

# ICANN | GNSO

Generic Names Supporting Organization

## Registration Data Scoping Team Deliberations & Findings for Assignments #1 and #2

2 September 2022

### Status of This Document

This is the Deliberations and Findings Report of the Registration Data Accuracy Scoping Team. This report covers the deliberations and findings for assignment #1 (enforcement and reporting) and #2 (measurement of accuracy). Work on assignments #3 and #4 is expected to commence after the recommendations in this report have been implemented and additional data is available for the Scoping Team to review and consider.

### Preamble

The objective of this Report is to document the Scoping Team's deliberations and findings on the issues assigned to it by the GNSO Council. It will be submitted to the GNSO Council for its consideration and decision on possible next steps.

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## A. Executive Summary

### A.1 Introduction

The topic of registration data accuracy is not new; it is provided for in ICANN's contracts and has been the subject of many community discussions and work streams over the years. Following its [agreement](#) to start a more holistic review effort, the GNSO Council received an [ICANN org Briefing](#) and held further discussions on the topic of registration data accuracy. The GNSO Council then confirmed the formation of and instructions to a Registration Data Accuracy Scoping Team during its meeting on 22 July 2021.

The Scoping Team has been tasked to consider a number of accuracy-related aspects, such as current enforcement and reporting, measurement of accuracy, and effectiveness. These considerations are expected to help inform its deliberations and the development of recommendations to the GNSO Council on whether any changes are recommended to improve accuracy levels, and, if so, how and by whom these changes would need to be developed. (For example, if changes to existing contractual requirements are recommended, a PDP or contractual negotiations may be necessary to effect a change). Each SG, Constituency, SO, and AC was invited to appoint [representatives](#) to this effort.

### A.2 Recommendations

Following its analysis of each of the assignments as outlined in this report, the Scoping Team is putting forward the following recommendations to address assignment #2 (Measurement of accuracy):

#### **Recommendations in relation to proposals not requiring access to registration data**

##### **Scoping Team Recommendation #1**

The Scoping Team recommends that the GNSO Council requests ICANN org to carry out a Registrar Survey as outlined in Annex D to this document. As part of this request, the GNSO Council should first obtain further information about the ICANN org resources that are expected to be needed to carry out this survey as well as the likely time frame for doing so. Informed by that input, the GNSO Council should then determine whether to move forward with this request. If the Council decides to proceed with the Registrar Survey, ICANN org is expected to consult with the Scoping Team on the development and roll-out of the survey. If/when data from the Registrar Survey is available, the Scoping Team should convene to analyze this information to determine whether, based on the data gathered, work could commence on assignment #3 and #4.

**Scoping Team Recommendation #2**

The Scoping Team recommends that further work is undertaken by the Scoping Team in collaboration with ICANN org to explore the option of conducting a Registrar Audit<sup>1</sup>. As part of this further work, the Scoping Team will further explore with ICANN org what type of testing could be included in such an audit with the aim of better understanding the strengths, weaknesses, and areas of opportunity in procedures for determining the accuracy of registration data. The Scoping Team appreciates that a careful analysis will need to be performed to ensure that such testing would not violate any agreements or laws, and that it would not unfairly scrutinize certain registrars over others. This analysis will factor in the preparatory work that the Scoping Team has already undertaken on this topic which has been documented [here](#). The Scoping Team would share the conclusion of this further work with the GNSO Council for its review and approval.

**Recommendations in relation to proposals requiring access to registration data****Scoping Team Recommendation #3**

The Scoping Team recommends that the GNSO Council pause the work of the Scoping Team in relation to proposals that require access to registration data until such time when it is sufficiently clear whether proposals that require access to registration data are a viable path to assess the current state of accuracy.

The Scoping Team further recommends that the GNSO Council requests ICANN org to proceed with their outreach to the EDPB as a matter of urgency and provide regular updates and consultation on the status of this outreach.

The Scoping Team recommends that the GNSO Council requests ICANN Org proceed with a Data Protection Impact Assessment in connection with the scenario(s) in which the request and processing of registration data takes place.

The Scoping Team recommends that the GNSO Council specifically calls out the importance of finalizing the Data Processing Agreement between ICANN and the Contracted Parties.

## A.3 Conclusions and Next Steps

This Report will be submitted to the GNSO Council for its consideration.

## A.4 Other Relevant Sections of this Report

For a complete review of the issues and relevant interactions of this Scoping Team, the following sections are made available in the later pages of this document:

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<sup>1</sup> As some had suggested using synthetic data for an audit or third party testing, for the record, ICANN Compliance confirmed to the Scoping Team that it will not submit, directly or through a third party, deliberately false registration data to registrars either as part of an audit or any other enforcement measure.

Background of the issue documenting how it was discovered and eventually approved for further exploration by the GNSO Council.

- Documentation of who participated in the Scoping Team’s deliberations, attendance records, and links to Statements of Interest as applicable.
- An annex that includes the Scoping Team’s mandate as defined in the Council’s instructions adopted by the GNSO Council.
- Documentation of input received from ICANN org.

## B. Assignment #1 – Enforcement and Reporting

- 1. Enforcement and reporting: The Scoping Team will assess the measures, including proactive measures, used by ICANN Compliance to monitor, measure, enforce and report on the accuracy obligations as specified in the Registry Agreements (RAs) and Registrar Accreditation Agreement (RAA). This assessment will include consideration of what compliance with the existing contractual data accuracy obligations means. The Scoping Team shall, with reference to the resources that will be included in the index of relevant resources cited below, consider whether there is an agreed definition of registration data accuracy and, if not, consider what working definitions should be used in the context of the Scoping Team's deliberations. Particular attention should be given to the definition that ICANN Compliance employs for "accuracy" in ICANN's contracts. Note, this does not preclude any subsequent effort from formalising the definition(s) that should be applied in the context of any existing and/or new accuracy requirements that may be developed.*

### B.1 Information Reviewed

The Scoping Team started by reviewing the [Index of Relevant Resources](#) that was compiled by the Staff Support Team. For each assignment, the Staff Support Team also prepared a Background briefing that was reviewed and discussed by the Scoping Team (see [here](#) for the assignment #1 Background Briefing).

#### B.1.1 Existing accuracy requirements

The background briefing confirmed the following existing accuracy obligations:

##### [2013 Registrar Accreditation Agreement \(RAA\)](#)

- 3.3.4 Registrar shall abide by any Consensus Policy that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any Consensus Policy requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.
- 3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and correct and update them within seven (7) days of any change during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number

- if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.
- 3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for suspension and/or cancellation of the Registered Name registration.
  - 3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm.
  - 3.7.8 Registrar shall comply with the obligations specified in the Whois Accuracy Program Specification. In addition, notwithstanding anything in the Whois Accuracy Program Specification to the contrary, Registrar shall abide by any Consensus Policy requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

#### WHOIS Accuracy Specification

- (...) within fifteen (15) days of (1) the registration of a Registered Name sponsored by Registrar, (2) the transfer of the sponsorship of a Registered Name to Registrar, or (3) any change in the Registered Name Holder with respect to any Registered Name sponsored by Registrar, Registrar will, with respect to both Whois information and the corresponding customer account holder contact information related to such Registered Name:

- a. Validate the presence of data for all fields required under Subsection 3.3.1 of the Agreement in a proper format for the applicable country or territory.
- b. Validate that all email addresses are in the proper format according to RFC 5322 (or its successors).
- c. Validate that telephone numbers are in the proper format according to the ITU-T E.164 notation for international telephone numbers (or its equivalents or successors).
- d. Validate that postal addresses are in a proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats.
- e. Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory.
- f. Verify:
  - i. the email address of the Registered Name Holder (and, if different, the Account Holder) by sending an email requiring an affirmative response through a tool-based authentication method such as providing a unique code that must be returned in a manner designated by the Registrar, or
  - ii. the telephone number of the Registered Name Holder (and, if different, the Account Holder) by either (A) calling or sending an SMS to the Registered Name Holder's telephone number providing a unique code that must be returned in a manner designated by the Registrar, or (B) calling the Registered Name Holder's telephone number and requiring the Registered Name Holder to provide a unique code that was sent to the Registered Name Holder via web, email or postal mail.

In either case, if Registrar does not receive an affirmative response from the Registered Name Holder, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If Registrar does not receive an affirmative response from the Account Holder, Registrar shall verify the applicable contact information manually, but is not required to suspend any registration. (...)

#### [Restored Names Accuracy Policy](#)

- When a registrar restores a name (from the redemption grace period) that had been deleted on the basis of submission of false contact data or non-response to registrar inquiries, the name must be placed on Registrar Hold status until the registrant has provided updated and accurate Whois information.



### [WHOIS Data Reminder Policy \(WDRP\)](#)

- At least annually, a registrar must present to the registrant the current Whois information, and remind the registrant that provision of false Whois information can be grounds for cancellation of their domain name registration. Registrants must review their Whois data, and make any corrections.

Note, the base Registry Agreement (RA) does not contain provisions that directly address the accuracy of registration data for generic top-level domains (gTLDs).

### [Registrar Across Address Field Validation \(AFAV\)](#)

As noted above, the [WHOIS Accuracy Program Specification of the 2013 Registrar Accreditation Agreement](#) requires registrars to validate and verify defined data fields, such as phone number, email and postal address. Included in the validation requirements of the Specification is the Across Field Address Validation requirement. This is an open requirement for registrars to validate the registrant's postal address fields, and confirm consistency across fields e.g., street exists in city, city exists in state/province, city matches postal code.

The 2013 Registrar Accreditation Agreement requires ICANN org to review these requirements in consultation with the Registrar WHOIS Validation Working Group<sup>2</sup> to identify a set of tools that will enable accredited registrars to complete these validation actions. These actions should contribute to increased accuracy rating of physical address information associated with the registered name holder.

ICANN org has identified a set of commercial providers offering global address validation tool-sets via a Request for Information that was published in October 2017. If the Registrar WHOIS Validation Working Group and ICANN org are able to mutually agree upon a solution(s) that is technically and commercially feasible, all applicable documentation will be published accordingly. The intent of the Request for Information was to determine if commercial providers offer related solutions and to gather information for review between ICANN and the Registrar WHOIS Validation Working Group.

Ultimately, the objective of ICANN org is to come to a mutual agreement that will result in a minimum of two-thirds (2/3) vote in support of the defined solution(s) by the ICANN Accredited Registrars.

The Registrar WHOIS Validation Working Group and ICANN may mutually agree upon and approve a designated Address Validation Service Provider(s). Registrars may choose a provider(s) and implement the address validation tool-set(s) based on the obligation within the 2013 Registrar Accreditation Agreement.

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<sup>2</sup> See <https://community.icann.org/display/AFAV/Overview> for further details

AFAV was paused in light of the EPDP on Registration Data. There were two RFIs (2014 and 2017); however, the solutions were not practical or applicable globally. Pending the implementation of all phases of the EPDP on Registration Data, the RrSG and ICANN org agree to review whether a new RFI is needed in light of the changes since 2014/2017. Further implementation is paused.

