

# ICANN Reviews – Terms of Reference (ToR)

<b>Review Name:</b>	<b>Registration Directory Service (RDS) WHOIS2 Review</b>
<b>Section I: Review Identification</b>	
<b>Board Initiation</b>	<a href="#">Resolution 2017.02.03.10</a>
<b>ToR Due Date</b>	Due date for ToR, as per Board Resolution: 15 May, 2017 Revised due date: Late November/Early December 2017 Submission date: February 2017
<b>Announcement of Review Team:</b>	<a href="#">2 June, 2017</a>
<b>Name(s) of RT Leadership:</b>	Alan Greenberg, Chair Cathrin Bauer-Bulst, Vice Chair Susan Kawaguchi, Vice Chair
<b>Name(s) of Board Appointed Member(s):</b>	Chris Disspain
<b>Review Workspace URL:</b>	<a href="https://community.icann.org/display/WHO/RDS-WHOIS2+Review">https://community.icann.org/display/WHO/RDS-WHOIS2+Review</a>
<b>Review Mailing List:</b>	<a href="http://mm.icann.org/pipermail/rds-whois2-rt/">http://mm.icann.org/pipermail/rds-whois2-rt/</a>
<b>Important Background Links:</b>	Bylaws Section: <a href="#">Registration Directory Service Review</a> RT Selection: <a href="https://community.icann.org/display/WHO/Selection+Process">https://community.icann.org/display/WHO/Selection+Process</a> RT Announcement: <a href="https://www.icann.org/news/announcement-2017-06-02-en">https://www.icann.org/news/announcement-2017-06-02-en</a>

## Section II: Mission, Purpose, and Deliverables

### Mission & Scope:

#### Background

At its meeting on 03 February 2017, the ICANN Board initiated the Registration Directory Service (RDS) WHOIS2 Review to “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.”

#### Mission and Scope

This review team is tasked, as per the [Bylaws](#), Section 4.6(e):

*“(i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.*

*“(ii) The Board shall cause a periodic review to 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 (“Directory Service Review”).*

*“(iii) The review team for the Directory Service Review (“Directory Service Review Team”) will consider the Organisation for Economic Co-operation and Development (“OECD”) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and [amended in 2013](#) and as may be amended from time to time.*

*“(iv) 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.*

*“(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.”*

The new ICANN Bylaws required that this review begin as soon as possible after they were enacted on 01 October 2016. In light of the ongoing RDS policy development activities, a reduced scope was proposed limiting Directory Service Review activities to just a review of the first WHOIS-RT Recommendations. Based on ICANN’s Supporting Organization/Advisory Committee (SO/AC) feedback and further discussions within the present review team, it was decided to consider all aspects of the Directory Service Review prescribed in the Bylaws, and to further consider other issues deemed to be of

importance to the review team and ICANN organization. See appendix 1 for more information.

## Objectives

The review team carefully considered the Bylaws, the limited scope proposal and feedback received. Using a table (see appendix 2), the review team held in-detail discussions and called for consensus on each item. To define the scope of the review, the review team developed detailed objectives for each agreed component. The review team's agreed specific, prioritized objectives are as follows:

- Consistent with ICANN's mission and [Bylaws](#), Section 4.6(e)(iv), the review team will (a) evaluate the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps), (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS), and (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT's recommendations. This includes developing a framework to measure and assess the effectiveness of recommendations, and applying that approach to all areas of WHOIS originally assessed by the prior RT (as applicable).
- Consistent with ICANN's mission and [Bylaws](#), Section 4.6(e)(ii), the review team will assess the effectiveness of today's WHOIS (the now current gTLD RDS, including cumulative changes made to the then-current RDS which was assessed by the prior RT) by (a) inventorying changes made to WHOIS policies and procedures since the prior RT completed its work, (b) using that inventory to identify significant new areas of today's WHOIS (if any) which the team believes should be reviewed, and (c) determining if any specific measurable steps should be recommended to enhance effectiveness in those new areas.
- Consistent with ICANN's mission and [Bylaws](#), Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today's WHOIS (the current gTLD RDS) meets legitimate needs of law enforcement for swiftly accessible, accurate and complete data by (a) establishing a working definition of "law enforcement" used in this review, (b) identifying an approach used to determine the extent to which these law enforcement needs are met by today's WHOIS policies and procedures, (c) identifying high-priority gaps (if any) in meeting those needs, and (d) recommending specific measurable steps (if any) the team believes are important to fill gaps. Note that determining which law enforcement requests are in fact valid will not be addressed by this review.
- Consistent with ICANN's mission and [Bylaws](#), Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today's WHOIS (the current gTLD RDS) promotes consumer trust in gTLD domain names by (a) agreeing upon a working definition of "consumer" and "consumer trust" used in this review, (b) identifying the approach used to determine the extent to which consumer trust needs are met, (c) identifying high-priority gaps (if any) in meeting those needs, and (d) recommending specific measurable steps (if any) the team believes are important to fill gaps.

