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# **RDS-WHOIS2-RT Plenary Call #46**

14 January 2019



# RDS/WHOIS2-RT Plenary Call Agenda

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1. Welcome, roll-call, Sol
2. Draft Report Updates review:
  1. WHOIS1 Rec #1 - Strategic Priority
  2. Subgroup 3 - Law Enforcement Needs
  3. WHOIS1 Rec #11: Common Interface
  4. Recommendations Numbering
  5. WHOIS1 Rec #4: Compliance
3. A.O.B.

# Draft Report Updates

## Agenda Item #2

# Draft Report Updates

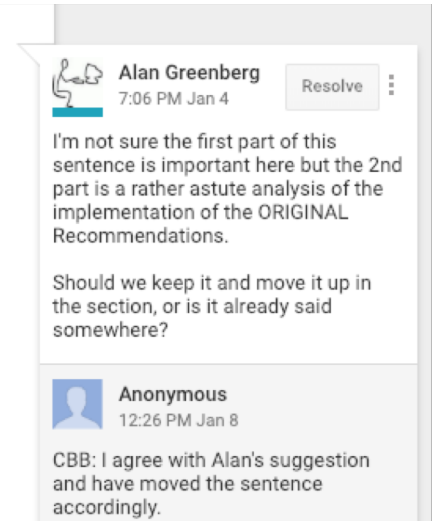
- **WHOIS1 Rec #1 - Strategic Priority – see Google doc**

Decision Reached: Do a rewording/reaffirmation of strategic priority, in the implementation note: reference to stakeholders is there. Work should be

~~These recommendations are aligned with~~ As a result, while ICANN's Strategic Plan and Mission, ~~which~~ already seeks to reflect the strategic priority given to RDS (WHOIS), the ~~but~~ focus is too much on compliance and support for Community processes, rather than providing a real advance planning and strategy function within the ICANN Board and organization. Therefore, the recommendation failed to achieve its original aim of instilling a culture of proactive monitoring and improvements on RDS (WHOIS).

## 1.2.4 Recommendations

Based on its analysis, members of this subgroup agree that this WHOIS1 recommendation has been partially implemented. Further recommendations are provided here to address the problems/issues identified above.



The screenshot shows a comment thread. The first comment is from Alan Greenberg, dated 7:06 PM Jan 4, with a 'Resolve' button. The comment text reads: "I'm not sure the first part of this sentence is important here but the 2nd part is a rather astute analysis of the implementation of the ORIGINAL Recommendations. Should we keep it and move it up in the section, or is it already said somewhere?". The second comment is from an anonymous user, dated 12:26 PM Jan 8, with the text: "CBB: I agree with Alan's suggestion and have moved the sentence accordingly."

# Draft Report Updates

problems/issues identified above.

Recommendation Rx.n are recommendations that follow up on Recommendation x<sup>10</sup> of the first WHOIS Review. Recommendations LE.n, SG.n, CM.n and BY.n are recommendations related to the new work done by the present review team under its investigations related to Law Enforcement, Safeguarding Registrant Data, Contractual Compliance and the Bylaw governing Specific Reviews.

## Recommendation R1.1

<sup>10</sup> In the case of R5.n, R12.n and R15.n, they are follow-up recommendation of the original R5-9, R12-14 and R15-16 respectively.



Alan Greenberg  
11:58 PM Yesterday



**Add footnote:** with text "In the case of R5.n, R12.n and R15.n, they are follow-up recommendation of the original R5-9, R12-14..."

**Add:** "Recommendation Rx.n are recommendations that follow up on Recommendation x of the first WHOIS Review..."

# Draft Report Updates

Action item: As per Dmitry's note, Cathrin to report for this recommendation that "legislative efforts are not enough".

## Recommendation R1.1

To ensure that RDS (WHOIS) is treated as a strategic priority, the ICANN Board should put into place a forward-looking mechanism to monitor possible impacts on the RDS (WHOIS) from legislative and policy developments around the world.

## Recommendation R1.2

To support this mechanism, the ICANN Board should instruct the ICANN organization to assign responsibility for monitoring legislative and policy development around the world and to provide regular updates to the Board.

## Findings:

While steps were taken towards making RDS (WHOIS) a strategic priority for the organization, the record of actions over the last year including the challenging situation regarding compliance with data protection requirements show that ICANN did not take action to address related community concerns in a timely manner. See also discussion of RDS (WHOIS) policy development actions in Section 3.3. Therefore, implementation of this recommendation is not yet sufficient.

