RDS/WHOIS and Data Protection Policy

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Agenda

1. Why Domain Name Registration Data is Important

2. Background

3. Timelines

4. GAC Concerns

5. Consideration of SSAD Recommendations

6. Accuracy Scoping Effort

7. ICANN74 Objectives

WHOIS and Data Protection: Importance to the GAC

Why this is important for the GAC

Per the GAC Principles Regarding gTLD WHOIS Services (28 March 2007), recalled in the GAC Abu Dhabi Communiqué (1 Nov. 2017), the GAC noted they "*continue to reflect the important public policy issues associated with WHOIS services*" including that "*WHOIS data […] is used for a number of legitimate activities, including:*

1. *Assisting law enforcement authorities in **investigations and in enforcing national and international laws**, assisting in **combatting against abusive use** of internet communication technologies;*

2. *Assisting businesses, other organizations, and users in **combatting fraud, complying with relevant laws, and safeguarding the interests of the public**;*

3. *Combatting **infringement and misuse of intellectual property**; and*

4. ***Contributing to user confidence in the Internet** as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online."*

And still relevant when considering compliance with Data Protection Law

The GAC advised the ICANN Board "*it should use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 Principles, including by:*
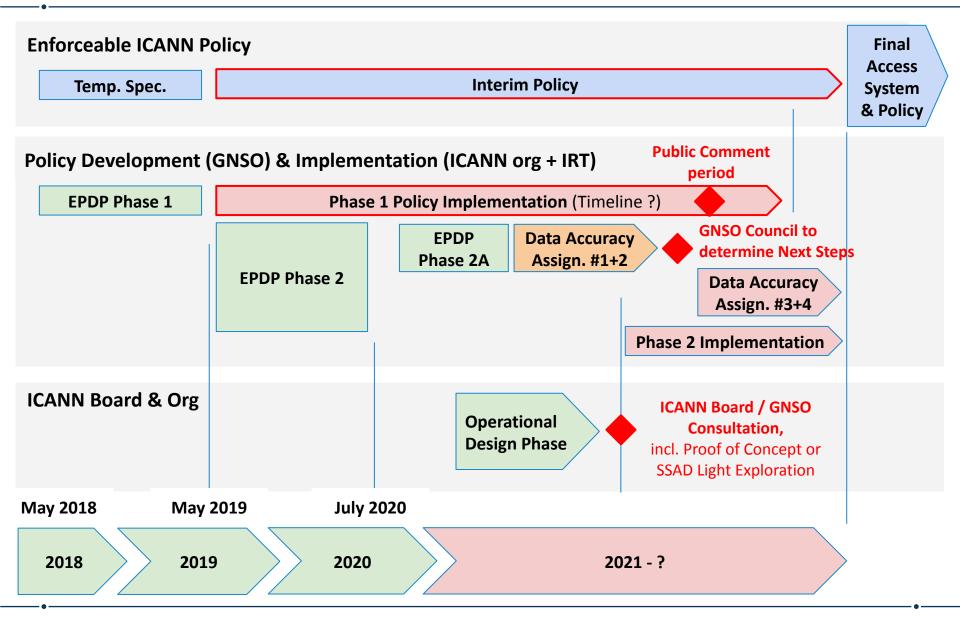
1. ***Keeping WHOIS quickly accessible for security and stability purposes**, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.*

2. ***Keeping WHOIS quickly accessible to the public** (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications"*

WHOIS and Data Protection: Background

Efforts to Define a New Policy Regime for Registration Data Services

- Expedited Policy Development Process (EPDP) Launched to replace the Temporary Specification (17 May 2018) now incorporated as the Interim gTLD Registration Data Policy (20 May 2019) which the GAC stressed "*created a fragmented system for providing access*" in the Barcelona Communiqué (25 Oct. 2018) and letter to the ICANN Board (24 April 2019)

- **EPDP Phase 1 Policy Development** (Aug. 2018 - Feb. 2019) **and Implementation** (May 2019 - ongoing)
  - Foundation of new policy framework (purposes, data elements, etc.). Mostly adopted by ICANN Board (May 2019)
  - Implementation timeline delivered following GAC Advice in Montreal, and Follow-up during ICANN71, ICANN72
  - ICANN Board listed the remaining milestones in Scorecard on ICANN72 GAC Advice (16 Jan. 2022)
  - Public Comment period announced for August 2022

- **EPDP Phase 2 SSAD Policy Development** (May 2019 - Jul. 2020) and **Operational Design Phase** (Mar. 2021 - Jan. 2022)
  - EPDP Phase 2 Final Report published on 30 July 2020. GAC submitted a Minority Statement (24 August 2020)
  - GAC Advice in the ICANN70 Communiqué (25 Mar. 2021) and response to Board Clarification Questions (6 Oct.)
  - ICANN Board directed ICANN to conduct an Operational Assessment of the GNSO Recommendations (25 Mar. '21)
  - ICANN org delivered its Operational Design Assessment (25 Jan. 2022) now subject to Board/GNSO consultation.
  - GNSO Council requested (27 Apr. 2022) the ICANN Board pauses consideration of the SSAD Policy Recommendations to allow work on a proof of concept. ICANN org expected to propose a simplified design.