### B.1.2 ICANN org Enforcement

In the context of assessing the measures and enforcement by ICANN org of existing accuracy obligations as specified in the Registry Agreements (RAs) and the Registrar Accreditation Agreement (RAA) were the following documents:

- [Registration Data Accuracy Requirements and the General Data Protection Regulation \(GDPR\)](#) (ICANN org, February 2021)
- [Enforcement of Registration Data Accuracy Obligations Before and After GDPR](#) (Jamie Hedlund, ICANN org, June 2021)
- [ICANN Organization Enforcement of Registration Data Accuracy Obligations Before and After GDPR](#) (ICANN org, June 2021)

Following its review of this information, the Scoping Team identified a number of clarifying and follow up questions for ICANN org. The detailed questions and responses can be found in Annex C to this document. In relation to current enforcement, ICANN org shared, amongst others, the following:

- ICANN Contractual Compliance (Compliance) enforces contractual requirements on the contracted parties, not registrants. Registrants do not have agreements with ICANN. Compliance requires that all complaints concerning inaccurate Registration Data be supported by information or evidence of the alleged inaccuracy, including those involving a registrant that is "using contact information that does not belong to them". If a reporter provides the requisite supporting information or evidence, ICANN will initiate a notice or inquiry with a registrar. Examples of these types of complaints include: 1) complaint from a Privacy or Proxy (P/P) Service Provider that alleges that the registration is not registered using its service, but the information in the Registration Data Directory Service displays the P/P Service Provider's contact information without authorization; 2) complaint from a representative of a legal person that alleges the registration is using the entity's contact information without authorization. The "reasonability" of the steps will depend on the type of inaccuracy reported. For example, a report of a nonfunctional email address may only require the registrar to perform email verification to ensure the email is functioning. However, if the complaint is about identity (e.g., the registrant is not who they say they are), Contractual Compliance may ask the registrar to provide further information concerning their findings and the results of their investigation specific to the facts of the complaint.

- In accordance with the Whois Accuracy Program Specification (Specification), Sections 1(a) through 1(d), registrars are required to perform syntactic validation as follows:
  - Values are present for all fields required under the RAA for the applicable country or territory
  - Registrant/Admin/Tech/Other Email are in the proper format with RFC 5322
  - Registrant/Admin/Tech/Other Phone and Fax are in the proper format according to the ITU-T E.164 notation for international telephone numbers
  - Registrant/Admin/Tech/Other Street, City, State/Province, Postal Code, and Country are in the proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats
  - In accordance with Section 1(f) of the Specification, registrars must verify the email address OR the telephone.
- Registrars are required to provide ICANN Contractual Compliance with evidence that the verification required by the Registrar Accreditation Agreement (RAA)'s Whois Accuracy Program Specification occurred and the registrar received an affirmative response from the Registered Name Holder (RNH), and Account Holder (AH), if different. Registrars may designate the method used (email or telephone) and manner in which the verification is performed.
- ICANN Contractual Compliance notes that the obligation to take reasonable steps to investigate a claimed inaccuracy is not limited to compliance with verification (and validation) requirements and reasserts that taking “reasonable steps to investigate” may require additional actions by the registrar depending on the type of inaccuracy reported.

## B.2 Current Description

The Scoping Team was requested to review the index of relevant resources and “consider whether there is an agreed definition of registration data accuracy and, if not, consider what working definitions should be used in the context of the Scoping Team's deliberations”. The Scoping Team was not able to determine or locate such an agreed definition. Instead of referring to a definition or working definition, the Scoping Team noted that it would be more accurate to agree and refer to a current description of how existing accuracy requirements are understood and enforced. The group agreed that a working definition created challenges because the group was endeavoring to establish a shared starting point. The Scoping Team agrees that a current description does not preclude future changes. This is simply a statement of current requirements. It is possible, for example, for requirements and enforcement to evolve and/or change as a result of future work.

The CURRENT accuracy requirements and enforcements against which the accuracy of registration data is assessed are set out below. The Scoping Team's understanding of the current requirements and enforcement does not preclude in any way possible

changes to these requirements and enforcement in the future based on the work of the Scoping Team and/or subsequent efforts.

*Under the current requirements, as spelled out in the Registrar Accreditation Agreement (RAA) as well as Consensus Policies, domain name registration data should be accurate, reliable, and up-to-date. Accuracy requirements are understood as entailing syntactic validation of the registration data elements provided by the Registered Name Holder or Account Holder as well as the verification of operability of either the telephone number or the email address.*

*To be determined to be syntactically valid, the contact must satisfy all requirements for validity (see Whois Accuracy Program Specification Sections 1b-d). For example, for email addresses all characters must be permissible, the “@” symbol is required, and there must be characters before the “@” symbol.*

*To be determined to be verified as operable, the contact must be operable as defined in the Whois Accuracy Program Specification Section f including an affirmative response from the Registered Name Holder for either email or phone.*

*In addition, upon notice of an alleged inaccuracy or if the Registrar learns of inaccurate contact information, the Registrar must take reasonable steps to investigate that claimed inaccuracy and correct inaccuracy. Additional verification procedures apply if the registrar has any information suggesting that contact information is incorrect. If a Registered Name Holder willfully provides<sup>3</sup> inaccurate or unreliable registration data information, the registrar will take additional action to terminate, suspend or place a registration on hold.*

*Whilst there are no explicit provisions in the Base Registry Agreement that refer to the accuracy of registrant data, some specifications to the Registry Agreement relating to eligibility requirements and auditing obligations in certain gTLDs may inform the topic of registration data accuracy.*

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<sup>3</sup> For example, if the Registered Name Holder provided Registration Data that passes format validation, but is patently inaccurate (such as Registrant Name: Mickey Mouse; Registrant Postal Address: 1234 Main Street, Disneyland, CA 00000, USA; Registrant Email: mickeymouse@example.com). See also <https://community.icann.org/x/mdMGCw>.

## C. Assignment #2 – Measurement of Accuracy

2. *Measurement of accuracy: The Scoping Team is expected to provide recommendations for how accuracy levels can be determined and measured, including, but not limited to, whether the WHOIS ARS needs a revamp to make it fit for purpose or whether there are other ways in which accuracy levels can/should be measured. The information and data resulting from these recommendations are expected to help inform the Scoping Team's work under 3.*

### C.1 Information Reviewed

The Scoping Team started its deliberations on assignment #2 with a review of the background briefing for this assignment (see [here](#)). The background briefing includes an overview of how accuracy has been measured in previous studies and reports.

#### C.1.1 Accuracy Reporting System (ARS)

In addition, the background briefing references a number of studies that prepared the ground for the Accuracy Reporting System (ARS), which is a framework that was implemented by ICANN org as a repeatable assessment of registration data accuracy.

Regarding findings of the reports, the ARS found in its Cycle 6 Report (June 2018), for example, that approximately 94 percent of email addresses, 60 percent of telephone numbers, and 99 percent of postal addresses were found to be operable (e.g., accurate such that the email address or phone numbers are operational) for all three contacts (administrative, technical, and registrant), according to the requirements of the 2013 RAA. Results from all the ARS reports can be found on the WHOIS ARS page.<sup>4</sup>

ARS relies on publicly available registration data. Following the implementation of GDPR and the subsequent adoption of the Temporary Specification, ICANN org decided to pause ARS, noting that:

*Further, the legal environment has changed significantly since the WHOIS ARS was launched. While ICANN org could restart WHOIS ARS using public registration data [...], ICANN org could not simply re-launch the WHOIS ARS and require the contracted parties to provide access to non-public registration data to ensure that the ARS is collecting a representative sample of registrations (i.e., not simply domains for which registration data is publicly available).<sup>5</sup>*

<sup>4</sup> <https://whois.icann.org/en/whois-ars-phase-2-reporting>

<sup>5</sup> [ICANN org briefing – Registration Data Accuracy Requirements and the European GDPR](#)

In addition to the information provided by ICANN org in its briefing, it provided the Scoping Team with a further memo “[WHOIS ARS Overview](#)” in January 2022 that provided further information on the background of ARS, including its development and implementation, the impact of GDPR on the ARS, issues related to continuing the ARS, and the potential for a future study of how to measure registration data accuracy.

During ICANN73, the ICANN Board liaison to the Accuracy Scoping Team, Becky Burr, communicated that:

*“In relation to data accuracy, the ICANN Board has requested ICANN org to prepare a number of specific scenarios for which it will consult the EDPB on whether or not ICANN org has a legitimate purpose that is proportionate, i.e., not outweighed by the privacy rights of the individual data subject(s) to request Contracted Parties to provide access to individual records as well as bulk access to registration data in order to review the accuracy of registration data.*

*The ICANN Board is of the view that this clarification will further inform discussions on this topic and will be helpful to address the issue of accuracy, as ICANN org could take further steps like restart the WHOIS ARS.”*

Most recently, ICANN org [consulted](#) with the Scoping Team on potential scenarios and is currently assessing the data protection impacts of scenarios that may involve the processing of personal data. Furthermore, on 2 June, ICANN org reached out to the European Commission to request its assistance to bring this question to the level of the EDPB (see <https://www.icann.org/en/system/files/correspondence/marby-to-viola-et-al-02jun22-en.pdf>).

## C.2 Gap Analysis

In order to better understand the different perspectives in the group, the Scoping Team commenced a [gap analysis](#) in which each group was asked to provide input on the following questions:

1. What is from your perspective the current goal that the existing accuracy requirements and enforcement are trying to meet?
2. How & by whom is it or can it be measured whether these goals are met?
3. Are there any goals that have been overlooked? If yes, please explain what additional goals should be considered in the context of accuracy requirements and why (what problem(s)/need(s) are these goals expected to address?
4. How and by whom have these problem(s) / need(s) been documented or how and by whom should it be documented?

## C.2.1 Current Goals

In relation to current goals that current accuracy requirements are trying to meet, the following goals were derived from the EPDP Phase 1 Purposes for processing registration data”:

- Ability to assign a domain to the registrant;
- Ability to establish communication with the registrant; and
- Contribute to the maintenance of the security, stability and resiliency of the DNS.

Several members also pointed to the need to ensure that the purpose of accuracy requirements be consistent with the purposes for processing registration data as identified in the EPDP Phase 1. The reason for that is that all processing of personal data must be based on a legitimate purpose and a legal basis, which is why the goals of this exercise must not go beyond the purposes defined in the EPDP .

As part of the gap analysis, the Scoping Team also considered whether any goals are overlooked and what problems these goals are expected to address. The Scoping Team expects to give this input further consideration as part of its work on assignments #3 and #4, informed by data that is expected to be gathered as outlined below.

## C.2.2 Measurement of whether current goals are met

Following the identification of current goals, the group focused its attention on how and by whom it can be measured whether these goals are met, especially considering the current limitations with ARS, as identified above. The Scoping Team [analyzed](#) the different proposals that were put forward and based on that analysis it would like to put forward for implementation.

### C.2.2.1 Proposals not requiring access to registration data

The Scoping Team considered, amongst others, the possibility of conducting a Registrar Survey, requesting a Compliance Audit, and further analyzing accuracy complaints received by ICANN Compliance. For each of these proposals, the Scoping Team considered the practical implementation, underlying objective, and if the expected/resulting information could potentially help to inform assignments #3 and #4. Based on this analysis, the Scoping Team recommends the following.

#### **Scoping Team Recommendation #1**

The Scoping Team recommends that the GNSO Council requests ICANN org to carry out a Registrar Survey as outlined in Annex D to this document. As part of this request, the

GNSO Council should first obtain further information about the ICANN org resources that are expected to be needed to carry out this survey as well as the likely time frame for doing so. Informed by that input, the GNSO Council should then determine whether to move forward with this request. If the Council decides to proceed with the Registrar Survey, ICANN org is expected to consult with the Scoping Team on the development and roll-out of the survey. If/when data from the Registrar Survey is available, the Scoping Team should convene to analyze this information to determine whether, based on the data gathered, work could commence on assignment #3 and #4.

### **Scoping Team Recommendation #2**

The Scoping Team recommends that further work is undertaken by the Scoping Team in collaboration with ICANN org to explore the option of conducting a Registrar Audit<sup>6</sup>. As part of this further work, the Scoping Team will further explore with ICANN org what type of testing could be included in such an audit with the aim of better understanding the strengths, weaknesses, and areas of opportunity in procedures for determining the accuracy of registration data. The Scoping Team appreciates that a careful analysis will need to be performed to ensure that such testing would not violate any agreements or laws, and that it would not unfairly scrutinize certain registrars over others. This analysis will factor in the preparatory work that the Scoping Team has already undertaken on this topic which has been documented [here](#). The Scoping Team would share the conclusion of this further work with the GNSO Council for its review and approval.