- Consistent with ICANN's mission and [Bylaws](#), Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today's WHOIS (the current gTLD RDS) safeguards registrant data by (a) identifying the lifecycle of registrant data, (b) determining if/how data is safeguarded in each phase of that lifecycle, (c) identifying high-priority gaps (if any) in safeguarding registrant data, and (d) recommending specific measureable steps (if any) the team believes are important to fill gaps.
- Consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems by enforcing policies, procedures and principles associated with registry and registrar obligations to maintain and provide access to accurate and up-to-date information about registered names and name servers, the review team will (to the extent that this is not already covered in prior RT recommendations), (a) assess the effectiveness and transparency of ICANN enforcement of existing policy relating to WHOIS (RDS) through Contractual Compliance actions, structure and processes, including consistency of enforcement actions and availability of related data, (b) identifying high-priority procedural or data gaps (if any), and (c) recommending specific measureable steps (if any) the team believes are important to fill gaps.
- The review team considered the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data in relation to WHOIS Policy as mandated by ICANN's Bylaws, Section 4.6.(e)(iii). The team agreed, by unanimous consensus, that current WHOIS policy does not consider the issues of privacy/data protection or transborder dataflows, and that it is within the domain of the ongoing PDP on Next-Generation gTLD Registration Directory Services to Replace Whois to determine to what extent a future RDS should factor in the OECD Guidelines or other privacy/data protection and transborder dataflow requirements set at national or multinational levels. Accordingly, the review team decided that further review of the OECD Guidelines would not be an effective use of the team's time and effort.
- The review team has considered ICANN's Bylaws, Section 4.6(a)(v): "Each review team may recommend that the applicable type of review should no longer be conducted or should be amended." Consistent with this section, the review team will (a) identify any portions of Section 4.6(e), Registration Directory Service Review, which the team believes should be changed, added or removed, and (b) include any recommended amendments to Section 4.6(e), along with rationale for those amendments, in its review report.
- The review team will not conduct a review of Registration Data Access Protocol (RDAP) at this time because policies have not yet been developed to enable assessment of the value and timing of RDAP as a replacement protocol for WHOIS.
- The review team will not conduct a review of the WHOIS protocol at this time because activities are already underway to replace the WHOIS protocol.

In recognition that the WHOIS landscape will be changing, perhaps radically, over the coming months as ICANN addresses how it will respond to the EU General Data Protection Regulation (GDPR), the review

team may choose to defer some or all of its work in relation to the scope items on Law Enforcement Needs, Consumer Trust and Safeguarding Registrant Data until it is more clear what path ICANN will be following. Should any work be deferred, individual timelines may slip. However, it is the intent of the review team that the overall schedule calling for the final report to be delivered by the end of December 2018 not change appreciably.

## Definitions

An assessment of this type requires a common understanding of the key terms associated with the review. Initially, the RDS-WHOIS2 Review Team is operating under the following definitions:

From [Glossary of WHOIS Terms](#):

- **Domain:** A set of host names consisting of a single domain name and all the domain names below it.
- **Domain Name:** As part of the Domain Name System, domain names identify IP resources, such as an Internet website.
- **GNSO - Generic Names Supporting Organization:** The supporting organization responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. Its members include representatives from gTLD registries, gTLD registrars, intellectual property interests, Internet service providers, businesses and non-commercial interests.
- **gTLD - Generic Top Level Domain:** Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs", such as .COM, .NET, and .ORG. In addition, many new gTLDs such as .HOTELS and .DOCTOR are now being delegated.
- **IDNs — Internationalized Domain Names:** IDNs are domain names that include characters used in the local representation of languages that are not written with the twenty-six letters of the basic Latin alphabet "a-z". An IDN can contain Latin letters with diacritical marks, as required by many European languages, or may consist of characters from non-Latin scripts such as Arabic or Chinese. Many languages also use other types of digits than the European "0-9". The basic Latin alphabet together with the European-Arabic digits are, for the purpose of domain names, termed "ASCII characters" (ASCII = American Standard Code for Information Interchange). These are also included in the broader range of "Unicode characters" that provides the basis for IDNs.
- **Registrar:** Domain names can be registered through many different companies (known as "registrars") that compete with one another. The registrar you choose will ask you to provide various contact and technical information that makes up the registration. The registrar will then keep records of the contact information and submit the technical information to a central directory known as the "registry." This registry provides other computers on the Internet the information necessary to send you e-mail or to find your web site. You will also be required to enter a registration contract with the registrar, which sets forth the terms under which your registration is accepted and will be maintained.

- [Registry](#): The "Registry" is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator; users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.
- [WHOIS](#): WHOIS protocol (pronounced "who is"; not an acronym) An Internet protocol that is used to query databases to obtain information about the registration of a domain name (or IP address). The WHOIS protocol was originally specified in RFC 954, published in 1985. The current specification is documented in RFC 3912. ICANN's gTLD agreements require registries and registrars to offer an interactive web page and a port 43 WHOIS service providing free public access to data on registered names. Such data is commonly referred to as "WHOIS data," and includes elements such as the domain registration creation and expiration dates, nameservers, and contact information for the registrant and designated administrative and technical contacts. WHOIS services are typically used to identify domain holders for business purposes and to identify parties who are able to correct technical problems associated with the registered domain.

From ICANN.org:

- [Registration Data Access Protocol \(RDAP\)](#) enables users to access current registration data and was created as an eventual replacement for the WHOIS protocol. RDAP was developed by the technical community in the Internet Engineering Task Force (IETF).

