**Preliminary Assessment of the RDS-WHOIS2 Review Team Final Recommendations**

**17 January 2020**

The purpose of this document is to follow up on the initial dialogue between the RDS-WHOIS2 Implementation Shepherds and the RDS Board Caucus Group on 19 December 2019. There will be a follow up call scheduled in January 2020, to engage in further discussion and clarification from the RDS-WHOIS Shepherds, to inform Board consideration.

Of the 22 recommendations from the RDS-WHOIS2 Review Team:

1. No significant implementation issues/concerns: 7 recommendations (R3.1, R10.2, R11.2, R12.1, R15.1, LE.1, CC.3)[[1]](#footnote-1)
2. [Potentially Requiring Policy Development](#o5zwogsfkdf0): 1 recommendation (CC.1) (Addressed by Shepherds on 19 Dec 2019)
3. [Potentially Requiring Contract Amendment](#t8hf1dno2zm3): 1 recommendation (SG.1) (Addressed by Shepherds on 19 Dec 2019)
4. [Potentially Impacted by GDPR and EPDP Work](#ec02clwyoya4): 3 recommendations (R4.1, R4.2, R5.1)
5. [Recommendations Requiring Specific Clarification from RDS-WHOIS2 Review Team Shepherds](#l6xhw6vldlyg): 8 recommendations (R1.1, R1.2, R1.3, R3.2, R11.1, LE.2, CC.2, BY.1)
6. [Intended for GNSO](#zfep8ipd34go): 1 recommendation (CC.4)
7. [Potential Timing Challenges](#fy0wtbwgn4y2): 1 recommendation (R10.1)

The table below highlights the associated issues and concerns and items requiring clarification:

