

GNSO Council Recommendations Report to the ICANN Board - Regarding Adoption of the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Phase 2

[Date]

Status of This Document

This is the GNSO Council Recommendations Report to the ICANN Board following the adoption by the GNSO Council of the Final Recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Phase 2.

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1. Executive Summary

On 24 September 2020, the GNSO Council [voted](#) to approve with the required GNSO Supermajority support all the recommendations contained in the [Final Report](#) from the Team that had been chartered to conduct phase 2 of an Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data. This Recommendations Report is being sent to the ICANN Board for its review of the EPDP Phase 2 recommendations, which the GNSO Council recommends be adopted by the ICANN Board. Please see Annex A for a summary of all the approved recommendations.

Phase 2 of the EPDP Team's [charter](#) covered: (i) discussion of a system for standardized access/disclosure to nonpublic registration data, (ii) issues noted in the [Annex to the Temporary Specification for gTLD Registration Data](#) ("Important Issues for Further Community Action"), and (iii) outstanding issues deferred from Phase 1, e.g., legal vs. natural persons, redaction of city field, et. al. For further details, please see [here](#).

In order to organize its work, the EPDP Team agreed to divide its work into priority 1 and priority 2 topics. Priority 1 consists of a System for Standardized Access/Disclosure to non-public gTLD registration data ("SSAD") and all directly-related questions. Priority 2 includes the following topics:

1. Display of information of affiliated vs. accredited privacy / proxy providers
2. Legal vs. natural persons
3. City field redaction
4. Data retention
5. Potential Purpose for ICANN's Office of the Chief Technology Officer
6. Feasibility of unique contacts to have a uniform anonymized email address
7. Accuracy and WHOIS Accuracy Reporting System

On 7 February 2020, the EPDP Team published its [Initial Report for public comment](#). The Initial Report outlined the core issues discussed in relation to the proposed SSAD and accompanying preliminary recommendations.

On 26 March 2020, the EPDP Team published an Addendum to the Initial Report for public comment. The Addendum concerns the EPDP Team's preliminary recommendations and/or conclusions on the priority 2 items as listed above.

Following an extensive review of all the public comments received, the EPDP Team finalized its recommendations and completed its [Final Report](#), which was submitted to the GNSO Council on 31 July 2020 (note, a number of minority statements were submitted after this date and have been integrated into the Final Report). As a result of external dependencies and time constraints, the Final Report does not address all priority 2 items, specifically, legal vs. natural persons and feasibility of unique contacts to have a uniform anonymized email address. The Council is expected to direct the EPDP Team to further consider these two topics in the near future. In addition, for

accuracy, per the instructions from the GNSO Council, the EPDP Team did not consider this topic further; instead, the GNSO Council is expected to form a scoping team to further explore the issues in relation to accuracy and ARS to help inform a decision on appropriate next steps to address potential issues identified.

The policy recommendations, if approved by the Board, will impose obligations on contracted parties. The GNSO Council's vote in favor of these items satisfies the voting threshold required by Section 11.3(i)(xv) of the ICANN Bylaws regarding the formation of consensus policies. Under the ICANN Bylaws, the Council's Supermajority support for the EPDP recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

Note that as part of the Council's vote in favor, noting some of the questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements, the GNSO Council requests a consultation with the ICANN Board as part of the delivery of the GNSO Council Recommendations Report to the ICANN Board to discuss these issues, including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption.

2. GNSO Vote

If a successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the Constituency(ies) or Stakeholder Group(s) that held that position.

While the GNSO Council approved the EPDP Team's Final Report with the required Supermajority support, the vote was not unanimous. Resolved clauses 1a and 1b (see Annex A), received 100% of the Contracted Parties House in favor and 69.23% of the Non-Contracted Parties House in favor. The rest of the motion did receive the unanimous support from both Houses. Please find a link to the [meeting minutes](#), wherein you may refer to additional statements made by Council members on behalf of their respective groups.

3. Analysis of affected parties

An analysis of how the issue(s) would affect each Constituency or Stakeholder Group, including any financial impact on the Constituency or Stakeholder Group.

