

RDS/WHOIS and Data Protection Policy

Laureen Kapin (US FTC)

Chris Lewis-Evans (UK NCA)

Melina Stroungi (European Commission)

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Agenda

1. Status of Policy Development and Implementation

- Status Overview of EPDP Process
- Phase 1 Implementation Challenges
- Phase 2 Recommendations for an Access/Disclosure System (SSAD)
- Phase 2A Progress on Natural vs. Legal and Unique Anonymized Contacts
- Accuracy of gTLD Registration Data

2. Next Steps

- Overall Timeline
- Opportunity for GAC Public Comments on Phase 2a Interim Report

Overview of Expedited Policy Development Process (EPDP)

Expedited Policy Development Process (EPDP) on gTLD Registration Data

- Launched as part of emergency measures, to replace the [Temporary Specification](#) (17 May 2018) now incorporated as the [Interim gTLD Registration Data Policy](#)
- [Phase 1](#) (Aug. 2018 - Feb. 2019)
 - Laid out foundation of new policy framework (purposes, data elements, etc.)
 - Sufficient basis to proceed (GAC [letter](#) to ICANN Board, 24 April 2019)
 - Most Policy Recommendations [adopted](#) by ICANN Board (15 May 2019)
- [Phase 1 Implementation](#) (ongoing)
 - Interim Registration Data Policy (20 May 2019) extended Temporary Specification
- [Phase 2](#) (May 2019 - Jul. 2020)
 - Focus on a System for Standardized Access/Disclosure (SSAD)
 - [Final Report](#) Published on 30 July 2020. GAC submitted a [Minority Statement](#) (24 August 2020), along with ALAC, BC, IPC, SSAC (Annex E of Final Report)
 - GNSO Council [adopted](#) (24 September 2020) the policy recommendations for eventual ICANN Board consideration
- [Phase 2A](#) (Started in Dec. 2020)
 - Focus on 2 of the 3 important policy issues not addressed in Phase 2 (treatment of data from legal entities; pseudonymized emails)

Phase 1 Implementation Challenges

Progress

- Work started in May 2019 with the formation of an Implementation Review Team (IRT) in which the GAC has been represented by some of its EPDP Team representatives
- Work to date includes numerous [meetings](#), [studies and reports](#), a [Draft Policy Language](#) document, and ongoing negotiations of Data Processing Agreements between parties
- Many inter-dependencies remain pending, and disagreements persist on policy language, including issues of importance to the GAC, such as timeframe for response to Urgent requests

Timeline

- [GAC Montreal Communiqué](#) (6 November 2019): the GAC Advised the ICANN Board to
 - Take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team **generate a detailed work plan identifying an updated realistic schedule to complete its work** and provide and inform the GAC on the status of its progress by January 3, 2020;*
- The ICANN Board [accepted](#) this Advice (20 Jan. 2020) noting the [status update](#) provided by the ICANN CEO (6 Jan. 2020) including that “*the implementation plan that will be published for public comment will include an implementation timeline*”.
- There is currently no schedule for completion, nor publication of an implementation plan.

Phase 1 Implementation Challenges

Impact on Privacy/Proxy Service Accreditation Policy and Implementation (PPSAI)

- The GAC previously advised the ICANN Board regarding the need to resume implementation ([Kobe](#), [Marrakech](#) and [Montréal](#) Communiqué) in light of persistent issues as illustrated during the COVID crisis (See [ICANN68 GAC discussions](#))
- ICANN Org [reported](#) (12 Jan. 2021) on the impact of EPDP Phase 1 and 2 Recommendations on the PPSAI Policy and Implementation. The GNSO Council is now [expected](#) to discuss the report [during ICANN70](#) (Wed. 24 March 17:30 UTC).

Impact on Thick Whois Policy Implementation

- The Thick WHOIS Policy was [adopted](#) on 7 February 2014. [Legal](#) and [contractual](#) challenges emerged during implementation. In Nov. 2019, the ICANN Board [deferred compliance enforcement](#) of the policy until complete implementation of the EPDP Phase 1 policy recommendations.
- The ICANN Board [adopted](#) (15 May 2019) Rec. #7 (Transfer of data from Registrars to Registries) noting specific issues to be addressed during implementation, with the *“understanding that the EPDP Final Report does not repeal or overturn existing Consensus Policy including, in this case, the Thick WHOIS Policy”*
- The IRT, GNSO, and ICANN Board have exchanged views of the impact of Phase 1 Rec. #7. IRT [could not agree](#) whether it implicitly “rescinded” Thick WHOIS
- Nevertheless, the GNSO Council determined per a [communication to the ICANN Board](#) (29 Jan. 2021): *“notwithstanding the absence of a clear statement, [...] the intent of EPDP Phase 1 Recommendation #7 is to modify the Thick Whois Transition Policy”*

