Responses to Strategic Priorities Subgroup Additional Questions

13 April, 2018

ICANN

About This Document

This document provides responses to questions that ICANN org received from the Strategic Priorities sub-group, which is tasked with reviewing the implementation of Recommendation #1 from the first WHOIS Review Team. These questions are addressed in the context of the Action Plan that the ICANN Board adopted in response to the recommendations from the first WHOIS Review Team. Please refer to the written briefing for Recommendation #1 for information on implementation of this recommendation in accordance with the Board adopted Action Plan.

Recommendation #1 from the first WHOIS Review Team:

"It is recommended that WHOIS, in all its aspects, should be a strategic priority for ICANN the organization. It should form the basis of staff incentivization and published organizational objectives

To support WHOIS as a strategic priority, the ICANN Board should create a committee that includes the CEO. The committee should be responsible for advancing the strategic priorities required to ensure the following:

- Implementation of this report's recommendations;
- Fulfillment of data accuracy objectives over time;
- Follow up on relevant reports (e.g., NORC data accuracy study);
- Reporting on progress on all aspects of WHOIS (policy development, compliance, and advances in the protocol/liaison with SSAC and IETF);
- Monitoring effectiveness of senior staff performance and the extent to which the ICANN Compliance function is effective in delivering WHOIS outcomes, and taking appropriate action to remedy any gaps (see Recommendation 4 for more discussion of compliance).

Advancement of the WHOIS strategic priority objectives should be a major factor in staff incentivization programs for ICANN staff participating in the committee, including the CEO. Regular (at least annual) updates on progress against targets should be given to the Community within ICANN's regular reporting channels, and should cover all aspects of WHOIS including protocol, policy development, studies and their follow up."

In response to this recommendation, the Board adopted an Action Plan:

a) "Board agrees that gTLD WHOIS is a strategic priority for ICANN

b) Consistent with advice from SSAC (SAC055), Board directs the CEO to create an expert working group to create material to launch GNSO policy work and inform contractual negotiations, as appropriate. Working group output is expected within 90 days and will ideally include a straw-man model for managing gTLD registration data

c) The working group's output will form the basis for an Issues Report to accompany Board-initiated, expedited GNSO policy work that is expected to result in consensus policy that, at a minimum, addresses the purpose of collecting, maintaining and making

available gTLD registration data, and related accuracy, data protection, and access issues.

d) The Board will also call upon the registrars, registries, and the staff to address the working group's output in contractual negotiations and registry contracts, as appropriate.

e) The CEO will oversee improvements to the enforcement of the contractual conditions relating to gTLD WHOIS in the gTLD registry and gTLD registrar agreements. Appropriate reporting of these improvements will be developed, and the CEO will be responsible for appropriate staff incentives.

f) The Board will incorporate performance of the WHOIS strategy into the incentive program for the CEO."

Information on implementation of this recommendation in accordance with the Board adopted Action Plan is available in the written briefing of Recommendation #1.

Question 1: Information on incentivization measures for ICANN Org staff including CEO ([standard] contract clauses, internal guidance, memos, meeting minutes etc.)

Response 1: Overall, RDS covers several different areas within the community and the organization, including in relation to reviews, contracted parties, policy development work or emerging issues such as the GDPR. For ICANN org, RDS is reflected in the ICANN Strategic Plan and therefore guides the CEO's goals as well as the work of all across the organization to meet those strategic objectives through ICANN's operating plan. Evaluation of ICANN CEO's performance is tied to the strategic objectives of the organization, which include RDS. The Board sets specific goals for the CEO as part of his annual performance process. The strategic goals of the organization are taken into account when setting the CEO goals. Please refer to the "CEO and Staff Incentivization" section of the written briefing for Recommendation 1 for additional information.

Question 2: Records of Board/CEO Committee on WHOIS including Terms of Reference/Charter, minutes of meetings, work plan, objectives and outputs.

Response 2: In July 2015, the ICANN Board formed a Board Working Group on Registration Data Directory Services (BWG-RDS) to (i) liaise with the GNSO on the policy development process to examine the EWG's recommended model and propose policies to support the creation of the next generation registration directory services, and (ii) oversee the implementation of the remaining projects arising from the Action Plan adopted by the Board in response to the first WHOIS Review Team's recommendations.