Policy recommendations regarding the access to and disclosure of non-public gTLD registration data will affect a number of GNSO Constituencies and Stakeholder Groups, as well as ICANN Advisory Committees. Accordingly, the EPDP Team included members from all the GNSO's Stakeholder Groups and Constituencies within the composition of the EPDP Team. In recognition of the effect on many stakeholders within the ICANN Community, the GNSO Council chose to invite all Advisory Committees and Supporting Organizations to participate in the EPDP Team. Following receipt of an invitation, the At-Large Advisory Committee, the Governmental Advisory Committee, and the Security and Stability Advisory Committee chose to participate. The Final Report also includes, where provided, statements from the participating groups. The following consensus designations were achieved, per the process that is outlined in section 3.6 of the [GNSO Working Group Guidelines](#):

- Eleven (11) recommendations obtained a full consensus designation (#1, 2, 3, 4, 11, 13, 15, 16, 17, 19 and 21)
- Three (3) recommendations obtained a consensus designation (#7, 20 and 21)
- Six (6) recommendations obtained a strong support but significant opposition designation (#5, 8, 9, 10, 12 and 18)
- Two (2) recommendations obtained a divergence designation (#6 and 14)

For further details about these designations, please see Annex D of the Final Report.

The GNSO's Stakeholder Groups and associated Constituencies were given the opportunity to provide additional statements, which were annexed to the Final Report. Below, please find a high-level summary of the concerns noted within the statements.

The At-Large Advisory Committee (ALAC) identified a number of issues in its statement such as, failure to address legal vs. natural, accuracy and evolution to more use-cases to be handled in an automated manner, noting that 'proceeding without addressing the issues that we believe are critical to the success of an SSAD will result in a system that will not meet needs of the users of SAD, with little opportunity to significantly correct those problems going forward'.

Similarly, the Business Constituency (BC) and Intellectual Property Constituency (IPC) note that 'the EPDP Phase 2 Final Report fails to deliver a System for Standardized Access that meets the needs of users' and also point to the failure to address a mechanism for evolution to centralized disclosure, legal vs. natural, data accuracy and inadequate enforcement policies.

The Governmental Advisory Committed (GAC) pointed out a number of public policy concerns in relation to the Final Report recommendations which in the GAC's view:

- 1) 'currently conclude with a fragmented rather than centralized disclosure system,
- 2) do not currently contain enforceable standards to review disclosure decisions,
- 3) do not sufficiently address consumer protection and consumer trust concerns;
- 4) do not currently contain reliable mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve in response to increased legal clarity; and
- 5) 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.'

The GAC furthermore points out that a number of key issues such as data accuracy, legal vs. natural and the use of anonymized emails are not addressed. It also notes that 'the model would also benefit from further clarifying the status and role of the data controllers and processors'.

In its minority statement, the Non-Commercial Stakeholder Group (NCSG) points out its lack of support and reasons for this lack of support for recommendations #22 (Purpose 2), #20 (City Field) and #7 (Requestor Purposes).

The Registrar Stakeholder Group (RrSG) notes that in its view 'the final recommendations provide sufficient guidance on which to base a standardized and predictable system, accommodating the recommendations of EPDP Phase 1 while also permitting the necessary flexibility for each registrar to implement their SSAD operations in a manner they determine to be in accordance with their often-multi-jurisdictional legal- and privacy-related obligations'.

The Registries Stakeholder Group (RySG) note that in its view 'the recommendations reflect the EPDP Team's best effort to develop a solution for access to personal data that balances the privacy rights of data subjects with the legitimate interests of third parties'.

The Security and Stability Advisory Committee (SSAC) is of the view that 'a much better system is possible within the limitations imposed by the general data protection regulation (GDPR), and that the EPDP has not provided outcomes that are reasonably suitable for security and stability'. The SSAC also points to unaddressed charter items such as legal vs. natural, accuracy and privacy/proxy related issues.

The above summary represents some noted points of impact among the affected Constituencies and Stakeholder Groups. Please refer to the full statements in Annex E of the [Final Report](#) for further information.

4. Period of time needed to implement recommendations

An analysis of the period of time that would likely be necessary to implement the policy.