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| **Category** | **Recommendation** | **Possible Issues/Concerns** |
| **Potentially Requiring Policy Development** | **CC.1** The recommendation asks that the Board “initiate action” to “ensure that gTLD domain names suspended due to RDS (WHOIS) contact data which the registrar knows to be incorrect, and that remains incorrect until the registration is due for deletion, should be treated as follows: (1) The RDS (WHOIS) record should include a notation that the domain name is suspended due to incorrect data; and (2) Domain names with this notation should not be unsuspended without correcting the data.” | The Registry Agreement (RA) and Registrar Accreditation Agreement (RAA) can be modified either via a policy development process or as a result of contract negotiations. In either case, the Board does not have the ability to ensure a particular outcome.  During the call on 19 December 2019, RDS-WHOIS2 Implementation Shepherds noted that they expected the Board to take appropriate action either via a PDP or directing contract negotiations. The Implementation Shepherds noted their clarification that the contract negotiations approach could be pursued the next time contracts will be negotiated. |
| **Potentially Requiring Contract Amendment** | **SG.1** The recommendation asks that the Board “require ICANN org, in consultation with data security and privacy expert(s), ensure that all contracts with contracted parties (to include Privacy/Proxy services when such contracts exist) include uniform and strong requirements for the protection of registrant data and for ICANN to be notified in the event of any data breach. The data security expert(s) should also consider and advise on what level or magnitude of breach warrants such notification.” | The Board cannot unilaterally impose new obligations on contracted parties through acceptance of a recommendation from the RDS-WHOIS2 Review Team. The Registry Agreement and Registrar Accreditation Agreement (RAA) can be modified either via a policy development process or as a result of contract negotiations. In either case, the Board does not have the ability to ensure a particular outcome.  During the call on 19 December 2019, RDS-WHOIS2 Implementation Shepherds noted that they expected the Board to take appropriate action either via a PDP or directing contract negotiations. The Implementation Shepherds noted their clarification that the contract negotiations approach could be pursued the next time contracts will be negotiated. |
| **Potentially Impacted by GDPR and EPDP Work** | **R4.1** This recommendation asks that the Board take action to ensure that ICANN Contractual Compliance “proactively monitor and enforce registrar obligations with regard to RDS (WHOIS) data accuracy using data from incoming inaccuracy complaints and RDS accuracy studies or reviews to look for and address systemic issues. A risk-based approach should be executed to assess and understand inaccuracy issues and then take the appropriate actions to mitigate them.”  **R4.2** Recommendation 4.2 asks that the Board ensure that ICANN Contractual Compliance “cross-reference existing data from incoming complaints and studies such as the ARS to detect patterns of failure to validate and verify RDS (WHOIS) data as required by the RAA.”  **R5.1** Recommendation 5.1 asks that the Board direct org to “continue to monitor accuracy and/or contactability through either the ARS or a comparable tool/methodology.” | On 4.1, the following considerations should be noted: ICANN’s Contractual Compliance department currently proactively monitors registrar obligations as well as uses risk-based analysis in its enforcement activities.  However, there is an overarching principle/caveat to this recommendation. Due to the lack of publicly available registration data, there are challenges in undertaking accuracy studies. RDS-WHOIS2 Implementation Shepherds clarification on the intent of this recommendation would be helpful.  On 4.2 and 5.1, the following considerations should be noted: the WHOIS ARS program has been on hold as a result of the changes to the availability of registration data as a result of the Temporary Specification/Interim gTLD Registration Data Policy. It is unclear what the future of that program will be. As the ARS relies on publicly available registration data, and measures accuracy of such data based on adherence to contractual requirements (i.e., in the Registrar Accreditation Agreement), changes to the collection and processing of registration data affect the overall feasibility of the system. This is because a key indicator of accuracy is contactability (i.e., can a registrant be contacted via the provided email address or telephone number?). Redaction of this public registration data (i.e., registrant’s name, email address, and telephone number) will make it more difficult for the ARS to measure contactability, and thereby accuracy of registration data.  Note: ARS was paused in 2018 prior to RDS producing this recommendation. ICANN org has engaged in discussion with the GNSO, to clarify the work of EPDP (see Correspondence, item dated 5 December 2019 and related correspondence items) Phase 2 team relating to accuracy. The intent of this correspondence was to seek to understand the scope of planned policy work to inform ICANN org’s thinking on the future of ARS, not to overlook or undermine RDS review team’s work and recommendations.  Since the Board adoption of the Temporary Specification, ICANN org has not published ARS reports due to the recognition that there are changes to gTLD registration data requirements and the public availability of such data, which has an impact on the viability of the WHOIS ARS. There are also potential timing issues for this recommendation with the work of the EPDP Phase 2 on access to non-public data. The EPDP Phase 1 Final Report states: “The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System.” RDS-WHOIS2 Shepherds’ clarification on the intent of these recommendations would be helpful. |
