comment*: **RDS-WHOIS2 Review Draft Report**
https://www.icann.org/public-comments/rds-whois2-review-2018-09-04-en
*Deadline **Sunday** 18 Nov 2018 23:59 UTC*

RDS-WHOIS2 Review Draft Report
Public Comment Proceeding Input Form

The purpose of the Public Comment posting is to request community feedback on the Draft Report published by the RDS-WHOIS2 Review Team. The following template has been developed to facilitate input to this Public Comment. Use of the template is not required but is encouraged to ensure that comments are appropriately applied. This template provides the opportunity for general input on the proposal as well as specific comments by section. Please note that there is no obligation to complete all sections – commenters may respond to as many or as few as they wish.
A PDF version of this template is provided for use by individuals. The template can also be used by a group to facilitate development of consolidated group comments; once comments are finalized by the group, please enter them into this template rather than sending them as a separate Word or PDF file. Following completion of the template, please save the document and submit it as a PDF attachment to the Public Comment proceeding: comments-rds-whois2-review-04sep18@icann.org.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN Privacy Policy and agree to abide by the website Terms of Service.
Please provide your name:
Please provide your affiliation:
Please provide your email address (Not mandatory. This is to allow for follow-up, as needed):
Are you providing input on behalf of another entity (e.g. organization, company, government)?
- **Yes**
- **No**

If yes, please explain:

Please refer to the specific recommendation and relevant section of the Draft Report for additional details and context about each recommendation.
Please add your comments into the designated areas.

Section 3.1 WHOIS1 Recommendation #1 – Strategic Priority

Enter any comments or observations you may have on findings in this section:

The RrSG believes it is appropriate for there to be greater foresight and overview of RDS within ICANN and that this role and the responsibilities be properly assigned.

Recommendation #1.1

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.

Choose your level of support of this recommendation:

- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #1.1:

> **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.**

Recommendation #1.2

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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments to Recommendation #1.2:

The RrSG generally supports this 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.

Recommendation #1.3

The ICANN Board should update the Charter of its Board Working Group on RDS to 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.

Choose your level of support of this recommendation:
- <mark>Support</mark>
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #1.3:

Yes, more transparency is helpful.

Section 3.3 WHOIS1 Recommendation #2 – Single WHOIS Policy

Enter any comments or observations you may have on findings in this section:

The RrSG believes it is curious that the RDS-WHOIS2 RT has categorized this recommendation as fully implemented given their findings are very similar to that of the first RT. While there is a collection of any number of policies related to WHOIS, and those policies now reside in a more singular space, ICANN Board has NOT created a single WHOIS policy document. At best this recommendation is only partially implemented.

Section 3.4 WHOIS1 Recommendation #3 - Outreach

Enter any comments or observations you may have on findings in this section:

RrSG agrees with the RT's determination of partial implementation.

Recommendation #3.1

The ICANN Board should direct ICANN Organization to update all of the information related to RDS (WHOIS) and by implication other information related to the registration of second-level gTLD domains. The content should be revised with the intent of making the information readily accessible and understandable, and it should provide details of when and how to interact with ICANN or contracted parties. Although not the sole focus of this recommendation, interactions with ICANN Contractual Compliance, such as when filing WHOIS inaccuracy reports, should be a particular focus. The revision of this web documentation and instructional material should not be undertaken as a purely internal operation but should include users and potentially focus groups to ensure that the final result fully meets the requirements. The resultant outward facing documentation of registrant and RDS (WHOIS) issues should be kept up to date as changes are made to associated policy or processes.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #3.1:

Support

Recommendation #3.2

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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #3.2:

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

Section 3.5 – WHOIS1 Recommendation #4

Enter any comments or observations you may have on findings in this section:

> **The recommendations are not supported by corresponding data. The reviewed data does not seem to indicate the existence of "systemic issues".**

Recommendation #4.1

The ICANN Board should direct ICANN Contractual Compliance to proactively monitor and enforce RDS (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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #4.1:

Given the advent of numerous privacy laws, the RrSG views this recommendation as creating more risk by trying to place ICANN Compliance into a more investigative mode, digging through data without justification. Compliance action should be targeted at issues raised by reporters. RDS accuracy is an obligation of the registered name holder (RNH). It is not the role of compliance to enforce RNH obligations.
This recommendation is not supported by any data that shows that such systemic issues actually exist, so without a problem, no solution is needed.

