

ICANN Transcription

Thursday, 13 February 2020 at 14:00 UTC

EPDP – Phase 2 Proposed Recommendations on a Standardized System for Access and Disclosure Webinar

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP Phase 2 proposed recommendations on Standardized System for Access and Disclosure webinar on the 13th of February, 2020, at 14:00 UTC. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. All documentation and information can be found on the ePDP Wiki space.

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webinar. Thank you. With this, I'll turn it over to our ePDP Phase 2 Chair, Janis Karklins. Please begin.

RAFIK DAMMAK:

Okay. Thanks, Zoe. I want to thank everyone for joining us today for the webinar from the ePDP team Phase 2 to present the proposed recommendation for a Standard System for Access and Disclosure. As you might know, we just published last Friday the public comment for the English report looking for input from the community. This is an opportunity to present the recommendation.

As you can see here, that's the presenter. It will be done by the ePDP team chair, Janis Karklins. And so, on the next slide you can see the agenda for today. As we have structured this call, we'll go through an overview of the initial report recommendation and also the expected next steps and timeline. We'll allocate time for an interactive session as a Q&A and to get questions from the webinar attendees. With that, I hand over to Janis so he can start the presentation. Janis, over to you.

JANIS KARKLINS:

Yeah. Thank you very much, Rafik. Once again, welcome, everyone. I will try to walk you through about 20 slides. Most likely, it will take about 20 minutes. After that, I will be very happy to answer questions if you have them.

Let me start by maybe explaining the methods of work and the scope of the exercise. First, we received the report of Phase 1 and a decision of the council that determined the scope of our activities,

as well as we received leftovers from the first phase issues that had not been resolved during the first phase, such as legal versus natural, a redaction of the CT field, using proxies, anonymized e-mails, and so on. We decided to structure our work in two streams.

The first stream is to work on the policy recommendations or on the System of Standardized Access and Disclosure to non-public registration data, and then to cluster all unresolved issues from the first phase in a so-called “priority two stream.” So for SSAD work, we started with a discussion of real-life cases in order to understand how potentially the standardized system could work.

After spending a few months in going through about six or seven different types of use cases, we came to some kind of understanding of what elements this system could have. We started to build the system by using building blocks. Each of the building blocks was part functional, part of the system. We talked about accreditation: whether there should be one or not, what would be the outline or content of request, what could be response requirements, what could be a query policy, acceptable use policy, whether there should be some automation involved, whether there should be logging, and then financial sustainability.

These were the building blocks that we discussed separately. And then, we put those building blocks together and this work got the shape of preliminary policy recommendations which were contained in the initial report that was released for public comment on January 7th.

If I would go through the preliminary recommendations, of course, in the short period of time I cannot go into very much detail but I will try to provide a high-level overview of these preliminary recommendations. And then, certainly, our community will have enough time to reflect on them and provide input in a structured way, as we requested.

When we talked about the system, we also thought, “What would be the benefits of having this standardized system?” We came to the conclusion that, in comparison with the current situation, there would be a number of benefits that potential users would have. First of all, that there would be a single gateway, a single location, where a request could be submitted.

Secondly, that there would be a standardized request form, that there would be a built-in accreditation process that would allow or that would comfort those who would need to formulate the replies to requests and would not make them verify the identity of requestors every time. And probably the most important, that all the requests would be examined and responses would be formulated in a standardized way, which certainly would increase predictability of the work of the system.

So, since we potentially are looking to, at least in the initial phase, many points where disclosure decisions would be made, the system will ensure that in each of those points at the contracting party level the answers would be formulated according to the same methodology and in the same way.

What are the general principles, if we can move to the next slide? The important question is sustainability and scalability of the system. We understand that the system should be automated as much as it is possible. There are several limitations. One limitation is technical limitation. Another limitation might be financial or commercial limitation, but most importantly there might be also legal limitations.

One of the fundamental principles that the team agreed and followed in the policy development process is that when it comes to receiving requests, authentication of requestor and the transmission or submission of the request, the SSAD would be fully automated insofar as it is technically feasible.

When it comes to disclosure decisions, they should be automated only where it is technically and commercially feasible and legally permissible. In other words, there will not be an automatic reply to any query. I think that this is important to understand: automation does not mean that the answer will be provided automatically no matter what. There will be a process involved, also, for the automated reply, which will perform and follow the policy that has been developed by the ePDP.

We also understand that there may not be full automation possible, and so we're probably at the beginning of the implementation of the system and functioning of the system. The disclosure decisions may be taken, after manual review, more, and the system potentially could be trained and it may evolve towards more automated disclosure decision-making, where it is legally permissible. What is important, also, is that policy suggests that this

transformation of the system or evolution of the system should not, in any way, violate existing policies or procedures.

