SAC122
SSAC Report on Urgent Requests in the gTLD
Registration Data Policy

Preface

In this report the Security and Stability Advisory Committee (SSAC) contends that the handling of Urgent Requests in the gTLD Registration Data Policy Implementation Review Team Final Report is not fit for purpose.

The SSAC focuses on matters relating to the security and integrity of the Internet's naming and address allocation systems. This includes operational matters (e.g., pertaining to the correct and reliable operation of the root zone publication system), technical administration matters (e.g., pertaining to address allocation and Internet number assignment), and registration matters (e.g., pertaining to registry and registrar services). SSAC engages in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and advises the ICANN community accordingly. The SSAC has no authority to regulate, enforce, or adjudicate. Those functions belong to other parties, and the advice offered here should be evaluated on its merits. SSAC members participate as individuals, not as representatives of their employers or other organizations. SSAC consensus on a document occurs when the listed authors agree on the content and recommendations with no final objections from the remainder of the SSAC, with the exception of any withdrawals included at the end of the document.

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Executive Summary

On July 24, 2023 the gTLD Registration Data Policy Implementation Review Team (IRT) reached closure and consensus on the wording for Urgent Requests.[1] Both the SSAC and GAC found the proposed language for handling Urgent Requests unclear, and that it did not provide a workable process for the processing of Urgent Requests.[2] Subsequently, the Board intervened and asked that Urgent Requests not be included in the policy at this time.[3]

The Board's action removed the inconsistency between the requirement to support urgent processing of Urgent Requests and the need for an appropriate process for doing so. If the concept of an Urgent Request, or something similar requires special expedited processing, then further work will be needed to meet the requirement.

This paper examines the process that led to the proposed language for Urgent Requests and asserts the following questions should be asked if the same or similar requirements for processing special requests are pursued in the future.

- What is known about the need for special requests? Is there documentation of the frequency, urgency, source and outcomes of requests of this type?
- Is the rationale for creating a separate process for these special requests fully specified, well defined, and accepted by all parties?
- Is the proposed special process fit for purpose? (i.e., Will the resulting policy or implementation accomplish its stated purpose?)

This paper concludes with three recommendations. The first recommendation adds additional structure so that Urgent Requests will be handled in an appropriately expedited fashion. The second recommendation requests that the response time policy for Urgent Requests be fit for purpose. Finally, the third recommendation requests ICANN org begin gathering data on Urgent Requests and make it available to the community to inform future policy making efforts.

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[1] See Registration Data Policy from 24 July 2023,
https://community.icann.org/download/attachments/124847947/irt.RegDataPolicy20240724.pdf?version=1&modifi
cationDate=1690835991000&api=v2
[2] See GAC ICANN78 Hamburg Communique,
https://gac.icann.org/contentMigrated/icann78-hamburg-communique
[3] See Letter from Tripti Sinha to Gregory DiBiase, November 13 2023,
https://gnso.icann.org/sites/default/files/policy/2023/correspondence/sinha-to-dibiase-13nov23-en.pdf

1   Introduction

The gTLD Registration Data Policy Implementation Review Team (IRT) reached closure on July 24, 2023 regarding the wording for Urgent Requests for Lawful Disclosure (hereinafter referred to as Urgent Requests).[4] Urgent Requests are defined in section 3.8:

> 3.8   "Urgent Requests for Lawful Disclosure" are limited to circumstances that pose an imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation in cases where disclosure of the data is necessary in combatting or addressing this threat. Critical infrastructure means the physical and cyber systems that are vital in that their incapacity or destruction would have a debilitating impact on economic security or public safety.

However, there is no specific method, or mechanism, defined for submitting Urgent Requests. There is only a general method for submitting Disclosure Requests defined in Section 10.1.

> 10.1   Registrar and Registry Operator MUST publish on their homepage (a publicly available webpage where their domain name services are offered) a direct link to a page where the mechanism and process for submitting Disclosure Requests is detailed. The mechanism and process MUST specify (a) the required format and content of requests, (b) the means of providing a response to the requestor, and (c) the anticipated timeline for responses.

