# Introduction

This Draft Report of the RDS-WHOIS2 Review Team is being issued to apprise the community of the status of the RDS-WHOIS2 Review, to publish the draft recommendations and through an ICANN Public Comment, to solicit feedback on the work conducted and on the draft recommendations.

# Background

The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for, among other things, the establishment of policies related to the creation and use of Generic Top Level Domains (gTLDs). Within each Top Level Domain (TLD) individuals and organizations may register domain names. For each registration a record is maintained of information about that registration including who the registrant is and information to facilitate contact with the registrant. This registration record is traditionally referred to as a “WHOIS” record and more recently is referred to as a Registration Directory Service (RDS) record. Traditionally, all information in the RDS (WHOIS) database is public. Policy associated with gTLD RDS (WHOIS) is established by the ICANN Board on the recommendation of the Generic Names Supporting Organization (GNSO). Current RDS (WHOIS) “Policy” is a combination of enacted policy and much de facto policy left over from the Internet’s early days.

As part of its prior agreement with the United States Department of Commerce, and more recently under its own Bylaws, ICANN is required to periodically review the RDS (WHOIS) system. The first such review was carried out in 2010-2012, and the present review is the second such effort.

RDS (WHOIS) is a rather hot topic in ICANN. It has been controversial for well over a decade. The recommendations of the first WHOIS Review Team (WHOIS1) resulted in an Expert Working Group studying WHOIS and the creation of a GNSO Policy Development Process (PDP) to establish a new RDS Policy Framework to replace WHOIS. Additionally, in mid-2017, ICANN began efforts to address European Union privacy regulations (the General Data Protection Regulations – GDPR) which impacts ICANN’s and its Registrars’ and Registries’ current RDS (WHOIS) regime and the ability to continue to publish RDS (WHOIS) information - at least for personal data from the European Union and neighboring countries that are part of the European Economic Area .

# Review Scope

There were a number of community proposals to both limit the scope of this RDS-WHOIS2 Review to just assessment of the first WHOIS1 review team’s recommendations, and also to include a range of other issues over and above those mandated in the Bylaws.

Formally, the scope of a Review is the responsibility of the review team. After much discussion the RDS-WHOIS2 review team decided that it would review all of the Bylaw mandated areas, except the OECD Guidelines, as they were under consideration by the RDS PDP and were judged to be obsolete, particularly in relation to the GDPR. In addition, the RDS-WHOIS2 review team included in its scope a review of new policy adopted by ICANN since the first WHOIS1 review team published its report, and decided to perform a substantive review of Contractual Compliance with the intent of (a) assessing the effectiveness and transparency of ICANN enforcement of existing policy relating to RDS (WHOIS) through ICANN 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 measureable steps (if any) the team believes are important to fill gaps.

The RDS-WHOIS2 review team explicitly did not focus on ICANN’s actions in response to the relatively new European Union GDPR legislation. Those actions are ongoing and the outcomes are not sufficiently firm as to allow them to be reviewed here. However, the review team did not ignore the issue and conduct its review as if GDPR were not an issue of significant concern. To the extent we could factor in GDPR and its effects on the RDS (WHOIS), we did so.

# Methodology

Mandated by ICANN’s Bylaws, Specific Review Teams may include up to twenty-one Members representing the seven Supporting Organizations and Advisory Committees. The RDS-WHOIS2 review team has 10 Members representing the At-Large Advisory Committee (ALAC), the Governmental Advisory Committee (GAC) and the GNSO, plus one Member representing the ICANN Board. All meetings (both teleconferences and face-to-face) may have observers and all review team documents and mailing lists are publicly viewable.

The sixteen recommendations from the first WHOIS1 review team were grouped into nine subject areas (Strategic Priority, Single WHOIS Policy, Outreach, Contractual Compliance, Data Accuracy, Privacy/Proxy, Common RDS (WHOIS) Interface, Internationalized Registration Data[[1]](#footnote-1) and Implementation Planning/Reports) and a Subgroup of the RDS-WHOIS2 review team was formed to address each topic. Subgroups were also created to address topics beyond recommendations produced by the first WHOIS1 review team (Law Enforcement, Consumer Trust, Safeguards and Post-WHOIS1 Policies and Procedures, referred to as “Anything New”). The new topic on Contractual Compliance Actions, Structure, and Processes was handled by the subgroup reviewing the original WHOIS1 Compliance recommendations.

