EPDP Phase 2 Small Team Preliminary Report to the GNSO Council – 4 April 2022

This is a preliminary report provided to the GNSO Council by the EPDP Phase 2 Small team on the status of its work. Although the small team had initially indicated that it would aim to complete its work by the end of March, some additional deliberations are necessary to present the Council with a full set of responses. Nevertheless, this update should provide the Council with an indication of the current thinking. The Council is invited to provide any further input or directions it may have for the small team during the Council's April meeting. If there is support for the approach outlined below, the GNSO Council may also wish to provide the ICANN Board with an update on the expected next steps and timing.

Introduction

The EPDP Phase 2 Small Team was formed by the GNSO Council to consider the concerns outlined in the ICANN Board letter and with these concerns in mind analyze the SSAD Operational Design Assessment and provide the Council with its feedback on:

- Whether the ODA has correctly interpreted the intent of the SSAD recommendations in the proposed implementation;
- Whether the ODA has overlooked any key aspects of the SSAD recommendations that should be factored in by the ICANN Board when it considers the recommendations;
- Its view on the concerns identified by the ICANN Board and potential options that could be considered, either in the form of changes to the proposed implementation or the policy recommendations themselves, to address these concerns (note, these are expected to be high level suggestions at this stage);
- Any other aspects that help inform the Council's deliberations and consultation with the ICANN Board.

The formation of the small team was preceded by a number of events that can be found in the background section in Annex A.

The Small Team commenced its deliberations on 9 February. As a first step, members of the Small Team reviewed the ODA and identified a set of clarifying questions that were submitted to the ICANN org ODA Team. The responses to these questions can be found here [include link]. In preparation for ICANN73, the Small Team lead, Sebastien Ducos, shared with the GNSO Council a high-level summary of findings based on the input received until that point which were also shared with the ICANN Board during the GNSO Council – ICANN Board joint session. Following that, the Small Team focused its attention on the Council's assignments through online work, meetings as well as engagement with the ICANN Board GDPR Caucus. Below you will find the responses from the Small Team to the questions put forward by the GNSO Council. The Small Team remains available to provide any further clarifications and/or further assignments the GNSO Council may have in relation to this topic.

1. **Whether the ODA has correctly interpreted the intent of the SSAD recommendations in the proposed implementation**

It is important to remember that the ODA illustrates one possible way to implement the SSAD recommendations. The design outlined in the ODA should not be seen as final or the only way in which these recommendations can be implemented. Having said that, the Small Team noted a couple of areas in which the ODA may have chosen a path that is not what the EPDP Team had in mind when it developed its recommendations. These include:

- The ODA seems to assume that the SLAs (recommendation 10) apply to the length of time the CP has to respond to a disclosure request letting the requestor know if their request has been approved or denied and that a separate timeline would exist for the CP to provide the data. That is not quite what the working group had in mind. The working group considered that SLA to be the amount of time the CP has to either respond with the data requested or provide a reason why the request has been denied.
- The ODA assumes that the various governmental and non-governmental accreditation authorities will also be the access point to the SSAD for requestors. That is not what the working group had in mind. The intent was for the Central Gateway to be the single point of entry for all SSAD users (thus the name). When accrediting a new user the Central gateway would leverage the applicable Accreditation Authority to verify the identity of SSAD users. The intake and processing of disclosure requests would be done directly to the Central Gateway (not via the accreditation authority).
- The diagram on page 77 of the ODA shows a separate process for the requestor to go directly to the individual contracted party to get the non-public registration data (once approved). That isn't how the working group envisioned the SSAD working. Our expectation was that the Central Gateway would be the requestors single interface for requesting and receiving access to non-public registration data. This separate processes of going directly to the CP defeats some of the intended benefits and utility of having a single centralized system.
- The concept of Signed Assertions is not captured in the ODA.
- The use of RDAP to complete the disclosure is an assumption that was not part of the Recommendations; this will create development work for CPs that the Recommendations did not specifically envision or require, as a CP may have an alternative method already in place to provide the data to the requestor
- There is an identified purpose for notifying Contracted Parties about SSAD requestors who have been sanctioned or suspended (the ODA says there is no identified purpose). We would suggest updating the ODA to indicate that there has indeed been a need identified for doing so.

The Small Team does not know if changes to these aspects would have a significant impact on the overall conclusions of the ODA. Nevertheless, the Small Team wanted to flag these here so that in case these recommendations are adopted and moved to an Implementation Review Team (IRT), these findings can be factored in.

