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Governmental Advisory Committee

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Governmental Advisory Committee Comments on the Final Report of the RDS-WHOIS2 Review Team

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The Governmental Advisory Committee (GAC) of ICANN appreciates the work done by the RDS-WHOIS2 Review team since June 2017, and welcomes the submission of its final report to the ICANN Board on 3 September 2019. The GAC is looking forward to the ICANN Board considering these recommendations, as well as the comments included hereafter, towards taking necessary action by 3 March 2020.

1. Introduction

The GAC views ICANN Bylaws-mandated reviews as a fundamental mechanism to assess whether current contracts, procedures, policies and their implementations are appropriate, and produce the expected outcomes. Where gaps are identified, the consensus recommendations made by review teams should be given thorough and timely consideration by the ICANN Board and ICANN Community.

As set forth by the GAC in its 2007 Principles regarding gTLD WHOIS Services¹, as the Internet evolved, the WHOIS became a tool relied upon by various stakeholders for a number of legitimate activities, including inter alia:

- supporting the security and stability of the Internet;
- assisting law enforcement authorities in their national and international investigations;
- assisting businesses, organizations and users in combating fraud; and
- contributing to user confidence in the Internet.

Additionally, the GAC also recognizes the legitimate concerns about misuse of WHOIS data and conflicts with applicable privacy and data protection laws.

These interests are reflected in ICANN's current Bylaws which commit to *"Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet"* per Section 1.2 (a) and provide that *"ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data"* per Section 4.6(d).

In this context, the GAC recalls that the periodic Registry Directory Services (RDS) Review shall *"assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data"* per ICANN Bylaws Section 4.6(e)(ii).

In the following, the GAC considers several topics, findings and recommendations in the RDS-WHOIS2 Final Report as having a vital role in the public policy responsibilities of ICANN and offers comment in the following areas:

- Overall Findings of the RDS-WHOIS2 Review Team
- Foresight Function for Regulatory and Legislative Developments affecting ICANN
- Proactive Compliance Enforcement and Reporting of WHOIS Data Accuracy
- Adequate Access to Non-Public Registration Data for ICANN Contractual Compliance
- Accreditation of Privacy/Proxy Services and Validation of Registration Data Using Them
- Continuous Data Collection and Objective Assessment

¹ See Public Policy Aspects of WHOIS Data in [GAC Principles regarding gTLD WHOIS Services](#) (28 March 2007)

2. Highlights of Overall Findings of the RDS-WHOIS2 Review Team

The GAC notes that contrary to ICANN's reporting of full implementation of all of the 16 recommendations made by the first WHOIS Review (11 May 2012), the RDS-WHOIS2 Review team assesses² that:

- 8 recommendations were fully implemented,
- 7 recommendations were partially implemented, and
- 1 recommendation was not implemented.

The GAC also notes that implementation of prior recommendations fell short of expectations in areas of particular importance, including:

- *improving the accuracy of registration data*, which the GAC has recognized as a core principle supporting the legitimate purposes of WHOIS services since 2007³, and which it reiterated in recent years⁴
- *ensuring contractual compliance enforcement is done in accordance with best practices*, in particular when it comes to adopting a proactive approach in lieu of reactive responses to individual reports of non-compliance, and adopting risk-based enforcement strategy to address widespread non-compliance
- *Instilling a culture of proactive monitoring and planned improvement of WHOIS/RDS*

Furthermore, the GAC observes that among the 22 new recommendations made by the RDS-WHOIS2 Review Team:

- 14 (including 7 high priority) pertain to implementation of the first WHOIS Review Team recommendations
- 4 (including 2 high priority) address improvements of ICANN's contractual compliance function
- 2 (both high priority) relate to meeting the needs of Law Enforcement
- 1 relates to the safeguarding of registrant data
- 1 relates to the terms of the ICANN Bylaw provision governing Specific Reviews.

Finally, the GAC stresses its expectation of a timely consideration and implementation of these recommendations, in line with the RDS-WHOIS2 Review Team's own expectation that *"Implementation of all recommendations identified as High Priority should begin as soon as possible once approved by the Board and once all preconditions are met. Recommendations assigned medium or low priority need to be considered with respect to overall ICANN priorities, but should not be deferred indefinitely."* (Final Report, Section 1.2, p10).

