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Edgemoor Research Institute

Questions Regarding the ICANN WHOIS Disclosure System

Steve Crocker

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About Edgemoor Research Institute

Edgemoor Research Institute ("Edgemoor") facilitates the development and analyses of proposed and existing policies regarding the collection and access to registration data, including personally identifying information. We serve the public interest by creating and promulgating concepts and urgently needed tools that provide a precise specification of data collection, labeling, and access. Our goal is to bring together stakeholders from around the world, including non-profit, for-profit, government, end-users, and other stakeholders, to share knowledge and establish voluntary technical solutions to complex data-related public policy challenges.

Questions Regarding the ICANN WHOIS Disclosure System

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Abstract

This document captures a brief history of the work that has led to the proposed WHOIS Disclosure system and additional questions raised regarding its implementation.

I.   Introduction

In 2020, the ICANN Generic Name Supporting Organization (GNSO) Council approved a plan to revamp the WHOIS system per the recommendations of the ICANN [Expedited Policy Development Process](#) (EPDP).[1] This plan directed ICANN to develop a centralized System for Standardized Access/Disclosure (SSAD) for WHOIS records.

After much debate regarding the suitability and cost of such a system, ICANN brought together a group, the [EPDP Phase 2 Small Team](#), to review the SSAD ODA and recommend how to proceed with a more tightly focused project.[2] This has resulted in an effort called the [WHOIS Disclosure System](#).[3]

While ICANN has offered several updates regarding the goals, status, and aggressive timeline for the WHOIS Disclosure System, there are still concerns and open questions regarding critical details that will influence whether this revised system will meet the community's needs. [Edgemoor Research Institute](#), a non-profit led by Dr. Stephen Crocker, has submitted the following questions to ICANN in advance of ICANN 75 to improve the understanding and transparency around this project for potential users of this system.

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[1] ICANN org, "EPDP on the Temporary Specification for gTLD Registration Data," ICANN wiki, last updated 13 November 2019, https://community.icann.org/display/EOTSFGRD/EPDP+on+the+Temporary+Specification+for+gTLD+Registration+Data.

[2] ICANN org, "EPDP Phase 2 Small Team to review the SSAD ODA – started Feb 2022," ICANN wiki, last updated 3 February 2022, https://community.icann.org/display/EOTSFGRD/EPDP+Phase+2+Small+Team+to+review+the+SSAD+ODA+-+started+Feb+2022.

[3] Agopian, Eleeza and Karen Lentz, "ICANN Moves Ahead on SubPro ODP and WHOIS Disclosure System Design Initiatives," ICANN blog, 14 July 2022, https://www.icann.org/en/blogs/details/icann-moves-ahead-on-subpro-odp-and-whois-disclosure-system-design-initiatives-14-07-2022-en.

A.   Temporary Specification - Background

On 17 May 2018, the ICANN Board adopted the Temporary Specification for gTLD Registration in response to the European Union's General Data Protection Regulation (GDPR). The Temporary Specification "establishes temporary requirements to allow ICANN and gTLD registry operators and registrars to continue to comply with existing ICANN contractual requirements and community-developed policies in light of the GDPR."[4] One of the most critical elements of the Temporary Specification is the handling of the WHOIS system.

WHOIS started with the ARPANET, before the Internet and before the creation of the Domain Name System (DNS).[5] As the DNS began to be deployed, there was a need to be able to contact the operators of domain names, and since WHOIS was available, it was pressed into use for this purpose. The administrative and technical contacts were the people in charge of the time-shared computers on the ARPANET. The administrative contact was usually a person with the administrative authority who could take action if one of the system users was engaging in harmful behavior. The technical contact was the person one might call the sysadmin today.

Over the last fifty years, WHOIS has morphed from a directory of the system administrators of the several dozen time-shared hosts on the ARPANET to a directory of several hundred million domain name registrants on the Internet. In the process, registration data is now used – and misused – in many ways not originally envisioned. The simple concept of administrative and technical contacts for a domain available to anyone else on the network is significantly complicated by the emergence of privacy regulations around the world, law enforcement demands, complex business structures, and conflicting policies.

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[4] ICANN org, "Temporary Specification for gTLD Registration Data," adopted 17 May 2018, https://www.icann.org/en/system/files/files/gtld-registration-data-temp-spec-17may18-en.pdf.
[5] ICANN, "History of WHOIS," website, https://whois.icann.org/en/history-whois.

The purpose of the Temporary Specification is to allow gTLD Registry and Registrars to provide guidance on how to handle non-public registration data in a manner compliant with the GDPR. Part of that guidance involves the creation of a new registration data disclosure system.

B.   System for Standardization/Access Disclosure

A critical output of the ICANN EPDP effort is a System for Standardized Access/Disclosure (SSAD).[6] This model describes the interaction between three parts: requesters of the data, holders of the data, and the system's interface itself. It was intended to provide a controlled mechanism to support the release of non-public data to appropriate requesters.

Early criticism regarding the SSAD included a variety of concerns. A minority statement released by the ICANN Governmental Advisory Committee (GAC) and supported by the At-Large Advisory Committee (ALAC), Business Constituency (BC), and Intellectual Property Constituency (IPC) (these groups collectively represent a large part of potential users of the SSAD), highlighted several concerns around the recommendations included in the final report of the EPDP Phase 2, noting that the recommendations:

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*

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[6] Karklins, Janis, "EPDP Team Makes Key Progress in Phase 2 Work," ICANN blog, 19 September 2019, https://www.icann.org/en/blogs/details/epdp-team-makes-key-progress-in-phase-2-work-19-9-2019-en.