At this stage, the Scoping Team has not identified sufficient benefits of moving forward with any of the other proposals that do not require access to registration data, but it reserves the right to reconsider these proposals at a later stage.

### **C.2.2.2 Proposals requiring access to registration data**

The Scoping Team also identified several proposals that would require access to registration data, such as a restart of ARS. It agreed, however, to pause consideration of these proposals in light of the outreach that the ICANN Board has requested ICANN org to undertake to the European Data Protection Board (EDPB) to consult “on whether or not ICANN org has a legitimate purpose that is proportionate, i.e., not outweighed by the privacy rights of the individual data subject(s) to request Contracted Parties to provide access to individual records as well as bulk access to registration data in order to review the accuracy of registration data”. Most recently, ICANN org consulted with the Scoping Team on this proposed outreach (see <https://mm.icann.org/pipermail/gnso-accuracy-st/2022-May/000444.html>). It is understood that any feedback from the EDPB

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<sup>6</sup> As some had suggested using synthetic data for an audit or third party testing, for the record, ICANN Compliance confirmed to the Scoping Team that it will not submit, directly or through a third party, deliberately false registration data to registrars either as part of an audit or any other enforcement measure.



may require months to be received, but the Scoping Team considers this feedback key to determine whether any of the proposals that require access to registration data are viable and should be further considered.

### **Scoping Team Recommendation #3**

The Scoping Team recommends that the GNSO Council pause the work of the Scoping Team in relation to proposals that require access to registration data until such time when it is sufficiently clear whether proposals that require access to registration data are a viable path to assess the current state of accuracy.

The Scoping Team further recommends that the GNSO Council requests ICANN org to proceed with their outreach to the EDPB as a matter of urgency and provide regular updates and consultation on the status of this outreach.

The Scoping Team recommends that the GNSO Council requests ICANN Org proceed with a Data Protection Impact Assessment in connection with the scenario(s) in which the request and processing of registration data takes place.

The Scoping Team recommends that the GNSO Council specifically calls out the importance of finalizing the Data Processing Agreement between ICANN and the Contracted Parties.

## D. Assignment #3 - Effectiveness

3. *Effectiveness: The Scoping Team will, on the basis of its assessment under 1. and data resulting from 2., undertake an analysis of the accuracy levels measured to assess whether the contractual data accuracy obligations are effective at ensuring that Registered Name Holders provide “accurate and reliable” contact information.*

### D.1 Information Reviewed

[Not commenced]

## E. Assignment #4 – Impact and Improvements

4. *Impact and Improvements: Based on its findings under 3., the Scoping Team will (taking into account estimates of benefits and costs) assess whether any changes are recommended to improve accuracy levels, and if so, recommend to the GNSO Council how and by whom these changes would need to be developed (for example, if changes to existing contractual requirements are recommended, a PDP or contractual negotiations may be necessary to effect a change).*

### E.1 Information Reviewed

[Not commenced]

## F. Conclusions / Recommendations

[This section will be updated once work on all assignments has been completed]

## Annex A - Council Instructions

As *adopted* by the GNSO Council on 22 July 2021

### Registration Data Accuracy Scoping Team – Formation and Instructions

The topic of registration data accuracy is not new; it is provided for in ICANN’s contracts and has been the subject of many community discussions and work streams over the years. Following its [agreement](#) to start a more holistic effort, the GNSO Council received the [ICANN org Briefing](#) and held further discussions on the topic of registration data accuracy. The Council has now developed these instructions to guide the formation and work of a Registration Data Accuracy Scoping Team.

### Background

Two recent documents inform the Scoping Team’s remit:

- The proposal adopted by the GNSO Council (see [here](#)):
  - recommends the Scoping Team addresses the effects of GDPR on Registration Data accuracy requirements and the Whois Accuracy Reporting System (ARS)<sup>7</sup>, stating, “a scoping team would be tasked to, ‘facilitate community understanding of the issue; assist in scoping and defining the issue; gather support for the request of an Issue Report, and/or; serve as a means to gather additional data and/or information before a request [for an Issue Report] is submitted,’”
  - suggests that it “...may also consider reaching out to ICANN org to better understand the impact, if any, on ARS and enforcing existing accuracy requirements.”
- The [ICANN Org Briefing](#), which provides an overview of existing accuracy requirements and programs, as well as the impact that GDPR has had on these. It furthermore advises that:
  - the Scoping Team views the question of measuring registration data accuracy in light of ongoing higher-level conversations on accuracy,
  - the discussion of accuracy measurement should not be solely focused on the ARS but should encompass the wider range of issues related to the GDPR and data protection, and
  - it may be beneficial to commission a study on how accuracy of registration data might be measured.

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<sup>7</sup> ARS is “a framework for conducting repeatable assessments of WHOIS accuracy, publicly report the findings, and provide data to the ICANN Contractual Compliance team to follow up on potentially inaccurate records with registrars”. For further information, see <https://whois.icann.org/en/whoisars>.

### Effects of GDPR on existing accuracy requirements and ARS

While privacy legislation might have an impact on what data can be published to third parties, it does not impact the obligation for Registrars and Registries to collect accurate information, i.e., contracted parties must adhere to the law and their contractual requirements.

However, the [ICANN org briefing](#) does indicate the effects of GDPR on various efforts:

- Existing Whois accuracy policies are marginally affected,
- Contractual compliance is minimally affected,
- Whois ARS is paused, because it cannot obtain the data necessary to perform its function.

Similarly, in response to the GAC's ICANN70 Communique, the Board's [scorecard](#) highlighted the fact that redaction of registration data has diminished ICANN Contractual Compliance's ability to check compliance and the unavailability of some public contact information in RDDS has hampered ICANN org's ability to continue with the original framework for the ARS. The Board noted:

"This context is important to factor in when discussing ICANN policies concerning accuracy as in practice it might be difficult to implement such policies due to the restrictions on access to registration data as a result of the GDPR".

In order to carry out the objectives laid out in the proposal adopted by the GNSO Council and the ICANN org Briefing, one aspect of the Scoping Team's work will be to consider whether and how an accuracy measurement program (including ARS or its successor / replacement) can be effectively implemented to gather necessary data and facts and assess the state of accuracy and what, if any, improvements to existing requirements or programs need to be further considered.

### The Charge to the Scoping Team

1. Enforcement and reporting: The Scoping Team will assess the measures, including proactive measures, used by ICANN Compliance to monitor, measure, enforce and report on the accuracy obligations as specified in the Registry Agreements (RAs) and Registrar Accreditation Agreement (RAA). This assessment will include consideration of what compliance with the existing contractual data accuracy obligations means. The Scoping Team shall, with reference to the resources that will be included in the index of relevant resources cited below, consider whether there is an agreed definition of registration data accuracy and, if not, consider what working definitions should be used in the context of the Scoping Team's deliberations. Particular attention should be given to the definition that ICANN Compliance employs for "accuracy" in ICANN's contracts. Note, this does not preclude any subsequent effort from formalising the definition(s) that should be applied in the context of any existing and/or new accuracy requirements that may be developed.
2. Measurement of accuracy: The Scoping Team is expected to provide recommendations for how accuracy levels can be determined and measured, including, but not limited to, whether the WHOIS ARS needs a revamp to make it fit for purpose or whether there are other ways in which accuracy levels can/should be measured. The information and data resulting from these recommendations are expected to help inform the Scoping Team's work under 3.

3. Effectiveness: The Scoping Team will, on the basis of its assessment under 1. and data resulting from 2., undertake an analysis of the accuracy levels measured to assess whether the contractual data accuracy obligations are effective at ensuring that Registered Name Holders provide “accurate and reliable” contact information.
4. Impact and Improvements: Based on its findings under 3., the Scoping Team will (taking into account estimates of benefits and costs) assess whether any changes are recommended to improve accuracy levels, and if so, recommend to the GNSO Council how and by whom these changes would need to be developed (for example, if changes to existing contractual requirements are recommended, a PDP or contractual negotiations may be necessary to effect a change).

For clarity, it is the expectation that the Scoping Team will first address items 1 and 2 and only once those are completed it will commence work on items 3 and 4. Any recommendations stemming from 1-4 will need to be approved by the GNSO Council before these are directed to the appropriate parties for action.

In carrying out its work above, the Scoping Team is expected to take into account the policy recommendations from the EPDP on gTLD Registration Data (EPDP) Team that have been adopted by the GNSO Council and the ICANN Board, including the EPDP-identified purposes and the related data processing activities. However, the scoping team is not tasked to review these purposes or suggest changes. If the scoping team finds that further review of these purposes is necessary, especially in the context of implementation and enforcement of existing requirements, it will identify this as an area of further work in its recommendations.

As the Scoping Team deliberates these issues, it might find the need to spin-up a group with an alternative skill set or commission a study. If so, the Scoping Team is expected to consult with the GNSO Council, especially if there are resource implications, such as funding needs, that will need to go through the appropriate approval processes before these can be implemented.

### **Resources**

The Staff Support Team will create an index of relevant resources, including studies, reports and recommendations from SSR2, ATRT, CCT RT, RDS RT, WHOIS RT, the GAC Principles Regarding gTLD WHOIS Services, the ICANN org briefing paper and the Bird & Bird advisory memoranda, that the Scoping Team can consult, as necessary. This is not intended to be an exhaustive index, Scoping Team members will be encouraged to add any sources that they deem relevant.

### **Scoping team composition**

The Scoping Team will be based on a set representation from each Supporting Organization, Constituency, Stakeholder Group and Advisory Committee that is interested to participate. The work described above requires a breadth of experience, skill sets and talents. Representatives will possess a mix of quantitative skills, experience, privacy legislation acumen, data quality expertise, ICANN contract knowledge, and policy perspectives.

Preliminarily, each interested Supporting Organization, Constituency, Stakeholder Group and Advisory Committee can assign up to two members to this effort, with the exception of the Registrar and Registry Stakeholder Group which may each appoint up to three members who are expected to reflect the different business models that are impacted by accuracy requirements due to their different relationships with end-users (namely, wholesale, corporate and retail for registrars and open, restricted and brand for registries). However, the Council or

the Scoping Team might decide to augment the Team. Examples might be to obtain a breadth of experience complying with ICANN contract provisions across different jurisdictions, or in governmental legislative implementation. The Team might also call upon experts as needed but in a way that will not disturb the consensus determination methods of the Team.

In addition, both ICANN org and the ICANN Board will be invited to appoint a liaison to this effort.

The GNSO Council will appoint a qualified Chair for the Scoping Team. The Scoping Team, once formed, may select a Vice Chair to assist the Chair.

### **Timing and Timeline**

The Scoping Team will be timed to start work after the completion of the Registration Data EPDP Phase 2A work (currently target for delivery of Final Report: end of August 2021). There is a sense of urgency in some ACs/Cs to start and complete this work, and so staff and Council leadership planning activities (including the survey of existing resources described above) can start immediately and the call for volunteers can be launched so that waiting for the EPDP Phase 2A's Final Report will have little or no effect on the timeline.

An early Scoping Team task will be to develop a detailed work plan and timeline which are to be submitted to the Council for review. The work plan and timeline are expected to address the different assignments (see 1-4 above) although it is understood that for the later assignments it may not be possible to provide specific details until earlier assignments are complete or underway. There might be efficiencies and overlap across tasks so that the work can be completed in a year, recognizing that if any study needs to take place, this timeline may be extended.



## Annex B – Membership and Attendance

The Scoping Team held its first meeting in October 2021. Recordings and transcripts of the group’s discussions can be found on its [wiki space](#). It has conducted its work primarily through weekly conference calls, in addition to email exchanges on its mailing list.

As instructed by the GNSO Council, the Working Group prepared a [work plan](#), which it reviewed on a regular basis. The Working Group Chair and the GNSO Council Liaison to the Working Group also provided regular reports to the GNSO Council regarding the status and progress of the group’s work. Details of the project schedule, attendance and action items can be found in the monthly project packages.

