

## **Questions of GNSO Council to Whois Review Team**

### **Question 1**

**In light of recommendations 1 and 18 Stéphane van Gelder asked whether or not ccTLDs were to be included in the review's team work.**

#### Recommendation 1

ICANN's WHOIS policy is poorly defined and decentralized The ICANN Board should oversee the creation of a single WHOIS policy document, and reference it in subsequent versions of agreements with Contracted Parties.

#### Recommendation 18 Internationalized Domain Names

[Finalize IDN encoding] The working group should aim for consistency of approach across the gTLD and – on a voluntary basis – the ccTLD space.

### **Response**

We worked within the gTLD model, and our recommendations are directed to that system. The Affirmation of Commitments (AOC) states that ICANN commits to enforcing its `enforcing its existing policy relating to WHOIS.` That is a policy we found in GNSO Registrar contracts, Registry contracts, GNSO Consensus Policies and one GNSO Consensus Procedures. We did not find existing Whois policies created by ICANN for ccTLDs, and hence, did not review them.

## **Question 2**

**In light of Recommendation 2, Stéphane van Gelder asked if the Review Team had considered whether, from a registrant's point of view, the data reminder policy was proving useful.**

### Recommendation 2

The ICANN Board should ensure that the Compliance Team develop, in consultation with relevant contracted parties, metrics to track the impact of the annual WHOIS Data Reminder Policy (WDRP) notices to registrants. Such metrics should be used to develop and publish performance targets, to improve data accuracy over time. If this is unfeasible with the current system, the Board should ensure that an alternative, effective policy is developed and implemented in consultation with registrars that achieves the objective of improving data quality, in a measurable way.

### Response

**We agree. We are not at all certain that the WDRP is a useful process for registrants – or Registrars, or ICANN. That's why we would like to see metrics developed to track the WDRP over a short period of time, and if it's not useful, try something else.**

### **Question 3.**

**In light of Recommendation 5, Stéphane van Gelder asked what kind of measures the group was recommending to reduce unreachable WHOIS registrations.**

#### Recommendation 5 Data Accuracy

ICANN should take appropriate measures to reduce the number of unreachable WHOIS registrations (as defined by the NORC Data Accuracy Study, 2009/10) by 50% within 12 months and by 50% again over the following 12 months.

#### Response

**Good question. Here we are attempting to capture the “unreachable” or “un-contactible” domain names. The “low hanging fruit” here are the domain names that have completely bogus Whois information – clearly visible on its face. For example, all blanks or a mere “a” entered into every space.**

**We understand there are fairly easy ways, at the point of registration, to screen out clearly-bad information, and that a number of ccTLDs already use such screens. Since we do not want to define policy, we leave implementation details to ICANN and the GNSO.**

## Question 4.

**In light of Recommendation 10, Stéphane van Gelder asked how the balance between the wishes of law enforcement and the protection of the individuals' privacy and access to personal data would be measured.**

### Recommendation 10 Privacy Services

10. ICANN should develop and manage a system of clear, consistent and enforceable requirements for all privacy services consistent with national laws. This should strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum this would include privacy, law enforcement and the industry around law enforcement.

- WHOIS entry must clearly label that this is a private registration
- Privacy services must provide full contact details as required by the WHOIS which are available and responsive as required by the framework mentioned above.
- Standardized relay and reveal processes and timeframes.
- Rules for the appropriate level of publicly available information on the registrant
- Maintenance of a dedicated abuse point of contact for the privacy service provider
- Privacy service provider shall conduct periodic due diligence checks on registrant contact information.

### Response

**It's a good question, but we are not ready for metrics yet. The recommendation is one we envision goes to the GNSO Council for a Privacy Services PDP in which the GNSO balances the existing protections of due process, law enforcement requirements and data protection/privacy protections in other areas of national law (e.g., other Internet and telecom laws) and applies them to the Privacy Services used for gTLD domain name registrations.**

### **Question 5.**

**In light of Recommendation 11, Stéphane van Gelder asked whether, the de-accreditation the Review Team is referring to, is about just registrars or registries as well if registries that have an obligation to provide a WHOIS service breach it?**

#### Recommendation 11 Privacy Services

ICANN should develop a graduated and enforceable series of penalties for privacy service providers who violate the requirements with a clear path to de-accreditation for repeat, serial or otherwise serious breaches.

#### Response

**We envision this recommendation applying to Registrars. It is our understanding that Registrars hold the contractual relationship with registrants, and that the privacy services in questions (ones in which the Registrars are affiliated) would not be subject to any control by the Registries. We are also trying to find options short of de-accreditation, which to us seems extreme as the only remedy.**

## **Question 6.**

**In light of Recommendation 17, Stéphane van Gelder asked why the Review Team thinks that it should be ICANN's responsibility to do a thick WHOIS instead of the Registries?**

### Recommendation 17 Data Access- Common Interface

To improve access to the Whois data of .COM and .NET gTLDs, the only remaining Thin Registries, ICANN should set up a dedicated, multilingual interface website to provide thick WHOIS data for them.

ALTERNATIVE for public comment:

To make WHOIS data more accessible for consumers, ICANN should set up a dedicated, multilingual interface website to allow "unrestricted and public access to accurate and complete WHOIS information". Such interface should provide thick WHOIS data for all gTLD domain names.

