

## **RrSG response to Priority 1 Policy Recommendations for ICANN Board Consideration from EPDP Phase 2**

The Registrar Stakeholder Group (RrSG) is pleased to comment on the Priority 1 policy recommendations for ICANN Board consideration from the [Final Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process](#) (“Phase 2 Final Report”).

The RrSG would like to reiterate that it supported the Phase 2 Final Report (Priority 1 and Priority 2) as a complete package, both within the EPDP and at GNSO Council level. The RrSG notes that the results of EPDP Phases 1 and 2 were the culmination of a great deal of work and compromises on all sides, and the EPDP Team discussed many varied topics and positions.

As the RrSG stated prior to the Council vote to approve the Phase 2 Final Report, the RrSG is disappointed that the EPDP Team worked for almost one and a half years to develop the policy for the SSAD only for the intended users of the SSAD to withdraw their support at the very end and now indicate that they do not intend to use the SSAD. While the results of EPDP Phase 2 do not reflect everything wanted by the various constituent groups, it does achieve many of the goals set out in the EPDP Charter and contains recommendations that will allow the SSAD to further evolve towards a more automated system.

While the RrSG supports the recommendations in the Phase 2 Final Report, we again reiterate our concerns regarding the estimated cost to set up and operate the SSAD (US\$9 million to set up, and US\$9 million annually to operate). As the SSAD is intended to operate on a cost recovery basis (e.g., funded through user fees), it is concerning that the main intended users of the SSAD have expressed hesitation to use and/or pay for the SSAD. It is imperative that the ICANN Board—and not the GNSO Council—determine whether the SSAD is financially sustainable without the need for increased ICANN org contribution beyond what is currently estimated. Although the Phase 2 of the EPDP did consider the financial impacts of the SSAD (as required by GNSO process), it is ultimately the ICANN Board that has the fiduciary responsibility to ensure that the cost of creating and maintaining the SSAD does not outweigh any benefits (especially if the planned users do not intend to use the SSAD). Under ICANN bylaws and California’s Nonprofit Integrity Act, fiduciary duty rests with the ICANN Board and cannot be abrogated by claiming that the responsibility falls instead upon the community. We urge the ICANN Board to work closely with the GNSO Council in order to ensure that the cost of building and maintaining the SSAD do not impact the ICANN budget beyond the estimated amounts, and if it does, to take steps to ensure that registrants are not further burdened by new costs which benefit only third-party users of the SSAD.

Although out of scope for this limited public comment to EPDP Phase 2 Priority 1 items, we find it necessary to note the RrSG’s position that it is premature for the ICANN community to review current (or future) ICANN policies in light of planned or draft legislation or regulations. These

are subject to modification, implementation, and may ultimately not become law (or may not be effective for many years in the future). The ICANN community should focus its limited time and efforts on existing laws and regulations, while remaining flexible enough to adapt for legal changes in the future from around the world.

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