In addition to the policy recommendations, the Final Report includes a substantial amount of implementation guidance which is intended to provide supplemental context and/or clarifying information to help inform the implementation of the policy recommendations. However, the complexity of implementing these recommendations should not be underestimated. In addition to the time needed to translate the policy recommendations into Consensus Policy language, time would also be needed to build the actual SSAD. As part of the EPDP Team’s deliberations, ICANN org was requested in November 2019 to provide a cost estimate based on the state of deliberations of the EPDP Team at that point. The [response](#), provides some important insights into the expected costs, complexity as well as possible time involved based on some of the assumptions made such as “development of both the Central Gateway and Accreditation Systems will be done in 9 months (after RFP and contract signing). After that, an additional 3 months of integration testing between those systems will be needed”.

5. External advice (if any)

The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

During the course of its work, the EPDP Team recognized some of the issues under discussion required the expertise of legal counsel. A sub-group of the EPDP Team, the EPDP Legal Committee, worked together to identify the preferred qualifications and experience the Team was seeking. ICANN Org, in following its standard procedure which includes a conflict of interest assessment, identified Ruth Boardman of Bird & Bird as the outside legal counsel dedicated to this effort. Ruth Boardman jointly heads the International Privacy and Data Protection Group of Bird & Bird.

The [full legal memos](#) are available for review, but the topics which received further guidance from legal counsel have been provided below:

1. Liability, safeguards, controller & processor
2. Legitimate interests and automated submissions and/or disclosures
3. Lawful basis for disclosure to Law Enforcement Authorities outside the Controller's jurisdiction
4. Pseudonymized email addresses
5. Consent
6. Accuracy principle
7. Automation use cases

Lastly, the following [list of resources](#), which includes previously-received guidance on RDDS, privacy law, ICANN policies, et. al., was made available for EPDP Team review and reference.

6. Final Report Submission

The Phase 2 Final Report of the EPDP Team was submitted to the GNSO Council on 31 July 2020¹ and can be found here in full: [Final Report](#). The recommendations are included as an annex to this report.

Translations of the Final Report have been requested in all the other official languages of the United Nations.

¹ Note, an updated version was submitted to the GNSO Council on 25 August as some EPDP Team members had requested additional time to finalize their minority statements (see <https://mm.icann.org/pipermail/council/2020-August/023991.html>).

7. Council Deliberations

A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

On 19 August 2020, Keith Drazek, GNSO Chair, sent a message to the Council outlining the proposed leadership approach for dealing with the EPDP Phase 2 Final Report (see <https://mm.icann.org/pipermail/council/2020-August/023976.html>). The GNSO Council had its first exchange of view on this proposed approach during its meeting on 20 August 2020 (see [transcript](#) or [recording](#)). This was followed by a dedicated GNSO Council EPDP Phase 2 Final Report webinar which provided an overview of the Final Report and its recommendations on 3 September 2020 (see [presentation](#) or [recording](#)).

On 11 September 2020, Rafik Dammak submitted the proposed motion on the EPDP Phase 2 Final Report to the GNSO Council mailing list (see <https://mm.icann.org/pipermail/council/2020-September/024014.html>). The GNSO Council considered and adopted the motion during its meeting on 24 September 2020. Please refer to the GNSO Council's resolution adopting the final recommendations from the EPDP Phase 2 Team at <https://gns0.icann.org/en/council/resolutions/2020#20200924-2> as well as the transcript and minutes from that Council meeting, at <https://gns0.icann.org/sites/default/files/policy/2020/transcript/transcript-gns0-council-24sep20-en.pdf> and [[include link once available](#)] respectively.

8. Consultations undertaken

External

As mandated by the GNSO's PDP Manual, the EPDP Team reached out shortly after its initiation to ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies to seek their input on the Charter questions. See <https://community.icann.org/x/zlWGBg> for all the responses received (these were from the Business Constituency, the Non-Commercial Stakeholder Group, the Registrar Stakeholder Group, the Registry Stakeholder Group and the Internet Service Providers and Connectivity Providers Constituency (ISPCP)).

Also as mandated by the GNSO's PDP Manual, the EPDP Team's Initial Report was published for public comment following its release on 7 February 2020 (see: <https://www.icann.org/public-comments/epdp-phase-2-initial-2020-02-07-en>). The EPDP Team used a Google form to facilitate review of public comments. Forty-five contributions were received from GNSO Stakeholder Groups, Constituencies, ICANN Advisory Committees, companies and organizations, in addition to two contributions from individuals. The input provided is at: https://docs.google.com/spreadsheets/d/1EBiFCsWfqQnMxEcCaKQywCccEVdBc9_ktPA3PU8nrQk/edit?usp=sharing.