<sup>10</sup> In the case of R5.n, R12.n and R15.n, they are follow-up recommendation of the original R5-9, R12-14 and R15-16 respectively.

## Rationale:

The intent behind these recommendations is to ensure that ICANN as an organization is well placed to address future policy issues, that may arise from legislation or from community concerns. **It will be important to also take into account relevant non-legislative developments, such as soft policy measures or guidance provided by authorities on the implementation of relevant legislation.**

The issues identified could best be addressed by an improved implementation of the original recommendation. For these purposes, further elements are proposed in a re-shaped recommendation to provide concrete targets for the ICANN Board and organization.

Add: ", the"



Anonymous  
12:28 PM Jan 8



Delete: "but"



Anonymous  
12:28 PM Jan 8



Add: "is too much"



Anonymous  
12:27 PM Jan 8



Add space



Alan Greenberg  
11:58 PM Yesterday



**Add footnote:** with text "In the case of R5.n, R12.n and R15.n, they are follow-up recommendation of the original R5-9, R12-14..."

**Add:** "Recommendation Rx.n are recommendations that follow up on Recommendation x of the first WHOIS Review..."

Reply...

# Draft Report Updates

## Rationale:

The intent behind these recommendations is to ensure that ICANN as an organization is well placed to address future policy issues, that may arise from legislation or from community concerns. **It will be important to also take into account relevant non-legislative developments, such as soft policy measures or guidance provided by authorities on the implementation of relevant legislation.**

The issues identified could best be addressed by an improved implementation of the original recommendation. For these purposes, further elements are proposed in a re-shaped recommendation to provide concrete targets for the ICANN Board and organization.

The potential impact of not addressing the recommendation could create further situations of organizational unpreparedness, making it less possible to assume its responsibilities in a timely manner. Given the challenging process ahead as compliance with data protection rules and obligations under the Bylaws will take significant additional time, improved implementation could help the organization to better address such issues in the future.


~~These recommendations are aligned with ICANN's Strategic Plan and Mission, which already seeks to reflect the strategic priority given to RDS (WHOIS) but focus on compliance and support for Community processes, rather than providing a real advance planning and strategy function within the ICANN Board and Organization.~~


These recommendations are also within the scope of the review team's efforts.


## Impact of Recommendation:


These recommendations would impact the work of the Board and ICANN leadership. It would contribute to the legitimacy and efficiency of the organization, by ensuring that it is better prepared to meet future challenges and to serve community needs, including registrants, RDS users and contracted parties. It would also impact the ICANN organization, in that it would require resources to perform the requisite analysis and update the ICANN Board on a regular basis.

4:10 PM Jan 10  
**Add:** "will be important to also take into account relevant non-legislative developments, such as soft poli..."

 **Anonymous**  
4:10 PM Jan 10    
**Add:** "es or"

 **Anonymous**  
4:10 PM Jan 10    
**Add:** "guidance provided by"

 **Anonymous**  
4:10 PM Jan 10    
**Add:** "authorities on the implementation of relevant legislation."

 **Anonymous**  
12:27 PM Jan 8    
**Delete:** "These recommendations are aligned with ICANN's Strategic Plan and Mission, which already seeks to re..."



# Draft Report Updates

## Feasibility of Recommendation:

Given that the ICANN Board has already resolved in the past to make RDS (WHOIS) a strategic priority, this updated recommendation should also be feasible. A risk remains in that any such attempt at providing a global "policy scan" might fail to properly assess relevant developments, as may have been the case with the GDPR and other data protection rules: the potential for conflicts with the law was highlighted many years ago but no change was made in time through the normal ICANN processes.


## Implementation:

The implementation has to be provided by the ICANN Board and leadership, with staff support. A successful implementation would consist of a **comprehensive and clear comprehensive and revised** Charter for **an the** ICANN Board Working Group on Registration Data Directory Services ~~(BWC-RDS)~~, **which should be created if not already in place**. This should be implemented as soon as possible and at the latest within 6 months. This could dovetail with ongoing efforts to ensure swift and constructive cooperation between the Board, ICANN leadership, and the GNSO representing the Expedited PDP on the Temporary Specification for gTLD Registration Data. The **Working Group on BWC-RDS** would need to be supported by appropriate dedicated resources from ICANN, who would provide the requisite analysis of global policy developments and supply the ICANN Board with regular updates, which could also be shared with the full ICANN community.


## Priority: High.

These recommendations provide the backbone for ICANN's efforts on RDS (WHOIS), which should be driven by a strategic and coherent overall approach. It is therefore considered essential.


