ICANN BOARD SUBMISSION NO. 2012-11-08-01

TITLE: **WHOIS Policy Review Team Report Recommendations**

PROPOSED ACTION: **For Board Action**

EXECUTIVE SUMMARY:

After analysis of the WHOIS Policy Review Team recommendations and based on the Board's discussion and guidance, it is recommended that the Board resolve to 1) launch a new effort to redefine the purpose[1] of collecting, maintaining and providing access to gTLD registration data in order to provide the foundation for a new policy, and 2) fully enforce existing contractual obligations relating to the collection, access and accuracy of generic top-level domain name registration data (referred to as gTLD WHOIS data) (meeting ICANN's Affirmation of Commitment obligations). The Resolution fulfills the Board's responsibility to act on the WHOIS Policy Review Team Report by 11 November 2012. The proposed Board actions address three areas:

Strategic priority—A new gTLD registration data policy—The policy and management of gTLD registration data (i.e., WHOIS), is a strategic priority for ICANN. There is a critical need for a policy defining the purpose of collecting, maintaining and providing access to registration data (with appropriate safeguards to limit the use of the data to the purpose for which it was collected and for protecting personal data[2]). The Board directs the CEO to form a working group and publish organizational objectives for advancing this strategic priority and key actions. Regular public reports on progress against objectives will be issued. Where new policies are required (as noted below) ICANN will start with clearly answering the questions raised in the SSAC report (SAC055), taking into account privacy principles, and continue this effort in an expedited fashion through the GNSO policy development process (PDP).

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1 This work is expected to take into account the purpose referenced in the WHOIS Marketing Restriction consensus policy, and the previous GNSO work on the purpose of WHOIS and the WHOIS contacts, and to be informed by the guidance set forth in the SSAC report, SAC055.

2 For an example of privacy rules, see OECD privacy guidelines: http://www.oecd.org/internet/interneteconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm.
For an example of relevant practices of ccTDs, see GNSO WHOIS-Privacy Task Force 2 report: http://gnso.icann.org/en/issues/whois-privacy/Whois-tf2-preliminary.html#AppendixA

The Board and CEO will provide leadership to assist the community in defining the purpose of collecting and maintaining gTLD registration data, and consider how to safeguard the data, to serve as a foundation for the creation of new consensus policy and requisite contract changes, as appropriate. As recommended by the SSAC, the CEO will create an expert working group to provide the aforementioned, proposed purpose. The working group will be informed by previous community input and GNSO work,[3] and will address key questions set forth by the SSAC (SAC055).[4] The working group also will address the operational concerns of the parties who collect, maintain, publish or use this data as it relates to ICANN's remit. The working group is expected to provide output that will ideally include a straw man model for managing gTLD registration data, and will be used as the basis for initiating tightly focused GNSO policy work – targeted for completion by the end of calendar year 2013. Working in parallel, ICANN will provide an issues report based on the working group's output that will form the basis of a Board-initiated GNSO PDP. ICANN will provide a project plan for the completion of the policy work by the end of calendar year 2013. ICANN and its leadership will be focused on facilitation of the expedited policy work in order to provide a consensus policy that, at a minimum, addresses the purpose of collecting, maintaining and making available gTLD registration data, and related data accuracy and access issues. Such a policy would be contractually binding on ICANN accredited gTLD registrars and gTLD registries.

Implementing current policy (communications, outreach and tools)—The Affirmation of Commitments (AoC) commits ICANN to enforce its existing policy relating to WHOIS (subject to applicable laws), which requires that ICANN "implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information." ICANN's ongoing and planned activities address this obligation and are consistent with several objectives included in the Review Team's recommendations. These activities include: making efforts related to WHOIS/gTLD registration data a

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[3] This includes: the GNSO Preliminary Task Force Report on the purpose of WHOIS and the WHOIS contacts— http://gnso.icann.org/en/issues/whois-privacy/prelim-tf-rpt-18jan06.htm; the GNSO WHOIS studies— http://gnso.icann.org/en/issues/whois/studies; and the WHOIS Marketing Restriction consensus policy— http://www.icann.org/en/resources/registrars/consensus-policies/wmrp.

