

General Comments on Scope

Cathrin Bauer-Bulst: On scope, you may already be aware that the GAC has largely endorsed the GNSO proposal, with the exception of the last point on overlaps with the RDS PDP.

Alan Greenberg: Without going into the details of the GNSO proposal (which I will shortly), by saying the GAC does not endorse the last point in the GNSO Proposal (ensure no duplication of work between the RDS-RT and the GNSO RDS PDP), are you saying that the GAC supports us duplicating the RDS PDP work?

Cathrin Bauer-Bulst: To my understanding that's not the idea, it just seemed difficult to entirely avoid looking at some of the same issues, therefore it was decided not to exclude it and thus give the Review Team some flexibility in this regard. The GAC is interested in a comprehensive review, given the importance of the WHOIS to GAC interests combined with the likelihood that the PDP will carry on for quite some time, meaning that we may live with the existing system for a while to come.

Alan Greenberg: I would like to explain why I feel that we should limit our scope to an in depth review of the first WHOIS-RT recommendations and their implementation. This is specifically called for in section (iv) of the Bylaw governing this review: *The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.*

As the first phase of this, MSSSI should, with the support of the appropriate ICANN departments, prepare a full assessment of the WHOIS_RT Recommendations and their implementation, and do so prior to our first formal face-to-face meeting. *Staff Note: Published implementation reports are posted on the wiki [here](#), including a [detailed quarterly report](#) and [executive summary](#).*

Any future replacement for WHOIS is being discussed in the GNSO Next-Generation RDS PDP and is clearly out of scope. Privacy issues with the current WHOIS are clearly an issue, but I do not believe that this RT is the proper place to design any "fix" to meet GDPR issues, not would our time-frame meet requirements to act in the next several months. [refer to GNSO issue list below for specific points]

Carlton Samuels: I tend to agree with Alan's analysis here. I would also suggest that we look at the Internationalisation of WHOIS as part of this scope.

Chris Disspain: I tend to agree [with Alan's analysis above].

Volker Greimann: As discussed in our informal meeting, I mostly agree with your assessment, however I do feel we should not exclude any issues that have arisen since the first review team presented its report or that may have been overlooked at the time. This includes the issue of conflicts with privacy legislation. While I agree that we should not attempt to solve this issue, we do need to look at it and point out the problems that exist. If we turned a blind eye to any such issues, we would not have done our work properly.

Stephanie Perrin: While I agree that purpose is a central question and we will not be able to deal with data protection issues until we cut that gordian knot, since we just spent weeks on it in RDS I doubt we should attempt it in the Who2 review. I think if we stick to a very tight interpretation of the last review's recommendations, and sail very tight to the wind, we can get through this in a reasonable time.

Cathrin Bauer-Bulst: On the scope in general I still think our rough idea from the informal meeting at ICANN 59 works quite well:

- Do a post-mortem of the first WHOIS RT report + implementation; and
- Assess whether WHOIS as it is now (as compared to 2012) is fit for the relevant needs.

This may mean saying a word or two about the compliance with legal frameworks including GDPR but I would also support those who already explained why we shouldn't spend too much time on this and rather refer out to other work. I don't think we can escape this entirely though because how can something be fit for needs if it does not comply with relevant legal frameworks?

Dmitry Belyavsky: Shouldn't we also add to scope of our work the results of SSAC analysis? I mean <https://www.icann.org/en/system/files/files/sac-055-en.pdf> and maybe <https://www.icann.org/en/system/files/files/sac-061-en.pdf>.

Specific Comments on GNSO Response to Limited Scope

With respect to the nine focus areas the GNSO identified:

1. Assess whether the RDS efforts currently underway in the ICANN community are on target to meet the “legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data.”

Alan Greenberg: The prime RDS effort is the GNSO PDP. Given that the PDP is not at a stage to make any recommendations, I do see how we could assess its outcomes. If indeed it is thought to be in trouble, it is the sole responsibility of the GNSO to take action. A RT recommendation to the Board cannot do that.

Chris Disspain: Alan is correct. The Board would have no power to implement any such recommendation from the RT.

2. Assess the RDS efforts currently underway (or planned in the near term), for the purpose of making recommendations regarding how they might be improved and better coordinated.

Alan Greenberg: Again, I do not know what crystal ball we have to do this.

Chris Disspain: Again, the Board would have no power to implement such recommendations in respect to the GNSO PDP.

3. Ongoing work by the Privacy and Proxy Services Accreditation Issues Implementation Review Team (see Recommendation 10 of the 2012 WHOIS Review Team Final Report).