Phase 2 Recommendations for an SSAD (Adopted by the GNSO)

| | | |
|-----|---|---|
| #1 | Accreditation | Full Consensus |
| #2 | Accreditation of Governmental Entities | Full Consensus |
| #3 | Criteria and Content of Requests | Full Consensus |
| #4 | Acknowledgement of receipt | Full Consensus |
| #5 | Response Requirements | Strong support but significant opposition |
| #6 | Priority Levels | Divergence |
| #7 | Requestor Purposes | Consensus |
| #8 | Contracted Party Authorization | Strong support but significant opposition |
| #9 | Automation of SSAD Processing | Strong support but significant opposition |
| #10 | Determining variable SLAs for response times for SSAD | Strong support but significant opposition |

| | | |
|-----|---|---|
| #11 | SSAD Terms and Conditions | Full Consensus |
| #12 | Disclosure Requirements | Strong support but significant opposition |
| #13 | Query Policy | Full Consensus |
| #14 | Financial Sustainability | Divergence |
| #15 | Logging | Full Consensus |
| #16 | Audits | Full Consensus |
| #17 | Reporting Requirements | Full Consensus |
| #18 | Review of Implementation of recommendations concerning SSAD using a GNSO Standing Committee | Strong support but significant opposition |
| #19 | Display of information of affiliated privacy / proxy providers | Full Consensus |
| #20 | City Field | Consensus |
| #21 | Data Retention | Full Consensus |
| #22 | Purpose 2 | Consensus |

Consensus on Accreditation, Purposes and Centralization of Requests

Non-consensus on De-Centralized and Non-Automated Disclosure, Funding Arrangements and Requirement of Future Policy Development for Automation and Centralization of Disclosures

Phase 2 Recommendations for an SSAD

GAC Concerns

- In the [GAC Minority Statement](#) (24 August 2020), the GAC provided “input on its public policy concerns” in the way in which the recommendations:
 - *Currently conclude with a **fragmented rather than centralized disclosure system**,*
 - *Do not currently contain enforceable **standards to review disclosure decisions**,*
 - *Do not sufficiently address **consumer protection** and consumer trust concerns;*
 - *Do not currently contain reliable **mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve** in response to increased legal clarity; and*
 - *May impose financial conditions that risk an SSAD that calls for **disproportionate costs for its users** including those that detect and act on cyber security threats.*

Other Stakeholders Concerns

- **Representatives of prospective users of an SSAD and Internet Users** (ALAC, SSAC, BC and IPC) have expressed similar and additional concerns in Minority Statements (Annex E of [Final Report](#))
- **ALAC** expressed **concerns with adoption of non-consensus policy recommendations**, which the IPC and BC voted against
- **The IPC** [requested](#) (9 March 2021) that the **ICANN Board halt consideration of the EPDP Phase 2 Recommendations** due to the lack of consensus, public interest issues and emerging regulations to be taken into account (such as the European NIS2 Directive)

Phase 2 Recommendations for an SSAD

Current Status

- The ICANN Board [launched](#) (25 March 2021) a 6-month **Operational Design Phase** to inform its formal consideration of the GNSO Recommendations
 - This follows development by ICANN org of a [Concept Paper](#) discussed with the Community, on which the GAC provided [input](#) (22 January 2021)
 - The ODP aims at assessing the operational impact of the implementation of the recommendations
 - The ODP [will submit a request for information](#) from the community “to determine the feasibility and associated risks, costs, and resources required in the potential implementation of SSAD” (June 2021)
 - Upon completion of the ODP, the ICANN Board is expected to consider whether the recommendations are in the best interests of the ICANN community or ICANN
- In the [GAC ICANN70 Communiqué](#) (25 March 2021), the GAC advised the ICANN Board:
“to consider the GAC Minority Statement and available options to address the public policy concerns expressed therein, and take necessary action, as appropriate.”
- The GAC and ICANN Board [discussed](#) the Board’s [Clarifying Questions](#) (21 April 2021)
- The ICANN Board formally [adopted](#) its [response to the GAC Advice](#) (12 May 2021)
 - GAC Minority Statement explains bases for our concerns
 - Welcome ICANN Org’s continued engagement with Data Protection Authorities on the issue of Centralized Model (which Belgian DPA noted has “potential benefits”)

