**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 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 WHOIS facilitates identification and communication for a range of purposes.

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.

# 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.

## Definition of law enforcement

The Review Team’s draft definition of law enforcement is:

Law Enforcement shall be considered to be an entity authorized by a government and whose responsibilities include the maintenance, co-ordination, or enforcement of laws, multi-national treaty or government-imposed legal obligations.

**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?

## Applicable Laws, Privacy issues and Proxy/Privacy

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

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.

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| **Questions**   1. How can ICANN balance privacy concerns with its commitment to having accurate and complete WHOIS data publicly accessible without restriction? 2. Are you aware of any efforts by country code Top Level Domain operators within your jurisdiction to find a balance with regards to WHOIS between potentially conflicting legal requirements for data protection, privacy and data disclosure? |

One response to these concerns has been the use of privacy and proxy services, which limit 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).

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| **Questions**   1. HHow can ICANN balance privacy concerns with its commitment to having accurate and complete WHOIS data publicly accessible without restriction? 2. What is the importance of WHOIS data being publicly available without restriction? 3. How should ICANN address concerns about the use of privacy/proxy services and their impact on the accuracy of the WHOIS data? 4. 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.

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