

System for Standard Access/Disclosure to Non-Public Registration Data Operational Design Phase Scoping Document

1. Introduction

The ICANN Board is considering the [Expedited Policy Development Process \(EPDP\) Phase 2 Final Report](#) recommendations that were transmitted by the GNSO Council on 29 October 2020. In order to facilitate the Board's careful review and consideration of the recommendations, the Board is requesting that the ICANN org conduct an Operational Design Assessment of the System for Standard Access/Disclosure to Non-Public Registration Data, recommendations #1-18, of the Final Report. The Board requests that the Operational Design Assessment be completed 6 months from the date of the Board's request, provided that there are no unforeseen legal or other matters that could affect the timeline. This document provides the Parameters (Section 2), and Scope (Section 3), within which the ODA should be conducted.

2. Parameters

The ICANN org is expected to conduct its Operational Design Assessment based on the following parameters:

- 2.1. Operational Design Assessment (ODA) is performed from the perspective of finding a way to implement the GNSO's final recommendations and makes no judgment on whether the Board should approve the recommendations.
- 2.2. ODA will be organized by work area and include operational design analysis based on the policy recommendations as well as any additional anticipated aspects required to implement.
- 2.3. In cases where ICANN org needs to make assumptions to allow for the completion of the analysis, the assumptions will be explicitly stated in the ODA to provide transparency to the Board and community; and to assist in understanding the overall assessment.

- 2.4. Implementation may be dependent on other community or ICANN org efforts outside of the specific recommendation-related implementation work; such efforts will be clearly identified, documented, and explained, including how the ODA does or does not address the identified dependencies.
- 2.5. Initiating and conducting an ODP is not a minor undertaking and will require ICANN org resources to execute and deliver the information within the specified timeframe.
- 2.6. Some questions may only be addressed after the ODP is completed and, should the policy recommendations be adopted, once implementation of the SSAD has begun.

3. Scope

The ICANN org is expected to conduct its Operational Design Assessment of the GSNO Council-approved SSAD-related recommendations #1-18 within the scoping questions specified below, but may extend beyond the scope as it deems necessary.

3.1. Operational Readiness

3.1.1. Identity Verification

- 3.1.1.1. What approach(es) for identity verification can be used across different jurisdictions for the purposes required by the policy recommendations?
- 3.1.1.2. What criteria will be used to select the Identity Provider(s)?
- 3.1.1.3. Is more than one Identity Provider necessary for the operation of the SSAD?

3.1.2. Country/Territory/Governmental Accreditation

- 3.1.2.1. How will the governments be verified to make an Accreditation Authority (AA) designation?
- 3.1.2.2. How will the country/territory or government-designated AA be designated? Who should be allowed to make such designations?
- 3.1.2.3. How will country/territory or government-designated AA de-accreditation work?
- 3.1.2.4. How will governments integrate with ICANN org's systems?

3.1.3. Legal Questions

- 3.1.3.1. Data Protection Impact Assessment
 - 3.1.3.1.1. Should a Data Protection Impact Assessment be performed concerning any processing recommended to occur via the SSAD?
- 3.1.3.2. Data subject rights

- 3.1.3.2.1. How can data subject rights under applicable laws be accounted for at the Central Gateway level?
- 3.1.3.3. Legal bases for processing
 - 3.1.3.3.1. How can the various legal bases for personal data processing (where applicable) be accounted for in the SSAD design?
 - 3.1.3.3.2. How will the variable applicable legal bases for disclosure impact (if at all) the concept of SSAD providing reasonable access?
- 3.1.3.4. International data transfers
 - 3.1.3.4.1. What is the impact of data transfers from the EU and European Economic Area (EEA) to non-EU/EEA countries particularly following the Schrems II decision of the Court of Justice of the European Union?
 - 3.1.3.4.2. To what extent can the Central Gateway implement safeguards that may be legally required to transfer personal data across borders?
- 3.1.3.5. Economic and Trade Sanction Matters
 - 3.1.3.5.1. What impact could economic and trade sanctions have on operating the SSAD?
- 3.1.4. Timeline
 - 3.1.4.1. What is an estimated timeline to deliver the SSAD including specific timing for the items listed below?
 - 3.1.4.1.1. RFI/RFP for vendors
 - 3.1.4.1.2. Development of systems (Central Gateway, Accreditation Authority)
 - 3.1.4.1.3. Legal instrument creation
 - 3.1.4.1.4. Establishment of country/territory AA
- 3.1.5. Operation of the SSAD
 - 3.1.5.1. What is the proposed operational process flow for the SSAD?
 - 3.1.5.2. What is the expected volume the SSAD operational process flow will be able to manage?
 - 3.1.5.3. Can the SSAD handle requests for non-public registration data in a timely and predictable manner?
 - 3.1.5.4. Can the SSAD design scale to meet reasonably anticipated, future operational changes, for example as anticipated in Recommendation 18?
 - 3.1.5.5. How many potential users may be expected to use the system?
 - 3.1.5.6. Can the SSAD design be flexible enough to incorporate future changes in law(s) or ICANN Policy(ies)?