In relation to the costs, the actual net operational costs of the system (that is, the costs not recovered directly from users) was $4.8 million per year for the low volume scenario and $7.3 million for the high-volume scenario. This is very different from the high-level presentations only presenting the overall costs ($14-$107 million), the bulk of which would be paid by users. Similarly, amortization of the system development costs were included in the operational costs of the system. The Board could consider as an option to recover only a portion of these costs and contribute to the operational costs which would further reduce the costs to users.

2. **Whether the ODA has overlooked any key aspects of the SSAD recommendations that should be factored in by the ICANN Board when it considers the recommendations**

Most small team members are of the view that the ODA does not provide enough information to confidently determine the cost / benefit of the SSAD recommendations. Some point to the inability to predict costs based on usage, the high variability and range of costs and lack of information on the specific costs of the different components of the system. As a result, the Small Team considered

what further information may be needed and how this information can be obtained, to allow the GNSO Council as well as the ICANN Board to confidently determine the cost / benefit and/or determine if modifications need to be made to the SSAD recommendations to achieve a better cost / benefit balance. The response to question #3 provides further details on how from the Small Team's perspective further information can be obtained.

3. **Its view on the concerns identified by the ICANN Board and potential options that could be considered, either in the form of changes to the proposed implementation or the policy recommendations themselves, to address these concerns (note, these are expected to be high level suggestions at this stage)**

As noted in its response to question #2, from the small team's perspective, further information is needed to be able to confirm the Board's concerns. Similarly, such further information would help inform whether changes to the proposed implementation or the policy recommendations themselves are warranted to address these concerns. As such, the Small Team is considering recommending to the GNSO Council that it suggests to the ICANN Board that consideration of the EPDP Phase 2 SSAD recommendations is paused while a proof of concept is implemented. Hereunder are further details on the current thinking of the small team in relation to the proof of concept. The small team had an initial conversation with ICANN org about the feasibility of implementing such an approach. They have committed to consider this approach and provide the small team with further information in relation to the feasibility and expected timeline to implement such an approach by [insert date]. Following that, the small team intends to finalize this report and submit it to the GNSO Council for its consideration.

SSAD proof of concept Outline & Requirements – Draft 4 April 2022

Please note that this is the best current thinking of the small team. Based on further deliberations as well as input provided by ICANN org concerning the feasibility of a proof of concept, further updates may be made.

1. **What is a proof of concept?**

A 'proof of concept' is understood by the small team as a tool to evaluate and test assumptions, it is NOT NECESSARILY a path to the end product. As such, it is expected to be relatively easy and inexpensive to set up and implement. A proof of concept does not deal with edge cases and/or reproduce a user experience that is identical to what the SSAD is expected to do. Nevertheless, an SSAD proof of concept will likely contain requestor personal data and as such, does need to have appropriate security as well as retention measures in place.

While we will maintain the 'proof of concept' idiom in this document for the sake of clarity, the team proposed this tool should be thereafter referred to as the "Simplified Request System"[1].

2. **What is the SSAD proof of concept expected to prove / disprove?**

The most important data gap in the ODA is the unknown volume of use for the SSAD. If ICANN org had a more clear/reliable volume estimate, it would be possible to more accurately anticipate costs for building and operating the SSAD. The SSAD proof of concept is expected to address this gap by

---

[1] Note, "simplified" in this context does not imply that the small team thinks it is simple to develop and implement the proof of concept, but it is intended to indicate how the development and implementation compares to that of the SSAD as outlined in the ODA.

providing accurate and **useable data on origin, nature, and volume[2] of disclosure requests, amongst others,** which include all Contracted Parties and Requestors rather than just a subset of either. In addition, it may provide other information that may help inform a determination of the cost/benefit of the SSAD recommendations and/or whether updates to the policy recommendations should be considered.

3. **Which aspects of the SSAD recommendations would need to be part of such a proof of concept to provide essential insights, which ones are nice to have, and which ones are not relevant?**

Necessary: (Note there would need to be some adjustments due to interconnection of recs, e.g. criteria is relevant but includes info about accreditation which is not relevant, and e.g. to create more tailored/targeted/relevant Terms & Conditions, etc)