The response times for Urgent Requests are covered in Section 10.6. This section says that registrars and registry operators must "generally" respond within 24 hours. It also allows extensions that may increase the response time to seven (7) days:[5]

> 10.6   For Urgent Requests for Lawful Disclosure, Registrar and Registry Operator MUST respond, as defined in Section 10.7, without undue delay, generally within 24 hours of receipt.
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> > 10.6.1   If Registrar or Registry Operator cannot respond to an Urgent Request for Lawful Disclosure within 24 hours, it MUST notify the requestor within 24 hours of receipt of an Urgent Request for Lawful Disclosure of the need for an extension to respond. Registrar or Registry Operator's extension notification to the requestor MUST include (a) confirmation that it has reviewed and considered the Urgent Request for Lawful Disclosure on its merits and determined additional time to respond is needed, (b) rationale for why additional time is needed, and

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[4] See Registration Data Policy from 24 July 2023, https://community.icann.org/download/attachments/124847947/irt.RegDataPolicy20240724.pdf?version=1&modificationDate=1690835991000&api=v2

[5] For example, an Urgent Request can be made on a Thursday, on Friday the Contracted Party can respond that it needs an extension of another business day per 10.6.1, Saturday and Sunday then pass because they are weekend days, the Contracted Party can request an additional business day per 10.6.2 to cover Monday, and the requestor may receive the data on Tuesday. If the request is made before an additional non-business day such as a national holiday, the time to respond can extend to seven or more days.

(c) the time frame it will respond, as required by Section 10.7, which cannot exceed two (2) business days from the time of the initial receipt of the request.

10.6.2　In addition to the extension provided for in Section 10.6.1, if responding to an Urgent Request for Lawful Disclosure is complex, or a large number of requests are received by Registrar or Registry Operator, it MAY extend the time for response up to an additional one (1) business day provided it notifies the requestor within (2) business days from the time of the initial receipt of the request of the updated time frame to respond explaining the need for an additional extension of time.

The SSAC is struck by the incompatibility between the definition of Urgent Requests and the required response times. The key words in the definition of Urgent Requests are:

"… circumstances that pose an imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation in cases where disclosure of the data is necessary in combatting or addressing this threat."

The required response time is:

"Registrar and Registry Operator MUST respond, as defined in Section 10.7, without undue delay, generally within 24 hours of receipt."

Normally, when words like "imminent threat to life" are used, the expected response time is measured in **minutes**, not hours or days. Those words also have a clear legal definition in some jurisdictions.[6] The wording "within 24 hours of receipt" also invites closer examination.

The SSAC also notes that the term "generally" in, "generally within 24 hours of receipt," introduces ambiguity. Its inclusion is unnecessary. It implies that when no extension notification has been made, Urgent Requests may be responded to in a time longer than 24 hours. The policy is not clear and therefore its enforceability is likely to be a challenge, if it is indeed enforceable at all.

2   Policy Considerations

Some aspects of this policy remain unclear to the SSAC. These are addressed under four broad headings.

Fitness:　　　　Will the design and implementation meet the need? (i.e., will it be fit for purpose?)

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[6] See National Archives Code of Federal Regulations Title 47, Chapter I, Subchapter A, Part 10, Subpart D, §10.400(b)(1), https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-10/subpart-D/section-10.400

Transparency: Is the rationale for the policy clear? Are all the terms in use fully defined and understood by all parties?

Reputation: How does this make ICANN look to the outside world? (i.e., are there risks to the credibility of ICANN?)

Process: How well does the ICANN process work in addressing this matter?

2.1   ICANN and Industry Precedents

Standing ICANN contractual requirements and Internet industry practices offer useful precedents and procedures for handling Urgent Requests.

2.1.1 ICANN Contract Precedent

ICANN's Registrar Accreditation Agreement (RAA) has long required a response standard and procedure that is very relevant to the IRT. The IRT could use it as a model.

Since 2013, all registrars have been required to review abuse requests from law enforcement within 24 hours, seven days a week, by a staffer with decision-making authority. Registrars are also required to have both an email address and telephone hotline to receive those requests. The language in the RAA is:

> 3.18.2   Registrar shall establish and maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of Illegal Activity by law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report.[7]

The above contractual provision establishing 24 hours as a reasonable timeframe for review of reports of illegal activity represents treatment of a conceptually similar issue to that of Urgent Requests. The SSAC is unaware of any concerns that this 2013 RAA requirement has been in any way problematic.

While it is premature to predict the volume of Urgent Requests registrars will receive, the SSAC notes the conditions for making such requests are narrowly constrained, and thus are unlikely to greatly exceed the volume of Illegal Activity reports already handled by registrars. The SSAC is unaware of any complaints that the RAA requirement has been onerous or has been abused by law enforcement.