The Board meets with the GNSO Council at ICANN meetings and, as relevant, discusses the GNSO PDP on registration data directory services. The last communication from the Board to the GNSO Council on this topic was March 2018.

Regarding item (ii), the BWG-RDS received regular briefings from ICANN org regarding status of various implementation activities per the Board adopted Action Plan. The Board Working Group has a Charter to provide a framework and guide for its work. With respect to minutes, most working groups tend not to have minutes, as they are not decisional bodies and are not

empowered to make decisions, only to give guidance to the Board on areas where the Board should take an action, or to help provide oversight to ICANN org.

Question 3: Has ICANN Org made WHOIS a strategic priority from a formal perspective, by putting into place the appropriate resources and procedures?

Response 3: RDS is reflected under Objective 2.1 in ICANN's Strategic Plan, developed through consultation with the community and approved by the Board in 2014 for fiscal years FY16-FY20. ICANN org's work is based on the annual operating plan derived out of this Strategic Plan, which also went through community consultation prior to being adopted by the ICANN Board. The annual operating plan reflects various RDS related activities carried out by resources across the organization in support of RDS being a priority in ICANN's Strategic Plan.

Additionally, ICANN Global Domain Division (GDD) added an overall coordination, oversight, and management role for the RDS portfolio of activities. This role:

- monitors both the RDS PDP and Review with an eye toward implementation of the recommendations.
- identifies synergistic opportunities across initiatives and explore ways to leverage that synergy to achieve cost-saving, maximum benefit, and effective implementations.
- coordinates activities to ensure alignment with overall direction and strategy.
- manages interdependencies across activities to ensure streamlined and efficient execution.
- provides holistic reporting of all RDS related activities to the community.

Question 3A: How has WHOIS been implemented in staff incentivization including for the CEO? Are there specific clauses in staff contracts, including the CEO's, that link compensation to WHOIS implementation or management outcomes? Were KPIs adduced/developed? Were these part of the at-risk compensation portion or the general compensation? What percentage of the overall compensation, at-risk or otherwise, could be connected to WHOIS matters?

Response 3A: Overall, RDS covers several different areas within the community and the organization, including in relation to reviews, contracted parties, policy development work or emerging issues such as the GDPR. For ICANN org, RDS is reflected in the ICANN Strategic Plan and therefore guides the CEO's goals as well as the work of all across the organization to meet those strategic objectives through ICANN's operating plan. Evaluation of ICANN CEO's performance is tied to the strategic objectives of the organization, which include RDS. The Board sets specific goals for the CEO as part of his annual performance process. The strategic goals of the organization are taken into account when setting the CEO goals. Please refer to the "CEO and Staff Incentivization" section of the written briefing for recommendation 1 for additional information.

Question 3B: How has WHOIS been integrated into the organizational objectives? Did the ICANN 5-year Operating Plan contain any specific references to WHOIS and what year were they incorporated in that Plan? If it was and is no longer included in the ICANN operational plan, what year did it roll away? Were metrics developed that are connected to any WHOIS activity or outcomes? Are there specific measurable outcomes connected to contracted parties for WHOIS outcomes?

Response 3B: RDS is reflected under Objective 2.1 in ICANN's [Strategic Plan](#), developed through consultation with the community and approved by the Board in 2014 for fiscal years FY16-FY20. The corresponding [Five-Year Operating Plan](#) tactically explains the what, the who, the when and the how of the execution of ICANN's Strategic Plan. Additionally, the plan provides a visual roadmap and a means to measure progress for stakeholders. The Five-Year Operating Plan is reviewed and refined each year with input from stakeholders in the following areas: five-year planning calendar, strategic goals with corresponding key performance indicators, dependencies, year by year phasing, list of portfolios, and the five-year financial model. The current Five-Year Operating Plan reflects RDS under Objective 2.1. This is then further reflected at the project level in ICANN's annual operating plan and budget. RDS activities are reflected in projects in the [FY15](#), [FY16](#), [FY17](#), and [FY18](#) operating plans and budgets.

Regarding metrics, they vary by RDS related activity. For example, the RDS PDP Working Group defines its own timeline and output. The WHOIS Accuracy Reporting System (ARS) produces two reports per year that provides metrics on data accuracy. ICANN org's [Accountability Indicators](#) provide Tier 1 and Tier 2 metrics for the WHOIS portal and look-up tool (Click on Objective 3, then 3.2). Contractual Compliance Outreach information and Metrics Reporting are published at: [https://www.icann.org/resources/compliance-reportingperformance.](https://www.icann.org/resources/compliance-reportingperformance) This is a repository for monthly, quarterly and annual performance reports, compliance notices, outreach events, and metrics running on a 13-month rolling period.

