

|  |
| --- |
| RDS-WHOIS2 RTSubgroup Report: Compliance |
|  |
| DRAFT FOR SUBGROUP USE TO DOCUMENT DRAFT FINDINGS AND RECOMMENDATIONS (IF ANY) |
| Susan Kawaguchi (Rapporteur)Erika MannCarlton SamuelsChris DisspainThomas Walden |
| 5 April 2018 |
|  |

Table of Contents

[1 Topic 3](#_Toc496113346)

[2 Summary of Relevant Research 3](#_Toc496113347)

[3 Analysis & Findings 3](#_Toc496113348)

[4 Problem/Issue 3](#_Toc496113349)

[5 Recommendations 3](#_Toc496113350)

#  Topic

Subgroup 1 - WHOIS1 Rec4 Compliance is tasked with investigating, analyzing, and drafting recommendations (if needed) to address the following Review objectives:

Consistent with ICANN’s mission to ensure the stable and secure operation of the Internet's unique identifier systems by enforcing policies, procedures and principles associated with registry and registrar obligations to maintain and provide access to accurate and up-to-date information about registered names and name servers, the review team will (to the extent that this is not already covered in prior RT recommendations), (a) assess the effectiveness and transparency of ICANN enforcement of existing policy relating to WHOIS (RDS) through Contractual Compliance actions, structure and processes, including consistency of enforcement actions and availability of related data, (b) identifying high-priority procedural or data gaps (if any), and (c) recommending specific measurable steps (if any) the team believes are important to fill gaps.

And

Consistent with ICANN’s mission and Bylaws, Section 4.6(e)(iv), the Review Team will (a) evaluate the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps), (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS), and (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT’s recommendations. This includes developing a framework to measure and assess the effectiveness of recommendations, and applying that approach to all areas of WHOIS originally assessed by the prior RT (as applicable).

The specific [WHOIS1 Recommendation](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) to be assessed by this subgroup appears below:



Questions the subgroup attempted to answer when assessing this objective include:

* 1. Do the current reports provide the details described above? Are they transparent and complete?
	2. Is the current appointment of a senior executive appropriate? Who does this person report to?
	3. Does the compliance team have all necessary resources?

# Summary of Relevant Research

To conducts its research, all members of this subgroup reviewed the following background materials, posted on the subgroup's wiki page:

