

ICANN BOARD PAPER No. 2023.02.27.1a

TITLE: WHOIS Disclosure System Implementation
PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being asked to approve implementation and operation of the WHOIS Disclosure System (System) for up to two years and to direct the Interim President and CEO, or her designee(s), to collect and report on usage data as requested by the Generic Names Supporting Organization (GNSO Council or Council) in its letter to the ICANN Board on [17 November 2022](#). The Board also is being asked to approve that the Supplemental Fund for the Implementation of Community Recommendations (SFICR) be used to fund the development and operation of the System for up to two years.

BACKGROUND:

Following publication of the [Operational Design Assessment](#) (ODA) of the Generic Names Supporting Organization (GNSO) Council (GNSO Council)-approved recommendations in its [Final Report](#) on the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) Phase 2 by ICANN organization (ICANN org), the ICANN Board noted concerns regarding the cost and complexity of implementing the proposed System for Standardized/Access Disclosure (SSAD). In response, the GNSO Council formed the Phase 2 Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Small Team (Small Team), to assess the ODA and recommend a path forward. The Small Team, in consultation with ICANN org, recommended a “proof of concept” to test demand and usage for such a system in its [Preliminary Report](#).

In its 17 November 2022 letter, the GNSO Council informed the Board and ICANN org that the Council unanimously accepted the [Addendum to the Preliminary Report](#) (Addendum) prepared by the Small Team. The Addendum directed the GNSO Council, ICANN Board, and ICANN org to proceed with their decision-making process on the implementation of the System as quickly as

possible. The Council also noted its expectation that the name of the System be modified before launch.

As specified by the Council in its 17 November 2022 [letter](#), the System is to be developed and operated by ICANN org for a period of up to two (2) years, with periodic check-ins with the Council to discuss System usage and data collection resulting from such usage. Implementation of this System is intended to enable ICANN org to gather data concerning usage of and demand for a system that would standardize the process to submit requests for access to non-public gTLD registration data, which will inform next steps on the [Phase 2 Recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data for a System for Standardized Access/Disclosure](#) (SSAD).

In its approval to proceed with the implementation of the System, the Board also is authorizing ICANN org to utilize the SFICR to fund development and operation of the System for up to two years (including the cost of reallocated ICANN org resources). The Board Finance Committee (BFC) has evaluated and considered the estimated costs associated with this implementation, which include incremental costs of US\$20,000 for information security and penetration testing, and US\$70,000 for two years of licensing fees. Taken together, the incremental costs of \$90,000 represent the only previously unbudgeted expenses that ICANN org will incur in the development and implementation of the System. The BFC recommended that the Board approve utilization of the SFICR to fund actual costs incurred in connection with implementation of the System.

In approving implementation of the System, the Board notes that the success of the data collection effort facilitated by the System depends on System usage, including registrar participation and requestor usage. Accordingly, the Board seeks the active involvement of the GNSO Council to secure comprehensive use of this System by registrars and requestors. For example, and noting that the EPDP Phase 2 policy recommendations mandated registrar use of the SSAD, the Board urges the Council to consider consensus policy development to mandate use of the System by ICANN-accredited registrars for all data access requests other than those submitted by law enforcement or as otherwise required by applicable law.

ICANN org estimates launching the System before the end of 2023, assuming the Board directs ICANN org to begin developing the system in February. Project ramp-up work began in December 2022 and is expected to take up to three (3) months. Development of the System is expected to take up to nine (9) months.

ICANN ORGANIZATION AND BOARD FINANCE COMMITTEE RECOMMENDATIONS:

ICANN org recommends that the Board approve the implementation of the WHOIS Disclosure System (System) and operate it for up to two years as recommended by the GNSO Council. Both ICANN org and the BFC recommend that the Board approve the use of the SFICR to fund the implementation of the System to help inform Board consideration of recommendations for new Consensus Policy. In its resolution, the Board should set clear expectations for the implementation of the System, including the timeline for which the System should remain in operation prior to initiating follow-up discussions on next steps, and any circumstances that should trigger further consultation among ICANN org, the Board, and the GNSO Council.