Each Subgroup performed a thorough analysis of its subject matter, and drafted its report including, if applicable, any new recommendations. Many subgroups held teleconferences to carry out their work, in addition to e-mail discussions. The subgroup’s documents and its conclusions were then reviewed in depth by the entire review team. To the extent possible, decisions were made by consensus and the vast majority of those were unanimous.

The RDS-WHOIS2 review team conducted 39 teleconferences (typically 90 minutes) and met face-to-face three times (for a total of 7 days) prior to issuing this Draft Report.

# Summary Findings

For each of the subgroups, a brief description of the issues and findings follow. Full text of all resultant recommendations appears in the section that follows.

**Strategic Priority:** WHOIS1 Rec #1 required ICANN to treat RDS (WHOIS) in all its aspects as a strategic priority. This recommendation was deemed to have been Partially Implemented as it failed to achieve the original aim of instilling a culture of proactive monitoring and planned improvement in RDS (WHOIS).

**Single WHOIS Policy:** WHOIS1 Rec #2 required ICANN to create a single RDS (WHOIS) policy document. This was done by creating a web-based document linking to the various documents that in total comprise ICANN RDS (WHOIS) policy. Although this was not a single policy that was envisioned by some on the first WHOIS1 review team, it did address the recommendation and was deemed to be Fully Implemented.

**Outreach:** WHOIS1 Rec #3 required ICANN to perform outreach, including to communities outside of ICANN, with the intent of improving understanding of RDS (WHOIS) and promoting consumer awareness. Significant web-based documentation was created, but it was not well integrated with other registration and RDS (WHOIS)-related parts of the ICANN web site. Abundant outreach was done, but little to communities not normally involved with ICANN. The recommendation was therefore deemed to be Partially Implemented.

**Contractual Compliance:** WHOIS1 Rec #4 required that the ICANN Contractual Compliance function be managed with accordance with best practice principles and overseen by a dedicated senior executive. There has been significant improvement since the recommendation was made, but it was found to be only Partially Implemented.

In addition to reviewing the implementation of WHOIS1 Rec #4, this subgroup was also responsible for the additional study of Contractual Compliance Actions, Structure, and Processes as described under Scope. A number of issues were identified, resulting in several new recommendations.

**Data Accuracy:** WHOIS1 Rec #5-9 dealt with several related to RDS (WHOIS) accuracy. The implementation of these recommendations resulted in a significant effort on behalf of ICANN Org and there is now a better understanding of accuracy issues. However, there are still many gaps in our understanding. Although we have improved the syntactic accuracy of data, it is less clear what the impact has been on whether the data allows identification of and contact with registrants. GDPR may ultimately obscure accuracy even more by making it more difficult to assess whether the data within the RDS (WHOIS) repository is accurate or nor. Two of the recommendations were deemed to be Fully Implemented and three were Partially or Not Implemented.

**Privacy/Proxy:** The GNSO Policy Development Process (PDP) on Privacy and Proxy service providers was triggered by WHOIS1 Rec #10. The PDP has completed and it is in implementation. Since the ICANN Board acted fully on the recommendation, it is deemed to have been Fully Implemented. However, since the RDS-WHOIS2 review team could not assess implementation effectiveness, the ICANN Board is requested to recommend that the next RDS (WHOIS) Review Team address that. There is also a fallback recommendation in the case that the Privacy/Proxy policy implementation is unduly delayed.

**Common RDS (WHOIS) Interface:** WHOIS1 Rec #11 required that a single RDS (WHOIS) portal be created and operated by ICANN to provide the community with “one-stop shopping” for all RDS (WHOIS) queries. That was done and the recommendation is deemed to be Fully Implemented. However, there is a follow-on recommendation suggesting metrics and/or a service level agreement for the portal to ensure full effectiveness. GDPR has also broken some aspects of the portal (since the registry is no longer the definitive source for thick RDS (WHOIS) information) and a follow-on recommendation addresses this new issue.