* [WHOIS Review Team (WHOIS1) Final Report](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) (2012) and [Action Plan](https://www.icann.org/en/system/files/files/implementation-action-08nov12-en.pdf)
* [WHOIS Review Team (WHOIS1) Implementation Reports](https://community.icann.org/display/WHO/WHOIS%2BReview%2BImplementation%2BHome), including
	+ [Executive Summary of Implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Recs%201_16%2030Sept2016.pdf)
	+ [Detailed implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Quarterly%20Summary%2031December2016.pdf)
* WHOIS1 Implementation Briefings on Recommendations 4, 12, 13, 14: [PPT](https://community.icann.org/download/attachments/63145823/WHOIS%20Briefing%20-%2028September2017%20-%20V2.0.pptx?version=1&modificationDate=1511776295000&api=v2), [PDF](https://community.icann.org/download/attachments/69279139/WHOIS%20Briefing%20-%2028September2017%20-%20V2.0.pptx?version=1&modificationDate=1506686336000&api=v2)
	+ [Answers to RDS-WHOIS2 Questions on Implementation Briefings](https://community.icann.org/download/attachments/63145823/WHOIS1-Implementation%20Briefings_final.docx?version=1&modificationDate=1510566466000&api=v2)
* Documents cited in briefing on Recommendation 4 Compliance include
	+ [Contractual Compliance Outreach information and Metrics Reporting](https://www.icann.org/resources/compliance-reporting-performance)
	+ [Process and approach for enforcing the contract](https://www.icann.org/resources/pages/approach-processes-2012-02-25-en)
	+ [Contractual Compliance staff information](https://www.icann.org/resources/pages/about-2014-10-10-en)
	+ [Contractual Compliance annual reports and financials](https://www.icann.org/resources/pages/compliance-reports-2017)
	+ [Chief Compliance Officer 2017 announcement](https://www.icann.org/news/announcement-2017-01-04-en) and [2014 announcement](https://www.icann.org/news/announcement-2014-10-12-en)
	+ [Consumer Safeguards Director announcement](https://www.icann.org/news/announcement-2017-05-23-en)
* Additional documents relevant to Topic 7 Compliance include
	+ [WHOIS Review Team (WHOIS1) Final Report](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) (2012), Section 1: The Effectiveness of ICANN’s WHOIS Compliance Effort
	+ [Documents relevant to WHOIS1 Recommendations 5-9 - Accuracy](https://community.icann.org/x/6plEB)
	+ [ICANN Contractual Compliance](https://www.icann.org/resources/pages/compliance-2012-02-25-en) web pages
	+ [Competition, Consumer Trust and Consumer Choice Review Team Draft Report](https://www.icann.org/en/system/files/files/cct-rt-draft-report-07mar17-en.pdf)
* [2 February Meeting with Compliance Management - Q&A](https://community.icann.org/download/attachments/79432988/RDS-WHOIS2%20Compliance%20Questions%20FINAL%20v2.pdf?version=1&modificationDate=1517534432000&api=v2), citing additional documents
	+ FY18 Operating Plan and Budget
	+ [Contractual Compliance 2017 Annual Report](https://www.icann.org/en/system/files/files/annual-2017-30jan18-en.pdf)
	+ [Contractual Compliance Audit Program](https://www.icann.org/resources/pages/audits-2012-02-25-en)
	+ [Contractual Compliance Monthly Dashboards](https://features.icann.org/compliance/dashboard/report-list)
	+ [WHOIS ARS Contractual Compliance Metrics](https://whois.icann.org/en/whoisars-contractual-compliance-metrics)
	+ [ICANN's Contractual Compliance Approach and Processes](https://www.icann.org/resources/pages/approach-processes-2012-02-25-en)
	+ [Notices of Breach, Suspension, Termination and Non-Renewal](https://www.icann.org/compliance/notices)
	+ [Registrar Formal Notices (Enforcement)](https://features.icann.org/compliance/enforcement-notices)

In addition, the subgroup requested additional materials and briefings from the ICANN Compliance organization: (to be augmented with additional briefings & results)

* + [Rec 4 Written Implementation Briefing](https://community.icann.org/download/attachments/63145823/Written%20Implementation%20Request%20for%20Recommendation%204%20-.pdf?version=1&modificationDate=1520850879075&api=v2)
	+ [Meeting #3 - with Compliance Management (1 February 2018)](https://community.icann.org/pages/viewpage.action?pageId=79432988)
		- [Written answers to 1 February 2018 questions](https://community.icann.org/download/attachments/71604711/RDS-WHOIS2%20Compliance%20Subteam%20Questions%20FINAL.pdf?version=1&modificationDate=1520778626000&api=v2)
	+ [Written answers to 28 March 2018 meeting questions](https://community.icann.org/download/attachments/71604711/28%20March%20meeting%20-%20Compliance%20input.pdf?version=1&modificationDate=1522233220000&api=v2)

The subgroup met with the Compliance team, Jamie Hedlund, Maguy Serad, Roger Lim and Andrea, twice each time providing a list of questions drafted by the subgroup prior to the meeting. The responses are provided above.

Finally, the subgroup applied the RDS-WHOIS2 review team's [agreed framework](https://community.icann.org/download/attachments/71604697/FinalRDS-WHOISRT2Effectivenes.docx?version=1&modificationDate=1519138360000&api=v2) to measure and assess the effectiveness of recommendations,

# Analysis & Findings

This subgroup's objectives when analyzing its findings were to:

* Identify the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps);
* Assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS); and
* Assess the effectiveness and transparency of ICANN enforcement of existing policy relating to WHOIS (RDS) through Contractual Compliance actions, structure and processes, including consistency of enforcement actions and availability of related data.

