

RDS-WHOIS2-RT Plenary Call #5 – Summary of discussion on Law Enforcement Needs

During the plenary call #5 on 17 August, review team members discussed the following point raised in GNSO feedback on the limited scope proposal:

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.”

Call discussion focused on what it might mean to “meet the legitimate needs of law enforcement.” To help further progress this discussion, ICANN Org was assigned an action to summarize points raised, enumerated below in the order discussed during the call. For further detail, please consult the call transcript and recordings available at <https://community.icann.org/x/yH3wAw>

1. Assessing whether the RDS meets the legitimate needs of law enforcement requires defining those legitimate needs – which is part of the RDS PDP mandate.
 - “Law enforcement” should include what’s needed for cybercrime enforcement
 - “Law enforcement” should include data privacy officers charged with enforcing data protection laws
2. If the current RDS is insufficient, how could it be made better for law enforcement?
This too is part of the RDS PDP mandate
3. The issue for law enforcement sometimes is that procedures are not always clear and they have sometimes difficulties of getting the information, the true information they need
4. Our industry is probably the only one which is not publishing information about law enforcement requests – this transparency might counter-balance concerns about law enforcement requests
5. Another important consideration may be the number of constitutional cases that have been brought regarding this law enforcement access to WHOIS data issue; we could recommend that ICANN acknowledge the existence of court cases that have addressed these issues
6. Points from first review team report that are significant issues for law enforcement: (1) accuracy of the information that’s in the WHOIS, and (2) privacy proxy issues. Both will be considered when the RT assesses implementation of WHOIS1 RT recommendations and whether they were effective.
7. The matter of retention data, what’s required of the Registrar, is relevant, because particularly with criminal investigations the data that might be of real interest is data that the Registrars are obliged to retain under the data retention requirements in the RAA
 - Don’t think retention is entirely relevant to review because it goes beyond WHOIS data, it’s all kinds of data that registrars are supposed to collect
 - Can we make a statement saying there is a conflict that must be addressed between ICANN’s current treatment of registration data, including retention and national laws?
 - We have a specific conflict resolution procedure for conflict with local data retention laws and data protection laws already in place. If we want to make some high level mention of it and recognize that this has already been recognized as a problem by the community, including ICANN, or that there’s a procedure in place that might also be in need of further refinement, that would be useful but probably not to do much more