Alan Greenberg: To the extent that this is an aspect of a previous WHOIS-RT recommendation, it falls within the purview of the review of the last RT's work

4. Progress of cross validation implementation (see Recommendations 6 and 7, 2012 WHOIS Review Team Final Report).

Alan Greenberg: To the extent that this is an aspect of a previous WHOIS-RT recommendation, it falls

within the purview of the review of the last RT's work

[5. Review compliance enforcement actions, structure and processes \(see Recommendation 4, 2012 WHOIS Review Team Final Report\).](#)

Alan Greenberg: To the extent that this is an aspect of a previous WHOIS-RT recommendation, it falls within the purview of the review of the last RT's work

[6. Availability of transparent data concerning enforcement of contractual obligations of WHOIS.](#)

Alan Greenberg: I am not sure exactly what this means, but it may well fall within the reasonable purview of this RT.

[7. Assess the value and timing of RDAP as a replacement protocol.](#)

Alan Greenberg: Although RDAP, or an evolution of it, is a likely choice for implementing a future RDS, I do not see how we can assess the value of RDAP without having the specific requirements for that RDS. In terms of timing, if the current RDAP ends up being sufficient, timing is not an issue, and if it required enhancement, the timing is not something that we are really equipped to predict.

Carlton Samuels: I believe this review will have to answer the question as to whether the current WHOIS protocol is fit to purpose in a evolved DNS environment in one or other job stream. Some may recall that the RDAP is being proposed as a fit and proper replacement. You may wish for background to examine the IETF charters for Web Extensible Internet Registration Data Service (WEIRDS) from whence came RDAP: <https://tools.ietf.org/wg/weirds/charters>

Alan Greenberg: I am less sure than Carlton that we MUST discuss this. I have no problem with discussing whether the current WHOIS protocol is fit for purpose, but it better be a pretty short discussion! If anyone has a good argument why it IS fit for purpose, it should be shared pretty quickly. The inability of a 7-bit protocol to handle today's IDN world, and the inability to handle any level of authorization/authentication/gating (which is generally understood to be necessary to allow critical information to be collected but not universally displayed in support of privacy legislation) makes the answer pretty clear. And as the charter Carlton points to indicates, this has been clear for quite some time. This is a REVIEW team. I believe it is well beyond our scope to debate whether the current protocol can be modified to meet new needs, to specify or design a replacement or to review possible replacements. And I have little interest in debating whether any new protocol should be called WHOIS (pretending it is the same), WHOIS-Mark-2, RDAP, WEIRDS, WIERDS or Betelgeuse.

Dmitry Belyavsky: I totally agree with you that WHOIS almost does not fit for our current purpose, but I also think that we can (and may be must) say that it does not fit and has to be replaced.

Alan Greenberg: I have no problem doing this BRIEFLY. But I will point out that the ongoing PDP has the explicit charter to (and I quote verbatim, emphasis mine) "establish gTLD registration data requirements to determine if and why a next generation RDS is needed". I believe that we have general agreement from our chartering organizations that we should not overlap with this PDP and in fact, our recommendations go to the Board which does not under the Bylaws have the authority to overrule the GNSO PDP.

Susan Kawaguchi: I agree with Alan that this is the work of the RDS WG. If we can provide brief insight to the WG that is fine but a long in depth review and discussion would be duplicating work.

Volker Greimann: The problem about asking this question is that to do so, we would first have to define the purpose of Whois and that is a bees nest because everyone only feels his part of the elephant in the darkness on that topic. Not saying that we shouldn't do it anyway, but it would complicate our work significantly.

Stephanie Perrin: While I agree that purpose is a central question and we will not be able to deal with data protection issues until we cut that gordian knot, since we just spent weeks on it in RDS I doubt we should attempt it in the Who2 review. I think if we stick to a very tight interpretation of the last review's recommendations, and sail very tight to the wind, we can get through this in a reasonable time.

Alan Greenberg: Agreed. We need to be really careful we do not go down this rat hole! (for non-English speakers, [Definition #2](#) - "To digress in an extensive way. To divert the conversation to a topic that is not only unrelated to the topic at hand, but a topic that will likely have no immediate resolution either.")

While I would be VERY happy to not touch this subject with a ten-foot pole since it overlaps with the PDP, I do not agree that we would need to define the purpose of a future WHOIS.

The question that was raised by Carlton is whether the current WHOIS protocol is fit for purpose. The CURRENT purpose, whether we like it or not or agree with it or not. The current WHOIS asks for name and contact information. We live in a world with IDN names and contact information. The current 7-bit protocol is not able to handle them. Therefore, it is not fit for purpose.

