**WHOIS Review Team**

**Questions for law enforcement, May 2011**

# Background on the 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 seeks comment from law enforcement to assist the review team in undertaking its work and developing recommendations for the ICANN Board.

The review team has also released a separate Discussion Paper for broad community comment, and would welcome law enforcement perspectives on the WHOIS issues raised in that 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) 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 ICANN 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 (including with law enforcement representatives) on potential amendments to the Registrar Accreditation Agreement. The review team will take account of these issues when developing its recommendations.

# ISSUES FOR DISCUSSION

The WHOIS Review Team is seeking feedback from law enforcement agencies as part of its public consultation and outreach activities. Responses will inform the work of the WHOIS Review Team in developing its recommendations.

The RT definition of law enforcement, which has gone for public consultation is:

Law Enforcement shall be defined as a department, division, section, branch, body corporate, foundation, or association all of which are part and parcel of a nationally or internationally recognized government and whose responsibility is to maintain, co-ordinate, and enforce laws, regulations, or multi-national treaty obligations within the internationally recognized authorized boundaries of such government.

**Questions**:

1. Do you feel this definition is suitable in the context of this Review?
2. If not, do you have any suggestions/changes or additions?

## The legitimate needs of law enforcement

In accordance with the principles set out in the AoC, the scope of the review team includes assessing the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement.

**Questions**

1. Does WHOIS policy and its implementation meet your needs?
   1. If so, are any aspects of the WHOIS service more important than others?
   2. If not, what issues or problems have you encountered with WHOIS?
2. How important is WHOIS for law enforcement activities? Are there alternative data sources that you could use?
3. What changes to WHOIS would you recommend to better meet the needs of law enforcement? Please provide reasons.

## ICANN’s role in implementing WHOIS

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.

**Questions**

1. In your view, how well is ICANN performing against these requirements? Please provide reasons.
2. Do you have specific examples of effective ICANN policies or implementation activities, or suggestions of how ICANN could improve its performance?

## Privacy issues and availability of WHOIS data

The review team understands that some registrants are concerned about publicly sharing personal information through WHOIS. The review team is also aware of concerns raised within the community about potential conflicts between WHOIS requirements and domestic privacy laws.

One response to these concerns has been the use of privacy and proxy services. These are commercial services which serve to limit publicly accessible information about domain name registrants.

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 accessible without restriction.

**Questions**

1. What is the importance of WHOIS data being publicly available without restriction?
2. What is your view on the use of privacy and proxy services by registrants?

## Other issues

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

**Questions**

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