

Registration Directory Service (RDS-WHOIS2) Review

Draft Report for last call for RT comments

OBJECTIVE 4 SUBGROUP REPORT - SECTION 6 ONLY

RDS-WHOIS2 Review Team
9 August 2018



6 Objective 4: Consumer Trust

[SUBSECTION NUMBERS WILL BE ADJUSTED WHEN ADDED BACK TO MASTER DOC]

1.1 Topic

Subgroup 4 - Consumer Trust is tasked with investigating, analyzing, and drafting recommendations (if needed) to address the following Review objective:

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 measureable steps (if any) the team believes are important to fill gaps.*

Questions the subgroup attempted to answer when assessing this objective include:

1. Is the term 'trustworthiness' that was used in past documents the best and only option in determining consumer trust in the gTLD environment as mentioned in the relevant WHOIS report(s)?
2. Is the increase in alternative identities (for example FB) an indication that the current use of gTLDs is not sufficiently advocating consumer trust?
3. A key high priority gap in understanding the consumer trust environment is the lack of sufficient data, as mentioned in the various WHOIS report(s). Question: Are there new developments that need to be considered.
4. Security and transparency play a major role in defining a trustful Internet environment. Did the current WHOIS system achieve this?
5. Are regulations like the European GDPR increasing consumer trust if major information are missing in the publicly available WHOIS?

1.2 Summary of Relevant Research

To conduct its research, all members of this subgroup reviewed the following background materials, posted on the [subgroup's wiki page](#):

- ⦿ [WHOIS Review Team \(WHOIS1\) Final Report](#) (2012), Appendix F: Consumer Study
- ⦿ [Competition, Consumer Trust and Consumer Choice Review Team Draft Report](#)
- ⦿ [Phase Two Global Registrant Survey](#), and announcement:
- ⦿ <https://www.icann.org/news/announcement-2-2016-06-23-en>
- ⦿ Add list of reviewed registrar/registry/reseller web pages, pages that were reviewed in finding relevant targeted information for consumers (WHOIS - data privacy/protection - complaint system) -

To date, the subgroup has requested no additional materials. The subgroup also requested that ICANN's Global Domain Division provide insight into how "consumer trust" is reflected in their approach to WHOIS policy implementation and enforcement.

In addition, the subgroup agreed to a working definition of “consumer” to include any Internet user, of which registrants are a small subset. Noting there may be multiple definitions of “trustworthiness” based on subclass of “consumer,” the subgroup agreed to examine “trustworthiness” by determining the extent to which consumer trust needs are met. The subgroup to develop/include working definitions for the above terms in its findings (see below).

The subgroup further agreed upon the following:

- ⦿ The definition of consumer to be addressed in this review must be broad and include Internet users. Users are potential domain name owners and insofar, it’s important to approach and address all users, whenever appropriate.
- ⦿ The basic idea is that WHOIS contributes to consumer trust, mostly indirectly. The subgroup notes that here are different opinions about whether the visibility of WHOIS data contributes to trust.
- ⦿ Beyond individual consumer use of WHOIS, there is a connection between consumer protection and WHOIS in the third party use of WHOIS to investigate abuse, deter phishing, etc. Consumers may not be aware that WHOIS plays a role in protection.

1.3 Analysis and Findings

After reviewing available documents, the subgroup finds that the only document which specifically explores the relationship between WHOIS and “Consumer Trust” is the “WHOIS - POLICY REVIEW TEAM’ final report from May 11, 2012. In this document, the topic of Consumer Trust is mentioned in various key context environments. Excerpts are provided below for subgroup analysis. (See below 4.a. WHOIS - POLICY REVIEW TEAM Final Report from May, 11, 2012)

Furthermore, two other documents are referenced in this section because these documents are significant in judging the relevance of consumer trust in the broader context of ICANN’s consumer and public interest value system: 4.b Phase 2 Global Consumer Research Survey and 4.c. Bylaws.

4.a WHOIS - POLICY REVIEW TEAM Final Report from May 11, 2012.