The Working Group email archives can be found at:

<https://mm.icann.org/pipermail/gns0-accuracy-st/>

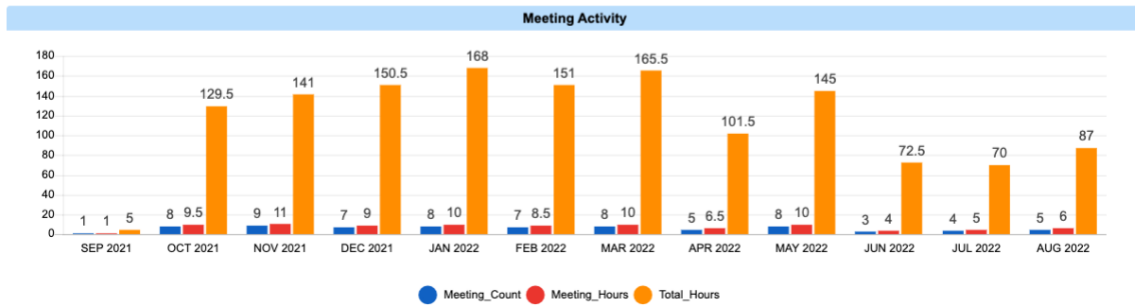
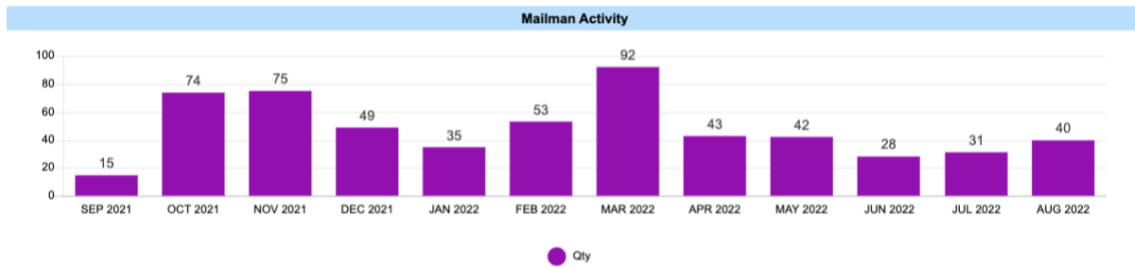
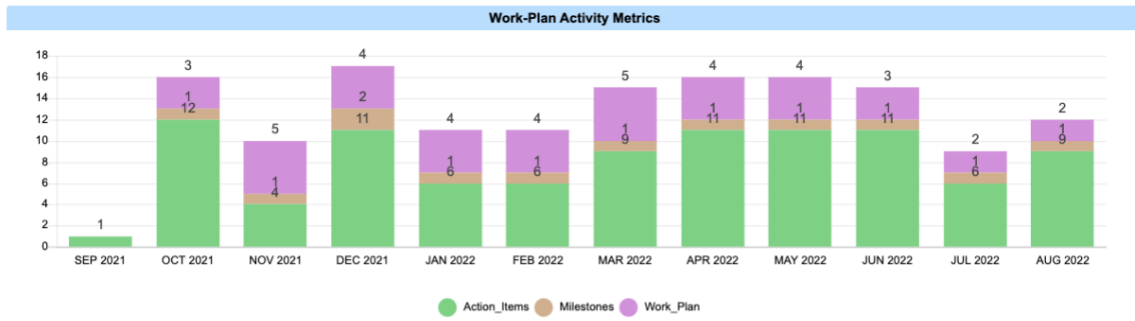
### **Plenary Meetings:**

- 36 Plenary calls (w/ 1 cancelled) for 54.5 call hours for a total of 1196.0 person hours
- 1 Face to Face at ICANN74
- 75.6% total participation rate

### **Leadership Meetings:**

- 36 Leadership calls (w/1 cancelled) for 36.0 call hours for a total of 192.0 person hours

Scoping Team Activity Metrics:



The Members of the Scoping Team are:

Represented Group / Full Name	SOI	Start Date	Depart Date	Attended %	Role
<b>At-Large Advisory Committee (ALAC)</b>				<b>94.6%</b>	
Alan Greenberg	<a href="#">SOI</a>	9/23/2021		94.6%	
<b>Commercial Business Users Constituency (BC)</b>				<b>59.7%</b>	
Mason Cole	<a href="#">SOI</a>	8/10/2022		100.0%	
Oluwatoba Obaniyi	<a href="#">SOI</a>	8/5/2021		37.8%	
Susan Kawaguchi	<a href="#">SOI</a>	8/4/2021	7/13/2022	81.8%	
<b>GNSO Council</b>				<b>92.8%</b>	
Michael Palage	<a href="#">SOI</a>	9/23/2021		100.0%	Chair
Olga Cavalli	<a href="#">SOI</a>	11/3/2021		84.4%	Liaison
<b>Governmental Advisory Committee (GAC)</b>				<b>53.3%</b>	
Kenneth Merrill	<a href="#">SOI</a>	12/15/2021		96.3%	
Melina Asimina Stroungi	<a href="#">SOI</a>	9/13/2021		60.0%	
Ryan Carroll	<a href="#">SOI</a>	9/15/2021	4/1/2022	65.2%	
Velimira Nemiguentcheva-Grau	<a href="#">SOI</a>	9/2/2021		5.7%	
<b>ICANN Board</b>				<b>69.0%</b>	
Becky Burr	<a href="#">SOI</a>	11/18/2021		69.0%	Liaison
<b>Intellectual Property Constituency (IPC)</b>				<b>61.1%</b>	
Lori Schulman	<a href="#">SOI</a>	9/2/2021		63.9%	
Scott R Austin	<a href="#">SOI</a>	9/2/2021		58.3%	
<b>Internet Corporation for Assigned Names &amp; Numbers (ICANN)</b>				<b>89.2%</b>	
Brian Gutterman	<a href="#">SOI</a>	8/27/2021		89.2%	Liaison
<b>Internet Service Providers and Connectivity Providers Constituency (ISPCP)</b>				<b>71.9%</b>	
Thomas Rickert	<a href="#">SOI</a>	11/4/2021		71.9%	
<b>Non-Commercial Stakeholder Group (NCSG)</b>				<b>82.9%</b>	
Manju Chen	<a href="#">SOI</a>	9/24/2021		88.6%	
Stephanie Perrin	<a href="#">SOI</a>	9/24/2021		77.1%	
<b>Registrar Stakeholder Group (RrSG)</b>				<b>88.3%</b>	
Roger Carney	<a href="#">SOI</a>	8/25/2021		91.9%	
Sarah Wyld	<a href="#">SOI</a>	8/25/2021		86.5%	
Volker Greimann	<a href="#">SOI</a>	8/26/2021		86.5%	
<b>Registry Stakeholder Group (RySG)</b>				<b>87.4%</b>	
Beth Bacon	<a href="#">SOI</a>	8/25/2021		83.8%	
Marc Anderson	<a href="#">SOI</a>	8/30/2021		91.9%	
Sophie Alice Hey	<a href="#">SOI</a>	8/25/2021		86.5%	
<b>Security and Stability Advisory Committee (SSAC)</b>				<b>66.7%</b>	
Jeff Bedser	<a href="#">SOI</a>	8/25/2021	12/13/2021	35.3%	
Steve Crocker	<a href="#">SOI</a>	8/25/2021		81.1%	
<b>Grand Total:</b>				<b>75.6%</b>	

The Alternates of the Scoping Team are:

Represented Group / Full Name	SOI	Start Date	Depart Date	Attended %	Role
<b>Governmental Advisory Committee (GAC)</b>				<b>87.5%</b>	
Christopher Lewis-Evans	<a href="#">SOI</a>	7/21/2022		100.0%	
Laureen Kapin	<a href="#">SOI</a>	4/26/2022		85.7%	
Susan Chalmers	<a href="#">SOI</a>	7/21/2022			
<b>ICANN Board</b>				<b>100.0%</b>	
Harald Alvestrand	<a href="#">SOI</a>	12/8/2021		100.0%	
<b>Registrar Stakeholder Group (RrSG)</b>				<b>84.6%</b>	
Owen Smigelski	<a href="#">SOI</a>	10/5/2021		84.6%	
<b>Registry Stakeholder Group (RySG)</b>				<b>100.0%</b>	
Alan Woods	<a href="#">SOI</a>	3/14/2022		100.0%	
<b>Grand Total:</b>				<b>90.9%</b>	

The Support Staff of the Scoping Team are:

Represented Group / Full Name	SOI	Start Date	Depart Date	Attended %	Role
<b>Internet Corporation for Assigned Names &amp; Numbers (ICANN)</b>					
Berry Cobb	-	7/22/2021			PM
Caitlin Tubergen	-	7/22/2021			
Chantelle Doerksen	-	7/21/2022			
Devan Reed	-	11/18/2021			
Julie Bisland	-	7/22/2021			
Marika Konings	-	7/22/2021			Lead
Nathalie Peregrine	-	7/22/2021			
Terri Agnew	-	7/22/2021			

The Observer – Email Only of the Scoping Team are:

Represented Group / Full Name	SOI	Start Date	Depart Date	Attended %	Role
<b>Governmental Advisory Committee (GAC)</b>					
Gabriel Andrews		4/11/2022			
Rosalind KennyBirch		8/22/2022			
<b>Registrar Stakeholder Group (RrSG)</b>					
Matt Serlin		10/5/2021			
Pam Little		11/25/2021			
Zoe Bonython		10/5/2021			
<b>Registry Stakeholder Group (RySG)</b>					
Amr Elsadr	<a href="#">SOI</a>	11/23/2021			
Cyntiana Germain		6/7/2022			
Rebecca Shields		6/23/2022			

## Annex C - ICANN Compliance Questions & Responses

Links (content reproduced below):

- [For Scoping Team Final Org Responses to Data Accuracy Scoping Team Questions.pdf](#)
- [1\\_19\\_22\\_Org\\_Answers\\_to\\_Follow-up\\_Questions\\_from\\_Data\\_Accuracy\\_Scoping\\_Team.pdf](#)
- [Final ICANN Org Compliance Responses to Accuracy Scoping Team Questions April 22'.pdf](#)

Also (content not reproduced below)

- [ICANN Org Memo - WHOIS ARS Overview - January 2022.pdf](#)

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Dear ICANN org colleagues,

Please find below the follow up questions that the Registration Data Accuracy Scoping Team has following its review of the following materials, amongst others:

- Registration Data Accuracy Requirements and the General Data Protection Regulation (GDPR)(ICANN org briefing doc)
- Enforcement of Registration Data Accuracy Obligations Before and After GDPR (Blog post by Jamie Hedlund, ICANN org)
- ICANN Organization Enforcement of Registration Data Accuracy Obligations Before and After GDPR
- ICANN org responses to RDS-WHOIS2 RT questions related to accuracy (see also compilation)

As the team continues its deliberations, further questions may arise, but we hope that with the list below we have identified the most pertinent ones.

Best regards,

Michael Palage

Chair, Registration Data Accuracy Scoping Team

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Compliance staff training

1. How are ICANN staff members trained on assessing accuracy complaints? Are there guidelines for review? How is the quality of review assessed?

ICANN Contractual Compliance (Compliance) has a robust training program to ensure all team members that are responsible for processing complaints related to accuracy are familiar with the contractual obligations under the Registrar Accreditation Agreement (RAA) and the Whois Accuracy Program Specification in the RAA (Specification). Compliance has designated Subject Matter Experts (SME) related to accuracy requirements and an assigned Lead to train staff and oversee the processing of complaints and contracted party cases. Compliance's enforcement actions and training are guided by the contractual requirements within the RAA, Registry

Agreements, and ICANN policies. In addition to reliance on the related contractual requirements within these agreements and policies, Compliance utilizes a hands-on approach to training. To independently process complaints and cases in this area, team members must demonstrate an understanding of the Registration Data Directory Service (RDDS), requirements relating to both display and accuracy of Registration Data (including modifications under the Temporary Specification for gTLD Registration Data), as well as the ability to identify valid complaints and registrar compliance. Accuracy SMEs and the Lead perform regular quality assurance reviews of cases.