PROPOSED RESOLUTION:

Whereas, on 24 September 2020, the Generic Names Supporting Organization (GNSO) Council (GNSO Council) [voted to approve](#) all of the recommendations in its [Final Report](#) on the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) Phase 2.

Whereas, on 25 March 2021, the ICANN Board [directed the President and CEO](#) in office at the time, or their designee(s), to proceed with the Operational Design Phase (ODP) for GNSO Council-approved recommendations 1-18 from the EPDP Phase 2 Final Report on the System for Standardized Access/Disclosure (SSAD).

Whereas, on 25 January 2022, ICANN organization (ICANN org) published its [Operational Design Assessment](#) (ODA) of the SSAD.

Whereas, on 4 April 2022, the Phase 2 Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Small Team (Small Team), which the GNSO Council tasked to assess the ODA, delivered its [Preliminary Report](#) to the GNSO Council, recommending a “proof of concept” approach.

Whereas, the GNSO Council and the ICANN Board consulted regarding the next steps for the SSAD and the GNSO Council [requested on 27 April 2022](#) that the ICANN Board pause its consideration of the recommendations concerning the SSAD while work continues on a “proof of concept”.

Whereas, on 13 September 2022, ICANN org published a WHOIS Disclosure System (System) [Design Paper](#) based on the “proof of concept” approach outlined by the Small Team;

Whereas, the GNSO Council informed [the ICANN Board on 17 November 2022](#) that the Council unanimously accepted the [Addendum to the Preliminary Report](#) (Addendum) prepared by the Small Team. The Council also noted its expectation that the System’s name be modified before launch.

Whereas, the Board Finance Committee (BFC) reviewed and recommended that the funding for the development and up to two (2) years of operation of the System be sourced from the Supplemental Fund for Implementation of Community Recommendations (SFICR).

Whereas, the ICANN Board supports moving forward with the GNSO Council’s recommendation to develop and operate the System as set forth in the Council’s 17 November 2022 [letter](#).

Whereas, the ICANN Board agrees with the BFC’s recommendation that the funding for the development and two years of operation of the System come from the SFICR.

Whereas, the success of the data collection effort facilitated by the System depends on System usage, including registrar participation and requestor usage.

Whereas, the ICANN Board encourages the GNSO Council to consider how best to promote and secure comprehensive use of this System by ICANN-accredited Registrars for all data access requests other than those submitted by law enforcement or as otherwise required by applicable

law, including through consensus policy development undertaken in parallel with System development;

Whereas, the ICANN Board urges the GNSO Council to partner with ICANN org and the Small Team to identify and articulate agreed upon success criteria for the System;

Resolved (2023.02.27.xx), the ICANN Board directs the Interim President and CEO, or her designee(s), to develop and launch the WHOIS Disclosure System (System) as requested by the Generic Names Supporting Organization Council (GNSO Council) within 11 months from the date of this resolution.

Resolved (2023.02.27.xx), the ICANN Board directs the Interim President and CEO, or her designee(s), to operate the System for up to two years from the date of launch, and collect and report on usage data.

Resolved (2023.02.27.xx), the ICANN Board directs the Interim President and CEO, or her designee(s), to continue to engage with the GNSO Council, via the Small Team, concerning the implementation of the System, including the System's name.

Resolved (2023.02.27.xx), the ICANN Board directs the President and CEO, or her designee(s), to work with the Small Team and the Council to encourage comprehensive System usage by data requestors and by ICANN-accredited registrars throughout the development and operation of the System.

Resolved (2023.02.27.xx), ICANN Board urges the GNSO Council to consider a Policy Development Process or other means to require registrars to use the System, as recommended by the Small Team in the Addendum submitted to the GNSO Council.