From [SAC051](#), Report on Domain Name WHOIS Terminology and Structure:

- **Domain Name Registration Data (DNRD)** – refers to the information that registrants provide when registering a domain name and that registrars or registries collect. Some of this information is made available to the public. For interactions between ICANN Accredited Generic Top Level Domain (gTLD) registrars and registrants, the data elements are specified in the current Registrar Accreditation Agreement. For country code Top Level Domains (ccTLDs), the operators of these TLDs set their own or follow their government's policy regarding the request and display of registration information.
- **Domain Name Registration Data Access Protocol (DNRD-AP)** – refers to the elements of a (standard) communications exchange—queries and responses—that make access to registration data possible. For example, the WHOIS protocol (RFC 3912) and Hypertext Transfer Protocol (HTTP) (RFC 2616 and its updates) are commonly used to provide public access to DNRD.
- **Domain Name Registration Data Directory Service (DNRD-DS)** – refers to the service(s) offered by registries and registrars to provide access to (potentially a subset of) the DNRD. ICANN Accredited gTLD registries and registrars are required by contracts to provide the DNRD Directory Services via both port 43 and over the web interface. For ccTLDs, the TLD registries determine which service(s) they offer.
- **Registration Data Directory Service (RDDS)** – Registration Data Directory Services refers to the collective of WHOIS and Web based WHOIS services. [[2013 RAA](#)]

The terms RDDS (Registration Data Directory Service) and RDS (Registration Directory Service) are often

used interchangeably.

### **Deliverables & Timeframes:**

The review team shall to the best of its abilities respect the timelines and deliverables as outlined in this document. The review team shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of this review, as agreed on below. The review team shall follow its published work plan to address review objectives within the available time and specified resources. The work plan is a roadmap towards reaching milestones and is subject to adjustments as the review team progresses through work.

Progress towards time-bound milestones defined in the work plan shall be tracked and published on a Fact Sheet.

### **Timeline (subject to change):**

- July 2017-February 2018: Define and approve terms of reference and work plan
- December 2017-March 2018: Data analysis
- February-March 2018: Assemble draft findings
- April-June 2018: Approve draft findings and engagement at ICANN62
- June-August 2018: Produce and approve draft report for public comment
- October-November 2018: Assemble final recommendations and update draft report based on public comments received; engagement at ICANN63
- December 2018: Adopt final report for ICANN Board consideration

### **Deliverables:**

The review team shall produce at least one **draft report** and a **final report**. The draft report should include the following:

- Overview of the review team's working methods, tools used and analysis conducted
- Facts and findings related to the investigation of the objectives identified in the scope
- Resolution to all questions raised in the scope or those that arose subsequently during the course of the review (as appropriate)
- Summary of public consultations and engagement conducted
- Self-assessment of what processes (pertinent to the scope) work well and where improvements can be made; the self-assessment ought to be based on and refer to facts, findings, and data provision wherever possible.
- Preliminary recommendations that address significant and relevant issues detected
- Preliminary feasibility assessment
- A preliminary impact analysis to measure the effectiveness of the recommendations proposed by the current review team, including source(s) of baseline data for that purpose:
  - Identification of issue
  - Definition of desired outcome, including identification of metrics used to measure whether recommendation goals are achieved, where possible
  - Identification of potential problems in attaining the data or developing the metrics
  - A suggested timeframe in which the measures should be performed

- Define current baselines of the issue and define initial benchmarks that define success or failure
- Surveys or studies
- All recommendations should indicate a preliminary, non-binding level of consensus they have received, as defined in these ToR. This is to inform the community during the public comment period to indicate the level of review team support for each recommendation, without binding the review team on their support level in the final report.

At least one draft report will be submitted for public comment, following standard ICANN procedures. The review team may update the draft Report based on the comments and/or other relevant information received, and submit its final report to the ICANN Board. The final report shall contain the same sections as the draft Report and, in addition, a section detailing the public comments received on the draft Report and an explanation of why and how they were incorporated into the final report or why and how they were rejected by the review team. Each recommendation shall include the level of consensus received from the review team members, as defined in these ToR. As mandated by ICANN's Bylaws, the final report of the review team shall be published for public comment in advance of the Board's consideration.

#### **Considerations with Regard to Review Team Recommendations:**

Review teams are expected to develop, and follow a clear process when documenting constructive recommendations as the result of the review.

This includes fact-based analysis, clear articulation of noted problem areas, supporting documentation, and resulting recommendations that follow the S.M.A.R.T framework: **S**pecific, **M**easurable, **A**chievable, **R**ealistic, and **T**ime-Bound.

Additionally, the review team is asked to share its proposed recommendations with ICANN organization to obtain feedback regarding feasibility (e.g., time required for implementation, cost of implementation, and potential alternatives to achieve the intended outcomes.) As stated in the Bylaws, the review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization. To the extent practical, proposed recommendations should be provided in priority order to ensure focus on highest-impact areas and priority should be accompanied by.

To help review teams assess whether proposed recommendations are consistent with this guidance, testing each recommendation against the following questions may be helpful:

- What is the intent of the recommendation?
- What observed fact-based issue is the recommendation intending to solve? What is the “problem statement”?
- What are the findings that support the recommendation?
- Is each recommendation accompanied by supporting rationale?
- How is the recommendation aligned with ICANN’s strategic plan, the Bylaws and ICANNs mission?
- Does the recommendation require new policies to be adopted? If yes, describe issues to be addressed by new policies.