Consumer Trust - Principles from Affirmation of Commitments - page 21/22 -

“Additional principles from the Affirmation further guided the Review Team work. While each Review Team member hails from a particular community within or outside of ICANN, the Team agreed to conduct its work pursuant to the broad public interest principles set out the Affirmation, including:

"decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent" Section 3(a); should “promote competition, consumer trust, and consumer choice in the DNS marketplace” Section 3(c); and should “reflect the public interest...and not just the interests of a particular set of stakeholders” (paragraph 4).¹³

Consumer Trust - Definition - page 23 -

“Consumers and Consumer Trust The Review Team found two potential classes of consumers: • All Internet users, including natural persons, commercial and non-commercial entities, governments and academic entities, and registrants, registries and registrars. • The

individuals and organizations who purchase the domain name and provide data for inclusion in the WHOIS. The Review Team found the definition of Consumer Trust, something the ICANN Community is also exploring in the context of its policy-making processes, to be particularly challenging. Consumer Trust can be narrowly construed to mean the level of trust Internet users have in available WHOIS data; or more broadly as the level of trust consumers have in Internet information and transactions in general. The Review Team focused its “consumer trust” research on the WHOIS issues, and reached outside the ICANN community to engage third party researchers for multi-country research. This research and its results are covered in chapter 6, with full research material in the appendices.”

Promotion of Consumer Trust - page 9/10

“Part of the WHOIS Review Team’s scope was to evaluate the extent to which ICANN’s current WHOIS policy and implementation “promotes consumer trust”. Having struggled with what “consumer” means in the context of WHOIS, and aware of the Affirmation of Commitments’ observation that there are key stakeholders who do not engage in the ICANN environment, the WHOIS Review Team commissioned consumer research. This found that drivers of consumer trust include knowing the entity with whom they are 10 dealing, and being able to find reliable contact information. The vast majority of consumers were unaware of the existence of the WHOIS service, and many struggled to understand the format of WHOIS outputs. This led us to conclude that the current implementation of WHOIS services does not help to build consumer trust, and more could be done to raise awareness of the service, and to improve its user-friendliness” (page

. Recommendation 3 - Outreach

ICANN should ensure that WHOIS policy issues are accompanied by cross-community outreach, including outreach to the communities outside of ICANN with a specific interest in the issues, and an ongoing program for consumer awareness.”

Consumer Trust and use of WHOIS - page 74 -

“E. Consumer Study Introduction The Review Team decided to undertake an independent research study to gain a better understanding of consumer trust as it relates to the use of WHOIS. The premise for this decision was based on the AOC, Paragraph 4 which states: “A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN’s processes to a greater extent than Internet users generally.”

Therefore, the WHOIS Review Team felt that we should solicit input beyond the ICANN constituencies. Specific questions related to consumer trust were: 75 • What factors influence consumer’s perception of trustworthy websites? • Are consumers aware of the WHOIS and WHOIS records for domain name registrations to evaluate trust in a website? • Are consumers able to locate and find domain registrant information with a reasonable ease of use? “

Consumer Trust and Accurate Data - page 12 -

“The low level of accurate WHOIS data is unacceptable, and decreases consumer trust in WHOIS, in the industry which ICANN provides rules for and coordinates, and therefore in ICANN itself. The organization’s priority in relation to WHOIS should be to improve WHOIS data accuracy and sustain improvement over time.

“According to our consumer research, one of the aspects that consumers struggled with (once they had been informed of the existence of WHOIS in many cases) was locating WHOIS services and interpreting WHOIS Data. This is particularly pronounced with 'thin' WHOIS services⁵ which split the WHOIS data between the registry and registrar, and affect .com and .net, which together hold over 100 million domain name registrations at the time of writing.