[4] In SAC055, SSAC called for an expert working group to define the purpose of collecting and maintaining gTLD registration data and address questions such as: Why are data collected? What purpose will the data serve? Who collects the data? Where is the data stored and how long is it stored? Where is the data escrowed and how long is it escrowed? Who needs the data and why? Who needs access to logs of access to the data and why?

strategic priority; providing a single public information portal for current policies and information related to WHOIS; executing a communication and outreach plan to support the objectives and activities related to WHOIS/gTLD registration data; supporting the RAA negotiation process; and moving forward with the internationalized domain name registration data requirements and related efforts.

Implementing current policy (compliance—improving accuracy through current policy and contractual requirements)—In line with the AoC obligations and ICANN's responsibilities, ICANN will focus on ensuring compliance with existing gTLD registrar and gTLD registry contractual obligations. This includes: enhanced communications and prevention outreach related to compliance with existing obligations relating to registration data; improved investigations of registrars' compliance with their obligation to take reasonable steps to investigate and correct reported inaccuracies, including reviewing steps taken and correspondence between accredited gTLD registrars and registrants; process management to reduce accuracy report processing cycles; enhanced public reporting; and implementation of a robust auditing program that includes checking for registrars' compliance with their obligation to investigate and correct reported inaccuracies. Staff also will explore the use of automation tools to proactively validate some registration data fields and report inaccuracies to gTLD registrars.

More details on these efforts and how they relate to the Review Team's recommendations are provided below.

BACKGROUND

The proposed Resolution and Board action is informed by public comments on the WHOIS Policy Review Team Report, community discussion and input, and advice from the Governmental Advisory Committee (GAC), the At-Large Advisory Committee (ALAC), and the Security and Stability Advisory Committee (SSAC). The GAC endorsed all of the Team's recommendations in its Prague communiqué. The ALAC endorsed all of the recommendations and urged the Board to "unilaterally move on" Recommendations 1, 2, 3, 4, 11 and 15 (see below). The SSAC described the critical need for a policy defining the purpose of collecting and maintaining [gTLD] registration data is an essential first step to implementing the Team's recommendations, which SSAC then characterized as high, medium or low priorities. The GNSO is in the process of compiling a summary of GNSO stakeholder and constituency positions on the Review Team Report.

As detailed in the Report of Public Comments, the public comment forum contained conflicting input from the Non-Commercial Stakeholders Group (NCSG), the Registries Stakeholder Group (gTLD RySG), the Internet Service Providers Constituency (ISPCP), and the Business Constituency (BC). The NCSG did not endorse the Review Team's recommendations, emphasized that all registrants have an interest in the privacy of their personal data, which should be given equivalent emphasis to accuracy in the normative discussions, and asserted that gTLD policy development is the responsibility of the GNSO. The ISPCP endorsed all of the Review Team's recommendation, noted that ensuring data accuracy was their overriding concern, and also emphasized the need for data access. The gTLD RySG asserted that "it is not possible to reach consensus in a diverse [GNSO] community ... and [it] is best to let market forces work rather than impose top-down regulation except when security [is] at risk," and stated that data access relating to privacy and proxy services is a policy issue to be addressed by a GNSO PDP. The BC supported all Review Team recommendations and noted that, "Without punitive measures, [there is] no incentive to provide accurate WHOIS. ICANN Compliance must take a greater role in ensuring that de-registrations take place. [The] WDRP is inefficient. An alternative policy should be developed. Accreditation for Privacy/Proxy Service Providers should be developed and implemented so that Registrars are contractually bound to comply with standards." A full report of public comments is linked above and provided as an annex to this paper. Previous Board papers provide Staff's assessment of the advisability and implementation paths of each of the Team's 16 recommendations and notes their connection to the proposals under discussion in the RAA negotiations.