Phase 2A Progress on Legal v. Natural, Unique Contacts

Initial Report Published June 3rd:

<https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>

- **very streamlined process** (1st meeting Dec. 17th, 2020)
- new material introduced near deadline for Initial Report which created challenges for team to adequately review, confer, and discuss in plenary
- disagreement within certain SGs (including GAC members) as to whether report clearly flagged the divergence on the proposed recommendations, e.g. --
 - ***Preliminary Rec #1.***
No changes are recommended, at this stage, to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”).
 - much debate on this issue

Phase 2A Progress on (i) Legal v. Natural

Distinction between Legal and Natural Persons

- The EPDP Team is to determine whether changes are necessary to Phase 1 Recommendation 17 “*Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so*” and
- What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons.
- Though Initial Report concludes no changes are necessary, the Report includes useful *guidance* for those choosing to differentiate

Key areas where community input is requested

- whether changes are needed to the Phase 1 recommendation
- need for the GNSO Council to monitor relevant developments (such as NIS2, SSAD, etc)
- whether a standardized data element should be available for Contracted Parties
- whether the Guidance is sufficient

Phase 2A Progress on (i) Legal v. Natural

Distinction between Legal and Natural Persons

Proposed Guidance: Registrants should be allowed to self-identify as natural or legal persons (with guidance on timing)

- Registrars should consider using a **standardized data element** in the RDDS, SSAD or their own data sets indicating whether a natural or legal person and, if legal, whether data is personal or non-personal data
- Registrars should ensure that they **clearly communicate the nature and consequences of a registrant identifying as a legal person:**
 - easy to understand explanation of what a legal person is
 - guidance on possible consequences of:
 - Identifying their domain name registration data as being of a legal person;
 - Confirming the presence of personal data or non-personal data, and;
 - Providing consent
 - **If Registrants identify as legal persons & confirm registration data does not include personal data, then Registrars should publish the Registration Data** in the publicly accessible Registration Data Directory Services
 - Registrants must have **easy means to correct mistakes**

Phase 2A Progress on (ii) Unique Contacts

Unique Anonymized Contacts

- The EPDP Team is expected to address
 - Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.
 - If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses

- Status:

Preliminary Rec #5.

The EPDP Team recommends that Contracted Parties who choose to publish a registrant- or registration-based email address in the publicly accessible RDDS should ensure appropriate safeguards for the data subject in line with relevant guidance on anonymization techniques provided by their data protection authorities and the appended legal guidance

Phase 2A Progress on Legal v. Natural, Unique Contacts

Next Steps in EPDP Phase 2A Process

- [Initial Report](#) released June 3rd.
- [Public Comment Period](#) Closing on **19 July** (Format of response constrained to a [form](#))
- Timeline for possible GAC and National Comments:
 - Target for Draft GAC Comment for Membership Review: **30 June**
 - Target for GAC Membership initial Review and Input: **7 July**
 - Time available for GAC Members to consider submitting individual National Comments
in light of GAC Comment: **8-18 July**
 - Deadline for submission of GAC and any National Comments: **19 July**

Note: The EPDP Team will hold a [Community Update and Consultation](#) on 16 June at 14:30 UTC which conflicts with GAC Communiqué Drafting. Recording will be available.

