

Recommendation 19 – Evolutionary Mechanism

Open Questions:

1. Can the EPDP Team provide additional guidance on how the difference between policy and implementation can be further delineated? For example, the following items were included in a previous iteration. Which of the below (if any) can be considered changes to implementation?
 - i. SLAs (recommendation #9)
 - ii. Automated use cases (recommendation #16/7) – review and assess possible updates to implementation of types of disclosure requests that can be automated;
 - iii. Third-party purposes / justifications (recommendation #4) – review and assess possible updates to third-party purposes / justifications;
 - iv. Financial sustainability (recommendation #15) – review and assess possible updates to implementation guidance in relation to financial sustainability.
 - v. Operational and system enhancements - only for those items where ICANN org is looking for guidance from the GNSO Standing Committee.
2. Does the scope for the GNSO Standing Committee require further limitation? Note: there is a proposal from the RrSG to include the following sentence, but GAC has expressed disagreement: “The Charter must not be restrictive in allowing the Committee to address any operational issues involving the SSAD, but should be clear that issues already addressed (meaning discussed, if not necessarily resolved) within Phase 1 or 2, including Phase 2 Priority 2 issues, are not part of this team’s purview.”
3. How will the GNSO deal with recommendations from the GNSO Standing Committee, i.e., what is the voting threshold to approve, and upon approval, do the recommendations go to ICANN Org for implementation or require a GNSO Policy Process?
4. Does the consensus process require additional updates? Some members have noted full consensus is difficult to achieve, and others have noted full CP consensus should not be required for every update (but may be required for updates to SLAs, for example). Can the Team provide further guidance on when full consensus or full consensus of the CPs is required?
5. RrSG proposes to remove the following items from the bulleted list in paragraph 1, noting these should only be b/w the CP and the SSAD operator. Does the EPDP Team agree to this removal?
 - Number of disclosure requests automated by the Central Gateway;
 - Number of disclosure requests automated by the Contracted Parties;
 - Number of requests processed manually;

Alternative Proposal 2 – Recommendation #19

Group	Current text & rationale for cannot live with	Proposed updated text	Staff Support
ALAC	<p>Recommendations concerning implementation guidance shall be sent to the GNSO Council for consideration and adoption, after which they will be sent to ICANN for further implementation work.</p> <p>Examples of what are considered implementation issues are required.</p>	<p>adding to the outlined text “Examples of implementation topics that require an update to the recommendations implementation guidance include but are not limited to, adding to the full automation category, types of disclosure requests that are legally permissible under GDPR and are not currently part of the implementation guidance as described in recommendation number 16, cost distribution and choice of party who performs various data protection functions, ...”</p>	Captured i
RrSG	<p>“No later than 3 months after the operationalization of SSAD, ICANN org will publish an SSAD Status Report, and continue to do so on a quarterly basis, that will include at a minimum:”</p> <p>3 months is not enough time to have useful data. The report should be after 6 months, or at least no earlier than 3 months after SSAD implementation</p>	No earlier than 3 months...	Change ap
RrSG	<ul style="list-style-type: none"> • Number of disclosure requests automated by the Central Gateway; • Number of disclosure requests automated by the Contracted Parties; • Number of requests processed manually; <p>These should only be between the CP and SSAD Operator</p>	Remove those 3 from the list	Included in

RrSG	The scope for the GNSO Standing Committee is not sufficiently limited. The existing text regarding focus of the Charter (“any operational issues involving the SSAD” and related examples) is a good start, but this should also include requirement that issues which were already discussed within the EPDP which are not mentioned here, including Priority 2 issues, are out of scope for this Committee.	Update 2nd sentence from this section as follows: “The Charter must not be restrictive in allowing the Committee to address any operational issues involving the SSAD, but should be clear that issues already addressed (meaning discussed, if not necessarily resolved) within Phase 1 or 2, including Phase 2 Priority 2 issues, are not part of this team’s purview.”	Captured in
RrSG - For discussion (not a “cannot live with” item)	There needs to be further detail on how Policy and Implementation issues are delineated so that any suggestions can be addressed with the appropriate path as described in (b)(2).		Captured in
ALAC	The proposal needs clarity whether the Standing Committee can propose new query classes which will be eligible for SSAD decision making and exactly how the GNSO will deal with them (ie voting threshold to approve and whether these go to ICANN Org for implementation or require a GNSO Policy Process.		Captured in
ALAC	Requiring full consensus may be problematic. It gives a veto to any group (or perhaps any person).	Requiring CP and SSAD Operator full agreement for additional SSAD decision making is acceptable. Requiring CP full agreement for SLA changes is also acceptable.	Captured in
ALAC	Need clarity on whether consensus decisions are made on a per person basis or per group. And to what extent multiple people from a single group impact the consensus process.		Support Sta Paragraph consideration comes dire charter.