- **EPDP Phase 2A Policy Development** (Dec. 2020 - Sep. 2021) **and Implementation** (Mar. 2022 - ongoing)
  - Focus on treatment of data from legal (vs. natural) entities and pseudonymized emails: Final Report (3 Sep. 2020)
  - GAC submitted a Minority Statement (10 Sep. 2021) and requested its consideration by the Board (9 Feb. 2022)
  - ICANN Board adopted the recommendations (10 Mar. 2022) and directed ICANN to implement

- **Registration Data Accuracy Scoping Team for potential GNSO Policy Development** (Oct. 2021 - ongoing)
  - Accurate registration data is important to the prevention and mitigation of DNS abuse (ICANN72 Communiqué)
  - The GAC stressed the importance of delivering on all four tasks in a timely and effective manner.
  - Partial Initial Report expected June 2022 to recommend scoping work be paused to allow for data gathering

WHOIS and Data Protection: Timeline to New System

Enforceable ICANN Policy

Temp. Spec.

Interim Policy

Final Access System & Policy

Policy Development (GNSO) & Implementation (ICANN org + IRT)

EPDP Phase 1

Phase 1 Policy Implementation (Timeline ?)

Public Comment period

EPDP Phase 2

EPDP Phase 2A

Data Accuracy Assign. #1+2

GNSO Council to determine Next Steps

Data Accuracy Assign. #3+4

Phase 2 Implementation

ICANN Board & Org

Operational Design Phase

ICANN Board / GNSO Consultation, incl. Proof of Concept or SSAD Light Exploration

May 2018   May 2019   July 2020

2018   2019   2020   2021 - ?

WHOIS and Data Protection: GAC Concerns

EPDP Phase 2: System for Standardized Access/Disclosure (SSAD)

- 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.*

EPDP Phase 2A: Distinction of registration data from legal vs. natural persons

- In the GAC Minority Statement (10 September 2021), the GAC acknowledged "*the usefulness of many components of the Final Recommendations"* including:
  - *the creation of data fields to flag/identify legal registrants and personal data;*
  - *specific guidance on what safeguards should be applied to protect personal information when differentiating between the domain name registrations of legal and natural persons;*
- The GAC noted however that it "remains *concerned that almost none of the Final Recommendations create enforceable obligations"* which *"fall short of the GAC's expectations for policies that would require the publication of domain name registration data that is not protected [...]"*

WHOIS and Data Protection: SSAD Operational Design

Findings of ICANN's Operational Design Assessment as presented to the GAC (16 Feb. 2022)

3-4 Years to Develop SSAD

3-4 years of development
- Selection of vendors
- Vendor ramp-up
- System development
- Legal instrument development
- Communications plan and support

Unknown duration of IRT
- Potentially 2 yrs based on experience
- Development and confirmation of requirements
- Policy document development

System development and IRT work is conducted in parallel to the extent possible.

Complexity

- 8 types of Actors
- 8 Subsystems
- 60 Processes

Approx. $14M - $107M for Annual Ongoing Operations

- Ongoing operations outsourced
- User accreditation volume drives cost
- ICANN org oversees ongoing operations, vendors, etc.
- 7 functions to fill through RFPs

Approx. $20M - $27M to Develop

- System development outsourced

SSAD Fee Structure
Based on full cost recovery model

Accreditations/Identity Verifications:
$86 - $21 (low - high usage)

Requestor Declaration Verification:
$190- $160 (low - high usage)

Disclosure Requests:
$40 - $0.45 (low - high usage)

Fee structure based on the assumptions* of:
- 25,000 and 3 million users**
- 100,000 and 12 million requests

*Based on a variety of inputs incl. the CP and community surveys, RDDS requests, abuse rates, etc.

**Requestors may still directly go to the CP, bypassing SSAD entirely. This may impact request volumes, if potential Requestors see the SSAD as too onerous.

WHOIS and Data Protection: SSAD Operational Design

Public Policy Concerns with Assessment to Date

- Role of Governmental Accreditation Authorities goes beyond the scope envisioned in GAC Principles on Accreditation (21 Jan. 2020). The GAC alerted the GNSO (15 December 2021) that ICANN's proposed design goes beyond the scope envisioned in GAC Principles on Accreditation (21 Jan. 2020) which were incorporated in Recommendation 2 of the EPDP Phase 2

ICANN Board / GNSO Council Consultation

- **A GNSO Small Team** reviewed ICANN org's Assessment with a view to support GNSO Council consultation with the ICANN Board, including addressing questions and concerns expressed in a ICANN Board letter (24 Jan. 2022)

- The **GNSO Council** shared concerns with the ICANN Board (27 Apr. 2022) regarding the Operational Design Assessment and called for a pause of the Board's consideration of the SSAD recommendations to allow for work to continue on a "proof of concept" in collaboration with ICANN org which suggested it could propose a simplified "SSAD Light Design" in a Concept Paper (6 April 2022)

- **Dialogue to continue between ICANN Board and GNSO Council** on next steps including prioritization of an "SSAD Light Design" against other priority projects such as Subsequent Rounds of New gTLDs