#### Accuracy Complaints

2. Previously Whois accuracy complaints were presumably mainly the result of publicly available registration data, but what kind of complaints is Compliance seeing now?

ICANN Contractual Compliance receives a variety of complaints related to the accuracy of Registration Data, including but not limited to complaints concerning:

A. Accuracy of Registration Data that is available in the public Registration Data Directory Services (RDDS), i.e. not redacted (examples include where registrar is not required to apply redactions under Appendix A, Section 2.1 of the Temporary Specification for gTLD Registration Data (Temporary Specification) and does not apply Appendix A, Section 3; registrar applies redaction but is required to display Registration Data based on Consent of the data subject, or full Registration Data is displayed where the domain is registered using a privacy or proxy service).

B. Accuracy of the Registrant, Admin, and/or Tech Email value(s), which are redacted pursuant to Appendix A, Section 2.5 of the Temporary Specification but the displayed email or web form does not facilitate communication with the relevant contact.

C. Accuracy of the underlying Registration Data that is redacted in the RDDS, and the reporter has provided evidence of having obtained the data from the registrar, or another reliable source such as the registrant.

3. What is the main cause for complaints being rejected by ICANN Compliance instead of being passed on to registrars?

Complaints received by ICANN Contractual Compliance that are not passed on to registrars are generally closed as out of scope of the contractual requirements under the Registrar Accreditation Agreement (RAA) and ICANN Policies. The majority of these are closed because: 1) the reporter did not provide evidence sufficient to support a claim that the Registration Data is inaccurate and ICANN was unable to independently confirm an inaccuracy in the public Registration Data; or 2) the reporter did not understand that the Registration Data is redacted pursuant to the Temporary Specification for gTLD Registration Data, i.e. the reporter believed that Registration Data was missing. Additional examples of out of scope complaints include those referring to ccTLDs, registrants contacting ICANN to update Registration Data, and complaints about Registrant Data of a valid privacy or proxy service provider (i.e. reporter believed the registrar must display the privacy/proxy service customer's own personal data in the RDDS, rather than data pertaining to the privacy or proxy service provider).

4. To what extent will ICANN Contractual Compliance respond to complaints that a registrant is using contact information that does not belong to them. That is, although the information is

syntactically correct, the complainant claims that it is not being legitimately used by the registrant. This is particularly relevant to registrations associated with legal entities (the classic example is Facebook) but is not limited to them.

ICANN Contractual Compliance (Compliance) enforces contractual requirements on the contracted parties, not registrants. Registrants do not have agreements with ICANN. Compliance requires that all complaints concerning inaccurate Registration Data be supported by information or evidence of the alleged inaccuracy, including those involving a registrant that is "using contact information that does not belong to them". If a reporter provides the requisite supporting information or evidence, ICANN will initiate a notice or inquiry with a registrar. Examples of these types of complaints include: 1) complaint from a Privacy or Proxy (P/P) Service Provider that alleges that the registration is not registered using its service, but the information in the Registration Data Directory Service displays the P/P Service Provider's contact information without authorization; 2) complaint from a representative of a legal person that alleges the registration is using the entity's contact information without authorization.

5. In past meetings, ICANN Compliance has stated in the past that complaints are "usually" from the Registrant. Does ICANN provide any metrics on the Data Inaccuracy complaints from Registrants/Registered Name Holders and third parties? If so can ICANN Compliance provide those numbers.

Transition to the Naming Services portal (NSp) on 29 August 2020 provided ICANN Contractual Compliance greater functionality and improved data-capturing functionalities, including the ability to collect data concerning reporter type, including: Registrant-Former; Registrant-Current; Law Enforcement Authorities, Consumer Protection, Government or Data Protection Agency; Intellectual Property Lawyer/Brand Protection; Authorized Representative; Information Security Researcher; and Other. Note that the reporter type refers to the capacity in which the reporter submitted the complaint, which is selected by the reporter at the time of submission and is not determined by ICANN Contractual Compliance.

From December 2020 through November 2021, ICANN received the following complaints related to Registration Data Inaccuracy:

Reporter Type	Total
Authorized Representative	33
Information Security Researcher	78
ICANN Compliance	15
IP Lawyer/Brand Protection	135
LEA, Consumer Protection, Government or Data Protection Agency	10
Non-Governmental Organization	0
Other	860
Registrant - Current	107
Registrant - Former	56
Registrar	4
Reseller	2
UDRP/URS - Complainant	3
UDRP/URS - Provider	4
UDRP/URS - Respondent	1
<b>Total</b>	<b>1,308</b>

Additionally, while ICANN Contractual Compliance lacks the context of the statement referenced above that "complaints are 'usually' from the Registrant", it is believed that this may be in reference to other complaint types that involve contractual obligations directly impacting

registrant rights with respect to the domain name registration, such as domain renewal and/or transfer. With respect to complaints concerning inaccurate Registration Data specifically, as reflected above, third-party complainants submit the majority of complaints.

6. Regarding ICANNs relationship with alternative dispute resolution providers, in WIPO UDRP Proceeding D2021-1050, the Panelist detailed multiple “inaccurate disclosures” regarding the registrant of the domain name in question and other “misconduct by the Respondent and by the Registrar.” The Panelist further wrote that “[t]his is an issue that the Panel believes should be addressed by ICANN, and the Panel requests that the Center share this decision with ICANN so that ICANN may consider whether to impose restrictions on such behavior by registrars.

a. Can ICANN confirm if WIPO ever contacted ICANN compliance in connection with this dispute and what if any actions did ICANN Compliance take?

b. Does ICANN Compliance have a formal reporting channel for UDRP and URS providers to share information with ICANN compliance regarding false or inaccurate Registrant data?

ICANN confirms that the issue referenced in this question has been reported to ICANN and that ICANN org is in the process of reviewing it. However, please note that ICANN’s scope in regard to this issue is limited to enforcement of current agreements and consensus policies.

Further, details regarding compliance complaints processed through ICANN Contractual Compliance’s informal resolution process are considered confidential.

With regard to the ability for UDRP and URS providers to report inaccurate Registrant data, they may do so through the channels that have always been available to the UDRP and URS providers, which are the publicly facing complaint forms available here:

<https://www.icann.org/compliance/complaint>. Complaint submissions through these forms allow ICANN Contractual Compliance to track, monitor, and respond to complaints which contribute to metrics and reporting.

7. “Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate or suspend the Registered Name Holder's Registered Name or place such registration on clientHold and clientTransferProhibited, until such time as Registrar has validated the information provided by the Registered Name Holder”. (RAA Whois Accuracy Program Specification)

In receipt of an inaccuracy complaint does ICANN compliance track the actual days it takes for the registrant to become compliant? Is this reported by the registrar? How many domain names are terminated vs suspended?

ICANN Contractual Compliance ensures that registrars fulfill the requirements in their agreements with ICANN org. As there is no requirement for registrars to maintain records concerning the number of days a registrant takes to correct reported inaccuracies (where applicable), or provide such records to ICANN, ICANN Contractual Compliance does not collect or monitor this metric.

While ICANN Contractual Compliance does not separately track closures relating to termination vs suspension, it notes that termination of a registered name occurs infrequently and generally



applies where the registrar determines the inaccuracy constitutes a breach of its registration agreement (for example, willful failure to provide accurate information). The number of complaints closed as suspended vs. updated is published on the monthly dashboard available [here](#).

8. “However if the complaint is about identity (e.g., the registrant is not who they say they are), Contractual Compliance may ask the registrar to provide further information concerning their findings and the results of their investigation specific to the facts of the complaint”. (Blog post “ICANN Organization Enforcement of Registration Data Accuracy Obligations Before and After GDPR”)

When a registrar provides further information concerning their findings does ICANN compliance track this information and look for trends of abuse?

ICANN Contractual Compliance does not track individual details of registrar responses to each complaint. However, it attempts to identify patterns and systemic issues of noncompliance within and across all of the complaint types. This effort is useful in identifying trends of issues and most importantly in identifying opportunities to conduct outreach or additional proactive monitoring.

9. Not all inaccuracy complaints are sent to ICANN compliance many registrars suggest reporting inaccuracy complaints directly to the registrar. Are there any stats on domain names suspended as a result of inaccuracy complaints that were made directly to the registrar that are requested in an audit of the registrar by ICANN compliance?

The ICANN Contractual Compliance Audit Program has not requested statistics on domain names that are suspended as a result of inaccuracy complaints made directly to the registrar and without involving ICANN. The Registrar Accreditation Agreement does not require registrars to report this information to ICANN.

Verification and Validation

10. How does ICANN define and differentiate between existing verification and validation requirements?

Verification and validation requirements are set forth in the Whois Accuracy Program Specification (Specification). Verification is the process by which a registrar confirms or corrects the accuracy of Registration Data by contacting and receiving an affirmative response from the Registered Name Holder (RNH) in the manner prescribed by the Specification.

Validation is the process by which a registrar ensures that the presence and format of Registration Data for all required fields is consistent with applicable standards.

Validation

11. What criteria does ICANN Compliance use to evaluate compliance with validation requirements?

Registrars are required to provide ICANN Contractual Compliance with both the results of their validation and the method used for validation. Examples of methods of standard formats include RFC 5322 for email addresses, ITU-T E.164 notation for the format of international telephone numbers and for the format of postal addresses the UPU Postal addressing format

templates, the S42 address templates (as they may be updated) or other standard formats for the applicable territory.

ICANN Contractual Compliance may evaluate the Registration Data in accordance with the standard format confirmed by the registrar.

12. What are the validation requirements for \*each\* of the data elements required to be collected by the registrar? If possible, use the four level scale of V0, V1, V2, V3.

V0 = No validation required.

V1 = Syntactic validation

V2 = Operational validation

V3 = Identity validation

In accordance with the Whois Accuracy Program Specification (Specification), Sections 1(a) through 1(d), registrars are required to perform syntactic validation (V1) as follows:

- Values are present for all fields required under the RAA for the applicable country or territory
- Registrant/Admin/Tech/Other Email are in the proper format with RFC 5322s
- Registrant/Admin/Tech/Other Phone and Fax are in the proper format according to the ITU-T E.164 notation for international telephone numbers
- Registrant/Admin/Tech/Other Street, City, State/Province, Postal Code, and Country are in the proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats

In accordance with Section 1(f) of the Specification, registrars must verify the email address OR the telephone (V2 - operational validation). Please see responses below for further details concerning verification requirements and enforcement.

13. Are registries and/or registrars permitted to perform or impose a higher level of validation?

Yes, provided that the validation is performed in compliance with applicable laws, regulations, and ICANN agreements and policies.

14. Are registrars required to provide the validation level along with the data element in their responses to ICANN Compliance or third party requestors, either as part of the response or in their documentation?

Please see responses to questions 11 and 12 above. The RAA does not require registrars to provide the "validation level" along with the data element in their responses to ICANN Compliance or third-party requestors.

Verification

15. "Whois-related complaints that are processed by ICANN as a "data format" issues (as opposed to "data accuracy" issues) do not invoke an obligation for the registrar to validate or verify Whois information. Examples of "data format" issues include a missing country code for a telephone number (as long as the number otherwise contains the proper number of digits for

that country) or an email address that is written with "(at)" instead of "@"." In such cases, the registrar is required to correct the data formatting issue but is not required to contact the Registered Name Holder to verify the formatting correction" (see Advisory: Clarifications to the 2013 Registrar Accreditation Agreement (RAA) Whois Accuracy Specification) and "For those that remain open, Contractual Compliance initiates an investigation into the registrar's compliance with the contractual requirements explained above, including the obligation to take reasonable steps to investigate the claimed inaccuracy. The "reasonability" of the steps will depend on the type of inaccuracy reported. For example, a report of a nonfunctional email address may only require the registrar to perform email verification to ensure the email is functioning" (see <https://www.icann.org/resources/pages/registration-data-accuracy-obligations-gdpr-2021-06-14-en>)

a. What criteria does ICANN Compliance use to evaluate compliance with verification requirements in addition to those already spelled out above?