² Pursuant to the Review Team's duty to "assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect" per ICANN Bylaws Section 4.6(e)(iv)

³ See [GAC Principles regarding gTLD WHOIS Services](#) (26 March 2007)

⁴ See Input on Recommendation 4, p.1 in [GAC Input on the Draft Final Report of EPDP on gTLD Registration Data](#) (20 February 2019)

3. Importance of a Strategic Foresight Function for Regulatory and Legislative Developments affecting ICANN

RDS-WHOIS2 Review Team Recommendation R1.1 (High Priority)

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.

RDS-WHOIS2 Review Team Recommendation R1.2 (High Priority)

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 ICANN Board.

In light of the challenges faced by the ICANN Community in adapting WHOIS policy with the requirements of applicable data protection law, the GAC fully supports the analysis and recommendations of the RDS-WHOIS2 Review Team to establish an effective foresight function to inform policy deliberations and decisions at ICANN.

The GAC notes and welcomes the recognition by the ICANN organization since April 2018⁵ that it “needs to be better prepared” and “to pay closer attention to any potential legislative effort that may impact ICANN’s mission and operations” or “that could have an effect on current policies and future policy development”.

To date, three *Legislative/Regulatory Reports* have been published⁶. It is unclear whether and when further reports will be provided since ICANN published its Draft Charter on Government Engagement Approach on 25 February 2019. In this charter, ICANN indicated it would “continue to evolve how it presents its regular report on Global Regulatory and Legislative Developments.”

More recently, the ICANN Board adopted⁷, as part of ICANN’s Strategic Plan for Fiscal Years 2021-2025, a strategic goal to “Identify and address global challenges and opportunities within its remit by further developing early warning systems, such as ICANN org’s Legislative and Regulatory Development Reports”. In terms of outcomes, it is expected that “ICANN org continues to develop and mature systems to detect and monitor legislative initiatives and other governmental or intergovernmental actions or initiatives that could impact ICANN’s mission or operations.”⁸

To date, the GAC has only conducted preliminary discussions of this topic with the GNSO during the ICANN65 in Marrakech⁹. The subsequent GNSO Council letter to ICANN org¹⁰ provided constructive input including that:

- the current approach is insufficient in that “the community is expected to identify errors and omissions in the *Global Legislative and Regulatory Developments Report*”
- ICANN org should conduct standard regulatory impact assessments
- ICANN org should partner with a professional firm to receive regular updates
- While ICANN org would benefit from GAC or governmental input on the matter of forthcoming legislation with the potential to impact ICANN’s contracts or policies, ICANN org must hold primary responsibility for maintaining its own awareness of such developments.

⁵ See ICANN Blog [Improving our Planning and Preparation](#) by Göran Marby, President and CEO (23 April 2018)

⁶ See ICANN’s [Legislative/Regulatory Reports webpage](#) and the reports available for [April 2018](#), [August 2018](#), and [January 2019](#)

⁷ See ICANN Board Resolution of 23 June 2019 on [Adoption of ICANN Strategic Plan for Fiscal Years 2021 – 2025](#)

⁸ See ICANN Blog [ICANN org publishes Charter on Government Engagement Approach](#) by Göran Marby, President and CEO (25 February 2019) and the associated [Draft Charter on Government Engagement Approach](#) (25 February 2019)

⁹ See ICANN65 [GAC Meeting with the GNSO](#) (25 June 2019)

¹⁰ See [Recommended Improvements from the GNSO Council on ICANN Org Legislative Statement](#) (24 July 2019)

4. Importance of Proactive Compliance Enforcement and Reporting of WHOIS Data Accuracy

RDS-WHOIS2 Review Team Recommendation R4.1 (High Priority)

The ICANN Board should initiate action to ensure ICANN Contractual Compliance is directed to proactively monitor and enforce registrar obligations with regard to RDS (WHOIS) data accuracy using data from incoming inaccuracy complaints and RDS accuracy studies or reviews 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.

