Registration Directory Service (RDS-WHOIS2) Review

Draft Report including F2F#3 agreements and action items

REC3 SUBGROUP REPORT - SECTION 3.4 ONLY
FOR ALAN TO PROVIDE REDLINED UPDATES

RDS-WHOIS2 Review Team
30 July 2018

ICANN

3 Objective 1: Assessment of WHOIS1 Recommendations Implementation

3.4 WHOIS1 Rec #3: Outreach
<mark>[SUBSECTION NUMBERS WILL BE ADJUSTED WHEN ADDED BACK TO MASTER DOC]</mark>

1.1.1 Topic

Subgroup 1 - WHOIS1 Rec3 Outreach 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)(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).*

The specific WHOIS1 Recommendation assessed by this subgroup appears below:

> **WHOIS 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.*

The subgroup reviewed all of the multiple "outreach" resources with a specific focus on:
- Identifying areas where there we inconsistencies, errors and out of date information
- Identifying gaps in the documentation

The subgroup also reviewed the various outreach events and activities.

1.1.2 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) and Action Plan
- WHOIS Review Team (WHOIS1) Implementation Reports, including
  - Executive Summary of Implementation Report
  - Detailed implementation Report
- WHOIS1 Implementation Briefings on Recommendations 1, 2, 3, 6, 7, 9, 15, 16: PPT, PDF
- Answers to RDS-WHOIS2 Questions on Implementation Briefings
- Documents cited in briefing on Recommendation 3 include
  - WHOIS Information Portal and Consolidated WHOIS Lookup Tool
  - Registrant's Benefits and Responsibilities
  - 2013 RAA - see Section 9

- ⊙ [Information for Registrars and Registrants](#)
- ⊙ [Registrant Educational Series](#)

In addition, the subgroup requested additional materials and briefings from the ICANN Org:
- ⊙ [Written implementation briefing on Rec 3](#)
- ⊙ SME answer to the following question:
  What has ICANN done, on a one-time basis or ongoing, to address Recommendation 3's requirement to reach out to communities outside of ICANN with an interest in WHOIS issues?

Finally, the subgroup applied the RDS-WHOIS2 review team's [agreed framework](#) to measure and assess the effectiveness of recommendations,

1.1.3   Analysis & Findings

ICANN has implemented a wide variety of documents and resources designed to educate various communities on issues related to WHOIS. Some were undertaken as a result of the WHOIS-RT recommendations on Outreach, and others were done as parts of other processes. WHOIS issues are to a large extent interwoven with other material related to gTLD domain names. This is reasonable, since from a registrant's point of view, WHOIS is just one aspect related to the complex world of domain names.

The Subgroup found that the material associated with the WHOIS Portal created explicitly as a result of the WHOIS-RT Recommendations is well organized and the level of information is reasonable. However, the material is vast, so it is less than clear how it should be used. Moreover, the hierarchical organization is opaque and cannot easily be viewed. There are important things listed on sub-menus that are not listed or implied at the top level, resulting in no practical way to discover such material.

The other material available on the ICANN website generally pre-dates the Portal, and no attempt was made to update this material, or integrate it.

As an example, the Portal points to a document entitled Registrant's Benefits and Responsibilities. The document includes two sections, "Domain Name Registrants' Rights" and "Domain Name Registrants' Responsibilities" (note the lack of a section entitled Benefits). It is written in seemingly simple and clear language, but hidden within it is complexity ("You must review your Registrar's current Registration Agreement, along with any updates." - Sounds simple but doing this is not at all simple). There is only one explicit reference to WHOIS, but there are many implied references.

If you actually go into the 2013 Registrar Accreditation Agreement (RAA), there is a reference to a document called Registrant Rights and Responsibilities as well as a Registrant Benefits and Responsibilities. The Rights and Responsibilities is a rather long and legalistic document which only applies to the 2009 RAA and has been supplanted by the Registrant Benefits and Responsibilities (which as mentioned has section on Rights and Responsibilities).

Another cache of information is a set of registrant education videos. They are on a completely separate part of the ICANN site dedicated to Registrars (not Registrants) and not likely to be found by accident. They are low-level introductions, and done reasonable well, but now VERY dated and do not integrate with the WHOIS Portal. For instance, to perform a WHOIS operation, they point the user to Internic.net instead of the Portal.

A fourth excellent repository is within the section of the ICANN web site devoted to Contractual Compliance.

In summary, the Recommendation to make information available was carried out, but it was not well integrated with other WHOIS-related information. The review of contractual compliance issues noted that there was a particular problem related to filing WHOIS inaccuracy reports and this will be addressed as well.

With regard to outreach, significant outreach to communities within ICANN has been carried out. There is little evidence that there was any substantive outreach to non-ICANN groups. The RT was told that such outreach would be done by Global Stakeholder Engagement and WHOIS is one of the topics that may touch on, but there were no records that specifically address the outreach described in this recommendation.

To what extent there are parties who are not affiliated with ICANN but interested in WHOIS is a relevant question. Certainly there are examples of civil society consumer protection organizations and government consumer protection organizations that may fall into this category. And one has to wonder whether the entire GDPR issue would have unfolded differently if ICANN had reached out to EU data protection commissioners to educate them about WHOIS and its uses and benefits long before the issue became hot in ICANN in mid-2017. Law enforcement is another area which might have been approached. Lastly, although the ICANN WHOIS Portal targeted those registrant who came looking for information, there is an argument to consider more active outreach to registrants, particularly in relation to whatever changes GDPR brings.