Registrars are required to provide ICANN Contractual Compliance with evidence that the verification required by the Registrar Accreditation Agreement (RAA)'s Whois Accuracy Program Specification occurred and the registrar received an affirmative response from the Registered Name Holder (RNH), and Account Holder (AH), if different. Registrars may designate the method used (email or telephone) and manner in which the verification is performed.

ICANN Contractual Compliance notes that the obligation to take reasonable steps to investigate a claimed inaccuracy is not limited to compliance with verification (and validation) requirements and reasserts that taking "reasonable steps to investigate" may require additional actions by the registrar depending on the type of inaccuracy reported.

16. When Contractual Compliance is given access to contact information that is normally redacted, is there an indication of which field(s) have been verified by the Registrar?

ICANN Contractual Compliance is not familiar with registrars providing contact information in a manner that indicates verification by field.

17. The RAA calls for the e-mail address and phone number(s) to be verified within 15 days of (1) the registration of a Registered Name sponsored by Registrar, (2) the transfer of the sponsorship of a Registered Name to Registrar, or (3) any change in the Registered Name Holder with respect to any Registered Name sponsored by Registrar, Registrar will, with respect to both Whois information and the corresponding customer account holder contact information related to such Registered Name. In case 2), if only one of the two verifiable fields has been changed, it is not clear if the Registrar must verify the new one (if the other has previously been verified).

a. What is Contractual Compliance's interpretation of the Registrar requirement? To be specific, if the phone number has previously been verified, and the registrant changes the e-mail address, must it be verified?

This question appears to be related to Section 1 of the Whois Accuracy Program Specification of the Registrar Accreditation Agreement (RAA). For clarity, please note that pursuant to Section 1(f), registrars must verify the email address OR the telephone, but are not required to verify both.

For new registrations transferred in, validation and verification must be performed unless the registrar has already successfully completed the procedures required by Section 1 on the

identical contact information (emphasis added), i.e., any change to the contact information will require re-verification.

Additionally, ICANN Contractual Compliance notes that Paragraph 4 of the “Advisory: Clarifications to the 2013 Registrar Accreditation Agreement (RAA) Whois Accuracy Specification” states the following:

In cases where a registration is transferred to a gaining registrar, and in the course of the transfer, the gaining registrar obtains consent to the transfer via the Form of Authorization from the Registered Name Holder or Account Holder via means that would fulfill the verification requirements of section 1(f)(i) of the Specification, the gaining registrar does not need to repeat the verification process on the contact data if there are no material changes to that contact data.

Further, if the registrant has additional domain names already registered with the gaining registrar and the registrar previously performed verification of the email or the telephone, “re-verification” may not be required.

18. “Within 15 days of the registration or inbound transfer of a domain name, or a change to the registrant information, a registrar must (...) and 2) verify the email address or the telephone number of the registrant and the account holder (if different) by sending a communication and requiring an affirmative response in a manner designated by the registrar (“verification”). If the registrar does not receive an affirmative response from the registrant, it must verify the information manually or suspend the registration until it can verify it.” (see <https://www.icann.org/resources/pages/registration-data-accuracy-obligations-gdpr-2021-06-14-en>).

- a. What process is acceptable to ICANN compliance to verify an email address manually.
- b. Is this method tracked and if so, how many registrations are verified manually?

Manual verification is not defined by the Registrar Accreditation Agreement or the Whois Accuracy Program Specification and the methods used for manual verification may vary by registrar.

For registrations that are the subject of a compliance complaint, ICANN Contractual Compliance does not track information related to the number of cases where the registrar has confirmed that the registration was verified manually. Note that manual verification is rarely reported to ICANN Contractual Compliance.

#### Temporary Specification

19. Under the Temporary Specification, if a request is made to disclose all contact information, and the registrar/registry chooses to accept the disclosure request, is Contractual Compliance of the view that all of the requested contact information MUST be disclosed, or may the registrar/registry release just some of the requested information (ie it may disclose the email address but not the phone number)?

Registrars are required to “provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR.” (emphasis added). ICANN

Contractual Compliance recognizes that there are situations where the provision of “reasonable access” may result in the disclosure of only certain Registration Data elements, the disclosure of all Registration Data elements, or denial of access if the interests of the requestor are overridden by the interests of fundamental rights and freedoms of the data subject.

#### Privacy / Proxy Registrations

20. Neither the Temporary Specification nor the Interim Registration Data Policy modified the RAA requirements for registrars to validate and verify registrant contact information and to investigate claims of inaccuracy.

a. Does ICANN compliance require the underlying contact information of a Proxy/Privacy registration to be validated and verified?

b. If so, are inaccuracy reports treated differently? Is data collected and tracked?

Requirements under the Whois Accuracy Program Specification apply to the validation of fields under Section 3.3.1 of the Registrar Accreditation Agreement and verification of the Registered Name Holder (RNH) and Account Holder (AH), if different. Specifically, Section 1 indicates that the requirements apply to “both Whois information and the corresponding customer account holder contact information.” Validation and verification requirements apply to all gTLD domain name registrations, regardless of whether they are registered using a Privacy or a Proxy (P/P) Service Provider.

Although the requirements focus on Registration Data displayed in the Registration Data Directory Service (RDDS), accuracy requirements concerning underlying customer information for P/P registrations may apply under the Specification in limited circumstances, depending on how the services are set up. For example, if the underlying customer is also the Account Holder, or where the service provides an anonymized email that forwards to the underlying customer email (such that an inaccurate underlying email would result in a bounce-back from the email in the public Registration Data).

ICANN Contractual Compliance (Compliance) also notes that Section 3.7.8 of the Registrar Accreditation Agreement (RAA) requires that upon notification by any person of an inaccuracy in the contact information associated with a Registered Name, registrars must take reasonable steps to investigate that claimed inaccuracy.

Concerning the collection/tracking of data, Compliance understands this question to inquire whether it tracks whether a complaint is regarding Registration Data of a P/P Service Provider or the underlying customer contact information. Noting that contractual obligations with respect to accuracy of Registration Data for domain name registrations utilizing a P/P Service Provider do not differ, ICANN does not track or collect separate metrics.

#### Current interpretation of existing accuracy requirements

21. As part of the accuracy scoping team’s effort to undertake a fact based survey of the current state of accuracy in the ICANN context, registrars proposed the following working definition of accuracy based on current contractual and consensus policy requirements (<https://mm.icann.org/pipermail/gnso-accuracy-st/2021-October/000086.html>):

Accuracy shall be strictly defined as syntactic accuracy of the registration data elements provided by the Registered Name Holder or Account Holder as well as the operational accuracy of either the telephone number or the email address.

To be determined to be syntactically accurate, the contact must satisfy all requirements for validity (see Whois Accuracy Program Specification Sections 1b-d). For example, for email addresses all characters must be permissible, the “@” symbol is required, and there must be characters before the “@” symbol.

To be determined to be operably accurate, the contact must be operable as defined in the Whois Accuracy Program Specification Section f. The RAA currently requires validation of syntactical accuracy and verification of operational accuracy including an affirmative response from the Registered Name Holder for either email or phone.

In proposing this working definition registrars are not suggesting that this is what the definition of accuracy should be, but rather capturing what it currently is to inform the work of the scoping team.

The Council instructions to the scoping team

(<https://community.icann.org/display/AST/2.+Council+Instructions+to+Scoping+Team>) include the following charge:

1. Enforcement and reporting: The Scoping Team will assess the measures, including proactive measures, used by ICANN Compliance to monitor, measure, enforce and report on the accuracy obligations as specified in the Registry Agreements (RAs) and Registrar Accreditation Agreement (RAA). This assessment will include consideration of what compliance with the existing contractual data accuracy obligations means. The Scoping Team shall, with reference to the resources that will be included in the index of relevant resources cited below, consider whether there is an agreed definition of registration data accuracy and, if not, consider what working definitions should be used in the context of the Scoping Team's deliberations. Particular attention should be given to the definition that ICANN Compliance employs for “accuracy” in ICANN's contracts. Note, this does not preclude any subsequent effort from formalising the definition(s) that should be applied in the context of any existing and/or new accuracy requirements that may be developed.

Does ICANN Compliance agree with the working definition proposed by registrars? What definition does ICANN compliance employ for “accuracy” in ICANN's contracts? Given the above instructions from council, the scoping team is attempting to understand ICANN compliance's definition of accuracy, and what compliance with existing contractual data accuracy obligations means to better inform our work.

ICANN Contractual Compliance (Compliance) does not employ its own definition of accuracy, but relies on requirements within the Registrar Accreditation Agreement (RAA) to determine registrar requirements as it pertains to the accuracy of Registration Data.

In addition to validation and verification requirements within Section 1 of the Whois Accuracy Program Specification (Specification), “upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, [Registrar must]

take reasonable steps to investigate that claimed inaccuracy. In the event the Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.” (Section 3.7.8 of the Registration Accreditation Agreement (RAA)).

Further, Section 4 of the Specification requires additional verification procedures if the registrar has any information suggesting that the contact information in Section 1(a) through 1(f) is incorrect. Section 5 of the Specification requires that registrars take additional action to terminate, suspend or place a registration on hold upon the occurrence of a Registered Name Holder’s willful provision of inaccurate or unreliable WHOIS information.

Based on the above, Compliance notes that accuracy requirements are not limited to the “syntactical accuracy” of the Registration Data elements and the operational accuracy of the email or telephone number. Particularly, in instances where the registrar is in possession of any information that suggests that the contact information is inaccurate, or the RNH willfully provided inaccurate or unreliable contact information. For example, the RNH provided Registration Data that passes format validation, but is patently inaccurate (such as Registrant Name: Mickey Mouse; Registrant Postal Address: 1234 Main Street, Disneyland, CA 00000, USA; Registrant Email: mickeymouse@example.com)

#### Registrant vs. Registered Name Holder

22. Is ICANN Compliance or ICANN Legal aware of any instances where any Contracting Party has argued that the terms “registrant” and the “Registered Name Holder” are not equivalent. If so, can ICANN Org summarize this divergent position taken by the contracting party and ICANN Org’s response and how any dispute was resolved.

ICANN Contractual Compliance is aware of at least one instance of a contracted party asserting the position that the terms “Registrant” and “Registered Name Holder” are not equivalent. While the details of compliance cases are confidential, ICANN does not distinguish between the two and considers the terms interchangeable. As an example, the Transfer Policy uses the terms “Prior Registrant”, “New Registrant” and “Registered Name Holder” without distinction. A “Change of Registrant” is a material change of the “Registered Name Holder’s name or organization”, including the contact information.

#### Reasonable and commercially practicable / technically and commercially feasible

23. There are multiple terms in the 2013 RAA referencing “reasonable and commercially practicable”; “commercially reasonable efforts”; and “commercially practical updates”. With regard to this language we have several questions:

a. What standard does ICANN Compliance currently use in determining commercially “practicable” and “reasonable”?

In determining compliance with obligations that require a registrar’s “commercially practicable” and/or “reasonable” efforts or actions, ICANN Contractual Compliance (Compliance) applies the standard of commonly accepted industry practice.

With that in mind, the determination is made on a case-by-case basis, considering factors such as complaint details and substantiation, as well as all evidence and explanation provided by the contracted party while addressing Compliance’s questions during the compliance investigation.