RDS-WHOIS2 Review Team Recommendation R4.2 (High Priority)

The ICANN Board should initiate action to ensure that ICANN Contractual Compliance is directed to cross-reference existing data from incoming complaints and studies such as the ARS to detect patterns of failure to validate and verify RDS (WHOIS) data as required by the RAA. When such a pattern is detected, compliance action or an audit should be initiated to review compliance of the Registrar with RDS (WHOIS) contractual obligations and consensus policies.

RDS-WHOIS2 Review Team Recommendation R5.1 (High Priority)

The Accuracy Reporting System, which was instituted to address concerns regarding RDS (WHOIS) contact data accuracy, has demonstrated that there is still an accuracy concern and therefore such monitoring must continue. ICANN organization should continue to monitor accuracy and/or contactability through either the ARS or a comparable tool/methodology.

The GAC strongly supports these recommendations and urges the ICANN Board, ICANN org and Contracted parties to act decisively to address the wide-spread and long-standing issue of WHOIS data inaccuracy.

As noted by the first WHOIS Review Team in its Final Report (11 May 2012)¹¹: *“The low level of accurate WHOIS data is unacceptable [...] The organization’s priority in relation to WHOIS should be to improve WHOIS data accuracy and sustain improvement over time.”*

A decade of data and analysis on WHOIS inaccuracy warrants concerns of a systemic issue

The first Review Team referred to a study on data accuracy conducted by the National Opinion Research Council of the University of Chicago (NORC)¹² which found at the time, that only 23% of WHOIS records were fully accurate, and close to 30% failed to provide the necessary information to reach the registrant.

In its recent report, the RDS-WHOIS2 Review Team recalled the evidence provided by the WHOIS Accuracy Reporting System (ARS) between December 2015 and June 2018 which seems to indicate that each cycle of accuracy testing required contractual compliance follow-up in 37% of cases on average¹³. The review team’s assessment is that *“data inaccuracy rate across the gTLD domain space is still high (30~40%) even without identity accuracy checks”*¹⁴. Indeed, this high rate of non-compliance with WHOIS accuracy requirements may still underestimate the scope of the

¹¹ See Section Recommendations 5-9: Data Accuracy, p.11 of [WHOIS Review Team Final Report](#) (11 May 2012)

¹² See [Draft Report for the Study of the Accuracy of WHOIS Registrant Contact Information](#) by NORC at the University of Chicago (17 January 2010)

¹³ See table p.53 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

¹⁴ See findings p.63 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

problem because ARS verifications did not take the extra step of validating the identity of registrants. In addition, accuracy testing was not always performed against the highest standards available as laid out in the 2013 Registrar Accreditation Agreement (RAA)¹⁵.

This data and the associated understanding accumulated by the ICANN Community over the past decade regarding wide-spread WHOIS inaccuracy warrants concerns of a worsening systemic issue, and as a consequence, warrants decisive actions by all stakeholders responsible.

WHOIS Data Accuracy supports Security and Stability of the DNS

The GAC would like to recall that in its 2007 Principles regarding gTLD WHOIS Services¹⁶, it recognized that:

gTLD WHOIS services should provide sufficient and accurate data about domain name registrations and registrants subject to national safeguards for individuals' privacy in a manner that: [...] Supports the stability, reliability, security, and global interoperability of the Internet, from both a technical and public trust perspective [...]

It is in this context, and in line with improved contractual requirements envisioned in the 2013 RAA in this respect, the GAC stated in its Beijing Communiqué (11 April 2013) that it was “pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventive mechanisms that help deter criminal or other illegal activity.”¹⁷

Law enforcement experts in the GAC’s Public Safety Working Group have continuously stressed the importance of WHOIS, and accurate WHOIS data to mitigate DNS Abuse. Indeed, WHOIS has been a key investigative tool for law enforcement and their cybersecurity partners in generating investigative leads, attributing crime and identifying victims of cybercrime¹⁸. Moreover, the validation of domain registration data is a proven factor in disincentivizing DNS Abuse by deterring criminals seeking anonymous domain registrations¹⁹.