- What outcome is the review team seeking? How will the effectiveness of implemented improvements be measured? What is the target for a successful implementation?
- How significant would the impact be if not addressed (i.e., Very significant, moderately significant) and what areas would be impacted (e.g., security, transparency, legitimacy, efficiency, diversity, etc.)
- Does the review team envision the implementation to be Short-term (i.e., completed within 6 months of acceptance by the Board), Mid-term (i.e., within 12 months), or Longer-term (i.e., more than 12 months)?
- Is related work already underway? If so, what is it and who is carrying it out?
- Who are the (responsible) parties that need to be involved in the implementation work for this recommendation (i.e., Community, ICANN organization, Board, or combination thereof)
- Are recommendations given in order of priority to ensure focus on highest impact areas?

Finally, review teams are encouraged to engage in dialog with the dedicated ICANN Board Caucus Group; for example, when the review team reaches a milestone and could benefit from feedback on agreed scope or any recommendations under development to address that scope.

### Section III: Formation, Leadership, Other Organizations

#### Membership:

As per the ICANN Bylaws, the review team has been selected by the Chairs of ICANN’s Supporting Organizations and Advisory Committees (SO/ACs). Members and their gender, SO/AC affiliation, and region are:

1	Alan Greenberg	M	ALAC	NA
2	Carlton Samuels	M	ALAC	LAC
3	Dmitry Belyavsky	M	ALAC	EUR
4	Cathrin Bauer-Bulst	F	GAC	EUR
5	Lili Sun	F	GAC	AP
6	Thomas L. Walden, Jr.	M	GAC	NA
7	Erika Mann	F	GNSO	EUR
8	Stephanie Perrin	F	GNSO	NA
9	Susan Kawaguchi	F	GNSO	NA
10	Volker Greimann	M	GNSO	EUR
11	Chris Disspain	M	ICANN Board	AP

Note: The ccNSO has reserved the right to appoint up to three review team members once the scope of

the review has been determined.

The ICANN Board has appointed Chris Disspain to serve as a member of the RDS-WHOIS2 Review Team.

By consensus, the review team has selected a leadership team, consisting of Alan Greenberg (Chair), Cathrin Bauer-Bulst (Vice Chair), and Susan Kawaguchi (Vice Chair).

#### **Roles and Responsibilities of Review Team Members:**

Responsibilities for all review team members include:

- Attend all calls and face-to-face meetings whenever feasible.
- Provide apologies for planned absences at least 24 hours in advance for all remote meetings; provide apologies for planned absence for face-to-face meetings as early as possible to minimize unnecessary expenses.
- Actively engage on email list(s) and other collaborative tools, including providing feedback when requested to do so through that medium.
- Actively engage with relevant stakeholder groups within the ICANN community, and within each team member's respective community.
- Provide fact-based inputs and comments based on core expertise and experience.
- Undertake desk research as required and in accordance with scope of work, including assessment of implementation of recommendations from prior reviews.
- Be prepared to listen to others and make compromises in order to achieve consensus recommendations.
- Participate in drafting and subgroups as required.
- Comply with ICANN's expected standards of behavior.
- Comply with all review team member requirements, including those described in the "Accountability and Transparency" and "Reporting" sections of this document.

#### **Roles and Responsibilities of Review Team Leadership:**

Responsibilities of the review team's leadership include:

- Remain neutral when serving as Chair or Vice Chair.
- Identify when speaking in individual capacity.
- Maintain standards and focus on the aims of the review team as established in this terms of reference.
- Drive toward delivery of key milestones according to the work plan.
- Ensure effective communication between members and with broader community, Board and ICANN organization.
- Set the agenda and run the meetings.
- Ensure that all meeting attendees get accurate, timely and clear information.
- Determine and identify the level of consensus within the team.
- Provide clarity on team decisions.
- Ensure decisions are acted upon.
- Build and develop team-work.
- Manage the review team's budget and work with the ICANN organization team supporting

work of the review to provide reporting to maintain accountability and transparency.

#### **Changes to Review Team Membership, Dissolution of Review Team:**

##### **Dissolution of review team:**

This review team shall be disbanded once it has submitted its final report to the ICANN Board.

##### **Implementation Phase:**

The review team shall identify one or two review team members to remain available for clarification as may be needed during the planning phase of implementation of review team recommendations.

##### **Replacement and Removal of Members:**

If a review team member is no longer able or willing to serve, or if an SO/AC withdraws its endorsement of the member, the SO/AC making the original endorsement will be requested to refill the position with a new member. The SO/AC will make the selection according to their own processes and will not be bound to consider only those candidates who originally applied requesting their endorsement.

Depending on the remaining time of a review, or any other factors, the relevant SO/AC may choose not to nominate a replacement candidate.

If a review team member is sufficiently inactive or disruptive as to cause at least 70% of review team members (excluding the member in question) to request their removal, the member will be asked to resign. If the member refuses to resign, the SO/AC that endorsed the member will be requested to withdraw their endorsement and replace the member. Should the SO/AC not take action, the member can be removed by a 70% majority vote of the remaining review team members. In all cases, the balloting will be carried out in such a way as to not reveal how individual members voted.

#### **Support from ICANN Organization:**

Members of ICANN organization assigned to the review team will support its work, including project management, meeting support, document drafting if/when requested, document editing and distribution, data and information gathering if/when requested, and other substantive contributions when deemed appropriate.

