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| WHOIS Review Team Discussion Paper |
| Questions to the community, May 2011 |

# INTRODUCTION

## WHOIS Review

The WHOIS review team has been constituted under the Affirmation of Commitments (AoC), which was signed by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers on 30 September 2009.

In accordance with the principles set out in the AoC, in particular its paragraph 9.3.1, the scope of the review team is to assess the extent to which existing WHOIS policy in the generic top level domains (gTLDs) and its implementation:

* is effective;
* meets the legitimate needs of law enforcement; and
* promotes consumer trust.

The review team will also undertake an analysis and determination of ICANN's performance against the AoC requirements that ICANN:

* implements measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information; and
* enforces its existing policy relating to WHOIS, subject to applicable laws.

## Purpose of this Paper

This paper describes of areas of interest identified by the review team to date, both in its own deliberations and in discussions with the community. The review team seeks comment from the community on any aspect of this paper, including any relevant issues not covered by the paper.

## Background on WHOIS

WHOIS is a protocol that enables users to find information about those who run and those who own Internet resources including domain names, IP address blocks and autonomous systems.

The current version of the WHOIS protocol (RFC 3912) for generic top level domains (gTLDs) states that while WHOIS was originally used to provide "white pages" services and information about registered domain names, current deployments cover a much broader range of information services. The review team understands that these include but are not limited to:

* supporting the security and stability of the Internet;
* contacting those who run or own the domain name about a technical problem or concern;
* contacting those who own or run domain names about purchase of the domain name;
* contacting those who own or run domain names regarding content of websites, listservs, emails or other services using the domain name;
* assisting businesses, other organisation and users in combating fraud;
* assisting law enforcement agencies in investigations; and
* contributing to consumer confidence in the Internet as a reliable means of communication.

Some issues are potentially beyond the scope of the review team. For example, the review team is aware of work being done elsewhere in the community on the internationalisation of WHOIS data and the technical evolution of the protocol. The review team is also aware that ICANN is considering several WHOIS studies, and that discussions are underway on potential amendments to the Registrar Accreditation Agreement. The review team will take account of these issues when developing its recommendations.

## How to comment

The closing date for comment is ...

Comments should be sent to ...

# ISSUES FOR DISCUSSION

In its preliminary discussions and interactions with the community, the review team’s attention has been drawn to several areas of interest which will inform its work going forward. Questions on each of these issues are below.

Clarity of existing policy

The Affirmation of Commitments (paragraph 9.3.1), *2007* *GAC Principles Regarding gTLD WHOIS Services* and the existing contracts between ICANN and gTLD registries and registrars appear to provide high level principles that are intended to inform WHOIS policy development and its implementation. However, it is not clear whether these principles are reflected in ICANN’s policy development processes, or in its mechanisms to implement policy.

There is limited ICANN consensus policy on WHOIS, and that which does exist is supplementary to the rules set out in other documents. These include technical standards (such as Internet Engineering Task Force Requests for Comment) and ICANN contracts (such as the Registrar Accreditation Agreement).

**Questions**

1. What measures could ICANN take to clarify its WHOIS policy?
2. How should ICANN clarify the status of the high level principles set out in the Affirmation of Commitments and the GAC Principles on WHOIS?

Consensus and Lack of Consensus on New gTLD Whois Policies

As the review teams understands, new Whois policy for gTLDs is formulated through the GNSO, the policy making supporting organization of ICANN for gTLDs. Over the last 10 years, the GNSO has engaged in a range of Whois policy-making activities, including the Whois Task Force (2001-2002), three additional Whois task forces (2002-2004), combination into single Task Force (2005-2007).

As we understand it, the following policy recommendations came from this Whois task force work and were approved by the ICANN Board for adoption and implementation:

1. Establishment of an annual “Data Reminder Policy” designed to improve Whois accuracy (effective October 31, 2003) We can link to WDRP
2. A Restored Names Accuracy Policy that applies when names have been deleted on the basis of submission of false contact data or non-response to registrar inquires (effective November 12, 2004) We can link to Restored Namess
3. A prohibition against bulk access to Whois information for marketing purposes (effective November 12, 2004) This is now part of RAA 2009
4. Prohibitions against resale or redistribution of bulk WHOIS data by data users (effective November 12, 2004).

