

IPC Comments on Findings Report of the Registration Data Request Service (“RDRS”)

Introduction to the Intellectual Property Constituency (IPC)

The Intellectual Property Constituency (IPC) represents the interests of intellectual property owners, including trademark holders, copyright owners, and other rights holders who rely on the domain name system for legitimate business purposes and brand protection. The IPC advocates for policies that enable effective consumer protection and enforcement of intellectual property rights while supporting innovation and competition in the domain name space.

The IPC has been actively engaged in policy development processes related to registration data access, including the Expedited Policy Development Process (EPDP) Phase 2 that developed the System for Standardized Access/Disclosure (SSAD) recommendations. As stakeholders who frequently require access to registration data for legitimate consumer protection and intellectual property rights enforcement purposes, IPC members have significant experience with the current Registration Data Request Service (RDRS) pilot and its limitations.

IPC Comments on RDRS Standing Committee Recommendations

Recommendation 1: Continue the RDRS beyond the pilot period

Recommendation Summary: The Standing Committee recommends maintaining the RDRS pilot service and continuing to promote voluntary registrar participation beyond its initial two-year term until a long-term permanent solution or successor system is agreed upon.

IPC Comment: The IPC does not support continued operation of the RDRS as it is currently structured. While we recognize the value of maintaining some form of interim non-public data access mechanism, the current RDRS has fundamental structural deficiencies that undermine its effectiveness and utility for consumer protection, intellectual property and law enforcement purposes.

As documented in our experience with the RDRS pilot, the system suffers from lack of contracted party participation, significant inconsistencies in decision-making across registrars, lack of transparency in the review process, and inadequate

disclosure standards that frustrate legitimate requestors. The arbitrary and confusing experiences reported by IP holders demonstrate that the current system fails to provide the predictable, fair access mechanism contemplated by the EPDP Phase 2 recommendations.

The IPC believes that any continuation of a disclosure system must mandate participation by all contracted parties, incorporate proper authentication mechanisms, implement clear evaluation standards based on the EPDP Phase 2 framework, and provide meaningful oversight and accountability measures. The IPC notes that the Standing Committee has recommended that the eighteen EPDP Phase 2 Recommendations either be implemented or rejected as a package. As such, we do not think that the current RDRS process will allow the changes to be made that would enable requestors to use it effectively. Rather than continuing a generally ineffective system, the IPC recommends that ICANN develop an alternative approach that better serves the community's legitimate access needs.

Recommendation 2: Allow for authentication of interested requestor groups, beginning with law enforcement

Recommendation Summary: The Standing Committee recommends that the RDRS or its successor system include authentication of specific user groups, beginning with law enforcement, while continuing discussions with other interested requestor constituencies.

IPC Comment:

The IPC does not support continued operation of the RDRS for the reasons set forth above, but if the RDRS continues to operate then the IPC supports this recommendation.

Having certain users become authenticated should streamline the process of providing such requestors with a quick and reliable way to request and receive requested non-public registration data, and would be advantageous for requestors, registrars, and registries alike.

While prioritizing law enforcement users for authentication is reasonable, other interested requestor groups, including non-LEA consumer protection and brand protection users, should have a similar opportunity to secure authenticated access.

Critically, the authentication process/program must not be used as a way to delay the contractual and legal obligations of registrars and registries to otherwise provide requestors with access to registration data.

Recommendation 3: Implement Key System Enhancements to sustain and evolve RDRS post-pilot while more policy work is underway

Recommendation Summary: The Standing Committee recommends implementing key system enhancements, including API integration, user experience redesign, and optional ccTLD participation, listed in order of priority.

IPC Comment: The IPC does not support continued operation of the RDRS for the reasons set forth above, but if the RDRS continues to operate then the IPC supports this recommendation.

Recommendation 4: Consider further policy work on the RDRS

Recommendation Summary: The Standing Committee recommends further policy development regarding privacy/proxy data and inclusion of RDRS links in RDAP responses.

IPC Comment: IPC does not support continued operation of the RDRS for the reasons set forth above, but if the RDRS continues to operate then the IPC strongly supports both aspects of this recommendation, as they address critical gaps in the current registration data access framework.