The commitments in this document presume appropriate staff support from ICANN organization. Should that support, in the view of review team leadership, become an issue, this will be communicated first to the ICANN organization member designated as the team leader and then if necessary, to the Board member participating in this review team.

#### **Dependencies on Other Organizations:**

The review team will ensure the work it undertakes does not duplicate or conflict with purview and scope of the following efforts. The review team will be briefed/updated on these activities, as appropriate, to avoid unnecessary or unintended overlap.

- GNSO PDP on Next-Generation Registration Directory Service (RDS)
- Registration Data Access Protocol (RDAP) Implementation
- Cross-Field Address Validation
- Translation and Transliteration of Contact Information Implementation

- Privacy/Proxy Services Accreditation Implementation
- ICANN Procedures for Handling WHOIS Conflicts with Privacy Laws
- WHOIS Accuracy/GAC Safeguard Advice on WHOIS Verification and Checks
- Implementation of THICK WHOIS
- ICANN organization’s work with the community on GDPR Compliance with existing agreements with registries and registrars

ICANN org will alert the RDS-WHOIS2 review team of any changes to the list and update it.

The review team will engage in dialog with the dedicated ICANN Board Caucus Group; for example, when the review team reaches a milestone and could benefit from feedback on agreed scope or any recommendations under development to address that scope.

## Section IV: Decision-Making and Methodologies

### Decision-Making Methodologies:

The Bylaws state: “(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.”

According to the Bylaws, “Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation.”<sup>1</sup>

All minority dissents must detail the analysis or recommendations in the final report with which its author(s) disagree(s), including a rationale for that disagreement.

The authors of minority dissents are encouraged to provide alternative recommendations that include the same details and context as is required from the recommendations in these ToR.

The review team leadership will be responsible for designating each decision as having one of the following designations:

- **Full consensus** - no review team members speak against the recommendation in its last readings.
- **Consensus** - a small minority disagrees, but most agree. A rule-of-thumb for judging consensus is that the decision is supported by 80% of the review team.
- **Strong support but significant opposition** - most of the group supports a recommendation but a significant number of members do not.
- **Divergence** - no strong support for any particular position, rather many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group

<sup>1</sup> Article IV, Section 4.6(a)(vii)(A).

agree that it is worth listing the issue in the report nonetheless.

- **Minority view** - a proposal where a small number of people support the recommendation. This can happen in response to a **consensus**, **strong support but significant opposition**, and **no consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In judging the extent to which consensus has been reached, it may be useful for each team member to consider which of the following categories they applies to them.

**Disagree:** I have a fundamental disagreement with the core of the proposal that has not been resolved. We need to look for a new proposal.

**Stand aside:** I can't support this proposal because ... But I don't want to stop the group, so I'll let the decision happen without me.

**Reservations:** I have some reservations but am willing to let the proposal pass.

**Agreement:** I support the proposal.

In cases of **consensus**, **strong support but significant opposition**, and **no consensus**, an effort should be made to document that variance in viewpoint and to present adequately any **minority views** that may have been made. Documentation of **minority view** recommendations normally depends on text offered by the proponent(s). In all cases of **divergence**, the review team leadership should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the review team has discussed an issue long enough for all issues to have been raised, understood and discussed, the review team leadership makes an evaluation of the designation and publish it for the group to review.
- ii. After the review team has discussed the review team leadership's estimation of designation, the leadership should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the leadership makes an evaluation that is accepted by the review team.
- iv. In rare cases, leadership may decide that the use of a poll is reasonable. Some of the reasons for this might be:
  - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **consensus** and **strong support but significant opposition** or between **strong support but significant opposition**

and **divergence**.

Care should be taken in using polls that opinions cast do not become votes. A liability with the use of polls is that, in situations where there is **divergence** or **strong opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the review team's needs, the leadership may direct that review team participants do not have to have their name explicitly associated with any full consensus or consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire review team and, for this reason, should take place on the designated mailing list to ensure that all review team members have the opportunity to fully participate in the consensus process. It is the role of the leadership to designate which level of consensus is reached and announce this designation to the review team. Member(s) of the review team should be able to challenge the designation of the leadership as part of the review team's discussion. However, if disagreement persists, review team members may use the process set forth below to challenge the designation.

If several participants in a review team disagree with the designation given to a position by the leadership or any other consensus call, they may follow these steps sequentially:

1. Send email to the leadership, copying the review team explaining why the decision is believed to be in error.
2. If the leadership still disagrees with the opposing member, a straw poll shall be conducted to determine the result.

#### **Accountability and Transparency:**

Teleconferences and face-to-face meetings will be recorded and streamed, to the extent practicable, and subject to Confidential Framework provisions. However, the record shall reflect this decision, as well as the underlying considerations that motivated such action.

The review team and supporting members of ICANN organization will endeavor to post (a) action items within 24 hours of any telephonic or face-to-face meeting; and (b) streaming video and/or audio recordings as promptly as possible after any such meeting, subject to the limitations and requirements described above.