See Appendix for "WHOIS Policy Review Team Report Recommendations Summary, and Proposed Board Action and Rationale"

STAFF RECOMMENDATION:

See above

PROPOSED RESOLUTION

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RATIONALE

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ATTACHMENTS

WHOIS Policy Review Team Report Recommendations Summary, and Proposed Board Action and Rationale

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Appendix to Board paper on "WHOIS Policy Review Team Report Recommendations"—ICANN Board Submission Number 2012-11-08-01: WHOIS Policy Review Team Report Recommendations Summary, and Proposed Board Action and Rationale

WHOIS Policy Review Team Report Recommendations	Board action	Board rationale
1. Strategic Priority -- WHOIS, in all its aspects, should be a strategic priority, form the basis of staff incentivization (including CEO's) and organizational objectives; Board should create a committee that includes the CEO to be responsible for priority and key actions; issue public updates on progress against targets for all aspects of WHOIS.	• Board agrees that gTLD WHOIS is a strategic priority for ICANN. • Consistent with advice from SSAC (SAC055), Board directs the CEO to create an expert working group to create material to launch GNSO policy work and inform contractual negotiations, as appropriate. Working group output is expected within 90 days and will ideally include a straw-man model for managing gTLD registration data. • The working group's output form the basis for an Issues Report to accompany Board-initiated, expedited GNSO policy work that is expected to result in consensus policy that, at a minimum, addresses the purpose of collecting, maintaining and making available gTLD registration data, and related accuracy, data protection, and access issues. • The Board also will call upon the registrars, registries, and the staff to address the working group's output in contractual negotiations and registry contracts, as appropriate. • The CEO will oversee improvements to the enforcement of the contractual conditions relating to gTLD WHOIS in the gTLD registry and gTLD registrar agreements. Appropriate reporting of these improvements will be developed, and the CEO will be responsible for appropriate staff incentives. • The Board will incorporate performance of the WHOIS strategy into the incentive program for the CEO.	• The Board notes that ccTLD WHOIS is the policy responsibility of each ccTLD manager. • The Board notes that IP address registry WHOIS services are under the policy responsibility of each RIR, and the WHOIS review has not raised any concerns with these services • It is difficult to further evolve improvements to the gTLD WHOIS service, without developing policy to answer fundamental questions such as: • Why are data collected? • What purpose will the data serve? • Who collects the data? • Where is the data stored and how long is it stored? • Where is the data escrowed and how long is it escrowed? • Who needs the data and why? • Who needs access to logs of access to the data and why? • How to protect personal data?
2. Single WHOIS Policy -- Board should oversee creation of a single WHOIS policy document, and reference it in agreements with Contracted Parties; clearly document the current gTLD WHOIS policy as set out in the gTLD Registry & Registrar contracts & Consensus Policies and Procedure.	• The Board directs the CEO to create and maintain a single public source that compiles current gTLD WHOIS requirements for gTLD registries, registrars and registrants (including consensus policies and contractual conditions).	• The Board notes that there is not a comprehensive gTLD WHOIS policy that addresses all of the issues raised in the Review Team report and in SAC055. There is a set of existing contractual conditions that have been developed over time by negotiation between ICANN and registries and registrars, and a small set of consensus policies that address some aspects of the management of domain name registration data. These presently available conditions and

		policies should be publicly available from one source. • The fundamental questions of the purpose of collecting and maintaining gTLD registration data have not been addressed through a successful policy PDP (see footnotes 1 & 2 on previous GNSO work)
3. Outreach -- ICANN should ensure that WHOIS policy issues are accompanied by cross-community outreach, including outreach to the communities outside of ICANN with a specific interest in the issues, and an ongoing program for consumer awareness.	• The Board directs the CEO to create an information portal with clear explanation of how to access the existing WHOIS information. • The portal will also make it clear how to notify relevant parties of a data accuracy issue. • The Board directs the CEO to have staff to create and execute a communication and outreach plan that provides key stakeholders, including users, with the information they need to use, and help improve, the collection and maintenance of gTLD registration data.	• The WHOIS information for domain names and IP registries is highly distributed. A single portal will make it easier to access WHOIS information, raise accuracy issues about WHOIS information, and allow contributions on WHOIS policies. • In addition to supporting the use of WHOIS, communication and outreach is necessary to inform discussions of the fundamental questions raised by actions related to Recommendation 1.
4. Compliance -- ICANN should ensure that its compliance function is managed in accordance with best practice principles, including full transparency on resourcing and structure; provide annual reports; appoint a senior executive whose sole responsibility would be to oversee and manage ICANN's compliance function (reporting to Board Committee); provide all necessary resources to manage and scale compliance team's activities.	• The Board directs the CEO to create and publicize a reporting structure on compliance activities, and regularly report on compliance activities related to gTLD registration data.	• The contractual compliance function of ICANN now directly reports to the CEO and has received increases in personnel and budget. • The CEO will regularly report on compliance activities to the Board and publish reports to the community.
Data Accuracy **5.** ICANN should ensure that the requirements for accurate WHOIS data are widely and pro-actively communicated, including to current and prospective Registrants, and should use all means available to progress WHOIS accuracy, including any internationalized WHOIS data, as an organizational objective. **6.** ICANN should take appropriate measures to	• The Board directs the CEO to: 1) proactively identify potentially inaccurate gTLD data registration information in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action; and 2) publicly report on the resulting actions to encourage improved accuracy. • The Board directs the CEO to ensure that WHOIS information pages make clear the requirements for	• As per actions related to Recommendation 3, the ICANN portal for gTLD WHOIS services will make clear the requirements for registrants to submit accurate information, and the risk that their names may be cancelled if the information is not accurate. • ICANN will report on current levels of accuracy from the recent data studies, and will track and report on improvements.