Recommendation #4.2

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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #4.2:

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. The current language is very broad and interpretation could easily lead to increased, unnecessary audits of registrars. Given the complexity of the Audit program and the amount of time and effort required for both ICANN and the affected parties, additional Audits outside the Audit program should only be triggered upon discovery of actual evidence of non-compliance, not for fishing-expeditions to detect potential non-compliance.

Section 3.6 - Recommendation #5-9 – Data Accuracy

Enter any comments or observations you may have on findings in this section:

We remind ICANN that data accuracy is achieved by providing our customers the tools/rights to access, correct and/or update their information and by establishing internal processes and procedures that ensure the data provided by our customers remains accurate and complete. Article 5(1)(d) of the GDPR does *not* require we poll our customers to ensure the data they have provided themselves as part of the underlying transaction was in-fact accurate. Any suggestion to the contrary is a misinterpretation of the GDPR.

Furthermore, since the signing of the 2013 RAA, Sections 1(a-d) as well as 1(f) of the of the Whois Accuracy Program Specification have been implemented. Implementation of these five sections has resulted in near perfect address accuracy and contactability rates. As of January 2018, postal address operability is 99% and postal address syntax accuracy is 88% (up from 80% three years earlier). ICANN's own key findings include that "nearly all WHOIS records contained information that could be used to establish immediate contact: In 98 percent of records, at least one email or phone number met all operability requirements of the 2009 RAA."

Recommendation #5.1

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. [1]

[1] This is a placeholder recommendation that will likely change because, in parallel with this Draft Report being published for Public Comment, the RDS- WHOIS2 Review Team is further investigating this issue with the ICANN Org ARS team and ICANN Contractual Compliance. The review team wishes to better understand why the ARS reports indicate such an unexpectedly high ratio of RDS (WHOIS) updates, while there is little evidence that the overall data accuracy rate improved to a comparable extent.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #5.1:

From the RrSG's perspective, this recommendation begs the question, to what end? What purpose does this recommendation serve? If a ticket is created because the WHOIS is deemed inaccurate, and then the ticket is closed because the WHOIS changed, is that not the outcome sought?

Additionally, the report notes that 81.6% of tickets are closed after the 1st notice due to the registration being cancelled or suspended and it is then inferred that this is because the data was intentionally entered incorrectly, because why else would you not update the info? This conclusion is simply wrong as there are any number of reasons why the data may not be updated. For example, one could purchase a domain with the intent to use it, but then a life change happens, be it a divorce, or family crisis, or change in job, and this change could result in a new address. You then receive a notice asking for the data to be updated, but you had already decided, based on the change in your circumstances, that you were going to allow the domain to drop, so you don't take any action and allow the domain to be suspended/canceled. This is a reasonable sequence of events, and making assumptions that every instance of inaccurate data or unexplained data element is evidence of something nefarious is not supported by any data or facts. The RT seems to draw conclusions from thin air instead of accepting the most reasonable explanation that due to the time lag between the data query in the ARS program and eventual compliance review the cause is most likely simply the passage of time. The RrSG is of the

opinion that recommendations should address actually existing issues that are evidenced by data instead of initiating fishing expeditions. We also note that we 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.

Section 3.7 – WHOIS1 Recommendation #10 – Privacy/Proxy Services

Enter any comments or observations you may have on findings in this section:

Recommendation #10.1

The Board should monitor the implementation of the PPSAI. In the event that the PPSAI policy does not become operational by 31 December 2019, the ICANN Board should propose an amendment to the RAA that Privacy/ Proxy providers affiliated with registrars shall verify and validate underlying customer information provided to them in the same way as registrars are required to verify and validate other registration data.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #10.1:

> **The RrSG believes this recommendation seems to overlook that Privacy/Proxy is a SERVICE, same as email, and therefore the underlying customer information is already being verified and validated by the registrar. In essence this is requiring the customer info to be verified/validated twice, which adds no value.**
> **The RrSG also rejects the notion of a recommendation dictating contractual language. Contracts are the sole remit of ICANN and the contracted parties.**

Recommendation #10.2

Reviewing the effectiveness of the implementation of WHOIS1 Recommendation #10 should be deferred. The ICANN Board should recommend that review be carried out by the next RDS (WHOIS) review team after PPSAI Policy is implemented.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #10.2:

Section 3.8 – WHOIS1 Recommendation #11 – Common Interface

Enter any comments or observations you may have on findings in this section:

Recommendation #11.1

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:

• How often are RDS (WHOIS) fields returned blank?

