**Input from the gTLD Registries Stakeholder Group (RySG), 1 August 2012**

**On the Final Report of the Whois Policy Review Team**

**http://www.icann.org/en/about/aoc-review/whois/final-report-11may12-en**

**Recommendations Needing PDPs**

As requested by the Board in the joint Board/RySG session on Constituency Day in Prague, following is the RySG’s assessment regarding which recommendations in the Final Report of the WHOIS Policy Review Team would likely require policy development work (PDPs). For clarity, some of the recommendations are broken into separate parts.

Of the 16 recommendations, the RySG believes that at most five of the recommendations would require a PDP and in three of those cases (recommendations 2, 6 & 9), a PDP may not be needed; see the comments below for further information. We believe that a PDP would definitely be required to fulfill recommendations 10 and 13.

| # | Recommendation[[1]](#footnote-1) | PDP? | Comments |
| --- | --- | --- | --- |
| 1 | It is recommended that WHOIS, in all its aspects, should be a strategic priority for ICANN the organization. It should form the basis of staff incentivization and published organizational objectives. | No |  |
| 2 | The ICANN Board should oversee the creation of a single WHOIS policy document, and reference it in subsequent versions of agreements with Contracted Parties. | ? | It is not clear whether this means a single Whois document in contrast to a single Whois policy. If it is the former, we believe it is a matter of creating a document that summarizes all relevant Whois polices. If it is the latter, we believe that a PDP would be required. |
| 3 | 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. | No |  |
| 4 | ICANN should act to ensure that its compliance function is managed in accordance with best practice principles . . . | No | The RySG questions the wisdom of the following parts of this recommendation: having the head of compliance report directly to a Board subcommittee and thereby having the Board perform a management function; disallowing committee members from the regulated industry and possibly not having needed expertise. The RySG also thinks that the following could cause serious delays in the introduction of new gTLDs and therefore play into the hands of those who have sought delays along: “. . . all relevant compliance processes and tools should be reviewed and improved, and new tools developed where necessary, in advance of any new gTLDs becoming operational.” |
| 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. | No |  |
| 6 | ICANN should take appropriate measures to 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. | ? | To the extent that the 'appropriate measures' necessary meet to these goals required new contractual compliance mechanisms or consensus policies, a PDP might be necessary. The RySG is not sure this goal is achievable because of the complexities involved in achieving it. |
| 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. | No |  |
| 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. As part of these agreements, ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its WHOIS policies. These sanctions should include de-registration and/or de-accreditation as appropriate in cases of serious or serial non-compliance. | No | To ensure the protections built into contractual policy requirements, it should be noted that ‘Whois policies’ must be ‘consensus policies’ as defined within registry and registrar agreements. |
| 9a | The ICANN Board should ensure that the Compliance Team develop, in consultation with relevant contracted parties, metrics to track the impact of the annual WHOIS Data Reminder Policy (WDRP) notices to registrants. Such metrics should be used to develop and publish performance targets, to improve data accuracy over time. | No |  |
| 9b | If this is unfeasible with the current system, the Board should ensure that an alternative, effective policy is developed (in accordance with ICANN’s existing processes) and implemented in consultation with registrars that achieves the objective of improving data quality, in a measurable way. | Yes | It is not clear how the Board can “ensure that an alternative, effective policy is developed (in accordance with ICANN’s existing processes)”; existing processes require consensus; what happens if consensus cannot be found? Should the multi-stakeholder, bottom-up processes be bypassed if some stakeholders do not get what they want? |
| 10a | The Review Team recommends that ICANN should initiate processes to regulate and oversee privacy and proxy service providers. | Yes | How would ICANN staff do this if there were not a means (i.e., consensus policies) to require compliance? Policies resulting from a PDP would provide the means for enforcement. |
| 10b | The Review Team considers that one possible approach to achieving this would be to establish, through the appropriate means, an accreditation system for all proxy/privacy service providers. As part of this process, ICANN should consider the merits (if any) of establishing or maintaining a distinction between privacy and proxy services. | Yes | This should be included in the Issue Report or Charter for the PDP. |
| 10c | The goal of this process should be 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. At a minimum, this would include privacy, data protection, law enforcement, the industry around law enforcement and the human rights community. | Yes | This should be included in the Issue Report or Charter for the PDP. |
| 10d | ICANN could, for example, use a mix of incentives and graduated sanctions to encourage proxy/privacy service providers to become accredited, and to ensure that registrars do not knowingly accept registrations from unaccredited providers. | Yes | This should be included in the Issue Report or Charter for the PDP. |
| 10e | ICANN could develop a graduated and enforceable series of penalties for proxy/privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial or otherwise serious breaches. | Yes | This should be included in the Issue Report or Charter for the PDP. |
| 10f | In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to the following objectives: . . . | Yes | This should be included in the Issue Report or Charter for the PDP. |
| 11 | 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) in order to create a one stop shop, from a trusted provider, for consumers and other users of WHOIS services. | No |  |
| 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 (including solutions being implemented by ccTLDs). 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. The working group should report within a year of being tasked. | No | We believe that this work is already underway. |
| 13 | The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in the relevant Registrar and Registry agreements within 6 months of adoption of the working group’s recommendations by the ICANN Board. If these recommendations are not finalized in time for the next revision of such agreements, explicit placeholders for this purpose should be put in place in the agreements for the new gTLD program at this time, and in the existing agreements when they come up for renewal. | Yes | It appears that the RT is recommending that existing processes be modified in this case by going directly from a WG to the Board without following all steps of a PDP. It also appears that the RT is suggesting that the Board unilaterally amend registrar and registry agreements to incorporate the new data model. The RySG appreciates the urgency of the need but does not think that existing processes should be ignored. At the same time, the RySG wants to communicate its intention to cooperate constructively in the efforts to fulfill these recommendations in as timely a manner as possible. |
| 14 | In addition, 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, as per the details in Recommendations 5-9 in this document. | No |  |
| 15 | 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. | No | This might be feasible if done unilaterally by ICANN Staff but the time target is terribly unrealistic if done following the multi-stakeholder model. |
| 16 | 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 implementation plan mentioned in recommendation 15, above. Each of these reports should contain all relevant information, including all underlying facts, figures and analyses. | No |  |

1. For brevity, in some cases only a portion of the recommendation is included in the table. Note that a full presentation of the recommendations including background and findings can be found in the Whois RT Final Report. [↑](#footnote-ref-1)