reduce the number of WHOIS registrations that fall into the accuracy groups "Substantial Failure and Full Failure" (as defined by the NORC Data Accuracy Study, 2009/10) by 50% within 12 months and by 50% again over the following 12 months. **7.** ICANN shall produce and publish an accuracy report focused on measured reduction in WHOIS registrations that fall into the accuracy groups "Substantial Failure and Full Failure" on an annual basis. **8.** ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreements with registries, registrars, and registrants to require the provision and maintenance of accurate WHOIS data; agreements should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its WHOIS policies; sanctions should include de-registration &/or de-accreditation in cases of serious or serial non-compliance. **9.** Board should ensure that the Compliance Team develop metrics to track the impact of the annual WHOIS Data Reminder Policy (WDRP) notices to registrants; metrics should be used to As per (1) above, the Board will initiate a policy on the purpose of the gTLD WHOIS service, and this will help drive the principles behind privacy/proxy develop and publish performance targets, to improve data accuracy over time; if this is unfeasible, Board should ensure that an alternative, effective policy is developed and implemented that achieves the objective of improving data quality, in a measurable way.	registrants to provide accurate information, and the consequences of providing inaccurate information. • The Board continues to support the RAA negotiation process to find ways to improve WHOIS accuracy, and as per (1) above is initiating a PDP to reform the WHOIS policy to support the objectives and balance the concerns of the multi-stakeholder community.	• ICANN already has an enforceable chain of contracts. The gTLD registrar agreement includes sanctions that include de-accreditation if a registrar fails to respond to reports of inaccurate WHOIS information.
10. Data Access – Privacy and Proxy Services -- ICANN should initiate processes to regulate and oversee privacy and proxy service providers; processes should be developed in consultation with all interested stakeholders and note relevant GNSO studies; a possible approach to achieving this would be to establish an accreditation system for all proxy/privacy service providers, and consider the merits (if	• The Board notes that staff has made the use and accreditation of privacy and proxy providers part of the RAA negotiations. The Board also notes that the GNSO has had discussions about a potential PDP relating to these issues. • The Board notes that staff has initiated community discussions on privacy and proxy "best practices"	• ICANN will initiate a process to develop proposed accreditation requirements for proxy providers, and these will be subject to public comment. Aspects of these requirements that raise policy issues will be provided to the GNSO. • The list of objectives provided by the WHOIS review team will be provided as input into any development of