To facilitate its review of the public comments, the EPDP Team developed a set of public comment review tools (PCRTs) and discussion tables (see <https://community.icann.org/x/Hi6JBw>). Through online review and plenary sessions, the EPDP Team completed its review and assessment of the input provided and agreed on changes to made to the recommendations and/or report.

On 26 March 2020, the EPDP Team published an Addendum to the Initial Report for public comment. The Addendum concerns the EPDP Team's preliminary recommendations and/or conclusions on the priority 2 items as listed above.

The EPDP Team used a Google form to facilitate review of public comments. Twenty-eight contributions were received from GNSO Stakeholder Groups, Constituencies, ICANN Advisory Committees, companies and organizations, in addition to one contribution from an individual. The input provided is at: <https://docs.google.com/spreadsheets/d/1jN5ThNtmcVJ8txdAGw0ynl5vrGJOuEv8xeccvzjR9qM/edit#gid=2086811131>.

To facilitate its review of the public comments, the EPDP Team developed a set of public comment review tools (PCRTs) and discussion tables (see <https://community.icann.org/x/Hi6JBw>). Through online review and plenary sessions, the EPDP Team completed its review and assessment of the input provided and agreed on which priority 2 recommendations and/or conclusions were ready to be included in the Final Report.

In addition, the Working Group held four face-to-face meetings: the first set of face-to-face discussions took place at the ICANN65 Public Meeting in Marrakech, Morocco, two dedicated set of face-to-face meetings, the second and fourth meeting, were held at the ICANN headquarters in Los Angeles (LA) in September 2019 and January 2020, and the third face-to-face discussion took place at the ICANN66 Public Meeting in Montreal, Canada. All of the EPDP Team's meetings are documented on its wiki [workspace](#), including its [mailing list](#), draft documents, background materials, and input received from ICANN's Supporting Organizations and Advisory Committees, including the GNSO's Stakeholder Groups and Constituencies.

Internal

In recognition of the condensed timeline the EPDP Team would be working under, the GNSO Council chose to invite two liaisons from ICANN Organization to participate directly within the EPDP Team: one liaison from ICANN's Legal Team and one liaison from ICANN's Global Domains Division. The ICANN Org liaisons attended most of the EPDP Team calls, joined the Team for its face-to-face meetings, and provided background information and [answers to questions](#) from the EPDP Team.

Similarly, two liaisons from the ICANN Board were also appointed by the ICANN Board and attended most of the EPDP Team's meetings.

Correspondence was also sent and received on various occasions to/from ICANN org as well as the ICANN Board to help inform the deliberations (see <https://community.icann.org/x/BpKGBg>).

9. Summary and analysis of Public Comment Forum

Summary and analysis of Public Comment Forum to provide input on the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data as adopted by the GNSO Council prior to ICANN Board consideration.

A public comment forum will be opened to solicit feedback on the recommendations prior to ICANN Board consideration. At the time of the publication of this report, the public comment forum had not been opened yet.

10. Impact/implementation considerations from ICANN staff

The internal ICANN org implementation team has formed and has begun to review the recommendations to analyze the implementation requirements. ICANN org considers the scope of effort required for this implementation to be significant and extensive.

Annex A: Council Resolution

Adoption of the Expedited Policy Development Process (EPDP) on the Temporary Specification Phase 2 Final Report and Recommendations