Privacy/Proxy Data: The current inability to effectively access underlying registrant data for privacy/proxy-protected domains significantly undermines the RDRS's utility. As noted in the WHOIS Disclosure System Design Paper, approximately 30% of registered domain names utilize privacy or proxy services, potentially rendering the underlying beneficial registrant's data inaccessible through the RDRS. This represents a substantial limitation for intellectual property enforcement, as malicious actors frequently use privacy/proxy services to conceal their identity. Notably, the [DNS Research Federation recently found](#) that 88% of abusively registered domain names have unavailable registration data, and that privacy/proxy usage is more prevalent with abusive domain names.

The IPC emphasizes the urgent need to implement the Privacy/Proxy Services Accreditation Issues (PPSAI) recommendations to address this gap. Any further policy work should prioritize developing harmonized approaches that integrate these previously-approved privacy/proxy services policy recommendations into the broader framework of registration data access.

RDRS Links in RDAP Responses: Including RDRS links in RDAP responses would improve system discoverability and user adoption. The IPC supports this enhancement as it would provide a clearer pathway for rights holders to access the disclosure request system when they encounter redacted RDAP data.

Recommendation 5: Consideration regarding next steps on EPDP Phase 2/SSAD Policy Recommendations

Recommendation Summary: The Standing Committee recommends that the GNSO Council undertake a targeted review of each EPDP Phase 2/SSAD recommendation to determine suitability or warranty for future policy work. The SC recognizes the emphasis the EPDP Phase 2 Team placed on the recommendations being considered by both the GNSO Council and ICANN Board as a single, interdependent package. Accordingly, the SC recommends that the Board should consider the 18 recommendations together as one package. The SC further recommends that when the GNSO Council and ICANN Board engage in a dialogue, the Council should recommend that the ICANN board reject the SSAD recommendations (as a package) and send them back to the GNSO Council for further action and Supplemental Recommendation.

IPC Comment: The IPC acknowledges the Standing Committee's recommendation regarding the EPDP Phase 2/SSAD policy recommendations, but the IPC's position on referral back to the GNSO Council is contingent upon specific conditions that must be met to avoid repeating the policy development failures that have characterized more than a decade of work in this area.

As reflected in the Minority Report filed by the IPC and Business Constituency during the EPDP Phase 2 process, fundamental concerns were raised that have proven prescient in light of the RDRS pilot experience. The IPC and BC identified critical deficiencies including:

1. **Insufficient Mechanisms for Data Accuracy.** The EPDP Phase 2 recommendations failed to adequately address mechanisms to verify and maintain the accuracy of registration data, which is crucial for law enforcement, consumer protection, and intellectual property rights enforcement. Registrars apply their own subjective standards for data disclosure. This lack of harmonization results in unpredictability and inefficiency for brand enforcement efforts.
2. **Inadequate Differentiation Between Legal and Natural Persons.** The recommendations did not sufficiently address how to handle registrations by legal entities, leading to unnecessary redaction of data that does not fall under GDPR protection. Voluntary differentiation is insufficient, inconsistent, rarely implemented, and ineffective in practice. Mandatory differentiation, with appropriate safeguards for mixed data cases, is critical for brand protection.
3. **Deficient Access Mechanisms.** The proposed framework did not provide clear and effective access to registration data for legitimate purposes, hindering efforts to combat abuse, fraud, and other malicious activities online. Further, there is no mechanism within the RDRS to escalate non-responses or

refusals. Rights holders have no recourse when a registrar ignores or denies a request without justification.

4. **Excessive Cost and Complexity.** The SSAD system carried prohibitive implementation costs that would have made the system financially unsustainable, as subsequently confirmed by the Operational Design Assessment.

The RDRS pilot experience has validated these concerns, demonstrating arbitrary denial of intellectual property-related requests (including in relation to domains being used to perpetrate DNS Abuse as currently defined under ICANN contracts), inconsistent application of legal standards, unpredictable response timing, and lack of transparency in decision-making. The refusal of RDRS requests apparently based solely on alleged intellectual property infringement, despite EPDP Phase 2 Recommendation #8.5 explicitly prohibiting such denials, exemplifies the fundamental flaws in the current approach.