Regarding measurable outcomes connected to contracted parties for WHOIS outcomes, RDS requirements for contracted parties are reflected in consensus policies and contracts, which ICANN Contractual Compliance enforces. ICANN Contractual Compliance provides monthly, quarterly and annual reporting, including WHOIS related complaints. The 2017 and 2018 Report & Blogs are at this link at this link - https://www.icann.org/resources/compliance-reporting-performance.

Question 3C: What aspects of the WHOIS are serving as incentive[s] or part of the organizational objectives? Is[are] this[these] aspect[s] amenable to measurement? And if so, what were the measurement criteria adopted? Can the outcomes be shared?

Response 3C: Please see the [listing](#) of projects in the FY18 operating plan and budget. Below are some RDS-related projects from the FY18 operating plan and budget. In addition to the projects listed below, there are ongoing activities in support of RDS (i.e., bug fixes for WHOIS look-up tool, presentations on RDS and GDPR as part of ICANN Global Stakeholder Engagement and Government Engagement's work, etc.) that are captured more generally as part of a department's ongoing work.

> 152497 – FY18 WHOIS [ARS](#)
> 032065 – [Thick WHOIS](#) policy [implementation](#)
> 026317 – Registrar WHOIS [Address Cross Field Validation](#) Initiative
> 025912 – [Specific Review](#): [Registration Directory Service](#) (RDS) (formerly WHOIS)
> 011913 – [Next Generation PDP](#)
> 031461 – Strategic Support on WHOIS Issues and Evolution of WHOIS
> 152412 – FY18 Ongoing Guidance and Interaction for WHOIS RDS
> 153502 – FY18 WHOIS

> The seven Contractual Compliance projects touch or have impact on WHOIS related matters: For more information on compliance portfolios/projects please refer to the

Portfolio Management System at this link -
https://features.icann.org/plan/objective/b3bbd215cfb9b0e7a1215ab83aa79367
- 152052 – FY18 Ongoing Contractual Compliance for Registrars & Registries
- 152053 – FY18 Ongoing Contractual Compliance Administration & Training
- 152054 – FY18 Ongoing Contractual Compliance Reporting
- 152055 – FY18 Ongoing Contractual Compliance Outreach
- 152056 – FY18 Ongoing Contractual Compliance Audit Program
- 152057 – FY18 Contractual Compliance Improvements
- 152058 – Fy18 Contractual Compliance Contract & Policy Work

151206 – FY18 Ongoing GNSO Policy Development Support

These projects are mapped to various objectives of the ICANN Strategic Plan. The corresponding Five-Year Operating Plan tactically explains the what, the who, the when and the how of the execution of ICANN's Strategic Plan. Additionally, the plan provides a visual roadmap and a means to measure progress for stakeholders. The Five-Year Operating Plan is reviewed and refined each year with input from stakeholders in the following areas: five-year planning calendar, strategic goals with corresponding key performance indicators, dependencies, year by year phasing, list of portfolios, and the five-year financial model. Additionally, the ICANN Accountability Indicators was launched in 2017 to provide a central place where progress made against ICANN's strategic and operating plans could be viewed. As mentioned above, some of the RDS activities are community-led and the community defines timelines and outcomes for these activities. The links to the projects listed above provides information regarding outputs of each activity. In addition, various departments within ICANN support RDS-related activities as part of their on-going work (i.e., maintaining WHOIS web content, blogs, announcements, engagement and educational activities, reporting, WHOIS look-up tool maintenance, etc.)

Question 3D: Has the Board created a committee including the CEO that is responsible for the WHOIS and for key actions? If yes, has the committee met? And are the activities of the committee recorded and archived? Are the documents available for viewing or sharing?

Response 3D: Please see the response to Question #2 above.

Question 3E: How has the CEO complied with the instruction from the Board to oversee improvements to the contractual conditions relating to gTLD WHOIS data in the gTLD Registry and Registrar agreements? What concrete actions has he taken himself, or staff at his direction, to facilitate improvements to the conditions (e.g. meetings, outreach, suggestions for improvement, facilitation of community dialogue aimed at improvements)? Are there any documents (meeting minutes, internal or external memos, etc.) that can demonstrate these actions?