any) of establishing or maintaining a distinction between privacy and proxy services; goal is to provide clear, consistent and enforceable requirements for the operation of these services consistent with national laws, and to strike an appropriate balance between stakeholders with competing but legitimate interests -- including privacy, data protection, law enforcement, the industry around law enforcement and the human rights community. A list of objectives for regulation is provided for consideration, including: labeling WHOIS entries made by a privacy or proxy service; providing full WHOIS contact details for the privacy/proxy service provider; adopting agreed standardized relay and reveal processes and timeframes; Registrars should disclose their relationship with any proxy/privacy service provider; maintaining dedicated abuse points of contact for each provider; conducting periodic due diligence checks on customer contact information; maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider; and providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment.	that will inform next steps. • As per (1) above, the Board will initiate a process to create a straw-man document on the purpose collecting and maintaining gTLD registration data, and this will help guide further policy in this area.	accreditation requirements. • The Board notes that the development of clear policy around the purpose of collecting, maintaining and making available gTLD registration data, and related accuracy, data protection and access issues, will help guide future policies and implementations in this area. • The Board notes that the OECD has created a set of privacy guidelines that were originally adopted by the OECD in 1980 and have served as the basis for developing national privacy laws. These guidelines may assist in assessing the suitability of rules around privacy /proxy providers.
11. Data Access – Common Interface It is recommended that the Internic Service is overhauled to provide enhanced usability for consumers, including the display of full registrant data for all gTLD domain names (whether those gTLDs operate thin or thick WHOIS services); operational improvements should include enhanced promotion of the service to increase user awareness.	• See (3) above.	

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Internationalized Domain Names **12.** ICANN should task a working group within six months of publication of this report, to determine appropriate internationalized domain name registration data requirements and evaluate available solutions; at a minimum, the data requirements should apply to all new gTLDs, and the working group should consider ways to encourage consistency of approach across the gTLD and (on a voluntary basis) ccTLD space; working group should report within a year. **13.** The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in relevant Registrar & Registry agreements within 6 months of Board adoption of working group's recommendations, or put explicit placeholders in the new gTLD program agreements, & in existing agreements when they come up for renewal. **14.** Metrics should be developed to maintain and measure the accuracy of the internationalized registration data and corresponding data in ASCII, with clearly defined compliance methods and targets.	• The Board directs the CEO to have Staff: 1) task a working group to determine the appropriate internationalized domain name registration data requirements, evaluating any relevant recommendations from the SSAC or GNSO; 2) produce a data model that includes (any) requirements for the translation or transliteration of the registration data, taking into account the results of any PDP initiated by the GNSO on translation/ transliteration, and the standardized replacement protocol under development in the IETF's Web-based Extensible Internet Registration Data Working Group; 3) incorporate the data model in the relevant Registrar and Registry agreements within 6 months of adoption of the working group's recommendations by the ICANN Board or put explicit placeholders in place for gTLD program agreements, and existing agreements; 4) valuate available solutions (including solutions being implemented by ccTLDs), and 5) to provide regular updates on technical development of the IRD, including the estimated timeline or roadmap of such technical development, so that the ICANN community, particularly the IDN gTLD applicant, can fully prepare for implementation of IRD features in its operation. • As per (5) above, the CEO to investigate using automated tools to identify potentially inaccurate internationalized gTLD domain name registration data in gTLD registry and registrar services, and forward potentially inaccurate records to gTLD registrars for action.	• The Board notes that both SSAC and the GNSO approved the recommendations in the IRD-WG Final Report, and the GNSO requested an issue report on the translation and transliteration of registration data, which has broader policy implications that could be addressed through a GNSO PDP once the Final Issue Report is produced. The final data model also could either be addressed via a PDP (for uniform application on all parties) or via direct contract negotiations with registrars or registries, or could be incorporated at the time of renewal of these agreements (over time). • The Board notes that the working group should use the IRD-WG final report as well as the SSAC advisory on Domain Name Registration Data Model as a starting point of discussion. • The Board also recognizes the effort underway in the IETF's Web-based Extensible Internet Registration Data (WEIRDS) Working Group to develop a standardized replacement WHOIS protocol.
15. Detailed and Comprehensive Plan -- ICANN should provide a detailed and comprehensive plan within 3 months after the submission of the Final WHOIS Review Team report that outlines how ICANN will move forward in implementing these recommendations.	• As per (1) above, the Board agrees that gTLD WHOIS should be a strategic priority. • The Board directs the CEO to incorporate a work plan for the improvement of WHOIS into the operating plan.	
16. Annual Status Reports -- ICANN should provide at least annual written status reports on its progress towards implementing the recommendations of this WHOIS Review Team. The first of these reports should be published one year, at the latest, after ICANN publishes the	• The Board directs the CEO to provide resources and budget to carryout these activities, to provide annual public reports on implementation of these activities and related efforts.	

implementation plan mentioned in recommendation 15, above.		