3.2. Systems & Tools

- 3.2.1. What systems, tools, and infrastructure are needed for the technical operation of the SSAD and its component parts?
- 3.2.2. Should ICANN org conduct a pilot program prior to launching the SSAD system?
- 3.2.3. How will the system integrate the various requirements such as identity verification, accreditation authorities, and disclosure of data?
- 3.2.4. Should the Accreditation Authorities manage and verify signed assertions for each requestor?

3.3. Vendors & 3rd Parties

- 3.3.1. Who will perform the Central Gateway Manager role?
- 3.3.2. Who will perform the Accreditation Authority role?
- 3.3.3. Should Identity Providers be used by the AA?

3.4. Resources & Staffing

- 3.4.1. What is the expected level of effort for ICANN org for each area of work outlined below?
 - 3.4.1.1. Development and launch of SSAD
 - 3.4.1.1.1. Systems development
 - 3.4.1.1.2. Vendor procurement
 - 3.4.1.1.3. Legal agreement creation
 - 3.4.1.1.4. Establish and manage the IRT; alignment with GNSO/IRT throughout the implementation phase
 - 3.4.1.2. Ongoing Operation of SSAD
 - 3.4.1.2.1. On-going operation of SSAD (system maintenance, vendor management, appeal mechanisms, compliance capacity, general customer support, etc.)
 - 3.4.1.2.2. Regular public reporting
 - 3.4.1.2.3. Engagement with GNSO Standing Committee

3.5. Finance

- 3.5.1. What is the cost estimate to design, build and operate a SSAD, or the estimate to contract for services as related to the SSAD?
- 3.5.2. How will the fee structure for the SSAD be constructed?

3.6. Risks

- 3.6.1. Would implementation of the SSAD recommendations create business, legal, reputational, or political risks for ICANN or ICANN org?
- 3.6.2. Would implementation of the SSAD recommendations create any potential conflicts with the ICANN Bylaws?
- 3.6.3. Is there any risk that existing policy or anticipated policy changes, or ICANN contractual requirements or amendments could conflict with implementation of the SSAD recommendations?
- 3.6.4. What is the risk to ICANN and ICANN org if future changes in law(s) impact the implementation of the SSAD?
- 3.6.5. Are there any recommendations where the intent is unspecified or unclear that will potentially lead to implementation challenges?
- 3.6.6. Is there a security, stability, and resiliency concern with the implementation of the recommendations?

3.7. Dependencies

- 3.7.1. What dependencies, if any, does implementation of the SSAD have with other ICANN org operations?
- 3.7.2. What are the dependencies, if any, on existing law(s) to implementation of the SSAD?
 - 3.7.2.1. Specifically, what is the impact of the NIS2, should it be adopted?
- 3.7.3. How will the timing of RDAP implementation impact the development and launch of SSAD?
- 3.7.4. What changes, if any, would be needed to the gTLD RDAP profile to implement the SSAD policy recommendations?

3.8. Global Public Interest Framework

- 3.8.1. What impact, if any, do the EPDP Phase 2 recommendations have on the Global Public Interest as evaluated using the [procedural framework](#) that was published in June 2020 and is currently being piloted?

3.9. Contractual Compliance

- 3.9.1. What will the ICANN org Contractual Compliance process design look like for SSAD-related complaints?

- 3.9.2. How will ICANN Compliance evaluate complaints from requestors regarding a CP's failure to respond, incomplete or delayed response, or rejection of disclosure when substantive review remains within the CP's discretion?