In the following table, we present the specific compliance principles recommended by the prior RT, the questions this subgroup asked to assess implementation of those principles, and our findings and analysis for each.

| RT1-Recommended Principle | Question | Findings and Analysis |
| --- | --- | --- |
| a. There should be full transparency regarding the resourcing and structure of its compliance function. To help achieve this ICANN should, at a minimum, publish annual reports that detail the following relevant to ICANN’s compliance activities: staffing levels; budgeted funds; actual expenditure; performance against published targets; and organizational structure (including the full lines of reporting and accountability). | Do the current reports provide the details described above? Are they transparent and complete? | The Compliance team has made significant progress in reporting metrics and data in their annual report. They also allocate time during ICANN meetings to meet with the community and provide additional details on their work. The reports are very helpful and quite an improvement over reporting in 2012. In reading the reports it is hard to make an assessment of the issues that are still problematic. 66% of reports to the compliance team are WHOIS inaccuracy reports which comprises the largest areas of the team workload. What is not evident in the data reported is what are the problem areas, what could be improved to assist the team with its work. ICANN Contractual Compliance has an ongoing continuous improvement cycle based on survey feedback, working group and review teams, lessons learned and internal reviews which also drive change. We appreciate that the Compliance team is working hard to receive input from the community ?????? add questions from the second report from Compliance.  |
| b. This senior executive should report directly and solely to a sub-committee of the ICANN Board. This sub-committee should include Board members with a range of relevant skills, and should include the CEO. | Is the current appointment of a senior executive appropriate? Who does this person report to? | The Compliance team provided an organizational chart for the reporting structure of the team. Although, the SVP Contractual Compliance & Consumer Safeguards reports directly to the CEO the recommendation explicitly states “report directly and solely to a Board sub-committee.” There is no indication that the recommended reporting structure was implemented. The Board action on this recommendation indicates they thought the implemented reporting structure to be adequate. The subgroup will need to ask additional questions concerning the reporting structure. At this point in time we do not believe the recommendation was fully implemented. The intention of the first review team was to ensure this role had the independence needed to perform the compliance function without restriction from the rest of the organization. |
| c. ICANN should provide all necessary resources to ensure that the compliance team has the processes and technological tools it needs to efficiently and pro-actively manage and scale its compliance activities. The Review Team notes that this will be particularly important in light of the new gTLD program, and 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. | Does the compliance team have all necessary resources? | It appears that the Compliance team has all the necessary resources to manage compliance activities. They have improved technology over the years and implemented new systems. ICANN organization has provided the budget for the compliance team to grow. They currently have 25? Employees compared to 6 during the first review. They have implemented a bulk WHOIS inaccuracy reporting tool and improved the single input WHOIS inaccuracy tool since the first review team report.  |