Resolved (2023.02.27.xx), the ICANN Board will engage with the GNSO Council together with the Small Team and ICANN org to establish success criteria for this System, which should include analysis of relevant usage data.

Resolved (2023.02.27.xx), the ICANN Board directs the Interim President and CEO, or her designee(s), to provide regular updates to the ICANN Board concerning the status of implementation of the System, including costs incurred.

Resolved (2023.02.27.xx), the ICANN Board directs the Interim President and CEO, or her designee(s), to publish usage statistics concerning the System on a regular cadence once the System becomes operational. These usage statistics will inform periodic check-in discussions with the GNSO Council. The Board expects that no later than two years after the System goes into operation, the Board and GNSO Council shall re-initiate discussions concerning the next steps on the GNSO Policy Recommendations concerning the System for Standardized Access/Disclosure.

Resolved (2023.02.27.xx), the ICANN Board authorizes the Interim President and CEO, or her designee(s), to use the funds from the Supplemental Fund for the Implementation Community Recommendations (SFICR) to absorb the costs incurred as a result of the development and operation of the System.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The Board is addressing this issue to ensure transparency and clarity concerning ICANN org's implementation of the WHOIS Disclosure System (System) and on the next steps concerning the consideration of the GNSO Consensus Policy recommendations concerning the System for Standardized Access/Disclosure (SSAD).

What is the proposal being considered?

The Board is considering a request by the GNSO Council for ICANN org to implement a System as an interim measure to gather usage and demand data to inform community discussions and Board consideration of the Phase 2 Recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration data related to a SSAD (recommendations 1-18).

Which stakeholders or others were consulted?

The GNSO Council convened a Phase 2 Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Small Team (Small Team) to engage with ICANN org concerning the System. The Small Team [consists](#) of a number of Council members as well as EPDP Phase 2 members, including representatives from the At-Large Advisory

Committee, Governmental Advisory Committee, and Security and Stability Advisory Committee. ICANN org met with the Small Team on [10 August](#) and [6 September](#) during the development of the WHOIS Disclosure System [Design Paper](#), which ICANN org produced at the request of the Small Team following its initial recommendation for a “proof of concept” approach to test usage and demand for a system. ICANN org presented the design paper to the Small Team during its [session at ICANN75](#). Following the presentation of the design paper, ICANN org continued its engagement with the Small Team through participation in a number of Small Team meetings as well as providing responses to a number of follow-up questions raised by the Small Team. ICANN org also held two webinars for ICANN-accredited registrars to solicit their input on the proposed System. ICANN org continued its engagement during the Contracted Parties Summit on 4 November 2022, discussing ongoing policy efforts and the potential impacts on registrars. The discussions and feedback received through these engagements were considered by ICANN org, as well as by the GNSO Council prior to its [message](#) to the Board on 17 November 2022, in which, the GNSO Council informed the Board and ICANN org that the Council unanimously accepted the [Addendum to the Preliminary Report](#) (Addendum) prepared by the Small Team. The Addendum directed that the GNSO Council, ICANN Board, and ICANN org to proceed as quickly as possible with their decision-making process on the implementation of the System.

What concerns or issues were raised by the community?

The Small Team provided significant input to ICANN org concerning the WHOIS Disclosure System Design Paper. Pursuant to its discussions with the Small Team, ICANN org is prepared to incorporate the following requests from the community into the System:

- (1) A mechanism for registrars to receive requests submitted via the System via encrypted email (requested by the registrars).
- (2) Additional System logging functionality, to log data associated with requests attempted for non-participating registrars that have been identified as “low risk” to data subjects and system security (recommended by Small Team members representing the Business Constituency).

- (3) A mechanism to enable registrars to provide updates to the multiple pending requests in the NSp (requested by the registrars).
- (4) After initial launch of the System, ICANN org also may implement API functionality to facilitate registrars' receipt of requests and reporting into the System concerning actions taken on each request, as recommended by some members of the Small Team.