WHOIS Data Accuracy is not a sole responsibility of the Registrant

As a starting point, the GAC observes that inaccurate data cannot serve any purpose, and its lack of accuracy undermines the legitimate purposes for which it is collected and further processed. In its Input on the Draft Final Report of Phase 1 of the Expedited Policy Development Process (EPDP) on gTLD Registration Data (20 February 2019), the GAC stressed²⁰ that:

Consistent with Article 5.1.d of the GDPR, every reasonable step must be taken to ensure the accuracy of personal data, in this case, including data provided by registrants. Article 5 of the GDPR also extends beyond the right of a data subject, “having regard to the purposes for which [the data] are processed”.

¹⁵ See discussion in Section 3.6.2.2, p.52 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

¹⁶ See Principle 3.3 in [GAC Principles regarding gTLD WHOIS Services](#) (28 March 2007)

¹⁷ See Section IV.2 of [GAC Beijing Communiqué](#) (11 April 2013)

¹⁸ See for example a presentation by Europol during the ICANN57 session [Update on WHOIS-Related Initiatives](#) (5 November 2017)

¹⁹ See e.g., [ICANN64 Session on Lessons Learned: How .DK successfully reduced abusive domains](#) and <https://www.dk-hostmaster.dk/en/news/dk-hostmaster-makes-online-fraud-more-difficult>

²⁰ See Input on Recommendation 4, p.1 in [GAC Input on the Draft Final Report of EPDP on gTLD Registration Data](#) (20 February 2019) and discussion during the [ICANN66 Cross Community Session on DNS Abuse](#): “When there is effectively anonymization of who owns an asset such as a domain, you're talking about free rein to criminals, and they are making huge use of it” (see p.49 of [transcript](#))

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Current ICANN contracts (in particular in the 2013 Registrar Accreditation Agreement, Sections 3.2.2, 3.7.7.2 and 3.7.8) are consistent with this aspect of the GDPR and obligate registrars to take steps to respond to and correct reports of inaccurate WHOIS data.

Therefore, the GAC believes that Recommendation 4 [of the EPDP Phase 1 Final Report] should more explicitly recognize the importance of ensuring information accuracy consistent with GDPR article 5.1(d).

While the GAC notes that WHOIS Accuracy remains a matter for further deliberation as part of the ongoing Phase 2 of the EPDP on gTLD Registration data, the GAC would like to stress ICANN's responsibility to continue enforcing accuracy requirements as laid out in the 2013 RAA under the current Interim Registration Data Policy for gTLDs and any future policy.

Effective Contractual Compliance Enforcement is Critical

In the GAC Hyderabad Communiqué (8 November 2016) the GAC sought to understand how ICANN enforces the 2013 RAA requirements regarding WHOIS verification, validation and accuracy. ICANN's response led to 23 follow-up questions in the GAC Copenhagen Communiqué (15 March 2016).

Based on ICANN's responses²¹, the GAC's understanding of ICANN's contractual enforcement practices is consistent with the findings of the RDS-WHOIS2 Review Team that there exist inefficiencies and missed opportunities to detect and address proactively and in a timely manner systemic non-compliance with accuracy requirements.

For illustration, the review team found that a lag of "up to six months between when sample records were polled [by the Accuracy Reporting System] to when the potentially inaccurate records were available for follow-up by ICANN Contractual Compliance" may be responsible for the closing of 50% of the compliance cases generated by the ARS before they could be investigated and the data inaccuracy addressed²².

Proactive Monitoring of WHOIS Accuracy Must Continue, at Scale

The GAC understands that WHOIS accuracy compliance enforcement has been done on a case by case basis:

- in response to third party complaints (almost 32,000 complaints in the year following November 2015 as reported to the GAC in 2017²³),
- based on findings of the ARS Phase 2 cycles (about 26,000 compliance tickets opened for 70,000 domain names tested²⁴ over three years), or
- through the general registrar audit program (unknown quantities).