| **Recommendations Requiring Specific Clarification from RDS-WHOIS2 Review Team Shepherds** | **R1.1** This recommendation asks the Board to “ensure that RDS (WHOIS) is treated as a strategic priority, the ICANN Board should put into place a forward-looking mechanism to monitor possible impacts on the RDS (WHOIS) from legislative and policy developments around the world.”  **R1.2** To support work ensuring that RDS is treated as a strategic priority, this recommendation asks the Board to “instruct the ICANN organization to assign responsibility for monitoring legislative and policy development around the world and to provide regular updates to the ICANN Board.”  **R1.3** This recommendation suggests that when drafting the charter of a Board working group on RDS, the Board “should ensure the necessary transparency of the group’s work, such as by providing for records of meetings and meeting minutes, to enable future review of its activities.”  **R3.2** The recommendations suggests “the ICANN Board should instruct the ICANN organization to identify groups outside of those that routinely engage with ICANN organization, and these should be targeted through RDS (WHOIS) outreach. An RDS (WHOIS) outreach plan should then be developed, executed, and documented. There should be an ongoing commitment to ensure that as RDS (WHOIS) policy and processes change, the wider community is made aware of such changes. WHOIS inaccuracy reporting was identified as an issue requiring additional education and outreach and may require a particular focus. RDS (WHOIS) outreach should be included when considering communications in underserved regions. The need for and details of the outreach may vary depending on the ultimate General Data Protection Regulation (GDPR) implementation and cannot be detailed at this point.”  **11.1** The recommendation asks the Board to direct org to collect the following metrics for the WHOIS lookup tool:   1. How often are RDS (WHOIS) fields returned blank? 2. How often is data displayed inconsistently (for the same domain name), overall and per gTLD? 3. How often does the tool not return any results, overall and per gTLD? 4. What are the causes for the above results?   **LE.2** This recommendation asks the Board to consider conducting surveys with RDS (WHOIS) users working with law enforcement on a regular basis to inform a future assessment of the effectiveness of RDS (WHOIS) in meeting the needs of law enforcement.  **CC.2** This recommendation asks the Board to initiate action to “ensure that all gTLD domain name registration directory entries contain at least one full set of either registrant or admin contact details comparable to those required for new registrations under the 2013 RAA (or any subsequent version thereof) or applicable policies.”  **BY.1** Recommendation BY.1 asks that the Board take action to “extend the reference to “safeguarding registrant data” in ICANN Bylaws section 4.6(e)(ii) and replace section 4.6(e)(iii) of the ICANN Bylaws (which refers to the OECD Guidelines) with a more generic requirement for RDS (WHOIS) Review Teams to assess how well RDS (WHOIS) policy and practice addresses applicable data protection and cross border data transfer regulations, laws and best practices.” | On R1.1 and R1.2: proactively monitoring impacts on the RDS from legislative and policy development around the world is an ICANN Org implementation responsibility. It is an operational task, not a Board responsibility. The Board has already endorsed this work more broadly through the charter for the legislative and regulatory tracking initiative in January 2019, through the FY20 goals the Board set for ICANN’s President and CEO, and the priorities the Board has identified for itself.    Specifically, the charter focuses activity on those legislative or regulatory efforts with the potential to directly impact the DNS; the security, stability, resiliency or interoperability of the Internet’s unique identifier systems; existing consensus policy or affects the ability of the ICANN community to make policy. This work was further prioritized by the Board in the FY20 CEO goals which call for the CEO to provide an overlook of the actions of governments that could impact ICANN and also for a mechanism for dialogue with the community to be established for discussing that activity that would address this area of work in conjunction with the work of the Board Working Group on Internet Governance.  It might be redundant to split this work and require the Board RDS Working Group to work with the org and community on RDS-related legislation, particularly when such legislation is often broader and potential impacts greater than just those on RDS.  Rather, the existing initiative could be understood to cover these concerns and - through ongoing collaboration between Government Engagement, Global Stakeholder Engagement and Policy Development staff supporting GNSO work, the requisite analysis of global policy developments could be provided to the Board WG on Internet Governance which is regularly briefed by ICANN Org and updates the ICANN Board. In addition, through the revised public reports and in dialogue with the community working group this information can be shared with the full ICANN community.  In light of the existing initiatives, clarification from RDS-WHOIS2 Implementation Shepherds would be appreciated on how these recommendations should be considered in relation towhat ICANN org already has in progress.  On R1.3: Clarification from RDS-WHOIS2 Implementation Shepherds would be appreciated about what type of reporting and records was envisioned. Depending on RDS-WHOIS2 Review Team’s intent, this recommendation could have potential implications for Board governance matters more broadly the transparency obligations for non-Bylaws defined groupings of Board members. ICANN Board Committees have formal transparency requirements and have certain responsibilities as defined by the ICANN Board. Working Groups (be they in the form of Working Groups or Caucus Groups) do not have delegated authority by the Board and serve to keep the Board informed on progress on certain issues through groupings of Board members expert or interested in the topic under discussion. There could be, of course, other means of achieving transparency of Working Group activities, such as through reporting to the relevant Board Committee or Board on activities.  In order to meet RDS-WHOIS2 Review Team’s Recommendation 3.2, further dialogue on the objectives or goals of the expected engagement would be helpful. Additionally, ICANN org’s current outreach efforts should be considered in determining what additional efforts are needed.  For example, ICANN org may need to implement new tracking regarding RDS-related content, which should be designed according to specified goals, for future analysis. ICANN org’s efforts center on engagement, which is bidirectional and encourages active participation from stakeholders, as opposed to outreach, which is viewed as one-way.  For new efforts, ICANN org may be reaching out to populations more difficult and expensive to target. It will be important to weigh the quality and impact of these new efforts against the cost of such outreach/engagement and clearly measurable expectations of this recommendation.  Estimating costs and feasibility of implementation are dependent on several factors. For example, if more targeted engagement can be incorporated into current work done by ICANN org, the cost may be on the lower end.  The higher end of the budget could include activities such as creating an educational course for ICANN Learn, a paid online awareness campaign, the development/placement of targeted content to specific audiences using multiple channels, and outside resources to accomplish these tasks.  