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| Registration Directory Service (RDS-WHOIS2) Review |
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| Draft Report  REC4 SUBGROUP REPORT - SECTION 3.5 ONLY OBJECTIVE 6 TEXT DELETED - MOVED TO SECTION 8 |
| RDS-WHOIS2 Review Team |
| 15 August 2018 |
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3 Objective 1: Assessment of WHOIS1 Recommendations Implementation

3.5 WHOIS1 Rec #4: Compliance

[SUBSECTION NUMBERS WILL BE ADJUSTED WHEN ADDED BACK TO MASTER DOC]

### Topic

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

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) assessed by this subgroup appears below:

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| WHOIS Recommendation #4: Compliance  ICANN should ensure that its compliance function is managed in accordance with best practice principles, including full transparency on resourcing and structure; provide annual reports; appoint a senior executive whose sole responsibility would be to oversee and manage ICANN’s compliance function (reporting to Board Committee); provide all necessary resources to manage and scale compliance team’s activities. |

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+Review+Implementation+Home), 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)

In addition, the subgroup requested additional materials and briefings from the ICANN Compliance organization:

* [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)

* Brussels Meeting follow-up questions

[Written answers to compliance questions](https://community.icann.org/download/attachments/71604711/Compliance%20questions%20-%20April%202018-1-3.pdf?version=1&modificationDate=1525166479000&api=v2)

[Written answers to data accuracy questions](https://community.icann.org/download/attachments/71604711/Data%20Accuracy%20questions%20-%20April%202018-1-2.pdf?version=1&modificationDate=1525166597000&api=v2)

* Follow-up questions on the WHOIS ARS reports (May 2018)

In addition, the subgroup considered the Accuracy Subgroup's findings with respect to compliance issues raised. Refer to the Accuracy Subgroup's output (Section 3.6) for a list of sources related to the Accuracy Reporting System (ARS).

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.

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| WHOIS1-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. We have heard from users of the inaccuracy tool that there is an inconsistency in experience and results received when submitting a report.  The Compliance team provided additional information to the subgroup. This information is reflected in the overall review of 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. 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.  Additional review is needed to determine feasibility of adhering to the intentions of the RT1 recommendation. |
| 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.  It is the RT's opinion that the Compliance team has sufficient resources but does not utilize data for proactive assessment and enforcement. |

Furthermore, it appears that the Compliance team does little in proactive actions to discover and remediate issues with WHOIS data. When the subgroup asked the compliance team about this they responded that they performed proactive monitoring of the WHOIS verification review in the APAC region. Other than this, it appears that reactive enforcement is the norm. When a ticket is filed it is actioned and responded to. This is not optimal for the security and stability of the internet.

The compliance team does have access to other sources of data through the DAAR reports. Although DAAR data is non-authoritative, it is used globally to add to the security and stability of the internet.

Based on this analysis, the subgroup identified the following Problems/Issues:

Proactive analysis and enforcement by the compliance team would contribute to the security and stability of the internet. By only reacting to reported compliance issues opportunities are missed to find systemic issues. Enforcement against single reports will miss the bigger picture of issues that require deeper analysis. If the Compliance team created a risk based enforcement strategy this would lead to more effective and measurable enforcement. A risk based enforcement strategy is critical when voluntary compliance is not sufficient. A strategy would include a rigorous and systematic approach to identifying and responding to risk. It is necessary to identify and assess the risk associated with non-compliance with policies or contractual obligations, based on this risk assessment, decisions regarding compliance and enforcement are based on the following:

* the nature and intensity of compliance and enforcement action for each policy or contractual requirement
* how compliance and enforcement resources should be deployed
* what monitoring and information-gathering mechanisms are needed
* the focus and timing of audit and inspection programs
* public reporting on compliance and enforcement activity to encourage voluntary compliance.

Compliance and enforcement activities should be proportionate with the relevant risks. The more escalated enforcement tools and severe enforcement responses should be used to address situations where the risks associated with non-compliance are the highest. Resources and actions should be focused where the risks are greatest.

* Probability of non-compliance
* Determine likelihood of whether or not one or more entities will not comply with the policy or contractual requirement.
* Take into account past compliance action history.

Impact of non-compliance:

* Determine the nature and types of impacts that may occur and how they will be measured.
* Which risks become acceptable or intolerable.
* It may also be worthwhile having the risk assessment reviewed by an independent, objective third party.

Implementation

The success of a compliance and enforcement strategy will depend in large part on the way in which it is implemented. The following criteria are critical:

* Strategy should be applied in a consistent manner
* Monitoring and data collection is necessary to detect instances of non-compliance and to provide evidence to support the enforcement action.
* The data should be reviewed and analyzed by staff with appropriate skills and experience.
* External and internal reporting of compliance actions is critical.

It may also be worthwhile having the risk assessment reviewed by an independent, objective third party. This approach helps to ensure that risk is managed effectively, efficiently and properly by the enforcement body.