**Level of Consensus:** No objections

 **Anonymous**  
12:25 PM Jan 8

**Replace:** "comprehensive" with "comprehensive and"

 **Anonymous**  
12:25 PM Jan 8

**Add:** "clear"

 **Anonymous**  
12:24 PM Jan 8

**Replace:** "revised" with "comprehensive and"

# Draft Report Updates

Action item: Since the former Board WG was dissolved, the recommendation should be reformatted to say any WG that is focusing on RDS issues should be made public and not make specific reference to a particular WG.

## Recommendation R1.3

The ICANN Board, ~~in drafting should update~~ the Charter of ~~a its~~ Board Working Group on RDS, ~~should to~~ ensure the necessary transparency of the group's work, such as by providing for records of meetings and meeting minutes, to enable future review of its activities.

### Findings:

It is difficult to assess the forward-looking nature of the work done by the ~~previous~~ BWG-RDS in the absence of any record of its activities. ~~The Board should conduct its work in transparency and with the involvement of the Community, rather than acting alone in these matters which are of key importance to the entire Community and beyond.~~

### Rationale:

Given the strategic importance of RDS (WHOIS) and related activities, it is expected that the work of the ~~previous relevant~~ BWG-RDS or any successor entity would be of interest to future reviews, or accountability and transparency of the work, an account on its activities needs to be created and made available to the ICANN Community.

### Impact of Recommendation:

This recommendation impacts the ICANN Board members participating in ~~any the~~ BWG on ~~RDS~~ and ICANN support staff to the Board. It increases the administrative burden incumbent on the ICANN Board and its support staff.

### Feasibility of Recommendation:

The recommendation would create a new administrative burden on the ICANN Board and on relevant support staff. However, given the limited burden of keeping of meeting records and the creation of minutes, its implementation should not be overly burdensome and is therefore considered feasible.

### Implementation:

The implementation has to be provided by the ICANN Board, with staff support. A successful implementation could consist in a ~~Charter providing for an obligation to create complete~~ records or summaries ~~of Board Working Group ICANN BWG RDS~~ meetings and corresponding meeting minutes, which the Board should resolve to create as soon as possible and at the latest within 6 months.

### Priority: Medium.

This Recommendation serves to create overall accountability and transparency of the Board's activities in a key field, and is therefore of strategic importance.

**Level of Consensus:** No objections

4:06 PM Jan 10  
Add: ", which"

Anonymous  
4:06 PM Jan 10  
Add: "should be"

Anonymous  
4:06 PM Jan 10  
Add: "created if not al"

Anonymous  
4:06 PM Jan 10  
Add: "ready"

Anonymous  
4:07 PM Jan 10  
Add: "in place"

Anonymous  
12:25 PM Jan 8  
Replace: "BWG-RDS" with "Working Gropu"

Anonymous  
12:25 PM Jan 8  
Add: "up"

Anonymous  
12:26 PM Jan 8  
Add space

# Draft Report Updates

- **Subgroup 3 - Law Enforcement Needs – See Google doc.**

Action item: Clarify what “regular” means and include rationale: 1) ex-ante impact assessment 2) evaluate new policies once there are in place.

## **Recommendation LE.1**

The ICANN Board should resolve that **ICANN conducts regular** data gathering through surveys and studies ~~are to be conducted by ICANN~~ to inform a future assessment of the effectiveness of RDS (WHOIS) in meeting the needs of law enforcement. **This will also aid as well as** future policy development (including the current Temporary Specification for gTLD Registration Data Expedited Policy Development Process and related efforts)<sup>6</sup>.

## **Recommendation LE.2**

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

## **Findings:**

The review team found that the lack of available data on RDS (WHOIS) uses, advantages and shortcomings had a negative impact on the possibility to assess the functionality of the RDS (WHOIS) and whether it meets requirements set out in the Bylaws.

# Draft Report Updates

## Rationale:

The intent behind this recommendation is to ensure that future reviews, but also policy development processes, can benefit from a better and more reliable evidence base.

The issues identified could best be addressed by repeated data gathering exercises that include the running of surveys at regular intervals to create comparable data sets.

The potential impact of not addressing the recommendation would be a continued lack of data, which has already shown to add to current problems plaguing both reviews and policy development processes, where disagreement on basic facts has sometimes led to significant and enduring conflict.