**Internationalized Registration Data:** WHOIS1 Rec #12-14 relate to the use of internationalized character sets for registration data (name, address, etc.) [[2]](#footnote-2) A number of studies and a PDP were carried out in response to these WHOIS1 recommendations. The resultant policy and practices are not yet in place because they depend on a new RDS (WHOIS) system which is not yet implemented (using the Registration Data Access Protocol – RDAP). Because all of the work requested was carried out, the recommendations are deemed to have been Fully Implemented. As with Rec #10 Privacy/Proxy, the ICANN Board is requested to recommend that the next RDS-WHOIS Review Team review the effectiveness of the actual implementation.

**Planning/Reports:** WHOIS1 Rec #15-16 addressed the need for planning and reporting to carry out and track implementation of WHOIS1 recommendations. This was done, but was not found to be as complete or useful as intended. The recommendations were therefore found to be Partially Implemented.

**Law Enforcement:** The ICANN Bylaws call for each RDS-WHOIS Review to assess whether the RDS (WHOIS) effectively meets the needs of Law Enforcement. A survey was carried out to assess this, and was also used to try to understand, in a preliminary way, whether GDPR was likely to have an impact on meeting those needs. This report details the results of this survey in Section 5.

**Consumer Trust:** The assessment of whether RDS (WHOIS) enhances consumer trust is also an ICANN Bylaw mandated requirement for each RDS-WHOIS Review. This was carried out by examining available documentation, along with a gap analysis on the impact that implementation of WHOIS1 recommendations had on consumer trust. Two issues were identified as described in Section 6, with no recommended actions.

**Safeguarding Registrant Data:** The assessment of whether the RDS (WHOIS) safeguards registrant data looked at privacy, whether that data was adequately protected from access or change, and whether appropriate breach notices are contractually required. In the original WHOIS, there was no attempt to address registrant data privacy, and changes made to RDS (WHOIS) requirements to enable GDPR compliance will obviously improve privacy. The ICANN contracts with registries, registrars and escrow agents include varying requirements for how data is to be protected from inappropriate access or change. One of the contracts requires that ICANN be notified in the case of breach, and the others were silent on this topic. A recommendation is made to address these issues.

**Anything New:** All new RDS (WHOIS)-related policies and procedures enacted since the WHOIS1 review team published its recommendations were inventoried and inspected by the RDS-WHOIS2 review team. Most were not deemed to be problematic, but two were found to require further recommendations, which were included in the comparable sections related to the WHOIS1 recommendations.

# Review Conclusions

ICANN Org reports on the implementation of the sixteen recommendations from the first WHOIS1 review team deemed that all sixteen had been fully implemented.

The RDS-WHOIS2 review team’s conclusions were that, of the sixteen recommendations, eight were fully implemented, seven were partially implemented and one was not implemented[[3]](#footnote-3).

As a result of the analysis of the past WHOIS1 review team recommendations, as well as this review team’s new findings and recommendations, the RDS-WHOIS2 review team is making [TBD] new draft recommendations which are summarized in the next section of this Executive Summary. With the issuance of this Draft Report, a Public Comment is being opened that will run until Friday, 02 November 2018, a week after the conclusion of the ICANN63 meeting. An engagement session will be held during the ICANN63 in Barcelona, Spain. Following the close of the Public Comment, the review team will consider all input prior to completing its Final Report. It is expected that the team’s Final Report will be issued in December 2018 or January 2019.

1. The First WHOIS-RT Report incorrectly titles the section on Internationalized Registration Data as “Internationalized Doman Names”. As the report itself makes clear, the problem is not with the domain names which are handled by the DNS and WHOIS by translating them into ASCII (Punycode), but in the registration data such as the registrant name or mailing address. WHOIS only allows 7-bit ASCII for those, and the need to be able to enter such data in local scripts exists for non-IDN domains as well. [↑](#footnote-ref-1)
2. The WHOIS1 Report incorrectly classed these recommendations under the title Internationalized Domain Names (IDNs). In fact, the need for internationalized registration date applies to both IDNs as well as traditional names. [↑](#footnote-ref-2)
3. Although the intent of the recommendation was partially addressed in a number of ways, the actual recommendation was deemed to be not feasible in the original ICANN Org evaluation and that did not change. [↑](#footnote-ref-3)