Consumer Trust and Compliance - page 12 -

“The WHOIS Data Reminder Policy is ineffective in achieving its goal of improving accuracy of data. Despite the dedication of considerable resources both by Registrars in sending out annual WHOIS Data Reminder Policy notices, and ICANN’s Compliance Team in auditing compliance, the lack of follow-up renders the entire action ineffective. Anecdotal evidence suggests that name holders frequently ignore these messages, view them as SPAM or as unwanted marketing approaches by their Registrar. The policy, while well-intentioned, has not measurably improved accuracy but has increased costs to Registrars and ICANN as it monitors compliance with the policy. Simply put, no one knows what impact the policy has in improving the accuracy of WHOIS data. “

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Consumer Trust and User Friendliness - page 13/14 -

(Recommendation 11) - Data Access – Common Interface Findings According to our consumer research, one of the aspects that consumers struggled with (once they had been informed of the existence of WHOIS in many cases) was locating WHOIS services and interpreting WHOIS Data. This is particularly pronounced with 'thin' WHOIS services⁵ which split the WHOIS data between the registry and registrar, and affect .com and .net, which together hold over 100 million domain name registrations at the time of writing. ⁵ See glossary for explanation of the terms “thick” and “thin” WHOIS services ¹⁶ We understand that ICANN already provides a WHOIS lookup service called Internic. The WHOIS Review Team supports the concept of the Internic service, as a 'go to' place for those wishing to find out information about domain name registrants. It finds that in practice, the Internic service is little known, and is not user friendly. For example, it delivers only the 'thin' WHOIS data for .com and .net. This requires users who are looking up through a web interface to find the relevant registrar's website, and their WHOIS service before they are able to complete their query. The WHOIS Review Team unanimously believes that WHOIS services in general and Internic in particular are not optimized for usability, and could do much more to promote consumer trust. Further, we believe that they prevent the WHOIS from being more widely used and relied on by consumers.”

WHOIS value debate - relates indirectly to consumer trust - page 6 -

Quite early at the beginning of the review, page 6, in a more general comment about the WHOIS debate, the complexity of consumer trust related issues comes up but is not explicitly mentioned. This text is nonetheless significant because it frames key issues related to consumer trust in the WHOIS environment well.

“WHOIS is the source of long-running discussion and debate at ICANN, other Internet Governance institutions, and elsewhere. This team and its successors hopefully will inform future debate and consensus-based decision making.

Issues in the WHOIS debate are varied. Any discussion of WHOIS will likely contain all of the words accuracy, privacy, anonymity, cost, policing, and SPAM. Each of the issues is important. This is sometimes lost in the heat of the debate and it is important to remind ourselves of this on a regular basis.

In order to inform the debate, and perhaps make the decision-making process easier, ICANN has adopted the age-old tradition of "the study" in lieu of or as a precursor to action. Significant sums have been spent studying WHOIS, more is being spent, and yet more is planned with the span of time now stretching into decades. Each study addresses some different aspect of WHOIS; accuracy, proxy/privacy1 reveal/request, availability, and so on. They take time to be approved, conducted, reported, and of course debated. This time is measured in years and could be called ICANN time as compared to Internet time. The one constant throughout has been WHOIS itself; protocol, service, data.

A gross understatement is that tensions exist between the various ICANN constituencies regarding WHOIS. Issues abound including right to privacy, anonymity, intellectual property protection, security and abuse, among others. Each is important. None more so than the other.

We find little consensus within the ICANN community on the issues. More concerning, there appears to be no coordinated effort to achieve consensus on these important, and admittedly difficult issues. Neither ICANN the corporation nor ICANN the community have seen the need to charge an individual or group as responsible for WHOIS. We find this a significant oversight and surmise that without such a coordinating effort, the small steps required for consensus may never be taken. It is hoped that the establishment of regular WHOIS Reviews will assist in this regard.

For something so simple as WHOIS the protocol, it is unfortunate that WHOIS the policy has become so complex and unmanageable.

This summary discussion is not a condemnation of the debate, the studies, or the people that invested their time, emotion, and personal capital over the years. Rather, it is an attempt to concisely present in a balanced and fair manner the very real truth that the current system is broken and needs to be repaired.”

