BC responses to SSAD ODA questions (drafted by Steve DelBianco)
Review of concerns identified in the 24-Jan-2022 ICANN Board letter.

From the ICANN Board letter: "The ICANN org ODP team has determined that the costs and level of effort required to implement the SSAD would be significant, particularly as some recommendations account for a substantial portion of the costs".
1. Does the ODA provide enough information to confidently determine the cost/benefit of the SSAD? If not, please indicate what information is missing to be able to make that assessment.

No. The ODA should also provide a separate estimate of costs to develop and support just the "ticketing system" aspects of SSAD. We expect that cost and effort will be reasonable, since ICANN already uses Salesforce software for similar trouble ticket applications. A ticketing system would enable tracking the origin and nature of requests, and the delivery of responses to those requests. We believe a ticketing system would enable us to analyze trends in request and response, and might even evolve over time into a full SSAD system.

2. With the information provided by the ODP Team (potential clarifying questions included) do you feel that for certain aspects of the SSAD, the costs/complexity outweigh the benefits?
If yes, please indicate what aspects.

Yes. In our Jul-2020 joint minority statement on EPDP Phase 2 final report, the BC described over several pages the many deficiencies in the SSAD recommendations. That's why the BC's GNSO Reps voted No on the recommendations, and why we believe the costs estimated for SSAD far outweigh the benefits for users seeking consistent, timely and predictable access to registrant data when users have a need to process this data lawfully for their legitimate purposes.

From the ICANN Board letter: "This significant investment in time and resources would not fundamentally change what many in the community see as the underlying problem with the current process for requesting non-public gTLD registration data: There is no guarantee that SSAD users would receive the registration data they request via this system."
3. What are the benefits of SSAD that are not sufficiently highlighted in the ODA?

None.

From the ICANN Board letter: "SSAD cannot change existing laws that restrict access to personal data within registration data and that require that the Contracted Parties bear the legal burden of determining whether or not they may disclose the requested data".
4. Which aspects could/should be further considered to reduce the legal burden, if any (note, during the meeting with the ICANN Board mention was made of a Code of Conduct and further highlighting legal risks in ODA)?

After Phase 1, we expected to develop a policy supporting centralized decision making. But the Phase 2 Report does not enable ICANN to evolve into its natural role of centralized decision maker. Instead it has the effect of giving the contracted parties undue discretion to individually interpret their obligations under the GDPR and their contracts with ICANN without any requirement for reasonableness, uniformity, or other safeguards. SSAD also fails to provide an adequate mechanism to permit centralization and automation in the future, and therefore locks-in the inefficiencies of decentralized decision-making and responsibility.

From the ICANN Board letter: "The market demand for an SSAD remains unclear. This makes it difficult to predict the estimated fees for such a system, as lower usage figures would result in higher fees in order to recover operating costs. ICANN org surveyed both contracted parties and potential requestors to assess demand, with inconclusive results. The number of queries requestors claimed to have made outnumbered the number of requests contracted parties reported receiving. Attempts to contract a reputable market research firm to help quantify the demand for the system were stymied, as many large firms turned down the work due to the unknowable nature of the demand for this service."

5. Are there ways to better assess the demand for an SSAD? Is it possible to assess such a demand without knowing the price point? (note, during the meeting with the ICANN Board it was suggested that a pilot could be contemplated that would give better insight into potential usage, but is it possible to conduct such a pilot without significant expense / effort?)

Yes. As noted in our response to Question 1, the BC believes we could assess request demand and response via just a "ticketing system". We expect that cost and effort will be reasonable, since ICANN already uses Salesforce software for similar trouble ticket applications. A ticketing system would enable tracking the origin and nature of requests, and the delivery of responses to those requests. We believe this would enable us to analyze trends in request and response, and to identify parties not responsive.

From the ICANN Board letter: "ICANN Contractual Compliance receives very few complaints related to non-public gTLD registration data requests. However, some reporters indicated that they do not submit complaints related to the non-disclosure of registration data because they know that Contractual Compliance is unable to compel disclosure, which would remain unchanged under the adoption of an SSAD."

6. Is there a common understanding / agreement on the problem that SSAD is trying to address? (see also question 3 – what are the benefits of SSAD that may not be sufficiently highlighted)

No. The contract parties and NCSG have a fundamentally different understanding of what the EPDP should have accomplished, relative to the shared understanding of the BC, IPC, GAC, ALAC, and SSAC. When the ICANN Board adopted the Temporary Specification in May 2018, it noted, "the Board's actions are expected to have an immediate impact on the continued security, stability or resiliency of the DNS, as it will assist in maintaining WHOIS to the greatest extent possible while

7. Other - is there any other input or other questions that the small team should consider as part of its deliberations?