I agree that what SHOULD be in WHOIS is a different question. If the answer ends up being almost nothing, then perhaps the current protocol would be fit for that. But that is NOT what we are here to decide.

Cathrin Bauer-Bulst: There are two layers here that we should distinguish, the technical and the legal layer. We could possibly end up making a recommendation about RDAP, for the IDN reasons Alan has already outlined, without entering into the weeds on the purposes of WHOIS from a data protection perspective.

8. To the extent time and bandwidth permit, evaluate the effectiveness of any other steps ICANN has taken to implement Recommendations 3-11 of the 2012 WHOIS Review Team Final Report.

Alan Greenberg: Agreed.

9. Ensure no duplication of work that is the responsibility of the GNSO's RDS Policy Development Process Working Group.

Alan Greenberg: Agreed.

Suggestions on Scope as per action item identified on plenary call #4

Cathrin Bauer-Bulst:

As per the Bylaws, Section 4.6(e):

- Assessment of the effectiveness of the current gTLD registry directory service;
- Assessment of whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data;
- Assessment of the extent to which the recommendations of the first [WHOIS Review Team Report of 2012](#) have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect. This assessment will encompass inter alia:
 - Privacy and Proxy Services Accreditation Issues and Implementation
 - The progress of WHOIS cross-departmental validation implementation
 - Compliance enforcement actions, structure, and processes
 - Availability of transparent enforcement of contractual obligations data
 - The suitability of RDAP as a replacement protocol in view of current technical requirements
 - The effectiveness of any other steps ICANN Org has taken to implement WHOIS Recommendations

The Review does not extend to issues of policy development as covered by the RDS PDP.

The objectives are listed in order of priority as reflected in the prioritization of the Bylaws, which the Review Team endorses.

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Alan Greenberg: - the current WHOIS implementation ignores privacy issues, and this has been a known issue for a long time;

- for whatever reasons, ICANN has chosen to largely ignore the issue, even though it has become of increasing importance to many parties and in multiple jurisdictions;

- the GDPR deadline has raised the importance and priority of the issue;

- ICANN is working on a GDPR response, and while opinions differ on whether their plans are reasonable or appropriate, the deadline of 25 May 2018 will almost surely have passed by the time we deliver our final report;

- as important as GDPR (and its penalties for non-compliance) are it is not the only privacy issue that ICANN is facing or will face and we need to address the generic issue in any recommendations we make; and finally

- our recommendations need to be high level and not attempt to provide detailed policy or implementation which is the domain of the GNSO PDP and its follow-on activities.

Erika Mann: I agree with your approach.

Few things to consider in addition to what you recommend. GDPR is such a drastic law with immense extra territorial law implications that we might not be able to avoid it completely because of the way ICANN responded to it and the implication it may have on ICANN and its ecosystem. I would agree with you that we should develop recommendations that are high level and should work in all (most) legal environments.

Nonetheless I wouldn't rule out to touch, when appropriate, on the way the GDPR was handled to allow future processes to evolve. There will always be a new GDPR-alike legislation showing up on the horizon. And, a proper response to such a future challenge should become ingrained in ICANN's DNR.

Alan Greenberg: Thanks Erika. On reading your note, I realized that there is an implication that I missed. As I mentioned, by the time we issue our report, the GDPR deadline will likely have passed. But that means we will know to a large extent if ICANN has been successful in addressing the issue or not, and out of that there may well come some recommendations.

Erika Mann: Good point Alan! Indeed the GDPR will have been implemented in all European Member States by then. And we will know by then as well if the first evaluation (starting September 18, 2017) of the Privacy Shield agreement (exchange of personal data from the EU to the US) between the European Union and the US will be successful. The GDPR and the Privacy Shield agreement are relevant for all companies that deal with personal data from the EU.

Carlton Samuels: Here's something to consider. It would be true to say ICANN hasn't dealt with WHOIS privacy issues in a 'privacy-by-default' & design kinda way. But the privacy/proxy framework inherent to registration of domain names bears some relevance; RAA 2013 Sec 3.14. That placeholder in the P/P specification of RAA 2013 booted the PPSAI WG which initiated downstream a P/P Service Provider Accreditation framework; I was a member of that WG. That WG has made final recommendations via the GNSO and the implementation phase has started with the work of the PPSAA IRT. I'm also following this phase; just completed a call.

Volker Greimann: I agree as well. Data privacy concerns and attached issues are probably the most pressing concern with current whois. Therefore the RT should include current work undertaken into their review or we risk producing a report that would be outdated on day one.