

RECOMMENDATION #19 – Mechanism for the Evolution of SSAD

Preliminary Recommendation #19: In conjunction with the implementation of these recommendations, the EPDP recommends the creation of a Mechanism for the evolution of SSAD. This Mechanism has the responsibility to provide guidance on the following topics:

- a) SLA matrix review;
- b) Categories of disclosure requests which should be automated;
- c) Other implementation improvements such as the identification of possible user categories and/or disclosure rationales.

The Mechanism focuses solely on the implementation of the SSAD and must not contravene the ICANN Bylaws, the GNSO PDP and/or existing contractual provisions for the development of new requirements for Contracted Parties. The Mechanism MAY make recommendations to the GNSO Council for any policy issues that may require further policy work.

The EPDP Team has indicated a preference to use existing processes and procedures to establish this Mechanism, if possible. Similarly, unnecessary complexity or cost should be avoided. The EPDP Team will further consider the details of the Mechanism, and would like request community input on the following:

What existing processes / procedures, if any, can be used to meet the above responsibilities?

If no suitable existing processes / procedures can be used, what type of mechanism should be created factoring in: o Who should guidance be provided to?

- How is guidance developed / agreed to?
- How should it be structured?
- What information is needed to ensure the evolution of SSAD?
- How is guidance of the Mechanism expected to be implemented?

Disclaimer: This overview has been developed to facilitate the EPDP Team’s consideration of the suggestions expressed and possible updates to the recommendations from the Initial Report. Comments may have been abbreviated and/or restated for this purpose. However, this does not replace the EPDP Team’s obligation to review all input received in full and to indicate if any concerns in this overview have inadvertently been mischaracterized.

Noted Concerns

Suggestions – Composition / Format / Use of existing processes / procedures	Corresponding PCRT Comment #	EPDP Team Support for suggestion (Y/N)
Any Mechanism should involve the input of directly affected parts of the community, in particular the contracted parties and SSAD users including business and intellectual property interests, law enforcement, cybersecurity, and other end users.	#7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 28, 29, 31, 33, 38, 42	
An advisory committee, made up of registries, registrars & accredited users, could be set up to review if the system is working as planned & to offer recommendations.	#10	
A new mechanism is not needed: The EPDP should complete its work based on a centralized model. This could eliminate the need for such a mechanism to gradually shift the SSAD toward greater centralization.	#13, 29, 31	
Forming an SSAD implementation council consisting from all stakeholders.	#22	

There are some small, standing committees set up for various technical issues that may provide some guidance (e.g. IDN-related implementations, RSEP reviews) and the IRT process itself could be looked at as a basis for creating a “standing” IRT of some sort.	#24	
Some kind of cross-community standing committee could be suitable for the Mechanism, akin to the CSC for PTI but with representation reflecting that of the EPDP.	#25	
We might look to other forms of standing committees employed by ICANN to continuously examine and recommend improvements to other matters, e.g the IANA Customer Standing Committee, the Empowered Community structure, the GNSO Council Standing Selection Committee, etc	#31	
A new mechanism is not needed: the existing GNSO Policy Development Process and contract negotiation process must be used for any changes or updates	#30, 32, 34, 35, 36	
It should be noted that this is not a new concept, as such a mechanism was envisioned by the Expert Working Group on gTLD Directory Services in its final report. Recommendation set 4 stated that “The RDS must be designed with the ability to accommodate new users and permissible purposes that are likely to emerge over time,” and proposed a multi-stakeholder review board for this purpose. The ePDP members may wish to review this work to assist their own effort.	#24	
It should not take the form of a GNSO PDP, as this structure is likely too rigid to meet the needs that the Mechanism would be serving.	#25	
A subcommittee of the GNSO Council can engage in long-term oversight of the SSAD's administration.	#34, 35	
Disclosure requests should follow best practice templates such as developed by RrSG (Minimum required information for Whois data requests), GoDady and Denic. <i>[Staff note – this does not seem to be specific to the mechanism but input on what existing processes procedures could be used in general?]</i>	#10, 36	
in terms of validation: as noted above the WIPO Brands Database contains tens of millions of records across dozens of national and regional offices, see: www3.wipo.int/branddb/en/branddb-help.jsp#db <i>[Staff note – this does not seem to be specific to the mechanism but input on what existing processes procedures could be used in general?]</i>	#26	

Suggestions – Role / scope of mechanism	Corresponding PCRT Comment #	EPDP Team Support for suggestion (Y/N)
It should be the aim of the Mechanism to seek to move as many use case-types to full automation as possible, bearing in mind the legal and operational considerations.	#7, 13, 25, 29, 31,	
All SSAD entities must receive detailed guidance in due time developed by ICANN consensus policy.	#9	
it must be able to require automation for new request types without that power crossing “the picket fence” or being considered to be policy making under the GNSO’s remit	#13, 29, 31	

looking into the types of disclosures that out of experience are deemed automatable and recommend moving its decision making to the central gateway manager who would provide an automated response to such requests.	#22	
the scope of the work it can do and recommendations it provides must both be narrow in their application yet enforceable under existing policy and contractual terms.	#24	
The Mechanism must not be a channel for second-guessing the EPDP recommendations/Registration Data Policy, or SSAD policy without objective evidence of legal risk, financial unsustainability, or other existential matters.	#25, 31	
Add d) The ability for Contracted Parties to make additional non-public data and services available through the SSAD or otherwise in a manner consistent with applicable data protection law. The EPDP Phase 2 recommendations should not be interpreted as precluding a Contracted Party from collecting additional registration data elements from a Registrant, and disclosing that information via SSAD, or otherwise, in a manner consistent with applicable data protection laws and other regulations	#27	
As decisions by the mechanism may result in increased automation of disclosure, there needs to be a clear definition of which parties remain responsible for the disclosure decisions	#28	
Recommendations stemming from this Mechanism MUST be focused on implementation only.	#30	
SLA will need review and modification as further experience is gathered. However, we see no need to establish ongoing review of the categories of disclosure requests which may be automated, nor will we need modifications to user categories and disclosure rationales.	#30	
the increased centralization of disclosure decision-making be explicitly added to the list of responsibilities of the Mechanism	#33	

Suggestions – Resources	Corresponding PCRT Comment #	EPDP Team Support for suggestion (Y/N)
It should have sufficient resources to obtain the legal clarity required to justify the centralization of more use cases over time	#13, 25, 29, 33	

Suggestions – Decision Making	Corresponding PCRT Comment #	EPDP Team Support for suggestion (Y/N)
Decisions should not be subject to reversal by the GNSO	#11, 12, 14, 15, 16, 17, 18, 19, 20, 21	
The mechanism must have the authority (with the support of contracted party representatives) to have new classes of automation introduced into the SSAD without referring the matter to the GNSO Council which only has jurisdiction over policy matters (and this present policy recommendation will already allow the creation of new classes of automated responses).	#22	

Decisions that result from this mechanism must not be subject to a vote from the GNSO Council that does not include the Advisory Committees.	#23	
This Mechanism cannot create new policies or contractual obligations on Contracted Parties, and MUST instead be referred to the legitimate and relevant GNSO Policy Development Process or direct contract negotiation with ICANN Org.	#30	
its guidance could be channeled to the GNSO Council, ICANN Org, and Board, with implementation of any accepted evolutionary guidance handled by a “standing” ICANN Org IRT in coordination with the standing committee Mechanism	#31	
The administrator can propose operational improvements; the GNSO Council subcommittee can review them to see if they implicate policy or alter policy or might have bad effects. Council approval should be required to go forward. In some cases public comment might be useful and required	#34	