The policy landscape has evolved significantly since the EPDP Phase 2 recommendations were developed. The EU's NIS-2 Directive, passed in December 2022, introduces new requirements that favor disclosure to requestors with legitimate rights and mandate the collection of accurate domain name registration data. NIS-2 specifically requires Member States to implement laws to ensure that domain name registration services collect and maintain accurate and complete registration data, and that this data is accessible to legitimate parties for cybersecurity, intellectual property and law enforcement purposes. These developments necessitate comprehensive policy changes to align ICANN's existing registration data framework with evolving legal requirements that prioritize legitimate access over blanket data protection.

The IPC can support referral of the SSAD recommendations back to the GNSO Council only if the following conditions are met:

1. Any renewed policy work must incorporate the lessons learned from requestor experiences during the RDRS pilot, including the documentation of arbitrary denials, inconsistent legal interpretations and disclosure outcomes, and systemic barriers to legitimate access (including the lack of mandatory participation by all contracted parties).
2. Strong procedural guardrails must be established around any future policy development work to prevent the repetition of the process tensions that characterized the original EPDP. These guardrails should include a requirement for the development of policy consistent with established legal principles, including those outlined in EU Commission Recommendation

2024/915¹ and the NIS-2 Directive's requirements for accurate data collection and legitimate access.

3. The policy work must be scoped realistically to address core access issues without attempting to solve every conceivable edge case. The community cannot afford another decade-long process that fails to deliver functional solutions.

Recommendation 6: Maintain the current Standing Committee with narrowed Scope

Recommendation Summary: The Standing Committee recommends maintaining itself with a narrowed scope to advise ICANN on continued operation, maintenance, and potential enhancement of the RDRS.

IPC Comment: The IPC does not support continued operation of the RDRS for the reasons set forth above, but if the RDRS continues to operate then IPC supports this recommendation.

Conclusion

The IPC appreciates the Standing Committee's thorough analysis of the RDRS pilot and its thoughtful recommendations for next steps. However, we believe that the path forward requires more fundamental reforms than currently proposed, particularly in light of evolving legal frameworks that mandate a shift toward greater data accessibility for legitimate purposes.

The EU's NIS-2 Directive, which came into effect in January 2023, represents a paradigm shift in the regulatory landscape surrounding domain name registration data. NIS-2 explicitly requires Member States to ensure that domain name registration services collect and maintain accurate and complete registration data, and that this data is accessible to legitimate parties for cybersecurity, intellectual property enforcement and law enforcement purposes. This directive fundamentally

¹ (14) Although domain names are of paramount importance in the online environment, they can be used to support IP-infringing activities online. This is the case when IP rights are misused in the name of the domain itself (i.e. cybersquatting or typo-squatting) or when the domain name leads to a website that supports IP infringements. Domain name registration data (WHOIS data) is critical to the security, stability, and resilience of the domain name system. For this reason, Directive (EU) 2022/2555 (NIS-2 Directive) obliges Member States to require top-level-domain ('TLD') name registries and entities that provide domain name registration services to collect and maintain accurate and complete domain name registration data in a dedicated database that enables the holders of the domain names to be identified and contacted. Access to specific domain name registration data must be provided upon lawful and duly substantiated requests by legitimate access seekers. A reply should be sent without undue delay and in any event within 72 hours of receipt of any requests for access. Under Directive (EU) 2022/2555, legitimate access seekers are to be understood as any natural or legal person making a request pursuant to Union or national law.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400915

alters the policy environment that existed when the original EPDP Phase 2 recommendations were developed, creating legal imperatives that favor disclosure to requestors with legitimate rights over blanket data protection measures. The community must recognize that NIS-2 is not merely one consideration among many, but rather a fundamental legal requirement that necessitates comprehensive policy changes to align ICANN's registration data framework with evolving legal obligations. Any continuation or modification of the RDRS, or any future system development, must be designed to comply with NIS-2's mandates for accurate data collection and legitimate access rights.

The implementation of proper authentication mechanisms, and establishment of clear evaluation standards based on legal frameworks including NIS-2, EU Commission Recommendation 2024/915, and other evolving regulatory requirements represent the type of systemic improvements necessary to serve the community's long-term needs effectively while meeting legal obligations that prioritize legitimate access over reflexive data protection.