

# APRALO-APAC Hub Webinar

**Privacy and Data Protection: Impacts  
on end-users, At-Large community  
and other sections within ICANN**

# ARALO-APAC Hub Webinar

## What Is Privacy?

- A state in which one is not observed or disturbed by other people.
- the quality or state of being apart from company or observation
- freedom from unauthorized intrusion
- Information privacy - the right to have some control over how your personal information is collected and used

# *Privacy Regulation - OECD Principles*

## **Collection Limitation Principle**

There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.

## **Data Quality Principle**

Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.

## **Purpose Specification Principle**

The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

# *Privacy Regulation- OECD Principles*

## **Use Limitation Principle**

Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with Paragraph 9 (purpose) except:

- with the consent of the data subject; or
- by the authority of law.

## **Security Safeguards Principle**

Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data.

# *Privacy Regulation- OECD Principles*

## **Openness Principle**

There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller. Individual Participation Principle

## **Individuals should have the right:**

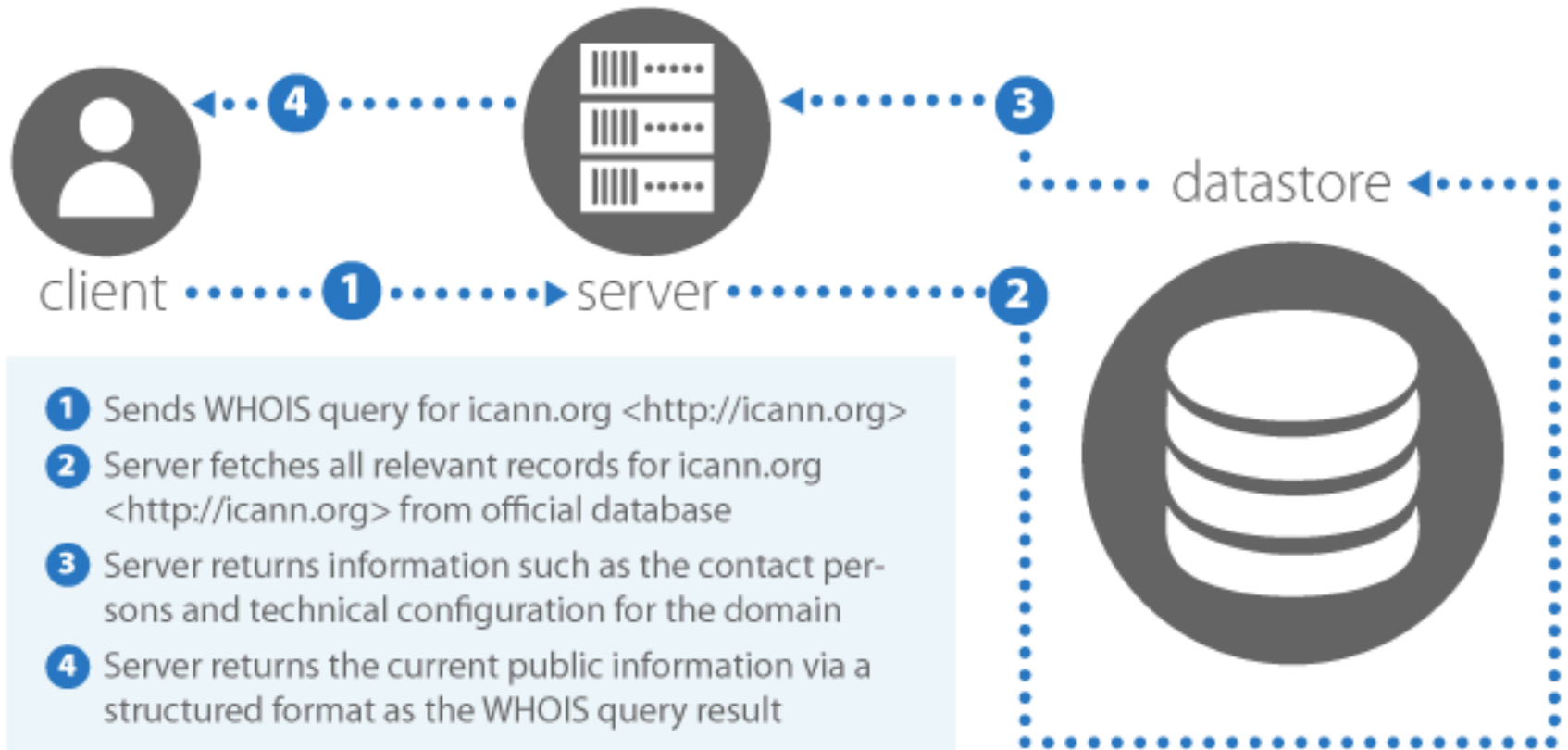
- a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to them;
- b) to have communicated to them, data relating to them
  - i. within a reasonable time;
  - ii. at a charge, if any, that is not excessive;
  - iii. in a reasonable manner; and
  - iv. in a form that is readily intelligible to them;
- c) to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and
- d) to challenge data relating to them and, if the challenge is successful to have the data erased, rectified, completed or amended.