An estimated 200 million domain name registrations exist as of Q2 2019²⁵; considering the RDS Review Team's estimate of 30-40% data inaccuracy rate across the domain name space, an estimated 60 to 80 million domain

²¹ See Part I.2 Enforcement by ICANN of WHOIS Verification, Validation and Accuracy Requirement, p.5 of the [Draft ICANN Org Responses to GAC Follow-up Scorecard to Annex 1 of GAC Hyderabad Communiqué](#) (30 May 2017)

²² See discussion in Section 3.6.2.2, p.52 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

²³ See ICANN Response (8 Feb. 2017) in Part I.2 Enforcement by ICANN of WHOIS Verification, Validation and Accuracy Requirement, p.5 of the [Draft ICANN Org Responses to GAC Follow-up Scorecard to Annex 1 of GAC Hyderabad Communiqué](#) (30 May 2017)

²⁴ See table p.55 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

²⁵ 354.7 million domain names registrations across all TLDs, including 158.7 million in ccTLDs per the [Verisign Domain Name Industry Brief](#) for Q2 2019

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names are therefore failing to meet accuracy standards. This means that by opening roughly 10,200 tickets in the last two semi-annual cycles of ARS Phase 2 and processing 32,000 third party complaints, the contractual compliance function of ICANN would be addressing, at best, a mere 0.07% of the potential problem.

Moreover, as a consequence of the Temporary Specification, ICANN contractual compliance has lost ARS as a source for its enforcement of the WHOIS accuracy requirements. Indeed, as indicated in recent correspondence between the ICANN org and the GNSO Council: *“since the adoption of the Temporary Specification in May 2018, ICANN org has not published further ARS reports”*²⁶ because *“ARS has relied on collecting publicly available registration data [registrant’s name, email address, and telephone number] to determine the accuracy of registrant contact information”*. As a consequence, the ARS is *“unable to perform its fundamental function of analyzing and measuring the accuracy of registration data”* and *“ICANN Contractual Compliance is unable to investigate inaccuracies that were previously measured and reported by the ARS.”*²⁷

The GAC notes that while Phase 2 of the EPDP is due to deliberate on this topic as a matter of lesser priority, and while WHOIS accuracy monitoring under the ARS was not ICANN consensus policy, as highlighted by the GNSO Council Chair in a recent correspondence²⁸, the ICANN Board did direct in November 2012:

- the ICANN CEO to: *“1) proactively identify potentially inaccurate gTLD data registration information in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action; and 2) publicly report on the resulting actions to encourage improved accuracy.”*
- and the *“preparation of an Issue Report on the purpose of collecting and maintaining gTLD registration data, and on solutions to improve accuracy and access to gTLD registration data, as part of a Board-initiated GNSO policy development process;”*

It is therefore incumbent upon the ICANN Board to take stock of the evidence and recommendations provided to it by the RDS-WHOIS2 Review Team and take the necessary urgent and decisive actions to not only ensure continued proactive identification of WHOIS inaccuracy, but also to scale these efforts by a significant order of magnitude, including considering the risk-based approach recommended by the Review Team.

²⁶ See letter from [ICANN CEO to GNSO Council Chair](#) (21 June 2019)

²⁷ See letter from [ICANN CEO to GNSO Council Chair](#) (5 December 2019)

²⁸ See letter from [GNSO Council Chair to ICANN CEO](#) (15 October 2019)

5. Importance of Adequate Access to Non-Public Registration Data for ICANN Contractual Compliance Consistent with Interim and Future Registration Data Policy for gTLDs

RDS-WHOIS2 Review Team Recommendation CC.3 (High Priority)

The ICANN Board should take steps to ensure that ICANN Contractual Compliance is adequately resourced factoring in any increase in workload due to additional work required due to compliance with GDPR or other legislation/regulation.

The GAC notes the finding of the RDS-WHOIS2 Review Team that “[t]he GDPR Temporary Specification no longer allows Contractual Compliance to view the WHOIS (RDS) data and must request such data from contracted parties. This markedly increases the number of steps and ICANN organization staff resources needed to address many compliance issues”.

The GAC believes that the possibility for ICANN to enforce its contracts is not hampered by the GDPR, which provides an explicit legal basis for the processing of data for the purposes of a contract. Therefore, the contracted parties should provide contact information within WHOIS data when the data is not publicly available.

In fact, ICANN’s Temporary Specification for gTLD Registration Data, currently still in force per ICANN’s Interim Data Policy for gTLDs²⁹ explicitly states:

5.7. ICANN Contractual Compliance. Registry Operator and Registrar MUST provide reasonable access to Registration Data to ICANN upon reasonable notice and request from ICANN for the purpose of investigating compliance-related inquiries and enforcement of the Registry Agreement, Registrar Accreditation Agreement, and ICANN Consensus Policies.

