# Registration Directory Service (RDS-WHOIS2) Review

Draft Report including F2F#3 agreements and action items

REC2 SUBGROUP REPORT - SECTION 3.3 ONLY
FOR CARLTON TO PROVIDE REDLINED UPDATES

RDS-WHOIS2 Review Team
30 July 2018

ICANN

# 3   Objective 1: Assessment of WHOIS1 Recommendations Implementation

## 3.3  WHOIS1 Rec #2: Single WHOIS Policy
<mark>[SUBSECTION NUMBERS WILL BE ADJUSTED WHEN ADDED BACK TO MASTER DOC]</mark>

### 1.1.1   Topic

Subgroup 1 - WHOIS1 Rec 2 Single WHOIS Policy 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:

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**WHOIS Recommendation #2: Single WHOIS Policy**

*The ICANN Board should oversee the creation of a single WHOIS policy document, and reference it in subsequent versions of agreements with Contracted Parties. In doing so, ICANN should clearly document the current gTLD WHOIS policy as set out in the gTLD Registry and Registrar contracts and GNSO Consensus Policies and Procedure.*

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This Subgroup addressed the task by:
- Reviewing the ICANN Board's Comments on reception of the Final Report and pursuant to the Action Plan for addressing the recommendations
- Reviewing Staff reports on implementation
- Analyzing the Implementation Action Plan that emerged from the Board's instructions to ICANN org
- Assessing the implementation outcomes from staff reports

### 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:

- Board Resolution Accepting WHOIS RT Recommendation 8 Nov 2012
- Action Plan to Address WHOIS Review Team Report Recommendations
- Single Source All WHOIS Related Agreements and Provisions
- Website Containing All Things WHOIS
- SAC055: SSAC's Response to the RDS-WHOIS1 Final Report

- Announcement of the Expert Working Group on Next Generation Registration Data Services
- EWG Final Report
- Board Resolution on Steps to be taken on acceptance of the EWG Final Report
- Framework to Address Next Generation gTLD Registration Directory Services to Replace WHOIS PDP
- Issue Report for Next Generation gTLD Registration Directory Services to Replace WHOIS
- GNSO Resolution Establishing the RDS-WHOIS-PDP WG
- Charter for PDP WG Next Generation gTLD Registration Directory Services (RDS) to Replace WHOIS
- The Communique from GNSO Next Generation RDS PDP WG Leadership Suspending PDP Meetings
- Some Evidence of the Work of the Next Generation gTLD RDS PDP WG
- Temporary Specification for gTLD Registration Data
- Charter for the ePDP for Specification for Registration Data Directory Service
- WHOIS1 Implementation Briefings on Recommendations 1, 2, 3, 6, 7, 9, 15, 16: PPT, PDF
- Answers to RDS-WHOIS2 Questions on Implementation Briefings

The Group followed the timeline from the release of RDS-WHOIS1 RT Final Report to current time. We examined the responses to the Final Report by ICANN Constituencies, records of the Board's discussion on receipt of the Final Report and its subsequent response, the Action Plan developed by ICANN org Staff on the Board's direction, the subsequent published status reports of the Implementation Plan and the evidence of implementation. We also accounted and examined the list of WHOIS-related consensus policies and procedures that have emerged from the GNSO policy making activities between then and now.

In reporting their findings, the previous Review Team (hereinafter referred as RDS-WHOIS1 RT) noted that being guided by the explicit language in the Affirmation of Commitments regarding the existence of a single document labeled "*WHOIS Policy*" and despite assurances of its existence, they could not, after diligent searching, find " *a clear, concise, well-communicated WHOIS Policy.*"

The RT acknowledged that they were able to find elements of "*a WHOIS policy*" in several places; they listed Registrar and Registry contracts, GNSO Consensus Policies and a Consensus Procedure, the IETF Requests for Comments (RFCs) and domain name history as sources. This evidence supports their finding that ICANN's WHOIS policy remained "*poorly defined and decentralized*".

Their Recommendation 2 flows from this finding; that the ICANN Board oversee the creation of a single WHOIS Policy document and in that document, clearly detail the extant WHOIS policies as are now contained in Registry and Registrar contracts and GNSO Consensus Policies and Procedure.

The ALAC, GNSO Constituencies and the SSAC submitted positive endorsements of the Report. In its response, the SSAC noted ""the foundational problem facing all 'WHOIS' discussions is understanding the purpose of domain name registration data", that "*there is a critical need for a policy defining the purpose of collecting and maintaining registration data" and suggested that "the formation of a properly authorized committee to drive solutions to these questions first, and to then derive a universal policy from the answers, is the appropriate sequence of steps to address the WHOIS Review Team's report .*"

The ICANN Board called a special meeting to consider the Report. After due consideration of the Final Report and the comments from other interests, the Board directed the [ICANN] CEO to create and maintain a *single public source* that compiles current gTLD WHOIS requirements for gTLD registries, registrars and registrants (including consensus policies and contractual conditions). It also resolved that the CEO initiate a process to rethink the entire WHOIS framework from a fundamental place, taking due care to consider and establish the purpose for collecting and maintaining registration data.

