Summary of Thick Whois IRT Legal Review

As noted in the separate summary re the Thick Whois WG Final Report, that working group recommended a legal review on privacy issues as part of the implementation process (still underway) for the consensus policy on thick Whois that resulted from the WG’s recommendations. That legal review, in which ICANN staff was assisted by expert outside counsel, is embodied in a June 2015 memorandum which concludes: “The analysis undertaken did not reveal any additional privacy issues not already considered by the Expert Working Group that would be implicated in the transition of data from a thin to a thick Whois model. To the extent that a contracted party finds that it is unable to comply with the Thick Whois policy requirements due to a conflict with its obligations under local privacy laws, such conflicts may be dealt with by exception through use of the Whois Conflicts Procedure, or requests to ICANN for an amendment to or waiver of certain provisions in the Registry Agreement or Registrar Accreditation Agreement.” The memo also addresses the importance of consent of domain name registrants in satisfying data protection/privacy requirements, and concludes that “notwithstanding the concerns over the validity of consent and the ability of registrants to revoke consent, it is likely to be the most expedient way of addressing the transition to thick Whois.” The memo also identifies “(i) privacy/proxy services, and perhaps (ii) thick Whois services where the data stays in the region subject to restrictions to avoid data transfer limitations” as other options (in addition to consent) for addressing data protection concerns regarding international transfer of data.