Also, it was understood by the team and emphasized by the team that service-level agreements need to be put in place and be enforceable. They may change and the response time may become faster as we go and we learn and improve functionality of the system.

Also, the principle is that responses to disclosure requests, no matter whether they are done manually or in an automated response, will be returned from the relevant contracting party directly to the requestor, but the appropriate logging information would be maintained. And also, the time of the response would be maintained, as suggested by service-level agreements.

What are the main elements or the main players of the system? First of all, we decided that there should be an accreditation process and SSAD could be used only by accredited entities or individuals, and those who are one-time individuals also will need to go through a lighter accreditation process.

The accreditation authority would be ICANN or an ICANN-outsourced organization or contracted organization, as well as an identity provider that would take care of providing a confirmation that the requestor is the one that he or she says it is. And then, the request would be sent to the central gateway, and this gateway manager function would be performed, also, by ICANN Org.

The contracting parties; the disclosure would be made at the level of contracting parties at the beginning. And then, as we go and learn, it may be possible that the disclosure decisions could be delegated to the automated processes. And to oversee this evolution of SSAD, we would create a special mechanism that would oversee the functionality of SSAD and would make suggestions for its evolution.

This evolutionary mechanism also would be tasked to see whether there is any need for further policy recommendations and would provide recommendations to the GNSO Council, should this new policy development process need to be put in place.

Then, we developed a number of recommendations. I think there are 19 and they are rather lengthy, since they really cover the functionality of the system, as such. Some of them are specifically targeted to perform certain functions. Some of them are more related to the functionality of the system overall. Those are financial issues related to how the system needs to be funded/who would be covering which cost. Then, the fundamental question of the automation of disclosure processes and the mechanism for evolution of SSAD, which I already briefly described.

And then, there are specific recommendations which are geared towards either specific actors or functions. When it comes to requestors, there are recommendations on accreditation. On accreditation, we divided them in two parts; one, accreditation of organizations and individuals, and another accreditation of government entities.

Then, we have a recommendation on criteria and content of request. An important recommendation for disclosure decision-making is on the purposes and justification of submitting other requests. And then, a number of recommendations related to acceptable use policy, terms of use, and retention and destruction of data as far as it concerns the requestor.

Then, we have recommendations on accreditation authority, again for organizations, individuals, and government entities, as well as recommendations on logging and auditing of accreditation requests and accreditation decisions.

When it comes to recommendations related to central gateway functionality, there we have a number of recommendations, starting with the “acknowledgment of receipt” policy that outlines requirements in relation to acknowledgment of receipt and such steps to confirm that requests are complete.

Then, we have the recommendation or authorization for automated disclosure requests, then on the response requirements, on query policy, and equally on logging and auditing procedures for a submission of requests.

Then, the next cluster of recommendations are related to actions or steps that need to be performed by contracting parties. Recommendation six describes in detail how a contracting party takes ... I'm sorry. The recommendation on a contracting party authorization outlines authorization steps and the requirements for contracting parties.

And then, recommendation 11 on disclosure requirements outlines every step; the way disclosure decisions should be made by contracting parties both in the manual or automated way. Also, recommendation on response requirements, as well as the times of responses that are included in service-level agreements. Again, we have the same logging and other things since each of the steps and activities in SSAD will be logged, and we'll be able to trace who does this work.

Now, the way a system functions is in a very schematic way presented in the next slide. You now see on the screen how it works in real terms. The first step, of course, is accreditation. There will be accreditation of organizations and individuals. Their identity will be verified and their credentials issued. That would allow the requestor to submit disclosure requests in the system. That would be a portal where credentials would need to be presented and a request to be filed.

One can imagine that as we go and as we operate the system the interface for submission of the requests would be fine-tuned and amended based on experience of the operation of the system, and the interface, probably after a year or two of operation of the system, would be much more nuanced and complete than at the beginning of the operation of the system.

So, once a request is submitted through the central gateway, the central gateway manager reviews the request and decides whether this would fall in the category of automated disclosure or would require manual disclosure.

And then, a system would perform functions accordingly, either in an automated way, whereby the request from the central gateway would go in an automated way to a contracting party and the contracting party would send the response to the requestor, or that would need to be done in a manual way, so that would be, again, performed at the level of contracting parties in a manual way and the reply would be sent to the requestor directly by a contracting party in both ways, whether that would be a positive answer or that would be a negative answer.

That is more or less how this system will function. Of course, there are many more nuances described in the policy recommendations. We tried to make it as clear as possible but we have no doubts that some questions will be raised during the comment period which would allow our team to review and fine-tune further the policy recommendations that have been formulated so far.