The Small Team and other stakeholders have also raised concerns that the proposed name of the System (WHOIS Disclosure System) could be potentially misleading. A number of alternative suggestions have been put forward to better reflect what the System is, such as DNS Data Request System, Whois Data Request System, and Registration Data Request System. ICANN org will work with the Small Team to determine a new name for the System that more accurately reflects its purpose and functionality as part of its implementation of the System.

What significant materials did the Board review?

In taking this resolution, the Board reviewed the [WHOIS Disclosure System Design Paper](#), the EPDP Phase 2 Small Team's [4 April 2022 Preliminary Report to the GNSO Council](#), the [7 November 2022 addendum](#) to the EPDP Phase 2 Small Team's Preliminary Report, the [17 November 2022 letter](#) from the GNSO Council to the ICANN Board, and the recommendation from the Board Finance Committee to allocate an envelope from the Supplemental Fund for Implementation of Community Recommendations for this work.

Are there positive or negative community impacts?

It is expected that ICANN org's implementation of this System will result in positive community impacts, including 1) streamlining the process for requestors to solicit access to nonpublic gTLD registration data, 2) creating a consistent format for requests for data access to be reviewed by participating registrars, and 3) added transparency and consistency for data subjects, by providing a centralized process and location for information about how third-party requests for registration data access are submitted to participating registrars. ICANN org's implementation of this System will also provide additional information regarding the current demand for and usage of a system operated by ICANN org for this purpose, to inform community and Board

consideration of next steps concerning the Consensus Policy recommendations for a System for Standardized Access/Disclosure.

The Board has also considered how to secure comprehensive participation in the system to facilitate data collection. The Board notes and strongly supports the Small Team's [suggestion](#) that the GNSO Council consider requiring registrars to participate by developing Consensus Policy recommendations to this effect in parallel with ICANN org's development of the System.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

ICANN org drafted the WHOIS Disclosure System Design Paper, which provided the cost estimate for the System's development and two-year operation. Upon further engagement with the EPDP Phase 2 Small Team, it was determined that the projected costs consist primarily of existing staff time needed to develop the intended system and process, plus an incremental cost for information security and penetration testing.

This project, and its expenses and funding, were not contemplated and thus not included in the adopted FY23 Operating Plan and Budget nor in the draft FY24 Operating Plan and Budget submitted for public comment in December 2022. As this project proceeds, funding of its expenses was recommended by the Board Finance Committee (BFC) to be drawn from the Supplemental Fund for the Implementation Community Recommendations (SFICR). The SFICR was created to fund projects, as approved by the Board, when the size, complexity, and length of the projects may not be solely funded by the operating budget. This action will not have a negative financial impact on ICANN, as funding is available in the SFICR.

How are SFICR funds allocated?

The governance of the SFICR is defined in the [ICANN Investment Policy](#). ICANN org will track the efforts and costs associated with this work and transfer the corresponding funds from the SFICR to the ICANN operating fund for reimbursement. The SFICR funds will only be utilized for actual costs incurred. If projected costs are not incurred, there will not be a

subsequent transfer. The amount of actual expenses incurred during a quarter will be drawn from the SFICR after the end of that quarter.

Are there any security, stability or resiliency issues relating to the DNS?

It is anticipated that the implementation of this System will provide benefits to security, stability, and resiliency of the Domain Name System, by providing a streamlined mechanism for parties to request access to nonpublic gTLD registration data.

Is this decision in the public interest and within ICANN's mission?

This decision is within ICANN's mission and will serve the public interest by gathering additional data concerning the demand for and anticipated usage volumes for a centralized system for the intake and routing of requests for nonpublic gTLD registration data, which will inform community policy discussions and Board consideration of the SSAD recommended by the EPDP Phase 2 Team. This supports the Board in responding to community-developed policy recommendations.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

This action supports further consideration of policy recommendations arising out of the GNSO Council's policy development process.