In terms of defining what would constitute a “regular” basis, it would be useful at minimum to repeat the survey and/or conduct studies (as appropriate)— at least ahead of every review team exercise. Consideration should also be given to running such survey and study exercises to a) ~~4~~ provide an ex-ante impact assessment if new measures are considered or 2b) evaluate new policies once they have been ~~there are~~ in place for a while.

This recommendation is aligned with ICANN's Strategic Plan and Mission, which already seek to reflect the strategic priority given to RDS (WHOIS) and which could benefit from a better evidence base to assess whether its own projects and processes meet KPIs.

This recommendation is also within the scope of the RDS-WHOIS2 Review Team's efforts.

# Draft Report Updates

## Impact of Recommendation:

This Recommendation would impact ICANN as an organization, creating an administrative burden. It would **also** contribute to the legitimacy, transparency and accountability of the organization and the ICANN community, by ensuring that a better evidence base is made available to assess the uses and other aspects of the RDS (WHOIS) and further develop RDS (WHOIS) policy.

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<sup>6</sup> While surveys as used here refers to questionnaires distributed to a group of respondents to gather their input, studies by contrast, would rely on a detailed analysis and investigation, and not simply be based on user input.

## Feasibility of Recommendation:

Given that the main burden of surveys lies on the respondents, the feasibility of the recommendation will depend on their willingness to participate. However, in light of the importance attributed to the RDS (WHOIS) in recent discussions, this risk seems to be manageable. Conducting surveys and possibly ~~also~~ studies would create an administrative and **potential possibly-also** financial burden for ICANN as an organization, ~~which is~~ However, **this burden** seems manageable in light of the benefits that are to be expected.

## Implementation:

The implementation has to be provided by the ICANN Board and ICANN Organization. A successful implementation would consist in a Board resolution within the next six months that is then put into practice by the ICANN Organization, e.g. through annual surveys of relevant user groups as defined by policy development processes.

## Priority: High.

These recommendations create an essential factual basis for further discussion and analysis.

**Level of Consensus:** No objections

# Draft Report Updates

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- **WHOIS1 Rec #11 – Common Interface**

**R11.2:** The ICANN Board should direct the ICANN org to continue to maintain the common interface or keep up to date with new policy developments or contractual changes for contracted parties to ensure that the common interface will display all publicly-available RDS (WHOIS) output for each gTLD domain name registration available from contracted parties, i.e., when they differ, both the registry and registrar RDS (WHOIS) output could be shown in parallel.

The revised version is:

**R11.2:** The ICANN Board should direct the ICANN organization to ensure that the common interface displays all applicable output for each gTLD domain name registration as available from contracted parties, including multiple versions when the output from registry and registrar differ. The common interface should be updated to address any policy or contractual changes to maintain full functionality.

# Draft Report Updates

- Recommendation Numbering

problems/issues identified above.

Recommendation Rx.n are recommendations that follow up on Recommendation x<sup>10</sup> of the first WHOIS Review. Recommendations LE.n, SG.n, CM.n and BY.n are recommendations related to the new work done by the present review team under its investigations related to Law Enforcement, Safeguarding Registrant Data, Contractual Compliance and the Bylaw governing Specific Reviews.

## Recommendation R1.1

<sup>10</sup> In the case of R5.n, R12.n and R15.n, they are follow-up recommendation of the original R5-9, R12-14 and R15-16 respectively.



Alan Greenberg

11:58 PM Yesterday



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**Add:** "Recommendation Rx.n are recommendations that follow up on Recommendation x of the first WHOIS Review..."

# Draft Report Updates

- WHOIS1 Rec.4 Compliance

## 1.1.6 Possible impact of GDPR and other applicable laws

~~To be provided in the final review report.~~

Suggested by Alan Greenberg

It is currently unclear to what extent Contractual Compliance will have access to RDS (WHOIS) information, nor what procedures it may have to follow to gain such access. Depending on the final GDPR implementation, the ability of Contractual Compliance to address issues that it did prior to GDPR may be affected and/or the amount of resources (time and staff) required may increase, perhaps substantially.



**A.O.B.**

Agenda item #3



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# Confirm Decisions Reached & Action Items

# Appendix

## Open Action Items

# Final Report Open Action Items

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## Level of priorities

Action item: Susan to evaluate each recommendation and Define priority level for each recommendation with some quick description. E.g. High, to be implemented by...

Action item: Susan to include brief statement that refers to timing envisioned for recommendations while highlighting some of the dependencies. Agreement to consider the six-month Bylaw window in assessments.