Finding Summary: Recommendation 3 of the WHOIS1 RT was Partially Implemented.

1.1.4   Problem/Issue

There is a wide variety of information related to WHOIS, some is well integrated and some very disjoint. Of necessity this information is somewhat interwoven with other information related to 2nd level gTLD domain names.

The information and documents cover several "generations" and do not integrate well.

Moreover a typical user or registrant will not be able to readily identify where they need to look for information, and identifying one of the multiple locations will not lead them to the others.

The problem is exacerbated by the introduction of the terms RDS (and at times RDDS) to replace WHOIS.

Regarding outreach, there is little strong evidence that any outreach targeted at non-ICANN audiences was contemplated or carried out.

1.1.5   Recommendations

Based on its analysis, members of this subgroup agree that this WHOIS1 recommendation has been partially-implemented. Further recommendations are provided here to address the problems/issues identified above.

Recommendation R3.1:
The ICANN Board should direct ICANN Organization to update all of the information related to WHOIS and by implication to other information related to the registration of 2nd level

gTLD Domains should be revised with the intent of making the information readily accessible and understandable, and should provide details of when and how to interact with ICANN or contracted parties. Although not the sole focus of this recommendation, interactions with ICANN Contractual Compliance, such as when filing WHOIS inaccuracy reports, should be a particular focus. The revision of this web documentation and instructional material should not be undertaken as a purely internal operation but should include users and potentially focus groups to ensure that the final result fully meets the requirements. The resultant outward facing documentation of registrant and WHOIS issues should be kept up to date as changes are made to associated policy or processes.

Findings: The requirement to provide outreach was correctly interpreted as to need significant WHOIS-related documentation and this was carried out. Although the resultant Portal is somewhat lacking in navigation tools, it was generally very well done. However, it was not well integrated with other registrant-related information or with earlier WHOIS-related documentation and tutorial efforts. Documentation related to WHOIS inaccuracy reports was noted as needed a particular focus.

Rationale: The original recommendation was not explicit as to what documentation was required or how it should be integrated. Although the work that was done was of high quality, the lack of integration makes it significantly less effective that it could have been. Although it is currently unclear to what extent WHOIS information will be publicly viewable, such information will always be collected and thus ICANN has an obligation to document it clearly. Moreover if there is tiered access to data at some point, there will have to be extensive documentation on who can access such additional information and how that process is carried out.

Impact of Recommendation: All gTLD registrants should have full information on why their data is collected, how it can be used, and how they may make use of such data. Similarly others who may have an interest in the registrant of a gTLD domain, or how to interact with that registrant should have ready access to such information and how to proceed if there is a problem to be resolved.

Feasibility of Recommendation: The documentation and educational materials requested are standard types of offerings.

Implementation:
This recommendation should ideally be implemented post-GDPR implementation, but no later than [TBD months] after the recommendation is adopted. The implementation should begin once it is moderately clear how GDPR will be addressed with relation to gTLD WHOIS. Should the implementation of this recommendation be deferred past FY2020, The then existing WHOIS-related parts of the ICANN web site must be amended to cross-link the various sections on the WHOIS portal, Contractual Compliance, Registrar and ICANN Learn.

As policies and processes change so should the related user-oriented documentation.

Priority: Medium

Level of Consensus: No F2F3 objections

Recommendation R3.2:
With community input, the ICANN Board should instruct the ICANN Organization to identify which groups outside of those that routinely engage with ICANN should be targeted effectively through WHOIS outreach. A WHOIS outreach plan should then be developed, executed, and documented. There should be an ongoing commitment to ensure that as

WHOIS policy and processes change, the wider community is made aware of such changes. WHOIS inaccuracy reporting was identified as an issue requiring additional education and outreach and may require a particular focus. The need for and details of the outreach may vary depending on the ultimate GDPR implementation and cannot be detailed at this point.

Findings: There is little evidence of outreach as described in the original recommendation and such outreach is still felt to have merits.

Rationale: The need for non-traditional outreach on WHOIS was clearly understood by the first WHOIS-RT. The apparent lack of insight on all parts to understand how GDPR might impact Internet communities demonstrates why such outreach is crucial and must include both traditional and non-traditional parties

Impact of Recommendation: The potential impact and reach of such outreach will be determined during the first phase of consultation.

Feasibility of Recommendation: Although such outreach implementing the original recommendation was apparently not carried out to any great extent, there is no reason to believe that it is not feasible.

Implementation:
The implementation should begin once it is moderately clear how GDPR will be addressed with relation to gTLD WHOIS. Implementation should not be a one-time effort but should have an ongoing component.

Priority: High

Level of Consensus: No F2F3 objections

1.1.6 Possible impact of GDPR and other applicable laws

GDPR will have a significant impact. There is current uncertainty, including uncertainty on timelines, and uncertainty on to what extent WHOIS information will continue to be freely available, even in parts of the world. For that reason it is not possible to predict whether, by the time this recommendation is approved by the Board, there will be sufficient stability to begin the effort.