Furthermore, as the GAC has previously stated, it is important that failures to provide reasonable access for third parties are addressed, and that ICANN Compliance is well positioned to deal with complaints. Indeed, in the GAC Barcelona Communiqué (25 October 2018), the GAC specifically took note of the fact that “existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cybersecurity investigators”³⁰, and it is in this context that in the GAC Montreal Communiqué (6 November 2019) the GAC advised the ICANN Board to³¹:

- i. *Instruct the ICANN organization to ensure that the current system that requires “reasonable access” to non-public domain name registration is operating effectively. This should include:*
 - *educating key stakeholder groups, including governments, that there is a process to request non-public data;*
 - *actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and*
 - *actively making available links to registrar and registry information and points of contact on this topic.*
- ii. *Instruct ICANN Compliance to create a specific process to address complaints regarding failure to respond to, and unreasonable denial of requests for non-public domain name registration data, and*

²⁹ See [Interim Data Policy for gTLDs](#) effective since 20 May 2019 which provides that for the foreseeable future contracted parties must continue to implement measures consistent with the [Temporary Specification for gTLD Registration Data](#) effective since 25 May 2018.

³⁰ See section IV.2, p. 5 of the [GAC Barcelona Communiqué](#) (25 October 2018)

³¹ See section V.2.b of the [GAC Montréal Communiqué](#) (6 November 2019)

monitor and publish reports on compliance with the current policy as part of their regular monthly reporting.

As it addresses the most recent GAC Advice along with the RDS-WHOIS2 Review recommendations in the coming weeks, the ICANN Board should ensure that the Interim Registration Data Policy for gTLD delivers reasonable access, effectively and efficiently, and that beneficiaries of such access include ICANN Contractual Compliance and any system it uses, such as the ARS, to proactively identify non-compliance with 2013 RAA WHOIS Accuracy requirements in line with its obligations. As indicated in the context of the EPDP Phase 1 Recommendation 2 regarding an additional legitimate purpose for ICANN's processing of non-public gTLD registration data, the "GAC believes that the final version of this purpose should include ICANN's purpose to process information associated with its registration data Accuracy Reporting System."

Finally, given the critical importance of accurate and accessible registration data for addressing DNS Abuse as discussed above³², the expected audit of all registrars regarding DNS Abuse obligation should cover practices related to the requirements for verification, validation and accuracy of domain registration data.

6. Importance of Accreditation of Privacy/Proxy Services and Validation of Registration Data Using Them

RDS-WHOIS2 Review Team Recommendation 10.1 (Low Priority)

The Board should monitor the implementation of the PPSAI. If the PPSAI policy does not become operational by 31 December 2019, the ICANN Board should ensure an amendment to the 2013 RAA (or successor documents) is proposed that ensures that the underlying registration data of domain name registrations using Privacy/Proxy providers affiliated with registrars shall be verified and validated in application of the verification and validation requirements under the RAA unless such verification or validation has already occurred at the registrar level for such domain name registrations.

The GAC believes that this recommendation, as well as the implementation of the PPSAI policy should be considered as a matter of urgency given the impact of unregulated and unaccountable privacy proxy services on the stability and security of the DNS.

Indeed, the correlation between the use of privacy and proxy services and DNS Abuse is established. For example, A 2013 Study of WHOIS Privacy and Proxy Service Abuse by the UK's National Physical Laboratory (NPL) under the direction of Dr Richard Clayton of the University of Cambridge concluded "we did find clear evidence that 'A significant percentage of the domain names used to conduct illegal or harmful Internet activities are registered via privacy or proxy services to obscure the perpetrator's identity.'"

Additionally, as the RDS-WHOIS2 Review Team has found, WHOIS verification requirements can be circumvented "by use of an affiliated privacy / proxy service provider"³³.

