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# **RDS-WHOIS2-RT Plenary Call #42**

26 November 2018



# RDS/WHOIS2-RT Leadership Call Agenda

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1. Welcome, roll-call
2. Face-to-Face Meeting #4 Agenda
3. Review of Public Comments Received
  - Domain Name Rights Coalition
  - Registrar Stakeholder Group (RrSG)
  - Non-Commercial Stakeholders Group (NCSG)
4. A.O.B.

# Face-to-Face Meeting #4

Agenda item #2

# Face-to-Face Meeting #4

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- **Meeting Objectives:**
  - Consider the results of public comment, determine any corresponding changes, and finalize the recommendations.
  - Mark up the draft report where substantial changes are needed
- **Draft agenda**

# Review Of Public Comments Received

Agenda item #3

# Review Of Public Comments Received

<b>R1.1</b>	<b>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.</b>
<b>Registrar Stakeholder Group (RrSG)</b>	If ICANN wants to indeed be viewed as a global organization then it is very important that they monitor and consider legislation and policy developments world-wide, and not be overly influenced by interests with a US-centric viewpoint.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	These recommendations (R1.1, R1.2) hardly address the huge failure to address data protection that has taken place over the past five years, putting the organization at risk. With respect to this objective, the NCSG has consistently pointed out the requirement to comply with data protection law, it would suffice to listen to us and assign existing staff the task of researching the matters we have raised, or consulting key stakeholders.

# Review Of Public Comments Received

<b>R1.2</b>	<b>To support this mechanism, the ICANN Board should instruct the ICANN Organization to assign responsibility for monitoring legislative and policy development around the world and to provide regular updates to the Board.</b>
<b>Registrar Stakeholder Group (RrSG)</b>	RrSG supports the recommendation but also suggests that such updates also be provided to the GNSO council to enable it to initiate timely policy development processes where necessary.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	These recommendations (R1.1, R1.2) hardly address the huge failure to address data protection that has taken place over the past five years, putting the organization at risk. With respect to this objective, the NCSG has consistently pointed out the requirement to comply with data protection law, it would suffice to listen to us and assign existing staff the task of researching the matters we have raised, or consulting key stakeholders.



# Review Of Public Comments Received

**R3.2**

With community input, the ICANN Board should instruct ICANN Organization to identify which groups outside of those that routinely engage with ICANN should be targeted effectively 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. 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.

**Registrar  
Stakeholder  
Group (RrSG)**

Support, however the costs for such outreach should not increase the ICANN budget.

**Non-  
Commercial  
Stakeholders  
Group (NCSG)**

It is not clear why this outreach needs to be done, and why it is a high priority, particularly given the lack of readiness of the data, and the current limbo situations with respect to any replacement for WHOIS or RDAP implementation. At the very least, there are much higher priorities than identifying a target audience for information as yet unprepared. We would recommend dropping this recommendation.

# Review Of Public Comments Received

<b>R4.2</b>	<b>The ICANN Board should direct ICANN Contractual Compliance to look for patterns of failure to validate and verify RDS (WHOIS) data as required by the RAA. When such a pattern is detected, an audit should be initiated to check if the Registrar follows RDS (WHOIS) contractual obligations and consensus policies. Sanctions should be applied if significant deficiencies in RDS (WHOIS) data validation or verification are identified.</b>
<b>Registrar Stakeholder Group (RrSG)</b>	The RrSG would like to understand better how ICANN Compliance would be detecting “patterns of failure”. As ICANN Compliance already conducts audits on registrars who have proven to have a track record of non-compliance, it’s unclear how this recommendation differs from the current practice and what the RT is envisioning.
<b>Domain Name Rights Coalition</b>	Dangerous recommendation for registrants, which should be removed as untimely and beyond scope, or narrowed in express language, to a more narrowly-tailored intent of the RDS/WHOIS2.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	Given that the RAA will be under review because of GDPR, we recommend holding off on recommending new expenses (e.g. audits) until the new workload of the compliance team has been determined. Breach disclosures, for instance, are a new requirement for both controllers and processors; monitoring for unreported breaches might be a more worthy candidate for compliance action.