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[7] See Registrar Accreditation Agreement,
https://www.icann.org/en/system/files/files/registrar-accreditation-agreement-30apr23-en.pdf

The IRT defines Urgent Requests as potentially being more urgent than well-founded reports of Illegal Activity. Compared to the IRT's draft language:

- In the RAA, the 24-hour time to review is clear and unambiguous. The RAA does not allow for a registrar to request extensions, such as depending on the number of domain names involved.
- The RAA requires review seven days a week, and does not allow exceptions for non-business days such as weekends and holidays.

Urgent Requests require a more urgent method for reaching a registrar to initiate an Urgent Request, and tighter timelines for processing the Request.

2.1.2 Internet Industry Precedents

Internet providers have long had procedures for law enforcement and government agencies to make emergency requests for disclosure, and for those requests to be verified. These processes are similar to what is detailed in Section 10 of the revised Registration Data Policy.

Examples include:
- Apple provides an emergency disclosure request form, for situations very much like the ones ICANN contemplates. It says: "Apple considers a request to be an emergency request when it relates to circumstance(s) involving imminent and serious threat(s) to:
  - 1) the life/safety of individual(s);
  - 2) the security of a State;
  - 3) the security of critical infrastructure/installation(s).

  Apple will not process a request on an emergency basis unless it relates to circumstance(s) as outlined above and this form is fully completed by the requesting officer and transmitted from the officer's official government or law enforcement email address to the mailbox: exigent@apple.com with the subject line: "Emergency Request."[8]
- Google has an Emergency Disclosure Request Form, which documents and expedites urgent requests from law enforcement. "This form is to assist Google in determining whether there is sufficient justification to establish a good faith belief that disclosing data without delay is necessary to avert a threat of death or serious physical injury to a person. This form must be completed by an authorized law enforcement official."[9]
- Google reports the number of Emergency requests in its transparency reports. In 2022, Google received 12,685 Emergency Requests, and fulfilled about 65% of them.[10]

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[8] See Apple EMERGENCY Government / Law Enforcement Information Request,
https://www.apple.com/legal/privacy/le-emergencyrequest.pdf
[9] See Google Emergency Disclosure Request Form,
https://storage.googleapis.com/support-kms-prod/5vk1sbKbfu388CXonYp3khD7LqjUDIbmJgBk
[10] See Google Transparency Report, Global requests for user information,
https://transparencyreport.google.com/user-data/overview?user_requests_report_period=authority:US

2.2   Fitness

Policy development occurs when there is an agreement that a new or improved process is required to accomplish a specific purpose. The SSAC believes that fitness is an integral requirement for policy development and implementation. That is, the new or improved process must accomplish the stated purpose.

The policy development process chooses from among the available alternatives and is driven by the value judgments and secondary considerations of the participants. We say "secondary" because the primary consideration should logically be whether the policy will be fit for purpose. If it is not, the policy does not achieve its goals and consensus is irrelevant.

Regarding handling Urgent Requests, the proposed procedures and policies do not include a well specified means for reaching a registrar or registry operator urgently. This is a gap (i.e., an incomplete solution).

Some registrar representatives claim law enforcement personnel know how to reach them. Some law enforcement personnel say that they have specific registrar contacts, however, these registrar contacts are not universally known to all law enforcement entities. In general, this seems to be a "if you know, you know" situation, where some law enforcement entities know how to contact some registrars because of individual relationships. Clearly, this is incomplete and does not scale.

The language in IRT Section 10.1 requires each registrar to provide a link on its home page to the contracted party's procedure for submitting Urgent Requests. However, there's no indication that requests submitted in this manner will be reviewed promptly (i.e., within minutes). One concern, voiced frequently by the registrars, is they are often flooded with bogus or low-priority requests, and the requesters are frequently unknown or unreliable persons. Hence, they cannot afford to promise immediate responses. The registrars further cited the risk of violating the European Union's General Data Protection Regulation (GDPR) rules and expressed multiple times the need to get legal advice before acceding to any disclosure request, Urgent or otherwise. All that said, according to IRT Section 10.8, the registrar may unilaterally "re-categorize" requests they deem abusive, which should mitigate the impact of any flood of requests in the system. And we note that Section 10 requires that the requestor provide a list of specific information and make attestations, which should reduce spam.

Registration Data Directory Service responses now include contact info for reporting Abuses in accordance with Registrar Accreditation Agreement (RAA) Section 3.18.2.[11]

However, when it was suggested that law enforcement agents (LEA) could use the Abuse contact, a registrar representative said fielding Abuse reports and fielding Urgent Requests requires a different skill set, and the people on duty to handle Abuse reports cannot be used to field Urgent Requests. The SSAC is concerned this response conflates at least two different issues: receiving requests versus dispatching them for handling.