What are the next steps and timeline? First, we would like to stress that the deadline for submission of public comments is Monday the 23rd of March, and there is no possibility of extension of this period because we're time-bound by the council's decision and availability of funding.

Equally, in order to facilitate the work of the submission of comments on specific recommendations, the team and support staff developed a Google Doc format form that needs to be used in order to facilitate, also, analysis of proposals. A similar type of methodology was used in the first phase of ePDP and has proven to be more efficient than allowing a freeform of submission of comment.

Of course, at the end of the submission there is also the possibility of writing a freeform essay formulated for the proposals, if commenters want to do so. In the meantime, while we will await the end of the comment period, the ePDP team will start working on the priority two items. We will aim at producing recommendations on priority two in a way that we could include them in the final report after the maybe shorter comment period of initial reporting of priority two items.

We're planning to continue working on priority two items during the Cancún meeting and release an initial report soon after for finalization on priority two items. We're aiming at finalizing the ePDP final report on SSAD and submitting it to the GNSO Council by early June, mainly June 7th.

On the next slide, you will see more or less what I described in the timeline format. I will not spend more time on this. You can study and see the history of the work of ePDP and our plans until the submission of a final report to the council. For the moment, according to staff calculations, we have completed 73% of the task when it comes to priority one issues. We're hoping to be able to finalize it as I outline.

That brings me to the end of the presentation. Probably you may have some questions. My apologies that that was maybe longer than I thought I would be and not so focused as I should have been because it's a bit of a busy day today, here in Geneva. With this, Rafik, turning the mic back to you.

RAFIK DAMMAK: Thanks, Janis, for the presentation. I believe we have enough time for a Q&A. We are looking for questions and comments from the attendees. In the meantime, we're checking the queue. We got some questions in the Zoom chat so we can start with those. The first question is from Maxim and it was the issue of leaked credentials for [every accounts considerate]; "People tend to change job, etc." Okay.

CAITLIN TUBERGEN: Rafik?

RAFIK DAMMAK: Yes?

CAITLIN TUBERGEN: This is Caitlin Tubergen from ePDP ICANN support staff. I'm happy to answer that question for Maxim.

RAFIK DAMMAK: Okay. Please, go ahead.

CAITLIN TUBERGEN: Thank you for that question, Maxim. I will note that the initial report does go through many of the built-in safeguards in detail and the ePDP team did specifically discuss abuse of credentials. Specifically, I would note that the initial report did foresee that it is the accredited entity's responsibility to make sure that credentials

used by its individuals are properly used, and specifically the report notes that both legal persons and/or individuals are eligible for accreditation. An individual accessing the SSAD using the credentials of an accredited entity, in other words “legal persons,” warrants that the individual is acting on the authority of the accredited entity.

Again, there are other safeguards built-in in the logging and auditing requirements to monitor the appropriate use of credentials. In short, yes, the ePDP team did discuss the misuse of credentials, and I would recommend that you read those recommendations in detail, and if you have any other concerns or recommendations to provide those in the public comment period. Thank you.

JANIS KARKLINS: Yeah. And maybe it is also worth mentioning that there is a provision of de-accreditation in case of abuse of accreditation system. De-accreditation also is envisaged or proposed.

RAFIK DAMMAK: Thanks, Caitlin, and thanks, Janis, for those responses. We still have some questions from the Zoom chat. The second one, I think, is also from Maxim: “What happens if a local law and jurisdiction of a contracted party will prohibit the use of SSAD?”

CAITLIN TUBERGEN: Rafik, this is Caitlin again with a response.

RAFIK DAMMAK: Yes, please go ahead.

CAITLIN TUBERGEN: Thank you. And thank you again for the question, Maxim. In response to this question, I will note that there is some text within the initial report that provides that the ePDP team recommends that if the contracted party determines the disclosure would be in violation of applicable laws or result in an inconsistency with these policy recommendations, the contracted party must document the rationale and communicate this information to the requestor and ICANN Compliance if requested.

Additionally, there's a separate procedure that a registry or registrar can make use of if there's a case of conflict with local law, and to note, that is the ICANN procedure for handling WHOIS conflicts with privacy law.

RAFIK DAMMAK: Thanks, Caitlin. I also encourage everyone, if you have any comments or questions, to be in the queue, but we'll continue with these questions from the Zoom chat. The next one, I think, is from Kristian. He's saying that he's sorry that he might miss it in the beginning. His question is, "How would it, anyway, be possible to do automatic disclosure?" I guess, Caitlin, you can respond to this?