## Examples:

- [Section 3.7.8 of the Registrar Accreditation Agreement (RAA)] The obligation to take reasonable steps to investigate a claimed inaccuracy may require actions that will depend on the type of inaccuracy reported. For example, a reported nonfunctional email address may only require the registrar to perform email verification while a registrar addressing an alleged inaccurate postal address might also request proof of address from the registrant (e.g., copies of utility bills).
- [Section 3.12 of the RAA] The obligation to use commercially reasonable efforts to enforce compliance with the provisions of the registrar-reseller agreement that relate to the provisions of Registrar Services may require actions that will depend on the type of noncompliance that results from a reseller's actions or inactions. For example, to ensure its resellers display mandatory information on their websites, a registrar may implement monitoring processes whereby the registrar periodically looks at its resellers' websites. Meanwhile, to ensure compliance with obligations related, for instance, to the renewal or transfer of domain names, a registrar may include such obligations in its registrar-reseller agreement and attach consequences for contract non-compliance.

In all instances, Compliance will require the registrar to detail the steps taken and will consider whether those steps were reasonable considering the specificities of the complaint at hand and the applicable contractual requirements.

b. Has ICANN Legal provided guidance to ICANN Compliance on how to determine commercially "practicable" and "reasonable"

Legal advice is privileged and confidential.

c. Has this expectation been conveyed to the CPs?

During a compliance investigation, all information/evidence required from the contracted party to demonstrate compliance under the applicable contractual requirements (including those that refer to "reasonable" steps) is conveyed to the relevant contracted party. In addition, ICANN Contractual Compliance addresses any questions the contracted party may have - related to expectations or otherwise - during the processing of each complaint. Further, ICANN Contractual Compliance participates in outreach activities to explain contractual requirements and the contractual compliance process, and produces webinars concerning compliance across different areas.

d. When was the current standard for "practicable" and "reasonable" adopted and what are the mechanisms for modifying this standard?

Each compliance matter is reviewed on a case-by-case basis. This has not changed with time. Rather, the timing of each review and application of the standard explained above will depend on the specific requirement being enforced. For example, application with respect to the "reasonability" pertaining to abuse-related obligations under Section 3.18 of the Registrar Accreditation Agreement (RAA) did not commence until the 2013 RAA became effective, as these obligations were not included in prior RAA versions.

e. If a standard does not exist, does ICANN Org anticipate creating one and when?



See response to 23 (a) and 23 (d) above.

24. Section 1-e of the RAA WHOIS ACCURACY PROGRAM SPECIFICATION states “Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory.

a. To what extent does ICANN understand that this is being done (that is, it is deemed by registrars to be technically and commercially feasible)?

ICANN has not studied the extent to which individual registrars are currently taking steps contemplated in Section 1e of the WHOIS Accuracy Program Specification. This provision is not yet in force-see the RAA Transition Addendum at Section 6: “ICANN and the Registrar Whois Validation Working Group (as defined below) will work together to identify and specify an appropriate set of tools to enable Registrar to complete the across field validation specified in Section 1(e) of the Whois Accuracy Program Specification to the Agreement (the "Across Field Validation"). When such tools are mutually agreed between ICANN and the Registrar Whois Validation Working Group, ICANN shall provide the Registrar written notice of such agreement (which notice shall specify and describe the agreed upon tools). Effective on the one hundred eightieth (180th) calendar day following delivery of such notice by ICANN, Registrar shall comply with the obligations specified in Section 1(e) of the Whois Accuracy Program. Until such time, ICANN will not enforce compliance with such obligations.

ICANN is currently in the process of updating the community on status of Across-Field Address Validation (AFAV) implementation efforts. Information and updates to the community will be provided in the near future.

b.If it is not done, how is this contract clause enforced or what other processes are in place to ensure compliance?

See response to (a) above. This provision is not yet in force.

#### Accuracy Reporting System (ARS)

25. When the ARS was suspended because under the Temporary Specification the ARS could no longer effectively be carried out exactly as it had before, did the ICANN make any effort to see if the ARS could continue with a modified procedure (such as requesting the contact information from registrars)?

ICANN org made the decision to pause further ARS reports following the GDPR being implemented and subsequent adoption of the Temporary Specification. Additionally, inquiries made by registrars as to whether it is permissible to provide certain registration data to ICANN in response to a WHOIS inaccuracy ticket issued by ICANN Contractual Compliance as a result of the ARS caused ICANN org to reconsider continuing with the ARS.

There have been discussions/conversations within the org regarding other options, such as using escrow data or Bulk Registration Data Access (BRDA), but these have not been thoroughly investigated as viable alternatives. Substantial study would be needed to ensure consistency with all requirements in ICANN policies and agreements, and applicable laws and regulations.

ICANN org has made the Board aware that the ARS is on hold via its twice-annual CEO reports to the Board. ICANN org first noted in its January 2019 report that “[t]he cycle 7 report of the ARS

has been paused as we consider updates to the process based upon GDPR and changes to available public registration data as a result of Registry and Registrar implementation of the Temporary Specification.” And further in April 2019:

“The ARS remains paused as ICANN org assesses the effects of General Data Protection Regulation (GDPR). Based on the lack of predictable publicly available registration data and given the community work from the GNSO’s Expedited Policy Development Process (EPDP) on Temporary Specification for gTLD Registration Data, ICANN org believes it may be prudent to continue to pause and consider the impact of the EPDP efforts and assess our ability to effectively administer ARS.”

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#### Follow-up Questions

##### 1. How is the Compliance team trained on GDPR specifically?

ICANN Contractual Compliance enforces the Registrar Accreditation Agreement, Registry Agreements and Consensus Policies, and its staff are extensively trained on these agreements and policies. ICANN Contractual Compliance does not enforce laws or regulations which are outside the contractual scope of the ICANN organization. Accordingly, the ICANN Contractual Compliance team does not undergo GDPR specific training (or that of any other law or regulation), but subject-matter experts do maintain a general awareness of GDPR issues relevant to their areas of compliance expertise. Each contracted party must ensure its own processing complies with GDPR, where applicable, as well as any other applicable laws and regulations

##### 2. Are the metrics from Compliance based on complaints received? (Answer: yes.) Would be interested to know – prior to the GDPR, how did ICANN perform these checks?

As noted in real-time during the discussion, metrics from Compliance are based on complaints received. Prior to the transition to the Naming Services portal (NSp) on 29 August 2020, ICANN did not track complaints received by reporter type, as the level of granularity in reporting was limited within the legacy system. ICANN Contractual Compliance’s monthly dashboard contains historical data about complaints received/closed that are related to accuracy which is available [here](#). Additional information specifically addressing complaints received before and after GDPR went into effect is available [here](#).

##### 3. What is the status of the DPA negotiation between ICANN org and contracted parties?

Following the Board’s adoption of the EPDP Phase 1 Recommendations, ICANN org and a group of registry and registrar representatives designated by the CPH have been working on a document to implement EPDP Phase 1 Recommendations 19 and 20. At present, we are aiming to produce a draft Data Processing Specification to the Registry Agreement and Registrar Accreditation Agreement, which, once finalized, a contracted party could elect to enter into for purposes of data protection compliance. We have made significant progress toward a draft that will, once tentatively agreed, be shared with the Implementation Review Team (IRT) for feedback. In late 2021, ICANN org and the CPH group held extended discussions regarding remaining open issues with the aim to bring this effort to completion in the near term. We expect that this will be ready to share with the IRT prior to the draft Registration Data Policy document (the product of the EPDP Phase 1 IRT’s work) being published for public comment.

4. Is the ability for ICANN to share any of the training materials possible? (For example, it has been difficult for the group with respect to wordsmithing. If there are documents regarding clarity on these issues, it would be very helpful.)

ICANN Contractual Compliance utilizes written training materials, as well as regular in-person and phone/video training sessions conducted by senior staff. These training materials contain information about our systems, internal procedures and processes and are, therefore, confidential. Such materials, however, do not seek to define or interpret contractual requirements, and use the defined terms and requirements within the Registrar Accreditation Agreement, Registry Agreements, and Consensus Policies.

5. With respect to Q3, it discusses issues that are out of scope. How would a third complainant ever file a complaint regarding the accuracy of registrant data behind a P/P service? When is a complaint in scope and when is it out of scope?

ICANN refers the team to the prior response to question #20. In-scope complaints pertaining to customer data of a P/P Service Provider are limited. For example, if the underlying customer is also the Account Holder, or where the service provides an anonymized email that forwards to the underlying customer email (such that an inaccurate underlying email would result in a bounce-back from the email in the public Registration Data).

ICANN additionally notes that the majority of P/P services are “Proxy Services”, which are “service[s] through which a Registered Name Holder licenses use of a Registered Name to the P/P Customer in order to provide the P/P Customer use of the domain name, and the Registered Name Holder's [RNH] contact information is displayed in the Registration Data Service (Whois) or equivalent services rather than the P/P Customer's contact information.” (See Section 1.3 of the Specification of Privacy and Proxy Registrations). In such cases, the “registrant data” is the data of the Proxy Service/RNH.

6. With respect to the engagement you are doing on the NIS2...exactly what kind of purpose are you lobbying for? How does it fit with ICANN’s controller role? Who else do you think should be able to avail themselves of that “legitimate purpose” role to check accuracy? Do you envisage outsourcing and how would that work? Who are you engaging with, the EC or the DPAs?

As regards the ongoing negotiations on NIS2, ICANN org is engaging with the co-legislators, i.e. the European Parliament and the Council of the EU. The purpose of the engagement is to explain how the DNS works, highlight what the community is working on, and identify the challenges the community is facing with respect to the application of GDPR to registration data in the context of the ICANN policy making. This engagement is with the aim to ensure that deliberations and decisions relating to the DNS in NIS2 are made with a full understanding of the current situation and possible impact of the proposed legislation.

With respect to registration data accuracy, ICANN org provided information about the requirements to perform due diligence checks as developed by the ICANN community and applied through contractual structures with the contracted parties, as well as information about how ICANN compliance enforces these requirements, including how GDPR has affected ICANN compliance’s ability to enforce accuracy requirements.

Regarding the question, “How does it fit within ICANN’s controller role[?] (emphasis added)”, the intended meaning of “it” is unclear. However, as regards the “purpose,” if a purpose for registration data processing and recognition of a legitimate interest in processing that data

(where the GDPR applies), were codified in a European directive and in turn in implementing member state laws, this could provide helpful clarity for any controller of the processing of personal data within registration data. The question (“Do you envisage outsourcing and how would that work?”) is also unclear (what would ICANN be potentially outsourcing?) and, thus, an answer on this aspect of the question cannot be provided.

7. On the answer to Q21, the second to last line includes the term “patently inaccurate”. How is “patently inaccurate” determined? For example, the name Mickey is an actual name. There are times where data may look fishy but it is, in fact, correct. How does ICANN org make this determination?

ICANN Contractual Compliance takes into account the totality of the information/evidence available. For instance, in the example provided, a fictional address “1234 Main Street, Disneyland, 00000, USA” combined with the Registrant Name “Mickey Mouse”, would be sufficient to suggest that the data is incorrect. ICANN Contractual Compliance further notes that it does not independently make determinations of accuracy, but may initiate a notice or inquiry where the information/evidence suggests that such contact information is incorrect.

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Follow up questions (responses received 6 April 2022)

1. The 2013 RAA Whois Accuracy Program Specification section 4 requires a Registrar take certain actions if it has any information that specific RDDS fields are wrong (fields references are any of the name, postal address, e-mail address, voice telephone number, and (where available) fax number). The example given in section 4 of having such information is: “Registrar receiving a bounced email notification or non-delivery notification message in connection with compliance with ICANN's Whois Data Reminder Policy or otherwise”. In the view of ICANN Compliance, does this example apply only to Registrars who happen to monitor such email bounce or non-delivery notifications, or are Registrars obliged to do such monitoring?