However, despite the continued harm enabled by these services, implementation of the PPSAI policy recommendations stemming from a GNSO PDP initiated in October 2013 and adopted by the ICANN Board in August

³² See subsection [WHOIS Data Accuracy supports the Security and Stability of the DNS](#) in section [3. Importance of Proactive Compliance Enforcement and Reporting of WHOIS Data Accuracy](#) in this document

³³ See rationale of recommendation 10.1 p.69 in the [RDS-WHOIS2 Review Final Report](#) (3 September 2019)

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2016 have not been delivered to this date. Moreover, there is currently no prospect of delivery in the near future as reiterated most recently in a letter from ICANN org to the GNSO Council leadership³⁴.

The GAC would like to recall the GAC Kobe Communiqué (14 March 2019) and its Advice to the ICANN Board to: *“Consider re-starting implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy”* noting in its rationale that *“The GAC is of the opinion that the Privacy Proxy Services Accreditation Issues Policy (PPSAI) remains highly relevant and implementation efforts should continue as appropriate, in parallel with the ongoing policy development work. The implementation of the PPSAI need not be deferred until the completion of the EPDP.”*

In its response to this advice³⁵, the ICANN Board shared its belief that *“waiting to proceed with implementation of Privacy Proxy Services Accreditation Issues (PPSAI) Policy until the completion of the RDS EPDP is a prudent course of action”*. The ICANN Board further indicated that *“[t]his course of action will allow ICANN org and the broader community to focus resources on ensuring that GDPR compliant requirements are finalized for existing contracted parties before proceeding to implement similar requirements for a new category of contracted parties”* and that *“[d]uring the implementation phase of the EPDP ICANN org will be reviewing all ICANN policies and services which may be impacted by the new Consensus Policy and will work with the GNSO and the community to identify the appropriate course of action.”*

Yet, in light of significant delays observed in both the implementation of EPDP Phase 1 policy recommendations and the development of new policy in EPDP Phase 2, such claimed dependency may not be viable anymore. In fact, in the GAC Montreal Communiqué (6 November 2019) the GAC issued Advice to the ICANN Board seeking to strengthen the implementation of interim arrangements.

In this context, the GAC welcomes a recent contribution by the Coalition for Online Accountability addressed to the ICANN Board Chair and Vice-Chair³⁶ making the case that *“Far from detracting from the work of the EPDP, moving forward with the implementation of the PPSAI Consensus Policy should assist in supporting and informing the work of the EPDP. Furthermore, it will serve the public interest goal correctly articulated by ICANN org of ensuring legitimate access to registration data when such privacy/proxy services are used to mask the data.”*

³⁴ See ICANN org [letter RE: Implementation of PPSAI Working Group Recommendations](#) (5 September 2019)

³⁵ See section §1.a.VI in the [Kobe Communiqué Board Scorecard](#) (15 May 2019)

³⁶ See [correspondence from Dean S. Marks to Maarten Botterman and Leon Sanchez](#) (31 October 2019)

7. Importance of Continuous Data Collection and Objective Assessment

RDS-WHOIS2 Review Team Recommendation LE.1 (High Priority)

The ICANN Board should resolve that ICANN organization conduct regular data gathering through surveys and studies to inform a future assessment of the effectiveness of RDS (WHOIS) in meeting the needs of law enforcement. This will also aid future policy development (including the current Temporary Specification for gTLD Registration Data Expedited Policy Development Process and related efforts).

RDS-WHOIS2 Review Team Recommendation LE.2 (High Priority)

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

RDS-WHOIS2 Review Team Recommendation R11.1 (Low Priority)

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?*

The GAC support the gathering of data recommended by the RDS-WHOIS Review Team. It should be noted that the ICANN Community is presented with a unique opportunity in the ongoing policy development regarding the System for Standardized Access/Disclosure of non-public registration data, to leverage the potential centralization of some processing of registration data to incorporate appropriate mechanisms for data quality reporting.

The GAC is also supportive of surveying non-law enforcement cybersecurity practitioners to quantify or otherwise validate their use of RDS (WHOIS) to provide lawful assistance to law enforcement authorities, in many jurisdictions, in generating and enhancing cybercrime investigations conducted into all forms of security threats in the DNS, as well as the important role they play in the prevention of crime and cybersecurity incidents through alert systems, blacklists and other mechanisms.