# Privacy and WHOIS

For all gTLDs, Registrars (and resellers) and 'Thick' Registries make publicly available information about each registrant including the following:

- Name
- Email Address
- Postal address
- Voice telephone number

# Provision of WHOIS Information



# Privacy and WHOIS

## Privacy and Proxy Services

- **Privacy Service:** a service that provides the Registrant Name and subset of other information (possibly null set)
- **Proxy Service:** a relationship in which the Registrant is acting on behalf of another – so the WHOIS data is that of the agent





# ICANN Work on WHOIS – policies, procedures and reviews

# Current WHOIS Consensus Policies (1)

All ICANN's Contracted Parties (i.e. Registry Operators and Registrars) are contractually obliged to implement all community-developed Consensus Policies, including for certain aspects of WHOIS:

- ⦿ **WHOIS Data Reminder Policy** (effective from 2003)

- *Registrars must remind registrants annually of obligation to provide accurate WHOIS information*

- ⦿ **Restored Name Accuracy Policy** (effective November 2004)

- *Registrars must place restored domain name in Hold status until registrant provides updated WHOIS information*

- ⦿ **WHOIS Marketing Restrictions Policy** (effective November 2004)

- *Under the Registrar Accreditation Agreement (RAA), third parties to be prohibited from selling or using WHOIS data for marketing*

# Current WHOIS Consensus Policies (2)

- **Additional WHOIS Information Policy** (effective January 2016)
  - *Registries and registrars must display certain WHOIS status codes, to help WHOIS users better identify the sponsoring registrar and understand the status codes used by registries and registrars*
- **Thick WHOIS Transition Policy** (for .com, .jobs, .net – intended effective date of May 2018)
  - *Note that all registry operators of gTLDs launched under the 2012 New gTLD Program are already obliged to use a Thick WHOIS model*

## ADDITIONAL NOTES:

- The **Registrar Accreditation Agreement** (RAA) includes specifications concerning WHOIS Accuracy and Data Retention; also, an interim specification for Privacy/Proxy Registrations
- The **New gTLD Registry Agreement** includes a specification on Registration Data Publication Services

# Current Community Work on WHOIS Issues (1)

## 1. GNSO Policy Development Process (PDP) on a Next-Generation Registration Directory Service (RDS) to replace WHOIS (PDP initiated by the GNSO Council in November 2015)

- *PDP scope is to define the purpose of collecting, maintaining and providing access to gTLD registration data, and to consider safeguards for protecting data, using the recommendations in the Expert Working Group's Final Report as an input to, and, if appropriate, as the foundation for a new gTLD policy*
- *The EWG was convened by ICANN Board in 2012; Final Report published June 2014*

## 2. WHOIS Conflicts with National Law Procedure

- *GNSO policy (effective June 2008) required ICANN to develop a Procedure to deal with situations where a registry or registrar can credibly demonstrate that it is legally prevented by local/national privacy laws or regulations from fully complying with applicable provisions of its ICANN contract regarding the collection, display and distribution of personal data via WHOIS*

# Current Community Work on WHOIS Issues (2)

- The Procedure has not been used to date
- *Review launched in 2014; Implementation Advisory Group issued report in May 2016 recommending additional trigger*
- *GNSO Council requested ICANN staff to assess feasibility of all the triggers under the Procedure prior to a new Review to commence in October 2017 (staff report open for public comment through 12 June)*

## **3. Bylaws-mandated Registration Directory Services (WHOIS) Review** (last review concluded in 2012)

- *Bylaws require this review every five years from the end of the last review*
- *Purpose: “assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data”*
- *Review Team must specifically consider the OECD Principles*
- *Call for Volunteers issued between late 2016 and early 2017*
- *ICANN’s Supporting Organizations and Advisory Committees currently selecting their nominees to the Review Team*

# Current Community Work on WHOIS Issues (3)

## 4. Other WHOIS projects

### ***Implementation of GNSO Consensus Policy on Accreditation of Privacy and Proxy Services***

- GNSO policy recommendations adopted by ICANN Board in August 2016
- Community-based Implementation Review Team currently working with ICANN staff on proposed accreditation agreement and operationalizing the Policy requirements (e.g. WHOIS labeling, de-accreditation, handling intellectual property rights-owners' and law enforcement requests for disclosure of WHOIS information)

### ***Implementation of GNSO Consensus Policy on Translation & Transliteration of gTLD Registration Data***

- GNSO policy recommendations adopted by ICANN Board in September 2015
- Community-based Implementation Review Team currently working with ICANN staff to implement Policy requirements (e.g. supporting languages and scripts of registrants)

# Current Community Work on WHOIS Issues (4)

## ***Development of WHOIS Accuracy Reporting Service (ARS)***

- To address recommendations from 2012 WHOIS Review Team and GAC concerns over accuracy of WHOIS data
- Two phases completed – syntax and operational accuracy
- Community to discuss whether third phase – identity – is needed

## ***Implementation of GNSO Consensus Policy on Translation & Transliteration of gTLD Registration Data***

- GNSO policy recommendations adopted by ICANN Board in September 2015
- Community-based Implementation Review Team currently working with ICANN staff to implement Policy requirements (e.g. supporting languages and scripts of registrants)

## ***Implementation of Registration Data Access Protocol (RDAP) to replace old WHOIS protocol***

- ICANN staff working with community (registries and registrars) to discuss implementation issues in light of other ongoing parallel WHOIS projects

# Further Information

- Information on WHOIS – history, glossary, ongoing projects: <https://whois.icann.org/en>
- Public comment forum on WHOIS Conflict with National Laws Procedure review: <https://www.icann.org/public-comments/whois-privacy-law-2017-05-03-en>
- Information on all ICANN Consensus Policies – not limited to WHOIS only: <https://www.icann.org/resources/pages/registrars/consensus-policies-en>
- Information on the ongoing GNSO Policy Development Process on Next-Generation RDS to Replace WHOIS: <https://gns0.icann.org/en/group-activities/active/rds>
- Information on implementation of GNSO policies on:
  - Privacy/proxy services accreditation: <https://community.icann.org/x/VA2sAw>
  - Thick WHOIS: <https://community.icann.org/x/t77hAg>
  - Translation & Transliteration of gTLD Contact Data: <https://community.icann.org/x/0SeOAw>