Response 3E:
Per response to question 3B, to list a few improvements –
1. Contractual Compliance enhanced transparency to monthly, quarterly and annual reporting by providing more details about the subject matter of complaints inclusive of WHOIS related; the 2017 and 2018 Report & Blogs are at this link at this link - https://www.icann.org/resources/compliance-reporting-performance

2. Enhanced 2016 and 2017 compliance metrics published on the Compliance Performance Reports page for the Monthly, Quarterly and Annual Reports at this link https://features.icann.org/compliance (details of enforcement reasons, registrar complaints by compliance cycle, closed complaint by closure, and many other reports that include WHOIS related metrics).

3. Please also refer to the compliance annual report published on the Reports page at this link https://www.icann.org/resources/pages/compliance-reports-2018 since 2012 for a summary of WHOIS related improvements, activities and outreach to improve processing, quality and turn-around time of complaints related to WHOIS.

4. In 2014, compliance also launched an initiative referred to as WHOIS Quality Review (WHOIS QR); a process to randomly select, review and report on previously closed WHOIS inaccuracy complaints to ensure continued compliance with the requirements of the RAA. Basically, ICANN wanted to validate a community concern that registrars are suspending the domains to get ICANN to close the complaint, then unsuspending the domains after the ticket is closed. The 2017 WHOIS QR sample, identified 18 domain names that required a follow-up vs. 86 in 2014. Please refer to the Compliance Annual Reports for metrics on this effort.

5. Ongoing support to policy efforts, WHOIS review teams and other working groups by providing data and responding to questions; please refer to the additional Contractual Compliance related data section on this page https://features.icann.org/compliance

In addition, please refer to written briefing for Recommendation #1 regarding RDS requirements in the 2013 RAA and RA.

The CEO reports to the Board as well as links to other CEO communications are posted at the President's Corner. Amongst other topics, these reports and communications cover RDS-related topics.

Question 3F: How has the CEO complied with the instruction from the Board to create appropriate reporting of these improvements and to implement staff incentivisation? Are there standard clauses in relevant employee contracts reflecting such incentivisation, and how is the incentivisation structured? Have any other measures been taken to incentivize staff to implement the strategic priority recommendation? How often does staff report to the CEO or the Board on WHOIS improvements and what form does that take? Are there any documents (internal reporting, meeting minutes, memos etc.) that can demonstrate compliance?

Response 3F: Overall, RDS covers several different areas within the community and the organization, including in relation to reviews, contracted parties, policy development work or emerging issues such as the GDPR. For ICANN org, RDS is reflected in the ICANN Strategic Plan and therefore guides the CEO's goals as well as the work of all across the organization to meet those strategic objectives through ICANN's operating plan.

The RDS related work that is distributed throughout the organization is tracked via projects that are mapped to objectives defined in the ICANN's Strategic Plan. Each objective is overseen by a member of the ICANN Executive Team. The Executive Team reports to the ICANN CEO, who

leads and oversees ICANN's day-to-day operations. This includes delegation of specific programs and responsibilities and setting appropriate performance goals to incentivize ICANN Org to meet the goals.

The CEO reports to the Board as well as links to other CEO communications are posted at the President's Corner. Amongst other topics, these reports and communications cover RDS-related topics.

Question 4: Has ICANN Org made WHOIS a strategic priority from a substantive perspective?

Response 4: In relation to the Strategic Priority recommendation from the first WHOIS Review Team, the ICANN Board adopted, and subsequently implemented, an Action Plan. The action plan adopted by the Board for the Strategic Priority recommendation was:

- ◉ "Board agrees that gTLD WHOIS is a strategic priority for ICANN
- ◉ Consistent with advice from SSAC (SAC055), Board directs the CEO to create an expert working group to create material to launch GNSO policy work and inform contractual negotiations, as appropriate. Working group output is expected within 90 days and will ideally include a straw-man model for managing gTLD registration data
- ◉ The working group's output will form the basis for an Issues Report to accompany Board-initiated, expedited GNSO policy work that is expected to result in consensus policy that, at a minimum, addresses the purpose of collecting, maintaining and making available gTLD registration data, and related accuracy, data protection, and access issues.
- ◉ The Board will also call upon the registrars, registries, and the staff to address the working group's output in contractual negotiations and registry contracts, as appropriate.
- ◉ The CEO will oversee improvements to the enforcement of the contractual conditions relating to gTLD WHOIS in the gTLD registry and gTLD registrar agreements. Appropriate reporting of these improvements will be developed, and the CEO will be responsible for appropriate staff incentives.
- ◉ The Board will incorporate performance of the WHOIS strategy into the incentive program for the CEO."