4.b. Phase 2 Global Consumer Research Survey

The topic of Consumer Trust comes up in different ICANN environment, for example the <https://www.icann.org/news/announcement-2-2016-06-23-en>

This study is not touching on WHOIS specifically in relation to Consumer Trust issues, therefore we're not “The Internet Corporation for Assigned Names and Numbers (ICANN) today [published](#) [PDF, 2.88 MB] the findings from its Phase 2 Global Consumer Research Survey. Conducted by Nielsen, the study measured current consumer attitudes toward the gTLD landscape and domain name system (DNS), as well as changes in consumer attitudes from the first wave [study](#) in 2015. Internet users were asked about aspects of consumer awareness, consumer choice, experience and trust.

The survey findings will inform the work of the [Competition, Consumer Trust and Consumer Choice \(CCT\) Review Team](#). The team is examining the impact of the New gTLD Program on consumer trust in the DNS.

"Survey results show that overall awareness of generic top-level domain has grown when compared to the baseline study that was conducted last year and continues to grow," said Akram Atallah, president of ICANN's Global Domains Division. "I encourage community members to review this important report to learn more about the current market, as well as to inform the numerous discussions that are occurring about subsequent rounds."

Online survey participants included 5,452 consumers ages 18+ in 24 countries throughout Asia, Europe, Africa, North America and South America. The survey was administered in 18 languages. This year, the study also included a sample of Internet users, ages 15-17.

The CCT Review Team will consider data from a separate survey of domain name registrants about their experiences later this year, when the Phase 2 report on registrants is published. The [phase 1 registrant report](#) was published in September 2015.

4.c. BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

<https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf>

(b) CORE VALUES In performing its Mission, the following "Core Values" should also guide the decisions and actions of ICANN: (i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies; (ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multi-stakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(d) Competition, Consumer Trust and Consumer Choice Review (i) ICANN will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws ("New gTLD Round"). (ii) After a New gTLD Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("CCT Review"). (iii) The review team for the CCT Review ("CCT Review Team") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the Adopted by ICANN Board on 27 May 2016 33 effectiveness of the New gTLD Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD Round. (iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods. (v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

1.4 Problem/Issue

Based on the findings and recommendations of the WHOIS1 Review Team, WHOIS policy and implementation have evolved since 2012. Using the 2012 report as a foundation, the subgroup will examine the findings and analysis of other subgroups which are assessing implementation of the WHOIS1 recommendations. This examination will produce a gap analysis which identifies areas of WHOIS which may need to be further enhanced to promote consumer trust. However, the gap analysis will need to be repeated after WHOIS further evolves to comply with GDPR – at least for access to data that impacts WHOIS data from European users.

Issue #1:

Lack of Reseller transparency in WHOIS is a potential gap that should be looked into to provide more information to Consumers.

Issue #2:

Web pages from ICANN, registries, registrars, resellers offer often little easily readable information for consumers in relation to the use or the non-use of WHOIS data. The RDS-WHOIS2 RT believes that, after WHOIS GRPR implementation, more attention should be given to ensure that these web pages cover relevant information for Consumers.

For reference:

3.7.10 Registrar shall publish on its website(s) and/or provide a link to the Registrants' Benefits and Responsibilities Specification attached hereto and shall not take any action inconsistent with the corresponding provisions of this Agreement or applicable law.

3.12.2 Any registration agreement used by reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC WHOIS lookup service.

<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa>
<https://www.icann.org/en/system/files/files/resellers-03oct13-en.pdf>

Findings: The subgroup reviewed websites from well-known and less well-known resellers. Based on this research, it is clear that many of the well-known resellers have little information for 'consumers' and, if they do, the information is often very hard to find.

1.5 Recommendations (if any)

The review team does not believe any recommendations necessary to address the above-noted issues at this time.

1.6 Possible impact of GDPR and other applicable laws

Relation between WHOIS and Consumer issues were not defined in the past. Insofar a future WHOIS system will have to define such kind of relations. GDPR is just one factor in an international legal WHOIS environment that is increasingly being determined by a complex web of legal and regulatory factors that - to some degree - are impacted by Consumer issues.