Recommendation	Proof of concept expectation
Recommendation #3. Criteria and Content of Requests	Request form would include the information outlined in this recommendation – not possible to submit form if not all fields have been completed. It should be possible for a requestor to store his/her information so that it can be reused (as applicable) for future requests.
Recommendation #4. Acknowledgement of receipt and relay of the disclosure request	Automated response to requestor once a form has been submitted, informing of proof of concept approach as well as confirming data processing / retention that will take place. ICANN org relays request to sponsoring Registrar.
Recommendation #5. Response Requirements	Registrar is expected to provide a disclosure response without undue delay. Responses where disclosure of data (in whole or in part) has been denied should include a rationale sufficient for the Requestor to objectively understand the reasons for the decision. Disclosure response time as well as responses (data disclosed y/n, which fields, for which TLDs) to be tracked.
Recommendation #6. Priority Levels	As part of the request form, the requestor is able to indicate the priority level (with clear information to be provided what these priority levels include). A registrar may factor in this priority level in its assessment of the request. Proof of concept to track use of priority levels.
Recommendation #7. Requestor Purposes	Requestor to indicate as part of the request form the specific purpose for which disclosure is requested.

---

[2] Even though the small team expects that the proof of concept may give some further insight into the potential volume of requests, the small team also understands that, as the proof of concept will not be identical to the SSAD, may not be as widely promoted as anticipated for the SSAD and may or may not have a requestor cost associated with it, the volume of requests if/when an SSAD is adopted and implemented may be widely different.

Recommendation #8. Contracted Party Authorization.	Registrars are expected to review every request individually and respond to the requestor directly (with tracking of response time and whether or not data was disclosed and which fields)
Recommendation #10. Determining Variable SLAs for response times for SSAD	Registrars are encouraged to try to meet the SLAs set out in this recommendation. Tracking to be put in place to allow for confirmation of response times in combination with request type.
Recommendation #11. SSAD Terms and Conditions	SSAD proof of concept Terms and Conditions need to be clear for those parties involved.
Recommendation #12. Disclosure Requirement	Registrars are expected to only disclose data requested by the requestor and only current data.
Recommendation #15. Logging	Appropriate logging needs to be put in place so that data resulting from the proof of concept can be reviewed and analyzed. This data must be anonymized and not include any personal information.
Recommendation #17. Reporting Requirements	As outlined below, at six months interval data will be made available to review the proof of concept.

Nice to have:
Recommendation #13. Query Policy

Not relevant:
Recommendation #1. Accreditation
Recommendation #2. Accreditation of governmental entities
Recommendation #9. Automation of SSAD Processing
Recommendation #14. Financial Sustainability
Recommendation #16. Audits[3]
Recommendation #18. Review of implementation of policy recommendations concerning SSAD using a GNSO Standing Committee

Note, the small team considered whether accreditation should be part of the necessary category, but feedback from the RrSG representatives indicated that in the context of a proof of concept approach, Registrars would, regardless of whether accreditation would be in place, confirm requestor provided information themselves and not rely on the information provided by an unknown third party accreditor in the context of a proof of concept.

---

[3] Note, the small team considers an overall audit of the proof of concept an inherent part of the exercise, not to be confused with this recommendation that concerns SSAD audits.

4. Which parties would need to partake in such a pilot to make the findings useful?

ICANN org would update an existing ticketing system, repurpose another ticketing system or engage a third-party[4] to provide this service, and then continue to track/distribute tickets appropriately.

Contracted parties would continue to receive tickets sent to them via the ticketing system, and would respond to the requestor directly

Requestors would submit requests to the ticketing system

The small team also discussed that for the proof of concept to be successful, requestors would need to be encouraged and directed to submit their requests via the SSAD proof of concept. This is expected to require promotional and educational efforts to promote the SSAD proof of concept. Similarly, registrars would need to assist by encouraging requestors to submit requests via the SSAD proof of concept, although it was also recognized that the existing Temporary Specification requirement as well as EPDP Phase 1 Rec #18 will continue to require a registrar to provide reasonable access in response to requests that are directly submitted to a registrar.

Although the small team did not exclude the possibility of a nominal fee for requestors, it expects that the cost for the development and implementation of the proof of concept are to be borne by ICANN org. Other parties participating in the proof of concept will be responsible for any adjustments that may be necessary to participate in the proof of concept (for example, Contracted Parties may need to make certain adjustments to their internal systems and/or processes to receive and respond to disclosure requests). The financial sustainability aspect is expected to be reconsidered at the end of the proof of concept together with the other SSAD recommendations to determine if further updates are necessary in light of the experience gained and lessons learned with the proof of concept.

5. What would be the success factors of such a proof of concept (i.e. what type of information must be part of the results of the proof of concept to allow for a determination on the cost/benefit of SSAD and/or what modifications could / should be made to change that balance, if deemed necessary and desirable)?

