

## Non-Commercial Stakeholders Group

Representing the interests and concerns of non-commercial Internet users in domain name policy

23 January 2021

To: Goran Marby, ICANN Chief Executive Officer  
To: Maarten Botterman, Chairman of the ICANN Board of Directors  
Cc: ICANN Board of Directors

### **Re: Clarification request about ICANN Org Comments on the EPDB Recommendation 01/2020 - SSAD and Content Moderation**

Dear Mr. Marby and Mr. Botterman,

The Non-Commercial Stakeholder Group writes to you in light of a recent letter issued by ICANN -the organization- to the European Data Protection Board regarding "*ICANN org Comments on the Recommendations 01/2020 on Measures That Supplement Transfer Tools to Ensure Compliance With the EU Level of Protection of Personal Data*"<sup>1</sup>. This comment touches upon the subject of the development of a new System for Standardized Access/Disclosure ("SSAD") for gTLD registration data responsible for facilitating access to non-public generic top-level domain registration data for parties with a legitimate interest.

#### **SSAD and Content Regulation**

When addressing the SSAD, the communication to the EPDB brings up the following statement -- "*[...]The SSAD is therefore instrumental for stopping and preventing the dissemination of illegal content and in order to avoid related societal harms*".

Whilst the introduction of instruments for preventing the dissemination of illegal content in realms other than the SSAD is very welcome, we believe that this specific initiative deals primarily with the transfer of data between regulatory jurisdictions and the processes necessary to meet a strict interpretation of the GDPR's international data transfer requirements. On that note, it comes as confusing the mention of a measure related to content regulation - a competence generally considered to be outside ICANNs remit - on a comment dedicated to expressing the Orgs position on an upcoming data transfer tool in compliance with the General Data Protection Regulation.

The NCSG, which brings to the table non-state and non-commercial perspectives on issues, is an integral component of the multistakeholder model. We have engaged in the subject of WHOIS for nearly two decades. During this time, we have repeatedly highlighted not only the violations of domain name registrants' privacy and sought to assist ICANN in rectifying these abuses, but have also called the attention to the fact that any discussions regarding possible rationales for disclosing WHOIS data should refrain from involving the Org in content regulation<sup>2</sup>.

In light of this topic, we would like to direct the following two questions to the Board:

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<sup>1</sup> ICANN Org EPDB Comment. December 20th, 2020. Available here:

<https://www.icann.org/en/system/files/files/icann-org-comments-edpb-recs-21dec20-en.pdf>

<sup>2</sup> Badiel and Perrin to the ICANN Board. 17 october 2018. Available at:

<https://www.icann.org/en/system/files/correspondence/badiel-perrin-to-icann-board-17oct18-en.pdf>

1. *Could you please clarify in what ways the SSAD could be instrumental for stopping and preventing the dissemination of illegal content and in order to avoid related societal harms ?*
2. *When the document mentions the prevention of the dissemination of illegal content and societal harm, does it relate to factors other than the access to information object of legitimate requests by legal authorities and/or related to investigations ?*

## **SSAD Implementation**

The above mentioned comment also says that the proposed SSAD model would introduce "(...) a centralized process for managing access requests and placing ICANN org in the middle of this process." They go on to say "ICANN org or its designee(s) would manage a system for the intake of requests for data and would route these requests to the registrar or registry operator for a response." If possible, we would like to seek clarification on the following:

1. *Would ICANN be the central clearing house for dealing with such requests?*
2. *Who could be the subject of the term "designee(s)"?*
3. *At the opportunity ICANN is confirmed as the clearing house for this request process, are there any available details on the governance of such a process, as well as a draft set of principles it should abide by?*

## **Data Transfers between jurisdictions**

Last but not least, considering the possibility of data transferences between two national jurisdictions, it is understood from the *EPDB Recommendations 01/2020 on Measures That Supplement Transfer Tools to Ensure Compliance With the EU Level of Protection of Personal Data* that there might be cases in which the recipient state's behavior could motivate the cancellation of the transfer by a sending state in compliance with agreed principles and processes. On that note we would like to stress our concerns regarding the actual decision surrounding the legitimacy of an inter-state data transfer request as well as the actors responsible for taking this decision.

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The Non-Commercial Stakeholders Group (NCSG) represents the interests of non-commercial users in the formulation of Domain Name System policy within the auspices of the Generic Names Supporting Organization (GNSO). Since our inception, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues while raising awareness of the need for ICANN to comply with applicable privacy and data protection legislation.

We thank you very much for the attention and look forward to receiving a written response to these questions along with any additional documents that could be used to clarify our questions.

Yours sincerely,

*Bruna Martins dos Santos*  
Chair, Non-Commercial Stakeholders Group