We further found that in 2005 and 2006, the Whois Task Force looked at the purpose of Whois, in the context of ICANN’s mission and core values, international and national privacy laws, and other specified factors, and recommended that the Whois data be shifted to an “operational point of contact” or “OPOC” and that the operational contact be identified in the Whois in lieu of the registrant’s information being displayed. We understand that this recommendation was declined in favor of a set of detailed Whois studies.

**Questions**

3. Have the new Whois policies made a difference, and if so, has it been positive or negative?

1. Why was the OPOC proposal rejected, and does it shed light on any GNSO consensus in the purpose of Whois data?
2. How effective do you think the progress and development of WHOIS policy within ICANN has been to date?
3. Is it possible to achieve consensus on meaningful new WHOIS policy?
4. d

6.

1. How should ICANN clarify the status of the high level principles set out in the Affirmation of Commitments and the GAC Principles on WHOIS?

Applicable Laws, Privacy issues and Proxy/Privacy

The review team understands that some registrants are concerned about publicly sharing their personal identity information through WHOIS, and that a number of registries and registrars operate in a data protection environment and with registrants from data protection environments (eg Canada, the EU and Asia). The review team is also aware of concerns raised within the community about potential conflicts between WHOIS requirements and domestic privacy laws.

The review team also has been told that the tension between access and privacy may be at the heart of the issues relating to WHOIS policy. The review team is interested in ways that ICANN could balance privacy concerns with its AoC goal of making accurate and complete WHOIS data publicly

**Questions**

6. HHow can ICANN balance privacy concerns with its commitment to having accurate and ` complete WHOIS data publicly accessible without restriction?

1. By way of example, what insight can country code TLDs (ccTLDs) offer on their response to data protection laws within their countries and how they have or have not modified their ccTLD Whois policies?
2. Similarly, by way of example, what insight can RIRs shed on their response to data protection laws within their countries, and how they have or have not modified their Internet Protocol Whois policies? (Where is this coming from?)
3. Applicable laws: in response to what laws have ccTLDs and RIRs based their changes or modifications to Whois policies?

accessible without restriction.

The current version of the WHOIS protocol (RFC 3912) noted that the current gTLD protocol “lacks mechanisms for access control, integrity, and confidentiality.” (Para. 5 “Security Considerations”)

One response to these concerns has been the use of privacy and proxy services, which limit or hide publicly accessible information about domain name registrants. A recent ICANN study found that at least 18% of domain names registered under the top five gTLDs are likely to have been registered using a privacy or proxy service[[1]](#footnote-1).

**Questions**

10. HHow can ICANN balance privacy concerns with its commitment to having accurate and complete WHOIS data publicly accessible without restriction?

1. How should ICANN address concerns about the use of privacy/proxy services?
2. What other options and additions might there be?

ICANN’s compliance and enforcement activities

The review team is interested to examine any gaps between ICANN’s commitments, stakeholder expectations and ICANN’s actual implementation and enforcement activities. This includes whether ICANN has the power and/or resources to enforce its commitments.

A key example relates to WHOIS accuracy. WHOIS accuracy is mentioned in the AoC, and is also a requirement in policy and contractual documents. However, a recent ICANN report found that only 23% of WHOIS entries are fully accurate[[2]](#footnote-2).

Some actors in the WHOIS space appear to have little or no direct contractual relationship with ICANN (e.g. resellers and privacy and proxy service providers). The review team is interested to examine whether this raises any compliance issues for ICANN.

**Questions**

1. How effective are ICANN’s current WHOIS related compliance activities?
2. Are there any aspects of ICANN’s WHOIS commitments that are not currently enforceable?
3. What should ICANN do to ensure its WHOIS commitments are effectively enforced?
4. Does ICANN need any additional power and/or resources to effectively enforce its existing WHOIS commitments?
5. How can ICANN improve the accuracy of WHOIS data?

## Other issues

The review team is also interested to hear from the community about any other relevant issues relating to its scope.

**Questions**

1. Are there any other relevant issues that the review team be aware of? Please provide details.

1. http://w13icann.org/en/compliance/reports/privacy-proxy-registration-services-study-14sep10-en.pdf [↑](#footnote-ref-1)
2. o http://www.icann.org/en/compliance/reports/whois-accuracy-study-17jan10-en.pdf [↑](#footnote-ref-2)