

Noncommercial Stakeholder Group Response to RDS WHOIS2 Review Team Final Report

The Noncommercial Stakeholder Group (NCSG) is pleased to comment on the Registration Directory Service (RDS) WHOIS2 Review Team Final Report published on 3 September 2019.¹ However, as it does not differ in any significant way from the draft report published a year earlier in September 2018, the comments which the NCSG provided at that time still apply.² We note in particular that our remarks about the tone of this report seem to remain missing. In our view the report ought to better reflect at least the view of this stakeholder group, that the new data protection regime we are facing is a welcome, long-overdue admission of registrant rights.

We note the scarcity of public comments submitted on this report. Unless there is a final rush on the last day of submission, we would suggest that the doodle poll which was offered to team members on how reviews might be improved, be reopened to a wider audience. This review took a great deal of time, energy and ICANN resources at a time when we were also flat out working on the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data. Given the recent about-face in terms of replacing the WHOIS with a data system that is compliant with data protection law as opposed to convenient and accurate for the benefit of third party users, a lot of the research and discussion that went on during the development of this Review Team report was essentially irrelevant.

We agree generally with the points raised in the Registrars submission, in which they have highlighted some of their earlier concerns.³ We also would like to highlight a few of our earlier points, and fresh observations based on current reality:

- R1.3 It would be particularly helpful if the Board RDS group could be more transparent as to what is happening with regards to the current EPDP.

¹ <https://www.icann.org/en/system/files/files/rds-whois2-review-03sep19-en.pdf>

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<https://mm.icann.org/pipermail/comments-rds-whois2-review-04sep18/2018q4/000004.html>

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<https://mm.icann.org/pipermail/comments-rds-whois2-rt-final-report-08oct19/2019q4/000000.html>

- R3.2 This is not a high priority. Particularly now, when we cannot even identify who is the controller of the Registrant's personal information.
- R4.1 The current EPDP continues to demonstrate the failure to understand accuracy obligations under data protection law. Recommend dropping this idea. "Proactively" could easily be construed as without sufficient cause.
- R4.2 Given the burden on the contracted parties to implement the outcome of the EPDP, including compliance with a potential SSAD, this is not appropriate as a recommendation.
- R5.1 The NCSG does not accept this recommendation. We believe the understanding of "accuracy" is inconsistent with data protection law.
- R10.2 Perhaps this is the point where we should point out that if the next review team simply reviews the recommendations in this Review Report, most of which will not be relevant in the new system developed by the EPDP, it will be a tremendous waste of money. The NCSG recommends a fresh start on the RDS III review, whenever that shall take place.
- R11.1 This recommendation may be redundant after the SSAD is developed.
- R15.1 was an attempt to get some risk analysis into the determination of what needed to be done in this context. Not sure it is well understood.
- LE1 Given the response burden expected following EPDP, we reiterate that we see no reason for ICANN to spend research money on this issue.

Thank you for the opportunity to comment on this final report.