ALAC	Since ICANN Org does not hold any data, it may be an SSAD Customer. Consideration must be given to having ICANN Org as a member of the Standing Committee (in its customer capacity).		Support Sta Paragraph may invite participate committee
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Review of implementation of policy recommendations concerning SSAD using a GNSO Standing Committee

The EPDP Team recommends that a GNSO Standing Committee be established to evaluate SSAD operational issues emerging as a result of adopted ICANN Consensus Policies and/or their implementation. The GNSO Standing Committee is intended to examine data being produced as a result of SSAD operations, and provide the GNSO Council with Recommendations on how best to make operational changes to the SSAD, which are strictly implementation measures, in addition to Recommendations based on reviewing the impact of existing Consensus Policies on SSAD operations.

1) No earlier than 3 months after the operationalization of SSAD, ICANN org will publish an SSAD Status Report, and continue to do so on a quarterly basis, that will include at a minimum:

- Number of disclosure requests received;
- Average response times to the disclosure requests, categorized by priority level;
- Number of requests categorized by third-party purposes / justifications (as identified in recommendation #4);
- Number of disclosure requests approved and denied;
- Number of disclosure requests automated by the Central Gateway;
- Number of disclosure requests automated by the Contracted Parties;
- Number of requests processed manually;
- Information about financial sustainability of SSAD;
- New EDPB guidance or new topical jurisprudence (if any);
- Technical or system difficulties;
- Operational and system enhancements.

The EPDP Team also recommends that the following principles be used as the basis by which the GNSO Standing Committee shall conduct its mission, which must be reflected in its charter:

a. Composition: The composition of the GNSO Standing Committee shall be representative of the ICANN Advisory Committees and GNSO Stakeholder Groups and Constituencies represented in the current EPDP Team on the Temporary Specification for gTLD Registration Data. This composition shall include at least one member from the GAC, ALAC, SSAC, RySG,

RrSG, NCSG, IPC, BC and ISPCP, as well as at least one alternate member from each group. Note, the number of members per group should not impact the consensus designation process as positions are expected to be considered per group and not at the individual member level.

- b. Scope: A Charter must be developed by the GNSO Council in conjunction with Advisory Committees, e.g., GAC, SSAD, and ALAC for the GNSO Standing Committee. The Charter must allow the Committee to address any operational issues involving the SSAD. This may include, but is not limited to, topics such as Service Level Agreements (SLAs), automation, third party purposes, financial sustainability and operational / system enhancements. The threshold for accepting an issue being on the GNSO Standing Committee's agenda shall be low enough to allow any of the groups involved the ability to have their interests in SSAD operations seriously considered by the Committee. Identification of issues, which the Committee may address shall be determined using the following two methods:
1. Any policy or implementation topic concerning SSAD operations may be raised by a member of the GNSO Standing Committee, and shall be placed on the Committee's working agenda if seconded by at least one other Committee member.
 2. Additionally, the GNSO Council may identify SSAD operational issues. The GNSO Council may choose to task the GNSO Standing Committee with evaluation of issues it identifies, in order for the Committee to provide the Council with consensus recommendations by the affected stakeholders on how best to address them.

Recommendations concerning implementation guidance shall be sent to the GNSO Council for consideration and adoption, after which they will be sent to ICANN for further implementation work. Recommendations which require changes being made to existing ICANN Consensus Policies shall be recorded and maintained, to be used in the issues scoping phase of future policy development and/or review.

- c. Required Consensus: Consensus Level for GNSO Standing Committee
Recommendations: Recommendations on SSAD operations and policies developed by the Standing Committee must achieve consensus of the members of the Committee in order to be sent as formal recommendations to the GNSO Council. For recommendations to achieve a consensus designation, the support of the Contracted Parties will be required. The GNSO Council may also consider inviting ICANN org liaisons as members to the GNSO Standing Committee. For the purpose of assessing level of consensus, Members are required to represent the formal position of their SG/C or SO/AC, not individual views or positions. Any SG or C that does not fulfil its entire membership allowance, as determined by the GNSO Council, must not be disadvantaged as a result during any assessment of consensus.
- d. Disbanding the GNSO Standing Committee: The Standing Committee may recommend to the GNSO Council that the Committee itself be disbanded, should the need arise. In

order for the Standing Committee to recommend to the GNSO Council that it be disbanded, an affirmative vote of a simple majority of the groups involved is required. This recommendation would subsequently need to be adopted by the GNSO Council.