The SSAD proof of concept should run for a period of time sufficient to gather a representative picture of the request volume as well as origin and nature of requests. The proof of concept would be considered successful if/when it provides sufficient information to allow for a determination by the GNSO Council and ICANN Board on how to proceed with the SSAD recommendations.

It was proposed that there would be check in points after each 6 months, for a maximum up to 2 years. At each of these checkpoints a review would take place of the data available to assess whether there is sufficient information to determine next steps or whether additional data would be beneficial to obtain a clearer picture. This determination would be expected to be made by the ICANN Board in consultation with the GNSO Council and ICANN org. During this period consideration of the EPDP Phase 2 SSAD Recommendations would remain on hold.

As part of the checkpoint review, it would also be discussed what happens with the SSAD proof of concept once the 2-year period ends[5]. The small team noted that it would not be prudent to decide

---

[4] The small team discussed that instead of ICANN org building or repurposing an internal system, it could also consider if such a service with the features outlined under section #3 is already available from a third-party vendor which might reduce costs and development time.

[5] This period may be reduced, should the proof of concept meet its goals early.

this at the outset as it will depend on the take up and use of the SSAD proof of concept. However, while decisions are taken and/or until a replacement solution is agreed, the small team can envision maintaining the proof of concept tool online, in existing or modified format, if it is proven useful enough, noting that there will be cost implications associated with such a decision. The small team does expect that before the 2-year period ends clarity is provided on the expected next steps in relation to the EPDP Phase 2 SSAD Recommendations which could include:

1) Approval of EPDP Phase 2 SSAD recommendations (in current or modified format) which would replace the SSAD proof of concept;
2) Determination that adoption of EPDP Phase 2 SSAD recommendations is not in the best interest of the ICANN community or ICANN and termination of SSAD proof of concept;
3) Modification of EPDP Phase 2 SSAD recommendations by GNSO Council informed by SSAD proof of concept findings;
4) A variation and/or combination of the above scenarios.

4. Any other aspects that help inform the Council's deliberations and consultation with the ICANN Board.

For the Council's information, the Small Team met with members of the ICANN Board's GDPR Caucus as well as members of ICANN org to float the idea of a proof of concept as well as discuss technical feasibility. No formal conclusions can be drawn from these conversations at this point, but some important questions were raised that have helped the Small Team further refine its approach and recommendations. As indicated above, further updates may be made as a result of further information received from ICANN org on the feasibility of the proof of concept approach.

The financial information presented is confusing, especially in the fee structure charts as well as the misuse management costs. It remains unclear to us how these estimates were formulated, how the high and low amounts were developed, and how the averages were calculated. If this financial information is being relied on for decision-making, perhaps the Council would want to have further discussions with the ODA team.

Annex A - BACKGROUND

On 3 December 2021, Philippe Fouquart shared on the GNSO Council mailing list that the SSAD ODP Team is in the process of finalizing its analysis, including work related to the SSAD Cost Model. As such, and in connection with the Council's request for a consultation (as captured in the Recommendations Report and elsewhere) with the ICANN Board related to concerns around financial sustainability, the next phase of that consultation will be scheduled in January 2022.

Ahead of the January consultation, an update session for the Council and GNSO appointed EPDP Team members was scheduled for 20 December 2021, focusing on the SSAD Cost Model information. During that meeting, the Council, GNSO appointed EPDP Team members, and GDPR Board Caucus members discussed the findings from the Operational Design Assessment (presentation) and the implications on the viability of the SSAD. On 4 January 2022, Philippe Fouquart shared a summary paper capturing the different ideas and suggestions that were made during that meeting. The Council scheduled a follow-on call on Wednesday 12 January 2022 to determine if there is convergence within the Council on possible next steps (see recording, presentation as well as follow up email sent on 17th January 2022 with an updated SSAD ODP Next Steps document). While the Council received an early update, a general webinar on the SSAD ODP was held on 18 January 2022.

During its meeting on 20 January, the Council further considered procedural options (see slides), as well as the proposed approach for analyzing the ODA which is seen as an essential step before being able to make any determination about next steps. The Council considers that a small team of Council members with the support of EPDP Team representatives would be best positioned to analyze the ODA and provide guidance to the Council on possible next steps.

The Council met with the ICANN Board on 27 January (see recording) as the next step in its consultation related to concerns around financial sustainability of the SSAD. In advance of that meeting, the ICANN Board sent the GNSO Council a letter outlining some of its concerns as well as questions it hoped to receive input on from the Council.