



**Comment on Registration
Directory Service (RDS-
WHOIS2) Review Team Draft
Report of Recommendations**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants. As defined in our Charter, the mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment

In this document we respond to the request for comment on the Registration Directory Service (RDS-WHOIS2) Review Team Draft Report of Recommendations¹.

The BC thanks the members of the RDS-WHOIS2 Review Team (“Team”) for their voluntary efforts to assess the extent to which prior Directory Service Review recommendations have been implemented and whether implementation has resulted in the intended effect, as well as to assess the effectiveness of the current gTLD Registry Directory Service (“RDS”) and whether its implementation meets the legitimate needs of law enforcement, promotes consumer trust, and safeguards registrant data.

Engagement in Whois discussion and ICANN’s responsibilities is not new to the BC. We have been engaged since ICANN’s inception, and have helped present evidence that Internet users are harmed when access to accurate Whois information is not provided in a timely and effective manner. Fighting fraud and abuse that harms end users – whether business or non-commercial or individuals – has to be a priority to fulfill ICANN’s mission in security, stability and resiliency of unique internet identifiers.

The following are the BC’s comments on the Team’s [Draft Report](#).

Strategic Priority: *WHOIS1 Recommendation #1 required ICANN to treat RDS (Whois) in all its aspects as a strategic priority.*

In reviewing ICANN’s activities since the first Whois Review Team’s recommendations were adopted unanimously by ICANN’s Board in 2012, it’s clear that RDS/Whois has not been treated as a strategic priority. We note ICANN’s failure to act on several RDS/Whois-related initiatives over the last 5 years, such as the [Final Report from the Expert Working Group on gTLD Directory Services: A Next-Generation Registration Directory Service \(RDS\)](#), cross-field validation of Whois records, Thick Whois, and RDAP. More recently, ICANN implemented a Temporary Specification for Whois that over-applied GDPR beyond the EU and to legal entities.

¹ ICANN public comment page at <https://www.icann.org/public-comments/rds-whois2-review-2018-09-04-en>

By deferring action on the report of ICANN's Expert Working Group (EWG)², ICANN finds itself with only limited options to satisfy data protection obligations of privacy regulations, such as the EU's GDPR. Implementing EWG recommendations could have served the needs for public safety, consumer protection, and others to legitimately access complete domain registration data in a timely, uniform and unencumbered manner.

We urge the Team to ask ICANN to reaffirm its commitment to RDS/Whois as a strategic priority and follow-through on that commitment in a meaningful way. One suggestion is for the Team to provide a timeline for setting temporary and final policies and their implementation as part of a comprehensive approach to satisfying existing and emerging needs for access to domain registration data. The needs of law enforcement alone are compelling.

Outreach: *WHOIS1 Recommendation #3 required ICANN to perform outreach, including to communities outside of ICANN, with the intent of improving understanding of RDS (Whois) and promoting consumer awareness.*

The BC recommends that the Team ask ICANN Org to now take more informed and distributed measures to expedite community efforts to create a single RDS/Whois policy document and provide a timeline for development, implementation and outreach. As we have seen from the law enforcement survey conducted by the Team, and cybersecurity surveys conducted by APWG³ and M3AAWG, ensuring that stakeholders who use Whois understand the policies, guidelines and processes involved in accessing Whois is critical (and a critical shortcoming, as too few people surveyed understand the current state). In particular, we ask the Team to recommend ICANN Org to reach out to law enforcement and cybersecurity communities, engage them in meaningful dialogue, and incorporate their feedback.

Contractual Compliance: *WHOIS1 Recommendation #4 required that the ICANN Contractual Compliance function be managed in accordance with best practice principles and overseen by a dedicated senior executive.*

The BC has provided substantial input over the last 6 years to broadly and specifically improve ICANN Compliance, and yet systemic problems remain in their ability to carry-out timely, impactful compliance activities and provide the community with the necessary information on these activities.

²6-Jun-2014, [Expert Working Group on gTLD Directory Services \(EWG\)](https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf), see [EWG Final Report](https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf) at <https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf>

³ 18-Oct-2018 Report of the Anti-Phishing Working Group (APWG) and the Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG). See <https://www.icann.org/en/system/files/correspondence/upton-to-marby-et-al-18oct18-en.pdf>

The many issues following the adoption of ICANN's Temporary Specification for gTLD registration data (TempSpec) also should be addressed by the Team. The BC is very concerned that ICANN Compliance has failed to issue appropriate guidelines for registrars and registries and users of Whois, and also has failed to ensure even a minimum level of compliance in this space.

The challenges identified in the APWG/M3AAWG⁴ survey on the impact of GDPR-Whois are also worth noting. The TempSpec was not specific with respect to enforcement tools or practices. The consequences of overlooking or leaving language unspecific are made evident in the APWG and M3AAWG survey. As we review disclosure responses, we see overwhelming evidence that contracted parties are unresponsive to disclosure requests; and the responses received are not uniform across what is *ostensibly* a community bound by a common policy. We ask the Team to recommend that ICANN Org urgently address this.

Data Accuracy: *WHOIS1 Recommendations #5-9 dealt with several issues related to RDS (Whois) accuracy.*

The implementation of these recommendations resulted in ICANN Org efforts and while there seems to be a better understanding of Whois accuracy, there are still many gaps in ICANN's collective understanding of accuracy issues. Although the syntactic accuracy of data seems to have improved somewhat, it is less clear what the impact has been on whether the data allows identification of, and contact with, registrants. GDPR may ultimately obscure accuracy even more by making it more difficult to assess whether the data within the RDS/Whois repository is accurate or not.