The review team will maintain a wiki, <https://community.icann.org/display/WHO/RDS-WHOIS2+Review>, on which it will post: (a) action items, decisions reached, correspondence, meeting agendas, background materials provided by ICANN, members of the review team, or any third party; (ii) audio recordings and/or streaming video; (b) the affirmations and/or disclosures of review team members under the review team's conflict of interest policy; (c) input, whether from the general public, from ICANN stakeholders, from ICANN organization, the ICANN Board, Supporting Organizations and Advisory Committees, etc. Absent overriding privacy or confidentiality concerns, all such materials should be made publicly available on the review team website within 48 business hours of receipt.

Email communications among members of the review team shall be [publicly archived](#) automatically via the review email list, [rds-whois2-rt@icann.org](mailto:rds-whois2-rt@icann.org). Email communication between team members regarding review team work should be exchanged on this list. In exceptional circumstances, such as when required due to Non-Disclosure Agreement or Confidential Disclosure Agreement provisions, non-public email exchanges may take place between review team members and ICANN organization. When possible, a non-confidential summary of such discussions will be posted to the public review email list.

### **Reporting:**

Review team members are expected to perform their reporting obligations, and provide details in terms of content and timelines. Reporting should start when a review team is launched and should continue until its conclusion. The review team should include in this section (a) the information to be reported, (b) the report format to be used, and (c) report intervals, to assure accountability and transparency of the RT vis-a-vis the community. In addition, reference to the quarterly Fact Sheets, assembled by ICANN organization, should be made.

Review team members are, as a general matter, encouraged to report back to their constituencies and others with respect to the work of the review team, unless the information involves confidential information.

While the review team will strive to conduct its business on the record to the maximum extent possible, members must be able to have frank and honest exchanges among themselves, and the review team must be able to have frank and honest exchanges with stakeholders and stakeholder groups. Moreover, individual members and the review team as a whole must operate in an environment that supports open and candid exchanges, and that welcomes re-evaluation and repositioning in the face of arguments made by others.

Members of the review team are volunteers, and each will assume a fair share of the work of the team.

Members of the review team shall execute the investigation according to the scope and work plan, based on best practices for fact-based research, analysis and drawing conclusions.

The review team will engage in dialog with the dedicated ICANN Board Caucus Group; for example, when the review team reaches a milestone and could benefit from feedback on agreed scope or any recommendations under development to address that scope.

### **Subgroups:**

The review team can create as many subgroups as it deems necessary to complete its tasks through its standard decision process, as follows:

- Subgroups will be composed of review team members and will have a clear scope, timeline, deliverables and leadership.
- Subgroups when formed will appoint a rapporteur who will report the progress of the subgroup back to the plenary on a defined timeline.
- Subgroups will operate per review team rules and all subgroup requests will require review team approval.
- Subgroups can arrange face-to-face meetings in conjunction with review team face-to-face

meetings.

- All documents, reports and recommendations prepared by a subgroup will require review team approval before being considered a product of the review team.
- The review team may terminate any subgroup at any time.

#### **Travel Support:**

Members of the review team who request funding from ICANN to attend face-to-face meetings will receive it according to ICANN's standard travel policies and subject to the review team's budget. When a review team face-to-face meeting is held in conjunction with an ICANN meeting, and when outreach sessions have been scheduled, review team members, who are not funded otherwise, may receive funding for the duration of the ICANN meeting.

#### **Outreach:**

The review team will conduct outreach to the ICANN community and beyond to support its mandate and in keeping with the global reach of ICANN's mission. As such the review team will ensure the public has access to, and can provide input on, the team's work. Interested community members will have an opportunity to interact with the review team. The review team will present its work and hear input from communities (subject to budget requirements).

#### **Observers:**

Observers may stay updated on the review team's work in several ways:

##### **Mailing-Lists**

Observers may subscribe to the observers mailing-list [rds-whois2-observers@icann.org](mailto:rds-whois2-observers@icann.org) by sending a request to [mssi-secretariat@icann.org](mailto:mssi-secretariat@icann.org). Calendar invites to RDS-WHOIS2 meetings as well as agendas are forwarded to this mailing-list.

In addition, observers can follow RDS-WHOIS2 review team exchanges by subscribing to the RDS-WHOIS2 review team mailing-list with read-only rights only.

##### **Attend a meeting virtually**

All meetings, whether in person or online, will have a dedicated Adobe Connect room for observers to participate: <https://participate.icann.org/rdsreview-observers>.

##### **Attend a meeting in person**

When review team members gather for public face-to-face meetings, Observers may attend to share their input and questions with the review team, as appropriate. The calendar of scheduled calls and meetings is published on the wiki: <https://community.icann.org/display/WHO/RDS-WHOIS2+Review>.

##### **Email input to the review team**

Observers may send an email to the review team to share input on their work. Remarks and/or questions can be sent to the following address: [input-to-rds-whois2-rt@icann.org](mailto:input-to-rds-whois2-rt@icann.org).

The RDS-WHOIS2-RT observers list is available [here](#).

#### **Independent Experts:**



As per the Bylaws (Article 4, Section IV(a)(iv), the review team may engage independent experts “to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by [Section 4.6 of the Bylaws] to the extent such fees and costs are consistent with the budget assigned for such review.”