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.[7]

As these concerns were raised in a minority statement and the final report otherwise approved, ICANN moved to the Operational Design Phase (ODP).[8]

C.   SSAD ODP and the WHOIS Disclosure System

As part of the ODP, ICANN conducted a formal Operational Design Assessment (ODA). This assessment included the input from the EPDP Phase 2 Small Team to review the SSAD ODA.[9]

The team was tasked with the following assignment:[10]

The small team is expected to consider the concerns outlined in the ICANN Board letter and with these concerns in mind analyze the SSAD ODA 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;*

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[7] ICANN Governmental Advisory Committee, "Governmental Advisory Committee Minority Statement on the Final Report of Phase 2 of the EPDP on gTLD Registration Data," report, 24 August 2020, https://mm.icann.org/pipermail/gnso-epdp-team/attachments/20200824/aeeab8dd/gac-minority-statement-epdp-phase2-24aug20-0001.pdf.

[8] ICANN org, "System for Standardized Access/Disclosure Operational Design Phase," website, (accessed 31 August 2022), https://www.icann.org/ssadodp.

[9] ICANN org, "System for Standardized Access/Disclosure (SSAD) Operational Design Assessment (ODA)", report, 25 January 2022, https://www.icann.org/en/system/files/files/ssad-oda-25jan22-en.pdf.

[10] ICANN org, "EPDP Phase 2 Small Team Assignment," wiki page, last updated 9 February 2022, https://community.icann.org/display/EOTSFGRD/EPDP+Phase+2+Small+Team+Assignment.

- *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 end result of this work was a more tightly scoped effort called the WHOIS Disclosure System. ICANN org offered several updates to the Small Team regarding the work planned, its schedule, and its scope. While informative, several questions remain. Dr. Stephen Crocker (Edgemoor Research Institute) sent these questions to ICANN org in the hope of further clarity around the proposed system.

II.   Questions to ICANN Org Regarding the WHOIS Disclosure System

With this background in mind, we appreciated the 2022-08-10 EPDP Phase 2 Small Team review of the SSAD ODA - Meeting #11.[11] We look forward to the presentations during the week of 12 Sept and on 17 Sept, as noted on slide 3 of the presentation.

Here are the assumptions and questions we have regarding the WHOIS Disclosure System. If any of the assumptions included here are wrong, we apologize and look forward to clarification.

1. The 17 Sept presentation will include "key features and system mockups."

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[11] ICANN org, "2022-08-10 EPDP Phase 2 Small Team to review the SSAD ODA - Meeting #11," wiki page, last updated 10 August 2022, https://community.icann.org/pages/viewpage.action?pageId=206144028.

Will this information be sufficient for prospective requesters and responders to begin building their interfaces? If not, when will the details become available?

2. When will the system become available for use? In the transcript at 29:51, Chris Gift offered an estimate of the development time "between seven to nine months total time from when we get the green light to when it's deployed and operational, including any testing that would happen in between." Gift commented further that this assumes the feature set stays the same and that it also depends "on we're given the green light to go." Yuko Yokoyama then added, "obviously resourcing is another [caveat]. [O]rg always have competing projects, so what Chris has mentioned, is that … if this project were to be given 100% priority, so that the resources are dedicated."

ICANN Org has put a great deal of energy into managing its priorities and allocating its development resources. We understand the plans are reviewed on a six-month cycle and that this project will be considered in comparison with the other projects competing for resources. Based on this, can staff provide a best guess as to when work on this project will be initiated? (Presumably, the project will complete 7-9 months after initiation as described in previous reports.)

3. A key feature of the system will be the registration of both requesters and registrars. Presumably, the registration process will require both requesters and registrars to agree to various terms and conditions. A positive benefit of the registration is that registrars will know that all requesters have agreed to the terms and conditions. This may help the registrars decide which requests to respond to with the data requested.

When will these terms and conditions be available for the prospective requesters and registrars to review?

4. Slide 5 indicates the system will be modeled "off of CZDS." However, the CZDS system not only accepts requests for access to zone data; it also delivers access to the zone data. However, we understand the WHOIS Disclosure System will not include delivery of the requested data or any other responses.

   What is/are the intended method(s) for the registrars to deliver responses to the requesters?

5. One of the lessons learned from CZDS has been that the lack of response guidelines or requirements imposed on the data providers has resulted in community frustration when the data providers take longer to respond substantively than requesters anticipate. What should the community expectations be with regard to the responsiveness of data providers to provide a response either with data or a reason the data cannot be provided with this project? Will there be an effort to come up with community-agreed service level expectations for substantive responses?

6. As requesters and registrars gain experience with this system, they will naturally desire to share their experiences. Are there any mechanisms, forums, etc. anticipated to facilitate such sharing?

7. We understand under existing rules, requesters are permitted to make direct requests of registrars and that registrars are contractually required to accept and respond to such requests. What are the benefits to both requesters and registrars in using the WHOIS Disclosure system instead of making direct requests?

8. Will registrars be under the same obligation to review all requests directed to them through this system and provide some type of response?

9. Will registrars participating in the system receive email notifications, or will they have to log into the system to see requests in their queue?   If the latter, how frequently will registrars be required to check for pending requests?

10. You've stated that registrars will have the option to dispose of those incoming requests within the system. Is that intended to be an optional feature?

11. What data retention period will be used for requests?

12. What data will be retained for requests?

13. As you've indicated that inconsistencies between what a registrar reports in the system and what they tell requesters are out of scope for this project. Would those inconsistencies be considered contractual compliance concerns? If so, how will requesters be informed of potential remedies, e.g., failing complaints with contractual compliance?

III. Bibliography

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