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[11] See Registrar Accreditation Agreement,
https://www.icann.org/en/system/files/files/registrar-accreditation-agreement-30apr23-en.pdf

What will the person fielding Abuse complaints do if the input is from a law enforcement agent presenting an Urgent Request? Further, law enforcement personnel, when asked "What do you actually do in practice?" responded, "We use all available means."

The wording related to Urgent Requests is quite specific, "… imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation…".[12] In the rest of society, a call to an established, documented emergency number (e.g., 911 in the U.S.A., 999 in many countries) reaches an operator that can appropriately route the request to police, fire, or ambulance services and is intended to provide the fastest possible response. The wording in this policy is much softer. It does not appear to provide comparable action and thus fails to meet the minimal requirement for fitness.

As noted above, it has been suggested that registrars supply a contact for Urgent Requests, and that it be made available to requestors. Regardless of how this is implemented, it must be maintained. That maintenance is a critical implementation detail.

A collateral question is whether there are other situations that require high priority attention and a prompt response that don't meet the narrowly defined criteria for Urgent Requests. The SSAC is unaware of any discussion along this line.

The SSAC is unaware of any data collection taking place regarding the frequency of Urgent Requests and how they are handled by registrars. That said, the frequency of Urgent Requests is unrelated to the need for policy that requires a reliable response. This capability must exist even if there are very few Urgent Requests.[13]

The SSAC is unaware of non-anecdotal data on situations that have arisen in the past that resulted in Urgent Requests. Or, even if the criteria were loosened to include other requests that do not fit the narrowly defined definition of an Urgent Request, but nonetheless were of high priority. There does not seem to be any concrete data on these kinds of requests.

Going forward, Urgent Requests should be recorded, and the data should be reported on a regular basis to ICANN. Data about the number of requests should be made available to the community for future consideration.

2.3 Transparency

The focus within the IRT regarding the response time for Urgent Requests had its origin in the Expedited Policy Development Process (EPDP) Phase 1. Recommendation 18 in their Final Report ends with:

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[12] See Registration Data Policy from 24 July 2023, Section 3.8, https://community.icann.org/download/attachments/124847947/irt.RegDataPolicy20240724.pdf?version=1&modificationDate=1690835991000&api=v2

[13] The SSAC became aware just prior to publishing this report that there are efforts to take note of the use of "Expedited Requests" in the "Registration Data Request Service" currently under development, and that there will be metrics collected regarding their use.

>A separate timeline of [less than X business days] will be considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].[14]

Some of the participants added minority positions regarding the time frame, but there is no specification of the overall process for handling Urgent Requests.

The IRT then focused on filling in the blanks (i.e., the bracketed wording, regarding response time). Should it be two business days, 24 hours, or something else? The final wording is a compromise between the GAC's Public Safety Working Group (PSWG)'s desires for 24 hours and the Registrar Stakeholder Group (RrSG)'s desire for enough latitude to avoid being subjected to a contractual complaint if they do not respond quickly enough.

Even if both the origin and the trade-offs are documented within the transcripts of the many meetings, some of which were in the EPDP Phase 1 meetings and some of which are documented in the IRT meetings, the rationale for inclusion of this specification and the rationale for the specific choices should be documented. Specifically, the language "MUST notify the requestor within 24 hours of receipt of an Urgent Request for Lawful Disclosure", and the exceptions in sections 10.6.1 and 10.6.2 of the IRT Registration Data Policy should be documented clearly.[15]

2.4   Reputational Risk to ICANN

The proposed language has the potential to create the impression that ICANN is officially specifying the response time for Urgent Requests to be measured in days. This may provide evidence to critics of ICANN that the multistakeholder model is not able to effectively take public policy considerations into account. At the very least, the description of the rule should make it clear that registrars and registry operators are expected to respond quickly. The policy is intended to deal with worst case situations (i.e., "imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation"), but the proposed solution does not deliver an appropriately quick response.