# Review Of Public Comments Received

<b>R5.1</b>	<b>The ICANN Board should direct the ICANN Organization to look for potentially-anomalous ARS results (e.g., 40% of ARS-generated tickets closed with no action because the RDS (WHOIS) record changed between the time the ARS report was generated and the time the registration was reviewed by ICANN Contractual Compliance) to determine the underlying cause and take appropriate action to reduce anomalies.</b>
<b>Registrar Stakeholder Group (RrSG)</b>	The RrSG is of the opinion that recommendations should address actually existing issues that are evidenced by data instead of initiating fishing expeditions. They also note that they consider it highly doubtful that the ARS program can be resumed under the GDPR and other applicable privacy legislation as it requires ICANN accessing and processing non-public personal information for no valid purpose.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	The Review Team has done great work in compiling the work that ICANN has done on registrants rights and responsibilities, and this report will be a good resource document for those who attempt to fix this problem. However, this very detailed section should remain a resource for this future work. We do not see the merit in developing new accuracy recommendations when the entire data set for publication is about to change. NCSG recommends removing this recommendation unless as your footnote indicates, something arises which merits further action.

# Review Of Public Comments Received

<b>R11.1</b>	<p>The ICANN Board should direct the ICANN Organization to define metrics or SLAs to be tracked and evaluated to determine consistency of results of queries and use of any common interface (existing or future) used to provide one-stop access to registration data across all gTLDs and registrars/resellers. Specific metrics that should be tracked for any such common interface include:</p> <ul style="list-style-type: none"><li>- How often are RDS (WHOIS) fields returned blank?</li><li>- How often is data displayed inconsistently (for the same domain name), overall and per gTLD?</li><li>- How often does the tool not return any results, overall and per gTLD?</li><li>- What are the causes for the above results?</li></ul>
<b>Registrar Stakeholder Group (RrSG)</b>	Supports.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	Given the state of flux of the data returned in response to queries, perhaps defining metrics is a low priority at this moment. We recommend dropping this one.

# Review Of Public Comments Received

<b>LE.1</b>	<b>The ICANN Board should resolve that regular data gathering through surveys and studies are to be conducted by ICANN to inform a future assessment of the effectiveness of RDS (WHOIS) in meeting the needs of law enforcement, as well as future policy development (including the current Temporary Specification for gTLD Registration Data Expedited Policy Development Process and related efforts).</b>
<b>Registrar Stakeholder Group (RrSG)</b>	LEA needs in the past often seemed to go beyond the scope of RDS services provided by contracted parties and relied on the use of third party data mining/data scraping services, so surveys may not correctly reflect the effectiveness of RDS services alone.
<b>Domain Name Rights Coalition</b>	If this recommendation is kept, DNRC asks that it is expanded to include DPAs, as ICANN must be in a position to receive comprehensive information about the full and complex situation, to learn how the laws are evolving, and what compromises are being reached domestically. However, they recommend to delete the recommendation considering ICANN's New Bylaws require only "periodic review" of the legitimate needs of law enforcement, not regular (meaning done or happening frequently) thus avoiding continuous or near-continuous cycle of expensive and time-consuming surveys.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	They fail to see why ICANN should conduct studies to determine whether third parties are achieving their desired results in accessing registrant data. By all means, this relatively well-funded area of Internet business may present survey data to ICANN, the Compliance department, and the SSAC, but in a time of falling revenues and new compliance costs related to the GDPR, they think this recommendation should be withdrawn.

# Review Of Public Comments Received

<b>BY.1</b>	The ICANN Board should take action to eliminate 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 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.
<b>Registrar Stakeholder Group (RrSG)</b>	LEA needs in the past often seemed to go beyond the scope of RDS services provided by contracted parties and relied on the use of third party data mining/data scraping services, so surveys may not correctly reflect the effectiveness of RDS services alone.
<b>Domain Name Rights Coalition</b>	Concerned about the deletion of protections for Registrants from New ICANN Bylaw Section 4.6(e)(ii) and ask that this recommendation be removed, as they consider it dangerous and short-sighted, as removing or changing this Bylaw protection would violate key promises made in the ICANN Transition, and fundamental commitments of the ICANN Community to its foundation of domain name registrants. The publicity of such a change, alone, would undermine confidence in the DNS.
<b>Non-Commercial Stakeholders Group (NCSG)</b>	We understand from examining the discussion on page 129 that the goal behind this recommendation was to eliminate reference to the OECD Guidelines, and to replace it with reference to data protection law and best practice (with a view to compliance), but as currently worded the recommendation does not do this. It sounds like the team is recommending the elimination of the reference to “safeguarding registrant data” in ICANN Bylaws section 4.6(e)(ii). If this is not indeed the intention, the recommendation must be reworded to precisely state its intention.

**A.O.B.**

Agenda item #4

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# Confirm Decisions Reached & Action Items