## Report

Action item: Susan will listen to the meeting recording for conversation regarding language “The board should negotiate”, and update the wording through the report consistently.

## Executive Summary

Action item: RT needs to evaluate recommendation numbering, potential explanation in ES.

Action item: History of WHOIS on ICANN’s website. Erika to provide Jackie with the right content/references link so introduction section can be properly updated.

# Final Report Open Action Items

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## Background Section

Action item: Alan and Jackie review and modify the WHOIS Background section (in reference to the last bullet on slide # 40 of Day # 3 of F2F meeting)

## WHOIS1 Rec #2: Single WHOIS Policy (Carlton)

Action item: Jackie to work with Alan to mention the problems of the policy development process regarding a single RDS (WHOIS), to be placed in the Executive Summary.

## WHOIS1 Rec #3: Outreach (Alan)

Action item: DNRC comment on section: Alan to update language.

**R3.1:** Action item: Alan to clarify what specific improvements we are looking for.

**R3.2:**

Action item: NCSG comment: Alan to work with Jackie on rewording of the recommendations to clearly articulate the need for outreach before and after RDS changes are finalized.

Action item: Add implementation note, that the RT does not have any input on ICANN budget.

# Final Report Open Action Items

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## **WHOIS1 Rec #4: Compliance (Susan)**

Action item: Susan to clarify that ICANN will not go on fact-finding missions, but use the information they currently have on hand (input received).

Susan to clarify that Compliance enforces Registrars to enforce data accuracy for registrants.

### **R4.1**

Action item: Volker to provide language to update recommendation 4.1 based on RrSG and NCSG comments.

Action item: Susan to delete the portion of the recommendation that refers to sanctions and make a reference to it in the report text.

### **R4.2**

Action item: Volker and Alan work on rewording R4.2 and add some metrics in for measurability and success of implementation.

# Final Report Open Action Items

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## **WHOIS1 Recs #5-9: Data Accuracy (Lili/Cathrin)**

### **R5.1:**

Action item: ICANN org to double-check the recommendation numbering to ensure comment was in response to recommendation 5-9 and adjust as needed.

## **WHOIS1 Rec #10: Privacy/Proxy Services (Volker)**

### **R10.1**

Action item: Lili to address Alan's comment, or confirm whether Alan/Jackie should address it

## **WHOIS1 Rec #11: Common Interface (Susan/Volker)**

Action item: Susan/Volker to clarify that this recommendation was not specifically aimed at compliance.

## **Objective 3: Law Enforcement Needs (Cathrin)**

### **LE.1**

Action item: MSSl to estimate number of hours spent on the LE survey in response to NCSG request for estimated cost associated with conducting the survey.

Action item: Cathrin to bring this recommendation to GAC's attention, Alan to EPDP's



# Final Report Open Action Items

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## **Objective 4: Consumer Trust (Alan/Erika)**

Action item: Alan and Erika to update section.

## **Objective 5: Safeguarding Registrant Data (Alan)**

Action item: Alan to update recommendation:

Agreement to add: “ICANN Board should consider whether and to what extent notifications of breaches should be publicly disclosed.”

Action item: Alan to clarify recommendation in light of section

## **Objective 6: ICANN Contractual Compliance: Actions, Structure and Processes (Susan, Cathrin, Alan)**

### **CM1:**

Action item: Alan to reword CM.1 so that it does not say “the Board should negotiate ...”. The goal is to ensure the recommendation is not dictating a PDP but suggesting a change somehow.

# Final Report Open Action Items

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## **CM2:**

Action item: Alan and Volker to add more details to CM.2 to clarify the registrant fields being addressed in the recommendation. Additionally, the whole recommendation should be reworded to better convey intent.

Update as of 11 December 2018: Based on the updated recommendation and rationale language Volker provided on 11 December (Day # 2), Susan is to take the pen and update the relevant sections of the report accordingly.

Jackie to add in introduction, to the extent that their deliberations so far impact areas in our review.

## **CM3:**

Action item: Recommendation to be deleted. Add this as a more targeted outreach in the relevant recommendation.

Cathrin to clarify Board options in a footnote.

## **CM4:**

Action item: Alan to write to ICANN org Compliance and negotiate language to be added to relevant page(s). If successful, recommendation will be deleted.

# Final Report Open Action Items

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## Objective 7: ICANN Bylaws (Carlton/Alan)

### BY.1

Action item: Carlton to amend the recommendation to incorporate the words “safeguarding the registrant data” and provide clarification that the suggestion is meant to postpone the topic to future reviews.