### Response

**Several responses, as the Review Team remains split on the issue. For the first option, the broader one, the response is: if not ICANN, then who? ICANN seems the logical place to run such a centralized system.**

**For the narrower option, ICANN running an interface to full .COM and .NET Whois data (two thin registries), we were told by Registrars that the split of the data was one that occurred when the competitive registrar system was founded. Thus, ICANN seems a logical place to create a system to help law enforcement and Internets users quickly find the full Whois data they seek.**

## WHOIS Policy Review Team Draft Report Recommendations

### Single WHOIS Policy

1) ICANN's WHOIS policy is poorly defined and decentralized; Team recommends Board oversee creation and publication of a single WHOIS policy document; include gTLD WHOIS policy in Registry & Registrar contracts, GNSO consensus policies & procedures.

### Policy Review – WHOIS Data Reminder Policy (WDRP)

2) Board should ensure that Compliance develops metrics to track impact of annual data reminder notices to registrants, and that these metrics be used to develop and publish performance targets to improve data accuracy over time (if not feasible, develop & implement an alternative policy).

### Strategic Priority

3) ICANN should make WHOIS a strategic priority, allocate sufficient resources to ensure Compliance is fully resourced to take a proactive regulatory role, encourage a culture of compliance; Board should ensure a senior member of the executive team is responsible for overseeing WHOIS compliance.

### Outreach

4) ICANN should ensure that WHOIS policy issues are accompanied by cross-community outreach, including outreach to interested communities outside of ICANN.

### Data Accuracy

5) ICANN should take appropriate measures to reduce the number of unreachable WHOIS registrations (as defined by the 2010 NORC Data Accuracy Study) by 50% within 12 months and by 50% again over the following 12 months.

6) ICANN shall publish annually an accuracy report on measured reduction in “unreachable WHOIS registrations.”

7) ICANN should publish status reports (at least annually) (with figures) on its progress towards achieving goals set out by the Team, the first to be issued before next review.

8) ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreements with Registries, Registrars, and Registrants to require the provision and maintenance of accurate WHOIS data; as part of this, ICANN should ensure that clear, enforceable and graduated sanctions apply to Registries, Registrars, Registrants that don't comply with WHOIS policies, including de-registration and/or de-accreditation for serious or serial non-compliance.

9) ICANN should ensure that requirements for accurate WHOIS data are widely and pro-actively communicated to current and prospective registrants, and should ensure that its Registrant Rights and Responsibilities document is pro-actively, prominently circulated to all new and renewing registrants.

### Data Access – Privacy Services

10) ICANN should develop and manage a system of clear, consistent and enforceable requirements for all privacy services consistent with national laws, balancing between stakeholders with competing but legitimate interests, including, at a minimum, privacy, law enforcement and industry around LE. These should include: WHOIS entry must clearly label that this is a private registration; privacy services must provide full contact details as required that are available and responsive (see above); standardized relay and reveal processes and timeframes; rules for the appropriate level of publicly available information on the Registrant; maintenance of a dedicated abuse point of contact for the privacy service provider; privacy service provider shall conduct periodic due diligence checks.

11) ICANN should develop a graduated and enforceable series of penalties for privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial

### Data Access - Proxy Services

12) ICANN should facilitate the review of existing practices by reaching out to proxy providers to create a discussion that sets out current processes followed by these providers.

13) Registrars should be required to disclose to ICANN their relationship with any Affiliated Retail proxy service provider.

14) ICANN should develop a set of voluntary best practice guidelines for appropriate proxy services consistent with national laws, striking a balance between stakeholders with competing but legitimate interests, including, at a minimum, privacy, law enforcement and industry around LE. Voluntary guidelines may include: proxy services provide full contact details as required; publication by the proxy service of its process for revealing and relaying information; standardization of reveal/relay processes & timeframes, consistent with national laws; maintenance of a dedicated abuse point of contact for the proxy service provider; due diligence checks on licensee contact information.

15) ICANN should encourage and incentivize registrars to interact with the retail service providers that adopt the best practices.

16) The published WHOIS Policy should include an affirmative statement that clarifies that a proxy means a relationship in which the Registrant is acting on behalf of another; the WHOIS data is that of the agent, and the agent alone obtains all rights and assumes all responsibility for the domain name and its manner of use.

**Data Access – Common Interface**

17) To improve access to the WHOIS data of .COM & .NET gTLDs (the Thin Registries), ICANN should set-up a dedicated, multilingual interface website to provide thick WHOIS data for them. (An "Alternative for public comment": to make WHOIS data more accessible for consumers, ICANN should set-up a dedicated, multilingual interface website to allow "unrestricted and public access to accurate and complete WHOIS information" to provide thick WHOIS data for all gTLD domain names.

**Internationalized Domain Names**

18) The ICANN Community should task a working group (WG) within 6 months of publication to finalize (i) encoding, (ii) modifications to data model, and (iii) internationalized services, to give global access to gather, store and make available internationalized registration data. Such WG should report no later than one year from formation, using existing IDN encoding. The WG should aim for consistency of approach across gTLDs and – on a voluntary basis – the ccTLD space.

19) The final data model and services should be incorporated and reflected in Registrar and Registry agreements within 6 months of adoption of the WG's recommendations by the ICANN Board. If these recommendations are not finalized in time for the next revision of such agreements, explicit placeholders for this purpose should be put in place in the agreements for the new gTLD program at this time, and in the existing agreements when they come up for renewal (as is case for adoption of consensus policies).

20) Requirements for registration data accuracy and availability in local languages should be finalized (following initial work by IRD-WG and similar efforts, especially if translation or transliteration of data is stipulated) along with the efforts on internationalization of registration data. Metrics should be defined to measure accuracy and availability of data in local languages and (if needed) corresponding data in ASCII, and compliance methods and targets should be explicitly defined accordingly.