Efficiencies can be gained by pairing engagement efforts related to RDS with education and awareness related to the implementation of the Registration Data Access Protocol (RDAP).  On 11.1: Feasibility concerns were identified for consideration. The RDS Look Up Tool is a web client that allows the results from data searches to be directly returned from the server to the end-user, without any pass through ICANN org. This feature is seen as valuable in avoiding any issues regarding privacy. ICANN org cannot collect or log any information relating to what data is being returned from search queries since ICANN does not touch the data. Therefore there is no collected data to analyze or create metrics around.  To track the recommendation’s #1-3 metrics, ICANN org could explore building a new Look Up Tool client. However, the resources required and relative value of creating a duplicate tool to provide logging data should be considered. Having two such systems would be likely to increase confusion as well as exposing ICANN org to more risks around system usage and disclosure of registration data.  Metric #4 does not appear to be feasible even if ICANN were to handle the registration data. This is because the lack of data in a field provides no insight as to why it is missing or inconsistent. Additionally, there is a lack of meaningful variables in each RDS data set to reach any statistical correlations. Manual inquiries with the Registries and Registrars would be required for each such blank query result.  Lastly, if such metrics were pursued, more definition needs to be provided:   * For #2, what is meant by displayed inconsistently? What is meant by overall/ per gTLD? * Is #3 talking about ICANN’s look-up tool up-time, or something else? What is meant by overall and per gTLD?   On LE.2, it is unclear what user groups the recommendation is referencing. It would be helpful if the RDS-WHOIS2 Implementation Shepherds could clarify.  On CC.2, it is unclear what is meant by “at least one full set of either registrant or admin contact details.” Does this recommendation have any relationship to recommendation 29 of the EPDP Phase 1 Final Report? For reference, EPDP recommendation 29 states: “Recognizing that in the case of some existing registrations, there may be an Administrative Contact but no or incomplete Registered Name Holder contact information, the EPDP team recommends that prior to eliminating Administrative Contact fields, all Registrars must ensure that each registration contains Registered Name Holder contact information.”  The recommendation BY.1 is dependent on Fundamental Bylaws processes and community consent to Bylaws changes. Moreover, the ICANN Bylaws identify that the Accountability and Transparency Review Team is charged with the responsibility of recommending the amendment of Specific Reviews such as RDS (4.6(b)(iv)). It would be helpful to understand whether the the RDS-WHOIS2 Review Team talked to the ATRT3 about this recommendation, and as part of its deliberations, whether the RDS-WHOIS2 Review Team fully considered the scope of what this would entail.   1. The 2013 OECD Guidelines form the basis for GDPR and most national data protection laws. An exhaustive multi-national study of WHOIS compliance with hundreds of laws around the world would be resource-intensive. Can the RDS-WHOIS2 Review Team Implementation Shepherds elaborate on why the OECD principles are deemed inadequate to address what would be undertaken in the study? 2. On the part of the recommendation that requests “a more generic requirement for RDS (WHOIS) Review Teams to assess how well RDS (WHOIS) policy and practice addresses applicable data protection and cross border data transfer regulations, laws, and best practices”, this language could serve to significantly broaden the scope of work for future RDS teams, as well as require specific review team expertise in identifying the “applicable” regulations and laws and then interpreting how current practice addresses those regulations and laws. There is a concern about expanding the scope of the review team to incorporate this level of expert assessment. Keeping up-to-date cross-jurisdictional surveys of data protection and data transfer laws could be quite resource-intensive and approving the recommendation as drafted could bind ICANN into such maintenance requirements. The reference to the OECD guidelines provides an objective referential starting point, as opposed to the less defined general scope within the recommendation. |
| **Intended for GNSO** | **CC.4** This recommendation suggests the “ICANN Board should recommend the GNSO adopt a risk-based approach to incorporating requirements for measurement, auditing, tracking, reporting and enforcement in all new RDS policies“. | Clarification is needed on what additional factors are being requested in reference to risk-based approach given current GDPR requirements. |
| **Potential Timing Challenges** | **R10.1** The recommendation reads: “The Board should monitor the implementation of the PPSAI. If the PPSAI policy does not become operational by 31 December 2019, the ICANN Board should ensure an amendment to the 2013 RAA (or successor documents) is proposed that ensures that the underlying registration data of domain name registrations using Privacy/Proxy providers affiliated with registrars shall be verified and validated in application of the verification and validation requirements under the RAA unless such verification or validation has already occurred at the registrar level for such domain name registrations.” | Overall, in terms of monitoring the PPSAI work the implementation of this recommendation is feasible, but given the time constraint, neither the policy implementation nor an RAA amendment is feasible by the 31 December 2019 date, which has already passed.  Per RAA section 7.4, proposed revisions or negotiations can only occur once a calendar year, and there are other negotiations in process (for RDAP and possibly other issues). Therefore, this recommendation would need to be incorporated into current planned negotiations or implemented in a future year.  During the call on 19 December 2019, RDS-WHOIS2 Implementation Shepherds noted that they expected the Board to take appropriate action either via a PDP or directing contract negotiations. The Implementation Shepherds noted their clarification that the contract negotiations approach could be pursued the next time contracts will be negotiated. RDS-WHOIS2 Implementation Shepherds’ confirmation that this matches the intent of the recommendation would be welcome. |

1. These recommendations are not addressed in the table below in absence of significant implementation concerns. [↑](#footnote-ref-1)