Accuracy of gTLD Registration Data

State of play

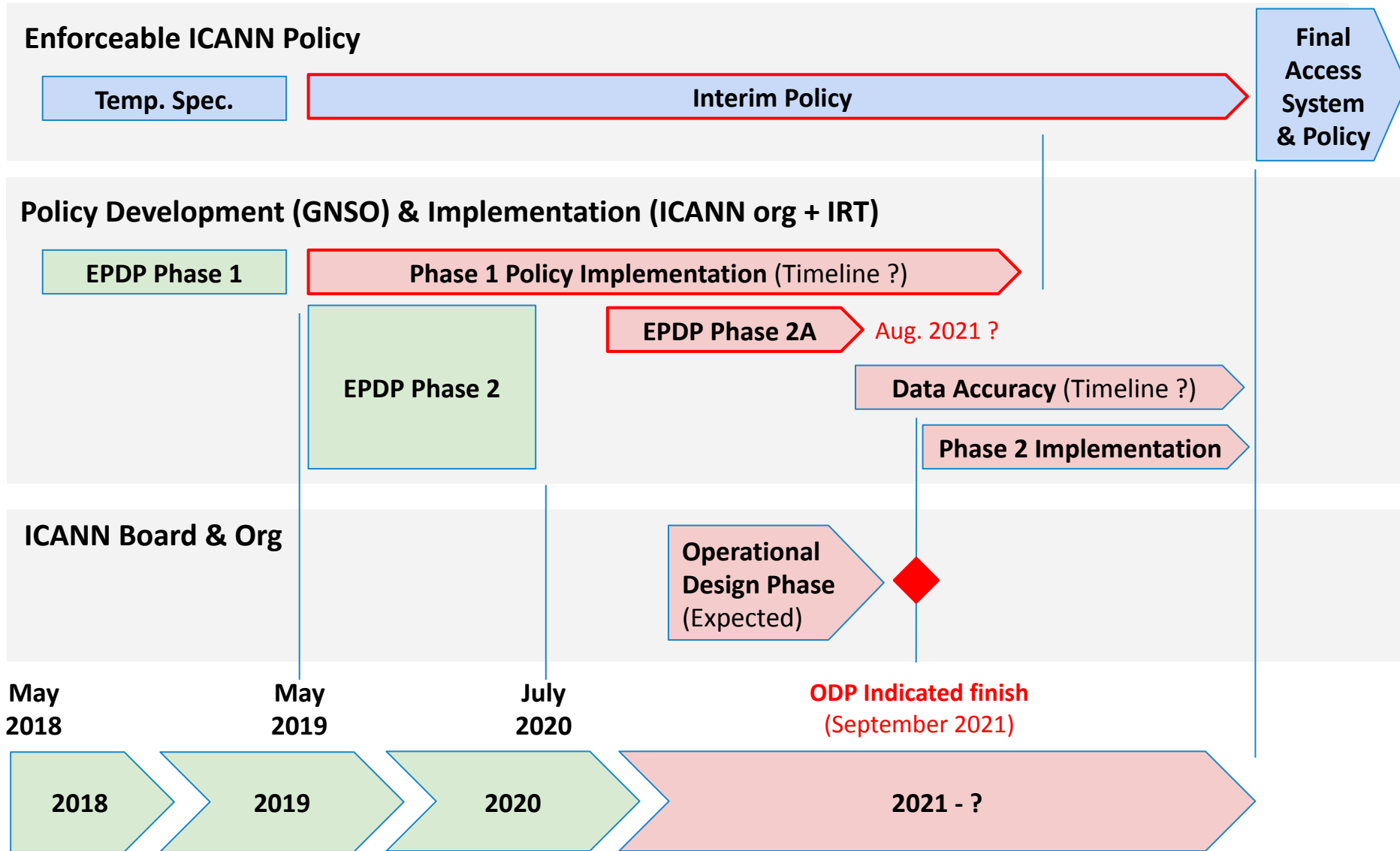
- **Developments since ICANN70**

- GNSO Leadership circulated a set of [proposed next steps](#) for the scoping exercise (23 April 2021)
- Call by some constituencies for setting a small team to redraft the GNSO leadership proposal
- A Small GNSO group was formed to advance on the launch of the scoping work (scope, timing, team composition)
- Currently, main aspects of work on accuracy are to be defined:
 - scope of work, including the purpose and scope of a study to support work
 - team composition and whether GAC will be part of the scoping team
 - timing – when the work will be launched

- **GAC / GNSO exchanges - overview**

- The accuracy of domain name registration data is fundamental for maintaining a secure and resilient DNS (e.g. EPDP Phase 2 Minority Statement)
- Importance for GAC of ensuring accuracy of domain name information
- A potential study on accuracy should consider this point and not be limited to accuracy definition and measuring but on effectively exploring accuracy issues
- Scoping is key for the ICANN community work on accuracy
- GAC would have added value for the scoping work and needs to be part of the scoping team
- The need for more clarity on the scoping work process, team composition, timing, scope delineation

Timeline to Access/Disclosure System





Review our Expected Standards of Behavior when participating in ICANN Meetings.

Go to:

<http://go.icann.org/expected-standards>

Review the ICANN Community Anti-Harassment Policy when participating in ICANN Meetings.

Go to:

<http://go.icann.org/anti-harassment>



Do you have a question or concern for the ICANN Ombudsman?

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