WHOIS and Data Protection: Proof of Concept/SSAD Light

Pre-ICANN74 ICANN org Briefing to the GAC (31 May 2022)

- ICANN org highlighted the **GNSO Council concerns**
  - *ODA does not provide enough information to confidently determine the cost/benefit of the SSAD recommendations.*
  - *Further information is needed to confirm Board's concerns, and whether changes to the proposed implementation or the policy recommendations are needed; which is expected to be obtained through a proof-of-concept approach, perhaps as outlined in the SSAD Light concept paper* [by ICANN org]

- ICANN presented **assumptions underlying the SSAD Light** Concept, which would:
  - Not take all the EPDP Phase 2 policy recommendations into account;
    - No identity verification of the requestors (Rec. 1)
    - No central or governmental accreditation authorities (Rec. 2)
    - No automated processing of certain requests by contracted parties (Rec. 9)
    - ICANN will not pass operational costs to requestors (Rec. 14).
  - Be based on the design described in the SSAD ODA
  - Collect data on the status of requests (e.g., approved, denied) and response times

WHOIS and Data Protection: Data Accuracy (1/2)

GAC Positions to Date

- In the ICANN72 GAC Communiqué, the GAC expressed support for the GNSO Scoping Team's assignments:

    I. enforcement and reporting
    [*assessment of how ICANN Compliance to enforce and report on accuracy obligations*]

    II. measurement of accuracy
    [*recommendations for how accuracy levels can be determined and measured*]

    III. effectiveness
    [*assess whether the contractual data accuracy obligations are effective at ensuring that Registered Name Holders provide "accurate and reliable" contact information*]

    IV. impact and improvement
    [*assess whether any changes are recommended to improve accuracy levels*]

- In the ICANN73 GAC Communiqué, the GAC highlighted that it "*has emphasized the importance of holding contracted parties accountable for their compliance with the existing accuracy requirements, as well as the importance of increasing transparency about compliance, in order to inform an evidence-based analysis of these issues*"

Key Input by GAC Representatives (in the Scoping Team on Registration Data Accuracy)

- Ensure that the "Current Description" of Accuracy (formerly an attempt at a consensus working definition which would be used to measure accuracy) reflects the ICANN73 GAC position

- Resuming ICANN's WHOIS Accuracy Reporting System where possible

WHOIS and Data Protection: Data Accuracy (2/2)

Expected Interim Report to the GNSO Council

- Leadership of the GNSO Accuracy Scoping Team reported (19 May 2022) that an interim report should be delivered in June 2022 covering deliverables #1 and #2 and including:
  - A "Current Description" of Accuracy (formerly an attempt at a working definition)
  - Possible ways to gather information on the current state of registration data accuracy that *require or do not require* access to the actual registration data

- The report will recommend that further work of the scoping team (on assignment #3 and #4) be paused until registration data is gathered and studied to evaluate accuracy, and until ICANN org completes its consultation of European authorities around a set of scenarios to determine if ICANN org has a legitimate purpose that is proportionate to request that contracted parties provide access to registration data records:
  - Scenario 1: Analyze publicly available registration data for syntactical and operational accuracy (as was done previously in the WHOIS ARS program).
  - Scenario 2: Analyze a sample of full registration data provided by registrars to ICANN org.
  - Scenario 3: Proactive Contractual Compliance audit of registrar compliance with registration data validation and verification requirements
  - Scenario 4: Registrar registration data accuracy survey (voluntary).

WHOIS and Data Protection: ICANN74 Objectives

ICANN74 Objectives

- **Consider providing further input to the ICANN Board** regarding the proposed Standardized System for Access/Disclosure of Registration Data (SSAD) given ICANN org's analysis of costs, benefits and risks in the SSAD Operational Design Assessment (25 Jan. 2022) and the subsequent request by the GNSO (27 April 2022) for the ICANN Board to pause consideration of these recommendations to enable the development of a proof of concept or SSAD Light, which ICANN org now also refers to as a "WHOIS Disclosure System"

- **Examine prospects of new policy development in relation to accuracy of registration data** in gTLDs given delays and dependencies in the current GNSO Registration Data Accuracy (RDA) scoping effort.

- **Assess the public interest impacts of the current interim policy regime** for gTLD registration data, in light of:

    a. **Prospects of implementation of, and community concerns with policy recommendations** in Phase 1, Phase 2 and Phase 2A of the Expedited Policy Development Process (EPDP) on gTLD Registration Data;

    b. **Current experience of parties seeking registration data** for a legitimate purpose which may not align with the GAC's Advice to "*ensure that the current system that requires 'reasonable access' to non-public domain name registration is operating effectively*"

    c. **The continued impact of delayed implementation of the privacy/proxy services accreditation policy recommendations**. Despite GAC Advice to resume implementation of the Privacy/Proxy Accreditation Policy, this is still suspended and continues to delay the delivery of an accreditation program including a law enforcement disclosure framework.

WHOIS and Data Protection

Potential ICANN74 GAC Communiqué Issues and Text

1. Accuracy scoping work timeline potential "pause"

2. SSAD light: timing, usefulness, and next steps unclear