CAITLIN TUBERGEN: Thank you, Rafik. Yes. Thank you for the question, Kristian. At this time, the ePDP has indicated two specific use cases for which it believes automation of responses may be possible. Those two instances are requests from law enforcement in local or otherwise applicable jurisdictions, as well as responses to UDRP and URS providers for registrant information verification in conjunction with the UDRP or URS case.

I will note that the ePDP team is still considering other scenarios in which automation may be possible, and I will also note that the report does currently contemplate that a contracted party may indicate to the SSAD that it would like to automate the response of all requests. That would be up to the discretion of that individual contracted party. Thank you. Back over to you, Rafik.

RAFIK DAMMAK: Thanks, Caitlin. Okay. The next question, I think, is from Maxim: "Was EBERO considered in the model as a replacement of a registry?" Over to you, Caitlin.

CAITLIN TUBERGEN: Thank you, Rafik. To answer your question, Maxim, no, I don't think the EBERO was specifically considered in light of the SSAD. If I'm misunderstanding your question or if you have more information you'd like to provide in that context, we can find an answer to that question, but at this time I'm not sure if I understand. Thank you.

RAFIK DAMMAK: Okay. Thanks, Caitlin. The next question is from Dev. It's for a request coming from an accredited organization person for registrant details for a domain: "Will the registrant be notified that a disclosure was made to the accredited organization person and the reason for the request?" Yes?

CAITLIN TUBERGEN: Thank you, Rafik, and thank you, Dev. I will note that the SSAD is meant to be compliant with data protection law, and therefore any requirements under the GDPR would need to be applicable for any entity that's operating under the GDPR. But in terms of specifics, that is not noted in the initial report. Thank you.

RAFIK DAMMAK: Okay. Thanks, Caitlin. Assuming Rubens wasn't asking in question, regardless of the tag or not; "Will SSAD know to query EBERO, and EBERO know how to answer it?" I think this is a follow-up of Maxim's question. Caitlin?

CAITLIN TUBERGEN: Thank you, Rubens, and thank you, Maxim. In terms of the actual technical details of the SSAD, that hasn't been built out yet, and so I'm not able to answer that question at this moment. Thank you.

RAFIK DAMMAK: Okay. Thanks, Caitlin, and thanks, Rubens. I think this is something we will take note of. Okay. I don't see any additional questions in

the chat, and also looking forward for anyone to be in the queue. The honor is for Olivier. Olivier, please go ahead. Olivier, if you are speaking we are not hearing you. Oh, please go ahead.

OLIVIER CRÉPIN-LEBLOND: Can you hear me? Yeah, okay. Thank you very much. Sorry for the terrible line. I'm in the UK at the moment. Quick question. Well, two quick questions, actually. I'm looking at priority one recommendations, which is what's being pushed on, now. Looking at priority two recommendations, there is a whole paragraph and there is the explanation that the public consultation and that process is going to be ongoing.

That includes very important stuff such as, for example, the display of information of affiliated versus accredited privacy proxy providers; things like the involvement of the chief technology officer with the ICANN CTO office and accuracy of the WHOIS accuracy reporting system. Is there any timeline as to when that will happen or is this just pushed until later? In the meantime, what is the position with regards to accredited privacy proxy providers?

That was my first question. The second one is with regards to the determination of a request. Well, the automatic determination has probably got a certain algorithm to it. I'm talking here about the manual determination on the viability of a request. What will that be based on? I mean, I don't want the whole thing but the just basic thing. And will conformance with adherence to human rights be considered in that determination? Thank you.

JANIS KARKLINS:

Olivier, let me try to answer your first question when it comes to priority two issues. As I mentioned during the presentation, we will now start working on priority two issues while awaiting the public comment for the initial report on SSAD.

We have a detailed work plan that includes, also, a full-day meeting in Cancún exclusively on priority two issues. I would like, also, to say that most of them are not simple and they have not been resolved for many years. We will give it a try in light of what we have done so far, building SSAD recommendations, and see whether we can agree on all of them or at least on some of them.

I cannot exclude a situation that if we will see that in the ePDP process the answers cannot be coined in a consensual way, we will refer back those issues to the GNSO Council. But we will do our best in trying to find a consensual solution for those complex issues.

From the other side, we also have some dependencies. For instance, on legal versus natural I think we are independent from the study, which was commissioned by the first phase recommendations and the study is ongoing, and so there is no point of discussing this issue without having that study on the table. Again, we will do our best and we will keep the community informed as we go.

When it comes to the second question, indeed, there is a recommendation in the procedure of disclosure that a human rights consideration should be taken into account in specific

circumstances, and they are outlined in the recommendation. Please read the recommendation and you will see for yourself. Rafik, back to you.