• How often is data displayed inconsistently (for the same domain name), overall and per gTLD?• How often does the tool not return any results, overall and per gTLD?

• What are the causes for the above results?

Choose your level of support of this recommendation:

- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #11.1

Support

Recommendation #11.2

The ICANN Board should direct the ICANN Organization to continue to maintain the common interface to keep up to date with new policy developments or contractual changes for contracted parties to ensure that the common interface will display all publicly-available RDS (WHOIS) output for each gTLD domain name registration available from contracted parties, i.e., when they differ, both the registry and registrar RDS (WHOIS) output could be shown in parallel.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments to Recommendation #11.2:

At first look it feels to the RrSG like there is more risk associated with this recommendation than any resulting benefit. However, if ICANN org plans to be the sole controller of this common interface and will be responsible/liable for pulling the data to create it (presuming the data is being correctly displayed in the first place (meaning not PII)), and they are comfortable with risk and their ability to comply with applicable laws, then OK.
That said, we appreciate the apparent intent of ensuring that the common interface provides both registry and registrar RDS outputs as these may currently differ under the Temp Spec, thereby reducing the potential of confusion with the users of the interface.

Section 3.9 – WHOIS1 Recommendation #12-14 – Internationalized Registration Data

Enter any comments or observations you may have on findings in this section:

Recommendation #12.1

Reviewing the effectiveness of the implementation of Recs #12-14 should be deferred. The ICANN Board should recommend that review be carried out by the next RDS review team after RDAP is implemented, and the translation and transliteration of the registration data launches.

Choose your level of support of this recommendation:
- <mark>Support</mark>
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #12.1:

> **Support deferment.**

Section 3.10 – WHOIS1 Recommendation #15-16 – Plan & Annual Reports

Enter any comments or observations you may have on findings in this section:

Recommendation #15.1

The ICANN Board should ensure that implementation of RDS-WHOIS2 Review Team recommendations is based on best practice project management methodology, ensuring that plans and implementation reports clearly address progress, and applicable metrics and tracking tools are used for effectiveness and impact evaluation.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #15.1:

Support

Section 4 – Objective 2: Anything New

Enter any comments or observations you may have on findings in this section:

Section 4 – Objective 2: Anything New

Section 5 – Objective 3: Law Enforcement Needs

Enter any comments or observations you may have on findings in this section:

We encourage the use of outside facilitators to draft and conduct surveys to ensure that results or questions are not biased towards the interests of any particular group.

Recommendation #LE.1

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).

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #LE.1:

We note that 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.

Recommendation #LE.2

The ICANN Board should consider extending and conducting such surveys and/or studies (as described in LE.1) to other RDS (WHOIS) users working with law enforcement on a regular basis.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #LE.2:

The RrSG cautions against including parties who work with LEAs in any survey or attempting to equate the needs of those who work with LEA to the actual needs of LEAs. The expansion of such a survey to third parties that have not been empowered by regulation or statute with legal enforcement or investigatory powers and legal rights is highly dubious as the legitimacy of such parties is not equal to that of LEAs even though they may provide useful services.

LEA only have powers within their territory/local jurisdiction and registrars/registries must follow the rules of law within their jurisdiction(s). While some LEAs may have mutual cross agreements between countries, these agreements and authority do not extend to third parties.

There are no global LEAs, only local LEAs.

Section 6 – Objective 4: Consumer Trust

Enter any comments or observations you may have on findings in this section:

Section 7 – Objective 5: Safeguarding Registrant Data

Enter any comments or observations you may have on findings in this section:

The RrSG has no issue with these requirements, with the assumption that any update of the contracts will not be extended to anything outside of them.
Such requirements should be general, not specific and merely reference best practice legal regulations such as the GDPR. For example, a reference that under the GDPR, contracted parties would already be bound by appropriate requirements would be sufficient as implementations of applicable laws may vary and ICANN dictating one particular implementation model may be onerous.