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

ICANN BOARD PAPER NO. 2023.02.27.1b

TITLE: **FY24 IANA Operating Plan and Budget**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

As required by the ICANN Bylaws, the draft FY24 IANA Operating Plan and Budget (OP&B) was developed and posted for public comment and discussion on 15 September 2022, alongside the FY24 Public Technical Identifiers (PTI) OP&B, which sets out the funding needs for PTI's performance of the IANA functions. The PTI OP&B is an integral and Bylaws' mandated part of the broader IANA OP&B. The PTI Board adopted the FY24 PTI OP&B on 12 January 2023. The finalized FY24 PTI OP&B is reflected in the FY24 IANA OP&B. All public comments have been taken into consideration, and where appropriate and feasible, have been incorporated into a final FY24 IANA OP&B. Per the Bylaws, the IANA OP&B is to be adopted by the ICANN Board and then posted on the ICANN website. The Empowered Community will have an opportunity to consider the FY24 IANA OP&B after Board adoption.

BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION:

The BFC recommends, after careful consideration of the public comments received and the corresponding responses, that the Board approve the FY24 IANA Operating Plan and Budget.

PROPOSED RESOLUTION:

Whereas, the draft FY24 IANA Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 15 September 2022.

Whereas, comments received through the public comment process were reviewed and responded to and provided to the BFC members for review and comment. In addition, all public comments have been taken into consideration, and where appropriate and feasible, have been incorporated and a final FY24 IANA Operating Plan and Budget.

Whereas, in accordance with the Bylaws section 22.4 (b), PTI submitted the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed ICANN Operating Plan and Budget.

Whereas, per the ICANN Bylaws, the IANA Operating Plan and Budget is to be adopted by the ICANN Board and then posted on the ICANN website.

Resolved (2023.02.27.xx), the Board adopts the FY24 IANA Operating Plan and Budget.

PROPOSED RATIONALE:

In accordance with Section 22.4 of the ICANN Bylaws, the Board is to adopt an annual IANA budget and publish it on the ICANN website. On 15 September 2022, the drafts of the FY24 PTI Operating Plan and Budget and the FY24 IANA Operating Plan and Budget were posted for public comment. The PTI Board approved the PTI Budget on 12 January 2023, and the PTI Budget was received as input into the FY24 IANA Operating Plan and Budget.

The draft FY24 PTI Operating Plan and Budget and the draft FY24 IANA Operating Plan and Budget were based on numerous discussions with members of ICANN org and the ICANN Community, including extensive consultations with ICANN Supporting Organizations, Advisory Committees, and other stakeholder groups throughout the prior several months. In July 2022, preliminary consultations were conducted with stakeholders on FY24 priorities for Public Technical Identifiers (PTI). These engagements were in the form of discussions with Supporting Organizations and Advisory Committees, as well as the gTLD Registries Stakeholder Group, Regional Internet Registries and IETF leadership. In addition, two public Community Webinars were held on 11 and 12 August 2022.

All comments received through the Public Comment proceeding were considered in relation to the FY24 IANA Operating Plan and Budget. Where feasible and appropriate these inputs have been incorporated into the final FY24 IANA Operating Plan and Budget proposed for adoption.

Adopting the FY24 IANA Operating Plan and Budget will have a positive impact on ICANN in that it provides a proper framework by which the IANA services will be performed, which also provides the basis for the organization to be held accountable in a transparent manner.

This decision is in the public interest and within ICANN's mission, as it is fully consistent with ICANN's strategic and operational plans, and the results of which in fact allow ICANN to satisfy its mission.

This decision will have a fiscal impact on ICANN and the Community as is intended. This should have a positive impact on the security, stability and resiliency of the domain name system (DNS) with respect to any funding that is dedicated to those aspects of the DNS.

This is an Organizational Administrative Function that has already been subject to public comment as noted above.

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