# Problem/Issue

| RT1-Recommended Principle | Question | Problem/Issue |
| --- | --- | --- |
| a. There should be full transparency regarding the resourcing and structure of its compliance function. To help achieve this ICANN should, at a minimum, publish annual reports that detail the following relevant to ICANN’s compliance activities: staffing levels; budgeted funds; actual expenditure; performance against published targets; and organizational structure (including the full lines of reporting and accountability). | Do the current reports provide the details described above? Are they transparent and complete? | We appreciate that the Compliance team is working hard to receive input from the community but WHOIS inaccuracy report data provided by the compliance team is not clear on several points. We have heard that there is inconsistency in experience and results received from users submitting inaccuracy reports. From the data we have reviewed it is not easy to assess if there is truly a problem or a perception of a problem. More in depth review should be performed of the responses they provided in the second set of questions. Registrars are contractually required by the 2013 Registrar Accreditation Agreement (RAA) to confirm and conduct verification and validation of the accuracy of WHOIS information. ICANN Contractual Compliance receives complaints via web forms, email to compliance@icann.org, the bulk WHOIS inaccuracy submission tool and through proactive monitoring or internal referrals. When ICANN receives complaints or otherwise has information that suggests these requirements are not being fulfilled by a registrar, ICANN Contractual Compliance will review the registrar’s compliance through a WHOIS Inaccuracy complaint. ICANN makes its compliance determination by conducting the following steps during its reviews: 1. Review the complaint to determine whether it is in scope of the requirements.  2. Review what WHOIS information the reporter claims to be inaccurate. Follow up with  reporter if unclear on the inaccuracy reported and request additional information. Such information may include a request for evidence of the alleged inaccuracy (e.g., an email rejection notice or returned postal mail) or further explanation regarding why the data is invalid (e.g., explanation to support an allegation that the contact information does not belong to the listed contact in the WHOIS). Reporters are requested to respond within 5 business days. The complaint is closed absent receipt of adequate information for processing.  3. Confirm the WHOIS information is available from the registrar by querying the domain name(s).  4. Confirm the WHOIS format per Section 1.4.2 of the Registration Data Directory Service (Whois) Specification also known as RDDS.  5. Confirm that all required WHOIS fields have values present.  6. Confirm that the WHOIS information has no glaring inaccuracies on its face.  7. Review the reporter’s complaint history in the compliance ticketing system to avoid  processing of duplicative complaints and obtain additional information from other  complaints, as applicable.  8. Once above checks are complete, ICANN will commence the informal resolution  process by sending a 1st notice to the sponsoring registrar. o WHOIS Inaccuracy complaints allow the registrar a 15-5-5 business day timeline  to respond during the Informal Resolution period for the 1st, 2nd and 3rd  notices, respectively.  9. To demonstrate compliance, a 2013 RAA registrar must:  o Contact the Registered Name Holder (RNH) 1   o Verify the RNH email address with an affirmative response o Provide the results of the registrar’s investigation o Validate the format of the WHOIS information o Suspend domain within 15 days if unable to verify 10. When the registrar demonstrates compliance: o ICANN assigns a resolution code to the complaint detailing the outcome of the review o ICANN sends a closure communication to the registrar and the reporter  |
| b. This senior executive should report directly and solely to a sub-committee of the ICANN Board. This sub-committee should include Board members with a range of relevant skills, and should include the CEO. | Is the current appointment of a senior executive appropriate? Who does this person report to? | Additional review is needed to determine whether or not it is feasible to adhere to the intentions of the RT 1 recommendation. Why did the Board make the decision to not implement the recommendation fully?What challenges would ICANN org face in requiring an employee of the org to report to the Board. Are there examples of this reporting structure we could review in other businesses?  |
| c. ICANN should provide all necessary resources to ensure that the compliance team has the processes and technological tools it needs to efficiently and pro-actively manage and scale its compliance activities. The Review Team notes that this will be particularly important in light of the new gTLD program, and 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. | Does the compliance team have all necessary resources? | We may want to take a closer look at how long it takes the compliance team to implement new technology.  |

# Recommendations

[To be completed for each recommendation - if any - suggested by the subgroup]

Recommendation #1:

All new policies implemented should be required to be measured, audited and tracked by the compliance team. Consistent Labelling and Display policy requires a registrar abuse contact email address and contact phone. This would be displayed in the WHOIS record. Possible to include this in the audit of a registrar?

Findings:

For the Registry Registration Data Directory Services Consistent Labelling and Display Policy - What is the compliance rate for registrars that have implemented this policy?

Registrar Abuse Contact Email Registrar Abuse Contact Phone

The following is the response from the compliance team:

The Registry Registration Data Directory Services Consistent Labeling and Display Policy is a policy imposed on registry operators, with the exception of .com, .jobs and .net. The policy requires registry operators to include in the registry WHOIS output the Registrar Abuse Contact Email and Registrar Abuse Contact Phone fields, among other things.