Recommendation #SG.1

The ICANN Board should require that the ICANN Organization, 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.

In carrying out this review, the data security and privacy expert(s) should consider to what extent GDPR regulations, which many but not all ICANN contracted parties are subject to, could or should be used as a basis for ICANN requirements.

The ICANN Board must either negotiate appropriate contractual changes or initiate a GNSO PDP to consider effecting such changes.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #SG.1:

> **Support**

Section 8 –Objective 6: ICANN Contractual Compliance Actions, Structure and Processes

Enter any comments or observations you may have on findings in this section:

Recommendation #CM.1

The ICANN Board should negotiate contractual terms or initiate a GNSO PDP to require 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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #CM.1:

Support, however we reject the notion of the RT dictating contractual terms.

Recommendation #CM.2

The ICANN Board should direct ICANN Organization to assess grandfathered domain names to determine if information is missing from the RDS (WHOIS) Registrant field. If 10-15% of domain names are found to lack data in the Registrant field, then the ICANN Board should initiate action intended to ensure that all gTLD domain names adhere to the same registration data collection requirements within 12 months.[2]

[2] The RDS-WHOIS2 Review Team is seeking community feedback on this percentage, as well as on impacts this recommendation might have on the rights of registrants in the use of their domain names.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #CM.2:

> **The RrSG views this as very problematic. The ARS studies have shown that the number of grandfathered domains is already decreasing steadily on its own, illustrating that there is no strong need for a complete removal of grandfathering privileges for pre-2013 RAA domain names, which would create significant implementation issues for both registrars and registrants. The terms of the 2013 provisions were negotiated by ICANN and the RrSG under consideration of the realities of the domain business and difficulties in having to reach out to existing customers.**
> **The RT also does not demonstrate any reasonable fact-based need for removing the grandfathering rules. If an existing registration that predates the adoption of the 2013 RAA by the sponsoring registrar is not causing any issue, there needs to be a compelling reason to impose sanctions.**
> **The presumption that sufficient time has passed since the adoption of the 2013 RAA is erroneous as registrars have been adopting the new RAA over time, not at the time it was introduced by ICANN.**

Recommendation #CM.3

The ICANN Board should direct ICANN Organization to review the RDS (WHOIS) records of gTLD domain names sampled by ARS for each region to determine whether lack of knowledge of RDS (WHOIS) inaccuracy reporting tools or other critical factors are responsible for low RDS (WHOIS) inaccuracy report submission rates in some regions.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #CM.3:

Support

The RrSG has doubts, however, that the Inaccuracy Reporting Function will remain viable in their current form under data privacy regulations as such data is no longer publicly accessible. As such, any review or study of this tool may be a misuse of resources.

Recommendation #CM.4

The ICANN Board should direct ICANN Organization to publicize and encourage use of the Bulk WHOIS inaccuracy reporting tool (or any successor tool). [3]

[3] The RDS-WHOIS2 Review Team is considering expanding this to include a recommendation that ICANN Contractual Compliance consider a different, more efficient methodology in analyzing bulk data submissions where such data identifies patterns of problems.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #CM.4:

It is unlikely that the use of a bulk reporting tool referenced in recommendation 4 will be compliant under GDPR or other applicable data protection regimes as bulk access to this data has become impossible/illegal too.

Recommendation #CM.5

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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #CM.5:

Support

Section 9 – ICANN Bylaws

Enter any comments or observations you may have on findings in this section:

The RrSG takes no issue with the bylaws being updated, however, it should be ensured that the data safeguards remain part of the revised language.

Recommendation #BY.1

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.

Choose your level of support of this recommendation:
- Support
- Do not support
- Not sure
- It depends

Enter comments for Recommendation #BY.1

Support

Other Comments

Are there any other comments or issues you would like to raise pertaining to the RDS-WHOIS2 Draft Report? If yes, please enter your comments here:

The RrSG notes that only a select number of LEAs, ie those that had a direct relationship with the GAC and members of the Review Team, participated in the questionnaire and so the results do not necessarily reflect the views of a full cross-section of national and local LEAs around the world.

Save your document, then send as a PDF attachment to: comments-rds-whois2-review-04sep18@icann.org