The Temp Spec allows redaction without consideration of data subject (EU or not) or legal entity. The contracted parties claim that they cannot reliably make these distinctions because the data is inaccurate. The convenient solution – redact everything – is over-prescriptive. The long-term solution that is most beneficial for all parties – and one that we recommend the Team emphasize – lies in improving data accuracy to the level where contracted parties can be confident when making data subject or legal entity/natural person distinctions.

Privacy/Proxy: *The GNSO Policy Development Process (PDP) on Privacy and Proxy service providers was triggered by WHOIS1 Recommendation #10.*

The PDP was completed several years ago and the implementation review team recently was **paused** by ICANN Org, preventing them from finalizing implementation plans. It is unacceptable that ICANN Org continues to delay implementation of this approved consensus policy and we

⁴ 18-Oct-2018 Report of the Anti-Phishing Working Group (APWG) and the Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG). See <https://www.icann.org/en/system/files/correspondence/upton-to-marby-et-al-18oct18-en.pdf>

ask the Team to address this in their report. ICANN should be accrediting Proxy Privacy providers and requiring compliance now.

Common RDS (Whois) Interface: WHOIS1 Recommendation #11 required a single RDS (Whois) portal be created and operated by ICANN to provide the community with a “one-stop shop” for RDS queries.

The BC notes that ICANN created the Whois portal. However, as users can attest it does not work as required. It is simply not to be counted on as a reliable source for Whois. It seems that ICANN efforts with respect to GDPR have broken aspects of the agreed to functions /purpose of the portal. We again refer ICANN to the APWG and M3AAWG survey, where investigators, either in survey responses or through submitted comments, identify prominent “pain points” and emphasize the need to restore timely access to complete Whois data for legitimate purposes. We ask the Team to address this in their recommendations.

Internationalized Registration Data: WHOIS1 Recommendations #12-14 relate to the use of internationalized character sets for registration data (name, address, etc.)

A number of studies and a PDP were carried out, for which ICANN Org should be acknowledged. However, the resultant policy and practices are not yet in place because they depend on a new RDS/Whois system which is not yet implemented (using the Registration Data Access Protocol – RDAP). We recommend the Team reinforce this priority.

Planning/Reports: WHOIS1 Recommendations #15-16 addressed the need for planning and reporting to carry-out and track implementation of WHOIS1 recommendations.

While plans and reports were issued, their utility was limited and they failed to provide transparency into areas where implementation fell short. The disconnect between ICANN Org’s claim of full implementation for all recommendations, and the reality of what has transpired is substantial. Clearly changes are needed in future implementation plans and reports. We suggest the Team recommend planning and reporting activities in concert with their recommendations.

Law Enforcement: The ICANN Bylaws call for each RDS-Whois Review to assess whether the RDS (Whois) effectively meets the needs of Law Enforcement.

We found the law enforcement survey conducted by the Team to be useful, as it not only provided insight into law enforcement needs regarding RDS/Whois, but also gave us a preliminary understanding of whether GDPR was likely to have an impact on meeting those needs. We support the conduct of additional surveys and research in this vein.

Consumer Trust: *The assessment of whether RDS (Whois) enhances consumer trust is also a requirement mandated by the ICANN Bylaws for each RDS-Whois Review.*

The BC supports the view that, for the purposes of these activities, “consumer trust” should not be restricted only to registrants, but must apply to all parties who “consume” domain names through registration and resolution services. This definition is better aligned with ICANN’s domain name system remit, which spans domain name registration services and name resolution services. Limiting consumer trust to the registrant population of millions constrains the scope of consumer and trust, and we recommend that the Team address this in its report.

There are billions of internet users that want to trust that the domain names they access are reliable, secure, and trustworthy. These users often want to know who is behind a website that may be asking for their name, their email, their credit card, or even more personal information. ICANN must accept its own responsibility in security, stability, and resiliency, and enforce these responsibilities in its contracts. Access to accurate Whois data for legitimate purposes of addressing threats to the integrity of domains is clearly within ICANN’s mission.

We also recommend that ICANN follow-through on its obligation to assess the level of consumer trust in the new regime of RDS, privacy/proxy services, GDPR-redacted data fields and limited or rejected access to registration data. The question ICANN should ask and answer is: *do these changes to Whois enhance consumer trust?*

Safeguarding Registrant Data: *The assessment of RDS (Whois) safeguards for registrant data looked at privacy, whether registrant data was adequately protected from access or change, and whether appropriate breach notices are contractually required.*

While there has been a significant and useful focus at ICANN on registrant data privacy over the last several months, it remains unclear whether registrars and registries are adequately protecting registrant data (e.g. from data breaches). ICANN’s contracts with registries, registrars and escrow agents include varying requirements for how data is to be protected from inappropriate access or change. We have limited transparency, however, on whether, and how well, these contracts are being enforced. For example, there’s a contractual requirement that ICANN be notified in case of a data breach, but it’s unclear whether and to what effect this has been enforced. We suggest this is an area for the Team’s further consideration.

The BC thanks Review Team members for volunteering their time for this important undertaking. We appreciate your consideration of our input and can provide additional information on our suggestions.

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This comment was drafted by Denise Michel, Jimson Olufuye, Marilyn Cade, Marie Pattullo, and Tim Chen. It was approved in accord with our charter.