For the purpose of this review, independent experts are third parties that may be contractually engaged to support the review team’s work. Should the need for independent experts arise, the review team will consider the scope of work required, expected deliverables, necessary skills and expertise, and the budget implications associated with the project. To initiate a request for an independent expert, the review team will create and formally approve a statement of work which includes:

- A clear, specific project title and concise description of the work to be performed
- A description of required skills, skill level, and any particular qualifications
- Concrete timelines for deliverables, including milestones and measureable outcomes
- Any additional information or reference material as needed to detail requirements

The leadership will communicate the review team’s request to ICANN org for processing in accordance with ICANN’s standard operating procedures. Selection of experts to support the work of the review team will follow ICANN’s procurement processes. The statement of work will inform the procurement path to be followed (Request For Proposals [RfP] or no RfP). In either case, ICANN organization will search for an expert that meets the specified criteria, evaluate each candidate relative to the criteria, negotiate contract terms, and manage the contracting process. Should the review team wish to appoint designated Team Members to participate in the selection process of the third party, the designated Team Members will be expected to sign the Non-Disclosure Agreement.

### **Considering advice from independent experts**

The review team shall give appropriate consideration to any work submitted by an independent expert.

While the review team is at liberty to adopt or reject any input or advice provided by an independent expert, it must include a dedicated section in its draft and final reports that details how the independent examiner’s work was taken into consideration by the review team.

In case the independent examiner provides concrete advice, and the review team rejects that advice, a rationale shall be provided.

Any work that the independent expert submits to the review team shall be included in full as an annex to the review team’s draft and final reports.

### **Closure & Review Team Self-Assessment:**

The review team will be dissolved upon the delivery of its final report to the Board, unless assigned additional tasks or follow-up by the ICANN Board are being requested.

Following its dissolution, review team members shall participate in a self-assessment, facilitated by

supporting members of ICANN organization, to provide input, best practices, and suggestions for improvements for future review teams.

# Appendix 1

A [Limited Scope Proposal](#) was developed in November 2016, at the request of SO/AC leaders, to reflect discussions about how to conduct the RDS-WHOIS2 Review more effectively, while minimizing the impact of the review on the community. The following text from “[RDS Review - Guidance for Determining Scope of Review](#)” summarizes the limited scope proposal and feedback on that proposal received from SO/AC leaders, highlighting key points that the review team should consider when determining the scope of this Review:

*The proposed limited scope suggests that:*

- *The scope be limited to “post mortem” of implementation results of the previous WHOIS review recommendations*
- *ICANN Org report on implementation of WHOIS review recommendations:*
  - *How well were the identified issues addressed?*
  - *How well were the recommendations implemented?*
- *Review scope exclude issues already covered by RDS PDP effort*

*The [GNSO feedback](#) indicates their support for excluding issues already covered by the RDS PDP efforts, to avoid duplication of work, and the proposed limited scope. Additionally, GNSO suggests the scope to include and assess:*

- *Whether RDS efforts meet the “legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data.”*
- *How RDS current & future recommendations might be improved and better coordinated*
- *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 value and timing of RDAP as a replacement protocol*
- *The effectiveness of any other steps ICANN Org has taken to implement WHOIS Recommendations*

*The [GAC feedback](#) noted that, while many of its members have no objection to the proposal to limit the scope of the review, a few members expressed concerns that this would not be appropriate given that a) the current WHOIS may still be in use for a while and its improvement should not be neglected; and b) the scope of a review should best be determined by the Review Team itself. At the relevant plenary, GAC members expressed general support for the GNSO feedback, noting that overlap with the RDS PDP might not be entirely avoided.*

*The ALAC and SSAC have both indicated support of the proposed limited scope, and exclusion of issues covered by RDS PDP.*

*In summary, the majority of the SOs and ACs agree that the RDS-WHOIS2 Review scope should be determined in very close coordination with other ongoing community efforts to avoid duplication of work. Moreover, given the concerns regarding the community bandwidth, sheer amount of work associated with a full Review scope, and the length of time it takes to conduct a full Review (12-18 months) compared to the proposed limited scope (approximately six (6) months), the proposed limited scope may be the most feasible approach and best use of community resources.*

# Appendix 2 – Scope table

The review team prioritized this review’s objectives using the table below. The “F2F Results” column indicates the priority assigned to each objective by review team, using a scale of 1 to 5 (highest).

Reference	Original Issue	Objective to be inserted into ToR (draft text for RT consideration)	F2F Results
<b>Bylaws 4.6(e)(iv)</b>	<i>(iv) The Directory Service Review Team shall assess the extent to which prior <a href="#">Directory Service Review recommendations</a> have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN’s mission and Bylaws, Section 4.6(e)(iv), the review team will (a) evaluate the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps), (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS), and (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT’s recommendations. This includes developing a framework to measure and assess the effectiveness of recommendations, and applying that approach to all areas of WHOIS originally assessed by the prior RT (as applicable).</li> </ul>	4-5
<b>Bylaws 4.6(e)(ii)</b>	<i>(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service...</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN’s mission and Bylaws, Section 4.6(e)(ii), the review team will assess the effectiveness of today’s WHOIS (the now current gTLD RDS, including cumulative changes made to the then-current RDS which was assessed by the prior RT) by (a) inventorying changes made to WHOIS policies and procedures since the prior RT completed its work, (b) using that inventory to identify significant new areas of today’s WHOIS (if any) which the team believes should be reviewed, and (c) determining if any specific measurable steps should be recommended to enhance effectiveness in those new areas.</li> </ul>	3
<b>Bylaws 4.6(e)(ii)</b>	<i>(ii) ...and whether its implementation meets the legitimate needs of law enforcement</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN’s mission and <a href="#">Bylaws</a>, Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today’s WHOIS (the current gTLD RDS) meets legitimate needs of law enforcement for swiftly accessible, accurate and complete data by (a) establishing a working definition of “law enforcement” used in this review, (b) identifying an approach used to determine the extent to which these law enforcement needs are met by today’s WHOIS policies and procedures, (c) identifying high-priority gaps (if any) in meeting those needs, and (d) recommending specific measurable steps (if any) the team believes are important to fill gaps. Note that determining which law enforcement requests are in fact valid will not be addressed by this review.</li> </ul>	4-5
<b>Bylaws 4.6(e)(ii)</b>	<i>(ii) ...and whether its implementation promotes consumer trust</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN’s mission and <a href="#">Bylaws</a>, Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today’s WHOIS (the current gTLD RDS) promotes consumer trust in gTLD domain names by (a) agreeing upon a working definition of “consumer” and “consumer trust” used in this review, (b) identifying the approach used to determine the extent to which consumer trust needs are met, (c) identifying high-priority gaps (if any) in meeting those needs, and (d) recommending specific</li> </ul>	2