Please refer to the written briefing for recommendation 1 for information on how the Board's Action Plan was implemented.

Question 4A: Has ICANN Org taken any other actions reflecting the strategic priority given to the WHOIS, beyond those specifically recommended by the WHOIS RT in its final report? If yes, which actions has it taken? Are there any written traces of these actions?

Response 4A: Please see the response to Question #4 above. In addition, ICANN Global Domain Division (GDD) added an overall coordination, oversight, and management role for the RDS portfolio of activities. This role:

- ◉ monitors both the RDS PDP and Review with an eye toward implementation of the recommendations.
- ◉ identifies synergistic opportunities across initiatives and explore ways to leverage that synergy to achieve cost-saving, maximum benefit, and effective implementations.

- ⊙ coordinates activities to ensure alignment with overall direction and strategy.
- ⊙ manages interdependencies across activities to ensure streamlined and efficient execution.
- ⊙ provides holistic reporting of all RDS related activities to the community.

Relating to the last bullet point above, please refer to the "Useful Links" section of the written briefing for recommendation 3 for a listing of sessions where ICANN org provided updates to the community on various WHOIS related topics.

Please also see response to Question 3B above for information on how RDS was incorporated into the ICANN Strategic Plan, Five-Year Operating Plan, and annual operating plan and budget.

Question 4B: How was this priority reflected in the transition from the AoC to the Bylaws? What efforts has ICANN made to ensure that the priority was preserved during the transition, and what other actions did ICANN take related to this?

Response 4B: As part of the Cross-Community Working Group on Enhancing ICANN Accountability's work, one of the main areas of recommendation was on the incorporation of the Affirmation of Commitments into ICANN's Bylaws. Recommendation 9 of the CCWG-ACCT required ICANN to "Add the [] review processes specified in the Affirmation of Commitments to the ICANN Bylaws, including: . . . [e]nforc[e] ICANN's existing policy relating to WHOIS, subject to applicable laws." This was identified by the CCWG-ACCT to protect against the potential that Department of Commerce or ICANN could terminate the AoC with 120-days notice, and preserve ICANN's key commitments. The CCWG-ACCT included in their recommendations that the name of the review be updated to reflect Registration Directory Services as a potential future replacement. ICANN fully implemented this recommendation, through the inclusion of Section 4.6 of the Bylaws. The RDS/WHOIS review is now specified at Section 4.6(e) of the ICANN Bylaws. In alignment with its Bylaws' obligation, ICANN timely initiated the RDS/WHOIS2 review.

Question 4C: What defects in WHOIS contractual obligations were identified? Has there been any analysis within the organization of the functioning of the contractual WHOIS obligations? If so, what outcomes have there been? Has ICANN taken any action to review or improve contractual obligations or their implementation?

Response 4C: ICANN org's role is to enforce consensus policies and contracts, including any RDS related requirements. Through continuous improvement efforts, ICANN org does identify and implement operational processes and reporting improvements. However, there is no effort to review consensus policies and contracts for the purpose of identifying "defects." There are mechanisms to allow for the community to perform reviews and identify any "defects" or improvements such as the work of the RDS2 Review Team and requirements built into the Transfer policy and RDS Specification of the 2013 RAA for a review of the policy and contractual provision, respectively.

Question 4D: How have WHOIS obligations in contracts improved including in the 2013 Registrar Accreditation Agreement (RAA) and the base new gTLD Registry Agreement? (as compared to previous obligations)

Response 4D: Please refer to the "2013 Registrar Accreditation Agreement and Registry Agreement" section of the written briefing for Recommendation #1.

Question 4E: Is there evidence to show that the definition as a strategic priority has had a positive impact on the WHOIS in view of the objectives that it serves?

Response 4E: This question includes terms that are undefined such as definition for strategic priority and objectives of WHOIS. It would be helpful if the Strategic Priority sub-group could clarify what data and information it is looking for in order to assess whether there has been a positive impact.