To address this issue, the subgroup proposes the following recommendation (further detailed in Section 3.5.5, Recommendation R4.1): The ICANN Board should direct ICANN Contractual Compliance to proactively monitor and enforce WHOIS data accuracy requirements 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.

### Problem/Issues

One issue related to Recommendation #4 is described in Section 3.5.3.

In addition, issues related to Recommendation #4, identified by the Data Accuracy subgroup, are described in Section 3.6.4.2.

### Recommendations (if any)

Based on its analysis, members of this subgroup agree that this WHOIS1 recommendation has been partially-implemented.

Further recommendations are provided here to address the problems/issues identified by the Rec4 subgroup in Section 3.5.3 and by the Rec 5-9 subgroup in Section 3.6.4.2.

Recommendation R4.1 EdNote: Formerly R4.8

The ICANN Board should direct ICANN Contractual Compliance to proactively monitor and enforce WHOIS data accuracy requirements 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.

Findings:

As detailed in Section 3.5.3, currently, the ICANN Contractual Compliance team’s responsibilities are mainly reactive in responding to WHOIS inaccuracy reports and working with GDD on the results of the WHOIS ARS reports. The team could be more proactive in their approach and when they see suspected systemic issues research, analyze and enforce against inaccuracy in the registration data. With the number of registered domain names growing daily it becomes more important to security and stability to ensure there is accurate information in the registrant data on record.

Rationale: Data produced by ICANN's Domain Activity Abuse Reporting (DAAR) system is an additional resource that the compliance team has available and is not currently including in their research and analysis. The use of DAAR data as one of many input sources would provide a different perspective for the compliance team. Although DAAR data is non-authoritative, it is used globally to add to the security and stability of the internet. Bulk WHOIS Inaccuracy Reports may be helpful in addressing systemic issues. Reports through this tool may be indicative of wide spread problems and use of these reports could assist in enforcement.

Impact of Recommendation:

This recommendation could positively impact the accuracy of registrant data. The Compliance team could implement this, unless it requires a new policy, in which case a GNSO PDP may be required. If this recommendation is not implemented the effectiveness of compliance actions will be lessened. As systemic issues increase and sophistication of attacks are on the rise the compliance teams needs more effective tools and detection information to resolve issues. This recommendation is aligned with ICANN’s Mission and within scope of the Review Team.

Feasibility of Recommendation: This recommendation would not be difficult for the Compliance team to implement, unless it requires a new policy, in which case a PDP may be required.

Implementation:

The Community and ICANN org would work together on creating a framework/policy for this recommendation. We would know this recommendation was successful when the percentage of accurate registrant data records increase. There is currently no specific work underway on this issue except that the DAAR data is available and ready for evaluation. This recommendation could be implemented immediately upon approval by Board.

Level of Consensus: [No F2F3 objections

Recommendation R4.2 EdNote: Formerly R4.7

The ICANN Board should direct ICANN Contractual Compliance to look for patterns of failure to validate and verify WHOIS data as required by the RAA. When such a pattern is detected, an audit should be initiated to check if the Registrar follows WHOIS contractual obligations and consensus policies. Sanctions should be applied if significant deficiencies in WHOIS data validation or verification are identified.

Findings:

As detailed in Section 3.6.3.2, all current RDS (WHOIS) accuracy-related compliance activities are separate and conducted individually. WHOIS ARS sampled WHOIS records to do accuracy tests, the Audit program samples registrars to conduct audits, and no synergies appear to have been gained through these different action tracks.

Rationale: If a WHOIS record is not accurate due to the registrar failing to conduct validation and verification, it shouldn’t be a standalone case. A follow up audit would help in cases where a pattern of failure to validate and verify WHOIS data as required by the RAA will help to mitigate issues regarding the identified registrar.

Impact of Recommendation:

Registrars that do not consistently adhere to the requirement to verify and validate the data in the WHOIS record will be impacted by this recommendation. If a pattern is detected for lack of adherence to RAA requirements, then the Registrar will be subjected to an audit of their verification and validation of WHOIS records by the Compliance team. This could result in education of the Registrar, better understanding of the requirements required by ICANN policy, and an improvement in WHOIS data accuracy. If this recommendation is not implemented, systemic issues will not be detected and we will continue to see Registrars that are not complying.

This recommendation is aligned with ICANN’s Strategic Plan and Mission and is within the scope of the review team.

Feasibility of Recommendation:

This recommendation will make the Audit program more targeted. The ICANN Contractual Compliance team may need further assessment of resources to implement this recommendation.

Implementation:

Registrants, Registrars, Registries and ICANN Contractual Compliance will all be responsible for the implementation of this recommendation. Successful implementation will result in a reduction in percentage of inaccuracy reports for audited registrars and improved accuracy of WHOIS records. There is no current work underway on this issue. This recommendation should be implemented immediately after approval by ICANN Board.

Level of Consensus: No F2F3 objections

### Possible impact of GDPR and other applicable laws

[TO BE PROVIDED]