Section 4 of the Whois Accuracy Program Specification (Specification) applies to all registrars that have “any information suggesting that the contact information specified in Section 1(a) through 1(f) of [the Specification] is incorrect” and is not limited to registrars who proactively monitor email bounce or non-delivery notifications. Information suggesting an inaccuracy in the RDDS Registration Data may come from sources other than a registrar’s self-monitoring, including ICANN Contractual Compliance (Compliance) in the event it receives a report containing sufficient evidence of inaccuracy (including a bounced email notification or non-delivery notification message).

The Registrar Accreditation Agreement (RAA) and the Specification do not contain requirements for a registrar to monitor bounce back or non-delivery notifications of email communications it sends to its registrants or other contacts as contained in Section 1 of the Specification. However, if through a registrar’s own practices it becomes aware of information that suggests the contact information is inaccurate, the obligations described under Section 4 of the Specification do apply.

2. If a Registrar is obliged to monitor such email notification of non-delivery, are they similarly required to monitor other delivery methods (such as postal mail failure to deliver, or a message to through the Registrar’s domain management portal never being viewed)?

Not applicable, see response to question 1 above.

3. If a Registrar is obliged to do such monitoring, does ICANN Compliance audit this requirement?

Not applicable, see response to question 1 above.

4. Section 4 goes on to require that “Registrar must verify or re-verify, as applicable, the email address(es) as described in Section 1.f...” With respect to the reference to “email address(es)”, since the information about inaccuracy may be about any of the name, postal address, e-mail address, voice telephone number, and (where available) fax number, is the Registrar only required to verify or re-verify the email addresses (even if the inaccuracy was in respect to one of the other fields)? If other fields are included, please be specific as to what fields must be verified or re-verified.

Verification, as described under Section 4 of the Specification, applies to the email address(es) of the Registered Name Holder (RNH), and Account Holder (AH), if different. Note however that registrars must also take reasonable steps to investigate a claimed inaccuracy (RAA Section 3.7.8), which may not be limited to verification or re-verification of the email address(es), and can include additional actions necessary to address the inaccuracy (or alleged inaccuracy).

5. The ICANN Org comments on the RrSG definition of accuracy saying that accuracy requirements are not limited to syntactical and operational accuracy implies that it may also include the requirement that the field contents are in fact associated with the RNH, and lacking such association, they may be deemed inaccurate. Is this an accurate reading of the ICANN Org comment, and if not, please explain just what the characteristics are that might make such fields inaccurate (in cases which are not as blatant as Mickey Mouse residing on Main Street of Disneyland)?

ICANN is not clear what the phrase “associated with the RNH ” means in the context of this question. Upon notification of an inaccuracy in contact information, registrars are required to investigate, and, where applicable, correct any inaccuracy. Compliance will enforce this requirement where a registrar has any information to suggest that the contact information listed in Section 1 of the Specification is incorrect. Some examples of reported inaccuracies are provided below in an effort to help describe what characteristics may be sufficient to suggest an inaccuracy in the contact information in the RDDS (other than syntactical accuracy and operational accuracy of the email and/or telephone, as described in Section 1(f) the Specification):

- An individual reports that their home address is used in Registration Data for a domain name that is not associated (or is no longer associated) with that address;
- Business entity address/telephone/etc. used in Registration Data by someone not authorized to use and/or not associated with that business entity (e.g. ex-employee continues utilizing address of employer);
- Privacy or Proxy Service contact information used in Registration Data for a domain name that is not or is no longer utilizing that P/P Service.

## Annex D Registrar Survey

Through a survey distributed amongst ICANN accredited Registrars, Registrars would be requested to report on the result of the status of accuracy of their domains under management.

### Upsides

The small team identified the following upsides of this approach:

- Direct reporting from Registrar;
- No need for third party involvement and/or a Data Processing Agreement as no personal information would be processed;
- Tracking this information over time could create a helpful picture of the state of accuracy.

### Downsides

The small team also identified the following potential downsides of this approach:

- It is not possible to require registrars to provide these data points; there is no contractual or policy obligation for them to track and disclose this information. As a result, it is unlikely that there will be widespread voluntary provision of these data points as there is complexity, time consumption, and cost involved in gathering the data.
- It is unclear whether the Scoping Team and broader Community will accept as accurate any data provided by registrars.
- Would only “good actors” respond and therefore not provide a representative picture of the state of accuracy?

### Expected insights

The Scoping Team anticipates that a Registrar Survey would provide insight into how registrars currently implement accuracy requirements as well as the rates of verified vs. unverified domains, which will help show a snapshot of the current number of domains in each group. It is important to remember that because registration and verification of domains happens constantly, the rates will change.

Some Contracted Parties track validation/verification status in relation to a contact set, rather than a specific domain name. This is in alignment with the ICANN Whois Accuracy Program Specification (§3, Registrar is not required to perform the above validation and verification procedures in Section 1(a) through 1(f) above, if Registrar has already successfully completed the validation and verification procedures on the identical

contact information and is not in possession of facts or knowledge of circumstances that suggest that the information is no longer valid.). This may affect the ability for some registrars to report precisely on rates of validated/verified domain names.

In addition, the Scoping Team would also like to encourage Registrars to share whether they apply validation/verification processes that go beyond the minimum that is currently required by the RAA.

### **Development and distribution**

ICANN org would develop the survey, in line with the details outlined in Annex [X] and would circulate the survey to all ICANN-Accredited Registrars. The Registrar Stakeholder Group has indicated it will assist in communicating and promoting the survey to its membership. The Scoping team encourages ICANN org to consider incentives that could be provided to encourage responses to the survey.

### **Possible Survey Questions**

*Note this is a compilation of possible survey questions that were developed by the Scoping Team and individual Scoping Team members. Further work will be undertaken in consultation with the Scoping Team as part of the implementation of this proposal. Consideration will need to be given to ensuring that the amount of information requested and expected effort required by registrars to respond is not considered a disincentive to completing the survey.*

The following questions look at the steps that are taken by Registrars:

#### **Email Address Format**

Which method(s) do you use to ensure that email addresses are in the correct format (or should be accepted)? Select all that apply

- Manual/human review of format
- Constraints on the form to only accept valid domain name after @
- Constraints on the format and structure of email address
- Other (specify)

Do you keep records of the number of domains which have contact email addresses in the incorrect format?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA
- Do not have the resources

- All emails are reviewed for format prior to being saved; cannot save in incorrect format
- Other (specify)

Which method(s) do you use to ensure that email addresses are operable? Select all that apply

- Check that domain name after @ exists
- Review domain name after @ against known disposable address domain names
- Sending test email to address not requiring action of recipient
- Sending test email to address requiring affirmative response from the recipient
- Other (specify)

Do you keep records of the number of domains which have contact email addresses that are inoperable?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA
- Do not have the resources
- Other (specify)

Do you use the same processes for all emails to ensure that they are in the correct format and operable?

- Yes
- No

If you do not use the same approach on all emails, why not? Select all that apply

- Different requirements for different registry operators
- Risk based review
- Differentiate between new and existing account emails
- Phone numbers are verified rather than email addresses
- Other (specify)

Do you keep statistics on the number of emails that bounce or do not get delivered from contact email addresses?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why? Select all that applied

- Not required to under RAA



- Do not have the resources
- Other (specify)

**Phone Numbers**

Which method(s) do you use to ensure that phone numbers are in the correct format?

Select all that apply

- Manual/human review of format
- Constraints on the form to only accept established calling codes
- Automated review of format
- Other

Which method(s) do you use to ensure that phone numbers are operable? Select all that apply

- Calling number to ensure it rings
- Sending an SMS to the number
- Calling number and having a human answer the call
- Sending an SMS to the number requiring affirmative response from the recipient
- Other (specify)

Do you use the same approach on all phone numbers?

- Yes
- No

If you do not use the same approach on all phone numbers, why not? Select all that apply

- Different requirements for different registry operators
- Risk based review
- Differentiate between new and existing account phone numbers
- Differentiate between mobile and landline numbers
- Email addresses are verified rather than phone numbers
- Other (specify)

Do you keep records of the number of domains which have contact phone numbers that are in an incorrect format?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA
- Do not have the resources
- Other (specify)

Do you keep records of the number of domains which have contact phone numbers that are inoperable?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA
- Do not have the resources
- Other (specify)

### **Willfully inaccurate or unreliable information**

What sources of information do you rely on to identify instances where a RNH may have provided willfully inaccurate or unreliable contact information? Select all that apply:

- Reports from ICANN Compliance
- Reports from law enforcement
- Reports from government agencies
- Reports from lawyers
- Identity checking
- Reports from individuals
- Automated checking of syntax
- Human review
- Other (specify)

Do you keep records on how many reports you receive of potentially willfully inaccurate or unreliable contact information?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA
- Do not have the resources
- Other (specify)

Do you keep statistics on what percentages of reported inaccurate registration data are corrected, confirmed, or not suspended?

- Yes, historical numbers
- Yes, rolling basis only
- No

If no, why not? Select all that apply

- Not required to under RAA

- Do not have the resources
- Other (specify)

The following questions look at how many domains have registration data which is validated and verified:

- a. Do you proactively track rates of completed validation for domains registered with you?
- b. Do you proactively track rates of completed verification for domains registered with you?
- c. If no, is it possible to gather those rates?
- d. If yes to a/b/c, what percentage of domains registered with you have validated registration data?
- e. If yes to a/b/c, what percentage of domains registered with you have verified registration data?
- f. What percentage of domains registered with you were created prior to the validation and verification requirements came into effect and have not yet been updated in a way that triggers the validation and verification requirements?

The following questions look at how many domains have data which is currently in the verification process:

- a. Do you proactively track rates of in-progress validation for domains registered with you?
- b. Do you proactively track rates of in-progress verification for domains registered with you?
- c. If no, is it possible to gather those rates?
- d. If yes to a/b/c, what percentage of domains registered with you are in the validation process now?
- e. If yes to a/b/c, what percentage of domains registered with you are in the verification process now?

The following questions look at how many domains are suspended due to incomplete verification:

- a. Do you proactively track rates of suspension due to incomplete verification?
- b. If no, is it possible to gather those rates?
- c. If yes to a/b, what percentage of domains registered with you are suspended due to incomplete verification?

The following questions look at the rate of email bounces for Whois Data Reminder Policy (WDRP) Notices sent out over a set time period.

- a. Do you proactively track the rate of bouncebacks to WDRP emails?
- b. If no, is it possible to gather those rates?

- c. If yes to a/b, what percentage of domains registered with you have received bounce-back emails in response to WDRP emails?

The following question looks at potential future reporting by Registrars:

- a. What information should Registrars be required to report to ICANN to help assess the state of accuracy in the future?

Required for identification:

- Registrar IANA ID
- Person filling out the survey - name and contact email

Publicly shared:

- Number of Registrars which responded
- Aggregated and anonymized response information
- [TBD - should names of those registrars who responded be published? Some indicated this could be an incentive, while others noted it could be a disincentive]

Access to individual responses:

- Only those administering the survey should have access to individual responses, unless the respondent has explicitly indicated its permission to publicly share its response (see next point). Restriction of access to the individual responses will help promote honesty of response.
- Could include a survey question allowing the responding registrar to opt in to having their response associated with their IANA ID (otherwise it would only be used in anonymized or aggregated form)
- If sufficient responses have been provided to ensure aggregation without identification, consider if it would be possible to represent responses in categories, e.g., responses by small registrars, responses by medium-sized registrars, responses by large registrars.

It is also important to determine the retention period of the personal data contained within the responses and include that information in the initial survey. The data should be retained for as long as is necessary to evaluate responses and then deleted (anonymized/aggregated data may be retained). Similarly, the survey should clearly state that information provided in response to the survey will NOT be used for compliance enforcement purposes.

The survey would initially be open for a month, but could be extended depending on the response rate.

The survey should be available in English as well as the 5 UN languages so that registrars around the world can equally participate.