RAFIK DAMMAK: Okay. Thanks, Janis. Okay. I guess the next question is on the Zoom chat, from [Ariel]: "Will it be possible for a registry/registrar to ask the requestor to provide further documents to justify its request?" Caitlin?

CAITLIN TUBERGEN: Thank you, Rafik, and thank you for that question. The short answer to that question is "yes."

RAFIK DAMMAK: Thanks, Caitlin. That was straight to the point. Okay. Checking. I do not see any other questions and nobody in the queue. We are looking for more, if there are any clarifying questions or comments. Okay. Seeing none, okay. We have 12 minutes left in this webinar, so still you have an opportunity to ask any question, but if there are none I guess we might finish earlier. I will ask here, Janis, if you want to add anything or have any further comment.

JANIS KARLINS: No, thank you. Probably I need to thank everyone for interest in this webinar and I can only encourage to read the report itself, or if not the whole report then parts related to recommendations. One can

always argue that the recommendations are not ideal. Indeed, they are not. We hope that we will finetune them based on community input because 25 pairs of eyes are good but 1,000 pairs of eyes are even better.

But also, please do not leave your input until the last day. It would be useful and very helpful for the team if comments would come in timely and not on the 23rd of March only. My appeal to those who would like to provide comments is to do it in a timely manner, and certainly using the form that we suggested to facilitate analysis of those comments by the team members.

We are planning the week of intensive work to look through the comments and see how much and to what extent we can accommodate them and finetune our proposed policy recommendations. Thank you, Rafik.

RAFIK DAMMAK: Yeah. Thanks, Janis. I see that Olivier is in the queue so I can give this opportunity to ask another question. Olivier, over to you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Rafik. This is just another comment here, on one point which I've noticed in the report, which is the priority matrix for non-automated disclosure requests. I think that the proposed SLA ... And it says "for discussion" so I'm not sure for discussion by whom, but "for discussion." I guess type two, priority two and three, might be absolutely fine.

But priority one does have something which does make me cringe, and that on the left-hand column it does talk about circumstances that pose an imminent threat to life/serious bodily injury/critical [inaudible] of child exploitation, and on the right-hand column it says “one business day.” If it happens at 7 pm on a Friday, one has to wait until the Monday for things to happen.

Now, I do understand the limitations that one has in running a registrar and being able to service such requests but it doesn't read well and it certainly doesn't look nice for something as important as the requests that have been outlined here. Just a comment on that. I don't know how it can be fixed. Thank you.

JANIS KARKLINS:

Olivier, I think the fix is very simple and it is not one business day, it is up to one business day. There will be circumstances, then, that answers will be given, even in the manual fashion, immediately. And again, for the moment when we're thinking about SSAD we're thinking in abstract. We do not have any experience. We do not know how many requests will be filed daily, what type of requests will be filed daily, whether they will be simple cases, straightforward, or they will be complicated. That would require tons of documentation in order to make this determination.

I think we also need to understand that the system will be improving its performance as we go, as we learn, when all types of algorithms, starting with accreditation. Automated responses will be finetuned, again, based on experience and operations of the system. As well as this evolutionary mechanism or mechanisms that will oversee

and will examine functioning of the system, we'll also propose changes. And if the system will be clogged by requests, then this mechanism will examine whether initially proposed SLAs are justified or not and whether any change should be done or not, or vice versa.

It may also go in the direction of reducing response time, and that is actually the overall expectation, that the system will be performing better as we go and as we train the system to be more performant than at the beginning. Rafik, over to you.

RAFIK DAMMAK:

Okay, thanks, Janis. I see in the chat there was a comment from Andrew that it might be better to add distinct [economically-recognized international] to government to [recommend] recommendation two. I would like to take the opportunity to ask everyone if you have any comments, [inaudible], etc., to some [inaudible] specific sections and through the public comments to allow the team to review them and to deliberate regarding those comments. Thanks again for suggesting this during the webinar. I encourage everyone to participate in the public consultation and submit their comments.

Okay. Seeing no one and nobody in the queue, and there are no further questions in the Zoom chat, I guess we can close the webinar for today. Before that, I would like to thank everyone for attending. Thanks, Janis, for presenting the report and the recommendations, and thanks to the staff for support. Again, we are moving forward your input and feedback for the public

comment. That will really help the ePDP team and their deliberation in working toward the final report.

At the end, I just also want to remind that the slides and the recording will be available and the GNSO secretary will follow up research some details where you can find those materials. Okay. Thanks, everyone, and see you soon.

TERRI AGNEW: Thank you once again, everyone. The webinar has adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]