Reference	Original Issue	Objective to be inserted into ToR (draft text for RT consideration)	F2F Results
		measurable steps (if any) the team believes are important to fill gaps.	
<b>Bylaws 4.6(e)(ii)</b>	<i>(ii) ...and whether its implementation safeguards registrant data</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN's mission and <u>Bylaws</u>, Section 4.6(e)(ii), the review team will assess the extent to which the implementation of today's WHOIS (the current gTLD RDS) safeguards registrant data by (a) identifying the lifecycle of registrant data, (b) determining if/how data is safeguarded in each phase of that lifecycle, (c) identifying high-priority gaps (if any) in safeguarding registrant data, and (d) recommending specific measurable steps (if any) the team believes are important to fill gaps.</li> </ul>	2
<b>Bylaws 4.6(e)(iii)</b>	<i>(iii) The review team for the Directory Service Review will consider the Organisation for Economic Co-operation and Development ("OECD") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and <a href="#">amended in 2013</a> and as may be amended from time to time</i>	<ul style="list-style-type: none"> <li>The review team considered the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data in relation to WHOIS Policy as mandated by ICANN's Bylaws, Section 4.6.(e)(iii). The team agreed, by unanimous consensus, that current WHOIS policy does not consider the issues of privacy/data protection or transborder dataflows, and that it is within the domain of the ongoing PDP on Next-Generation gTLD Registration Directory Services to Replace Whois to determine to what extent a future RDS should factor in the OECD Guidelines or other privacy/data protection and transborder dataflow requirements set at national or multinational levels. Accordingly, the review team decided that further review of the OECD Guidelines would not be an effective use of the team's time and effort.</li> </ul>	Agreed to drop as review objective but provide rationale in ToR
<b>GNSO Scope Msgs Page 3</b>	<i>Assess WHOIS Policy Compliance enforcement actions, structure, and processes; Availability of transparent enforcement of contractual obligations data</i>	<ul style="list-style-type: none"> <li>Consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems by enforcing policies, procedures and principles associated with registry and registrar obligations to maintain and provide access to accurate and up-to-date information about registered names and name servers, the review team will (to the extent that this is not already covered in prior RT recommendations), (a) assess the effectiveness and transparency of ICANN enforcement of existing policy relating to WHOIS (RDS) through Contractual Compliance actions, structure and processes, including consistency of enforcement actions and availability of related data, (b) identifying high-priority procedural or data gaps (if any), and (c) recommending specific measurable steps (if any) the team believes are important to fill gaps.</li> </ul>	3
<b>GNSO Scope Msgs Page 3</b>	<i>Assess the value and timing of RDAP as a replacement protocol</i>	<ul style="list-style-type: none"> <li>The review team will not conduct a review of Registration Data Access Protocol (RDAP) at this time because policies have not yet been developed to enable assessment of the value and timing of RDAP as a replacement protocol for WHOIS.</li> </ul>	Agreed to drop as review objective but provide rationale in ToR
<b>GNSO Scope Msgs Page 3</b>	<i>Assess current WHOIS protocol for current purposes</i>	<ul style="list-style-type: none"> <li>The review team will not conduct a review of the WHOIS protocol at this time because activities are already underway to replace the WHOIS protocol.</li> </ul>	Agreed to drop as review objective but provide rationale in ToR

Reference	Original Issue	Objective to be inserted into ToR (draft text for RT consideration)	F2F Results
<b>GNSO Scope Msgs Page 1</b>	<i>Assess progress made on supporting Internationalized Domain Names (IDNs)</i>	•	Merged into RT1 Rec Eval
	<i>Assess sections of ICANN's ByLaws relating to RDS</i>	<ul style="list-style-type: none"> <li>The review team has considered ICANN's Bylaws, Section 4.6(a)(v): "Each review team may recommend that the applicable type of review should no longer be conducted or should be amended." Consistent with this section, the review team will (a) identify any portions of Section 4.6(e), Registration Directory Service Review, which the team believes should be changed, added or removed, and (b) include any recommended amendments to Section 4.6(e), along with rationale for those amendments, in its review report.</li> </ul>	Objective added after F2F