Submitted by Rafik Dammak
Seconded by Michele Neylon

WHEREAS

1. On [17 May 2018](#), the ICANN Board adopted the [Temporary Specification for gTLD Registration Data](#) (“Temporary Specification”) pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of Temporary Policies;
2. Following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN's Bylaws needs to be initiated immediately and completed within a one-year time period from the implementation effective date (25 May 2018) of the Temporary Specification;
3. The GNSO Council has had a number of discussions about next steps to clarify issues around scope, timing and expectations, including a meeting between the GNSO Stakeholder Group and Constituency Chairs on [21 May 2018](#), the Council meeting on [24 May 2018](#), a meeting between the ICANN Board and the GNSO Council on [5 June 2018](#) and an extraordinary GNSO Council meeting on [12 June 2018](#);
4. Subsequently, the GNSO Council agreed to form a drafting team, consisting of Council leadership and interested Council members, to develop the EPDP Initiation Request and EPDP Team Charter. The drafting team submitted the proposed EPDP Initiation Request and EPDP Team Charter to the GNSO Council on 19 July 2018;
5. The GNSO Council approved the EPDP Initiation Request (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf>) and the EPDP Team Charter (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>) on 19 July 2018;
6. The EPDP Team divided the work in two phases; Phase 1 completed with the adoption of the EPDP Phase 1 Final Report on 4 March 2019, at which point the GNSO Council indicated its non-objection, as required per the EPDP Team Charter, for the EPDP Team to commence work on a System for Standardized Access/Disclosure to Non-Public Registration Data (“SSAD”) as well as other topics identified in Phase 2 of the Charter and/or carried over from Phase 1 (priority 2 items);
7. The EPDP Team commenced its deliberations on Phase 2 on 2 May 2019 with the development of its workplan (see <https://community.icann.org/x/6BdlBg>);
8. The EPDP has followed the prescribed EPDP steps as stated in the Bylaws, including the publication of an Initial Report on 7 February 2020 for public comment

(see <https://www.icann.org/public-comments/epdp-phase-2-initial-2020-02-07-en>) as well as an addendum to the Initial Report on 26 March 2020 (<https://www.icann.org/public-comments/epdp-phase-2-addendum-2020-03-26-en>, resulting in a Final Report delivered on 31 July 2020 with an [updated version](#) containing all minority statements [submitted](#) on 26 August 2020;

9. Eleven (11) recommendations obtained a full consensus designation (#1, 2, 3, 4, 11, 13, 15, 16, 17, 19 and 21); Three (3) recommendations obtained a consensus designation (#7, 20 and 21); Six (6) recommendations obtained a strong support but significant opposition designation (#5, 8, 9, 10, 12 and 18), and; Two (2) recommendations obtained a divergence designation (#6 & 14);
10. The EPDP Team has indicated that it considers all SSAD-related recommendations interdependent, and, as a result, recommends SSAD-related recommendations (Recommendations #1 – 18) be considered as one package by the GNSO Council and subsequently the ICANN Board;
11. The GNSO Council has reviewed and discussed the [Final Report](#) and its recommendations, including during a [dedicated webinar](#) on the topic.

RESOLVED

1. The GNSO Council:
 - a. Adopts and recommends to the ICANN Board of Directors the adoption of recommendations #1 – 18 that establish a System for Standardized Access/Disclosure to Non-Public Registration Data;
 - b. *[if 1a. is adopted]* Noting some of the questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements, the GNSO Council requests a consultation with the ICANN Board as part of the delivery of the GNSO Council Recommendations Report to the ICANN Board to discuss these issues, including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption.
2. The GNSO Council adopts and recommends to the ICANN Board of Directors the adoption of recommendations #19 – 22 that address a number of priority 2 topics.
3. The GNSO Council directs ICANN org to convene an Implementation Review Team to work on the implementation of these recommendations. If acceptable to the IRT as well as ICANN org, the GNSO Council has no objection if the existing EPDP Phase 1 Implementation Review Team would take on this task, recognizing that there may be a need to refresh membership as well as align the implementation with any work that may remain from the Phase 1 implementation. The Implementation Review Team will be tasked with assisting ICANN org in developing the implementation details for the EPDP recommendations, evaluating the proposed implementation of the recommendations as approved by the Board, and working with ICANN staff to ensure that the resultant implementation conforms to the intent of the approved

recommendations. The Implementation Review Team shall operate in accordance with the Implementation Review Team Principles and Guidance approved by the GNSO Council in June 2015.

4. The GNSO Council extends its sincere appreciation to the Chair, Janis Karklins, Vice Chair, Rafik Dammak, EPDP Team members, alternates and support staff of the EPDP Team for their tireless efforts to deliver this Final Report, recognizing that the Council may direct that some further work is undertaken on a number of priority 2 items that were not addressed in the Phase 2 Final Report.