Compliance rate of registrars with this registry operator requirement is not something that ICANN has attempted to measure. Additionally, measuring the cause of a registry operator’s noncompliance with the requirement may be difficult, as it is not obvious from the registry operator’s WHOIS output. For example, the registry operator’s noncompliance may be entirely within its control (e.g., it has obtained the registrar’s abuse contact information but is not displaying it) or, in part, due to the registrar’s (in)action (e.g., the registrar has not yet provided the registry operator with its abuse contact information).

Rationale:

1. What is Intent of recommendation and envisioned outcome?
	1. To ensure that all new policies are measured, audited, tracked and enforced by the compliance team
2. How did the finding lead to this recommendation?
	1. The Subgroup asked about compliance statistics of the CLDP.
3. How significant would impact be if recommendation not addressed?
	1. This information is also a requirement of the 2013 RAA so hopefully registrars are complying.
4. Is it aligned with ICANN’s Strategic Plan and Mission?
	1. An abuse point of contact, in light of the GDPR, will assist with the stability and security of the DNS.
5. Is it in compliance with scope Review Team set?
	1. Yes

Impact of Recommendation:

Registrars and Registries will be impacted by this recommendation along with the compliance team. It will add to security and transparency.

Feasibility of Recommendation: [Document feasibility of recommendation]

Implementation:

1. Who are responsible parties that need to be involved in implementation
	1. Community/ICANN org/combination
2. What is the target for a successful implementation?
	1. Knowledge of compliance with the policy.
3. Is related work already underway and how will that dovetail with recommendation?
	1. No
4. What is the envisioned implementation timeline?
	1. Immediately upon approval by Board.

Level of Consensus

Recommendation#2: (May belong in the Data Accuracy subgroup)

Require all domain name registrations adhere to the WHOIS requirements in the 2013 Registrar Accreditation Agreement.

Findings:

In the WHOIS Accuracy Reporting System (ARS) report categorize the domain name registrations that only must adhere to the 2009 RAA WHOIS requirements separately from those that must adhere to the 2013 RAA.

“the only difference between 2013 and 2009 RAA operability requirements is that the 2009 RAA requirements do not require that information be present in the registrant email or telephone number fields, while 2013 RAA require the presence of information in those fields.”

The report estimates that of the 12000 domain names reviewed for compliance 40% were 2009 grandfathered domain names and do not have to meet the same requirements as domain names registered after the 2013 RAA was implemented. Considering that the only way these domain names would have to comply with the 2013 RAA is if they were deleted and registered again. This does not seem likely since early registrations are often the most valuable. They are often sold but not deleted.

Rationale:

1. What is Intent of recommendation and envisioned outcome?
	1. Create one standard of requirements for WHOIS data
2. How did the finding lead to this recommendation?
	1. We should not have two sets of requirements for operability.
3. How significant would impact be if recommendation not addressed?
	1. The subgroup has not found information to determine how many domain name registrations do not contain Registrant email address or telephone number. It may not be an issue if the registrants have proactively provide the information without the requirement to do so.
4. Is it aligned with ICANN’s Strategic Plan and Mission?
	1. It will add to the security and stability of the DNS
5. Is it in compliance with scope Review Team set?
	1. Yes

Impact of Recommendation:

Registrars and Registries will be impacted by this recommendation along with the compliance team.

Feasibility of Recommendation:

This is a feasible recommendation. Would require the registrar to collect the information from the registrants. This could be done on renewal of the domain name.

Implementation:

1. Who are responsible parties that need to be involved in implementation?
	1. Community/ICANN org/combination) Registrants, registrars, compliance team
2. What is the target for a successful implementation?
	1. 100% of domain name registrations comply with the 2013 RAA.
3. Is related work already underway and how will that dovetail with recommendation?
	1. Unknown

Additional Recommendations may be inserted here