2.5   Process

In the IRT meetings, questions regarding whether the proposed policy was fit for purpose were dismissed as being out of scope. Apparently, the question of fitness was not considered during the EPDP Phase I process. The concept of "implementation" in the IRT process, however, must

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[14] See Final Report of the Temporary Specification for gTLD Registration Data Expedited Policy Development Process, 20 February 2019,
https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf
[15] See Registration Data Policy from 24 July 2023,
https://community.icann.org/display/RDPIRT/RegDataPolicy+Implementation+Resource+Documents?preview=/12
4847947/250710295/irt.RegDataPolicy20240724.pdf

include an evaluation as to whether the design will result in a functioning system and procedure capable of handling Urgent Requests with the import that they require.[16]

3   Recommendations

Since the SSAC began the work that became this report the ICANN Board and ICANN Community have continued to discuss the outcomes of the IRT and Urgent Requests.[17,18] This topic is currently in active discussion. Thus, rather than provide recommendations directed to the ICANN Board, or the specific group implementing Registration Data Request Service (RDRS), this report provides recommendations on the eventual outcome of these deliberations. The SSAC hopes that the recommendations below will be taken into consideration by all groups working on policies for handling Urgent Requests.

Recommendation 1: The policy must provide additional structure so that Urgent Requests will be handled in an appropriately expedited fashion.

Specifically, the SSAC recommends that the required structure must include at least the following elements:

    a. Registrar's and Registry Operator's published mechanism and process must state that Reasonable Requests for Lawful Disclosure and Urgent Requests for Lawful Disclosure are different, and must allow Urgent Requests to be identified as such by a requestor.

    b. When a requestor submits an Urgent Request, Registrar and Registry Operator must provide an acknowledgment of receipt within 30 minutes. This acknowledgment is separate from the "response" to the disclosure request described in paragraph 10.7.

    c. Paragraph 10.7.2 must specify that Responses to all Disclosure Requests must be in writing by email to the requestor. A written response is necessary for the information of the Requestor, and for compliance purposes. The requirement for written responses is not intended to prohibit other communication from occurring (e.g., if ongoing telephonic communication is conducted in parallel to the writing of the email response), so long as the written response is also provided.

Recommendation 2: The policy must ensure that response times for handling Urgent Requests be fit for purpose.

Specifically, the SSAC recommends that the required response time must have at least the following characteristics:

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[16] See Call for Volunteers: Implementation Review Team for Registration Data Policy Implementation, https://www.icann.org/en/announcements/details/call-for-volunteers-implementation-review-team-for-registration-data-policy-implementation-20-5-2019-en
[17] See Letter from Tripti Sinha to Gregory DiBiase, November 13 2023, https://gnso.icann.org/sites/default/files/policy/2023/correspondence/sinha-to-dibiase-13nov23-en.pdf
[18] See GAC ICANN78 Hamburg Communique, https://gac.icann.org/contentMigrated/icann78-hamburg-communique

a. Urgent Requests are a matter of imminent danger. The language of the policy should reflect that responses are to be fulfilled as soon as possible, with urgency befitting the situation.
b. Paragraphs 10.6.1 and 10.6.2 provide time extensions that are not fit for purpose, and these paragraphs should be deleted. No legitimate Urgent Request should be responded to in more than 24 hours.
c. In paragraph 10.6, the word "generally" is imprecise and confusing and should be deleted.

Recommendation 3: ICANN org should acquire and document data regarding Urgent Requests and make high-level information available to the community for future consideration.

Specifically, the SSAC recommends the data made available to the community must include at least the following metrics:

a. Number of Urgent Requests received at registrars and registry operators;
b. Expediency with which Urgent Requests were reviewed, evaluated, and handled;
c. Percentage of Urgent Requests classified as spam, not urgent, or otherwise invalid; and
d. Counts of requests handled and not handled within the contractual requirements (i.e., compliance statistics).

The data collected must be comprehensive enough for ICANN org to examine a registrar or registry operator's handling of Urgent Requests for compliance purposes.

4   Acknowledgments, Statements of Interest, and Withdrawals

In the interest of transparency, these sections provide the reader with information about aspects of the SSAC process.

The Acknowledgments section lists the SSAC members, outside experts, and ICANN staff who co-authored or contributed directly to this particular document (Contributors) or who provided reviews (Reviewers). The Statements of Interest section points to the biographies of all SSAC members and invited guests, which disclose any interests that might represent a conflict—real, apparent, or potential—with a member's or invited guest's participation in the preparation of this Report. The Withdrawals section identifies individuals who have recused themselves from the discussion of the topic with which this Report is concerned.

Except for members listed in the Withdrawals section, this document has the consensus approval of all of the members of SSAC.

4.1 Acknowledgments

The committee wishes to thank the following SSAC members and invited guests for their time, contributions, and review in producing this report.

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4.2 Disclosures of Interest

SSAC member biographical information and Disclosures of Interest at the time of publication are available at:
https://www.icann.org/en/ssac/members

4.3 Withdrawals

There were no withdrawals.