## 1.1.3    Analysis & Findings

The Board discussions around the WHOIS1 Review Team Final Report demonstrate that the ICANN Board accepted the lack of a single WHOIS policy as fact. They further acknowledged that the current policy framework was not anchored on first principles as the SSAC opined; the purpose for collecting and maintaining registration data. They were also keenly aware of the contours of the policy making processes in the ICANN environment; the Board itself could only give a temporary policy prescription but permanent consensus policymaking was the province of the Supporting Organizations, in this case the GNSO.
In the Action Plan that emerged after the ICANN Board's consideration of the Single WHOIS policy recommendation, the Board reasoned that "*… there is not a comprehensive gTLD WHOIS policy that addresses all of the issues raised in the Review Team report*" but rather "*…..There is a set of existing contractual conditions that have been developed over time by negotiation between ICANN and registries and registrars, and a small set of consensus policies that address some aspects of the management of domain name registration data.*" All "*presently available conditions and policies" would be curated and made accessible from a single source.*"

They went on: "*The fundamental questions of the purpose of collecting and maintaining gTLD registration data have not been addressed through a successful policy PDP*".  The report nevertheless acknowledged earlier attempts by the GNSO to effect such a policy prescription in footnotes.

The implementation of that directive for a single WHOIS policy document was by way of a digital artefact. That is, the web page from whence all content pertaining WHOIS requirements and conditions via contractual obligations imposed on registries and registrars, inclusive of pertinent GNSO-developed gTLD consensus policies can be accessed, was established.  That website can be accessed here.

At its special Board Meeting on 8th Nov 2012, the Boards accepted the essence of the SSAC's response as outlined. It acknowledged that the RT's report re-ignited  concerns surrounding a fundamental policy prescription of the purpose for collecting and publishing registration data and was a catalyst for "launching a new approach to long-standing directory services challenges." In its Resolution 1, the Board then directs the CEO to *" launch a new effort to redefine the purpose of collecting, maintaining and providing access to gTLD registration data, …..as a foundation for new gTLD policy and contractual negotiations…………as part of a Board-initiated GNSO policy development process.*"

See the Board Resolution here.

Implementation of that directive resulted in the establishment of the Expert Working Group on Next Generation Registration Data Services (EWG).  The EWG mandate was to *" re-examine and define the purpose of collecting and maintaining gTLD registration data, consider how to safeguard the data, and propose a next-generation solution that will better serve the needs of the global Internet community.*" This was interpreted as to also include

consideration for providing access to gTLD registration (WHOIS) data.  The EWG delivered its Final Report in June 2014.

In April 2015 the Board adopted a series of resolutions that affirmed the EWG Report as the guide and foundation for development of a new comprehensive and unifying gTLD WHOIS policy and outlined the next steps following on its acceptance of the EWG's Report.   That action can be found here.

In its estimation of the complexity of the issues raised, the EWG's Final Report detailed models and principles advised for framing the GNSO PDP and the general controversial nature of the WHOIS matter in and outside the community. The Board prudently raised a collaborative group of select Board members plus GNSO Councilors and interests to seek common ground on a 3-phase framework of action. That group agreed on a Preliminary Issues Report based on this 3-phase framework that would be used to guide the work of the pending GNSO PDP[s].

The Issues Report was issued in October 2016 and the GNSO set the first-phase PDP in motion as the Next Generation gTLD Registration Directory Services to Replace WHOIS PDP. The Working Group is now in operation; began January 2016.   The charter for the PDP WG can be found here.

After fifteen (15) months of contentious deliberations on the Phase 1 portion of its road mapped work plan, in April 2018, Next Generation RDS PDP WG meetings were suspended until further notice while awaiting guidance regarding how this PDP will be affected by GDPR compliance efforts. Formal action to suspend or terminate this PDP, in accordance with Policy Development Process procedures, is likely to occur after initiation of the Expedited PDP. The working documents are available for examination here.

Notwithstanding, there are ongoing developments pertaining adoption of a single WHOIS policy. In light of European Union's General Data Protection Regulations (GDPR) that came into force this May 2018 and the projected impact on domain name registration data collection, access and publication, the ICANN Board has provided a temporary specification in May 2018 that seeks "*to allow ICANN and gTLD registry operators and registrars to continue to comply with existing ICANN contractual requirements and community-developed policies in light of the GDPR. "* With this specification, the ICANN Board is maintaining it will conform to the GDPR requirements even as it seeks to maintain "*the existing WHOIS system to the greatest extent possible*," In fact to that end, some elements of the Temporary Specification are now in contention by a contracted party and the subject of a lawsuit in a EU state.

With the normal policy developed process for registration data upended by the shuttered PDP WG, the Temporary Specification that has emerged to address this matter remains a Board-developed policy adopted under emergency conditions.  It must be ratified or adapted for ratification by the GNSO-chartered policy development  process within one (1) year. The GNSO has already initiated an expedited policy development process (ePDP) that will consider the Board's Temporary Specification and hopefully, from here will emerge the single WHOIS Policy all are convinced is necessary.  The charter of the ePDP gives very discrete guidance to the Working Group regarding the questions to be answered for the output fit to purpose.

The primary question to answer in this regard is whether this digital artefact, the web page, is a good and sufficient substitute or facsimile for a 'single WHOIS policy document' and, thusly, conforms to the original WHOIS1 RT Recommendation 2?

On review, we can confirm the web page purposed to collect all WHOIS-related commitments contractually obliged by registries and registrars as well as GNSO developed consensus policies and procedures is available. We can also confirm that it lists a slew of WHOIS-related compacts with registries and registrars plus GNSO consensus WHOIS-related policies and procedures. These are hyperlinked to details of said policies and procedures. On the preponderance of the evidence therefore, the Board's response to the RT's recommendation as outlined in the Action Plan was executed.

Secondly, whether the contents and format of the web page furthers the objective of "a clear, concise, well-communicated WHOIS Policy."?

It is the team's view that the contents of web site manifests collection, curation and publication of all of ICANN's WHOIS-related content. Those include contracts, consensus policies and other peripheral matters.

Thirdly, the question of whether the decision to authorize the EWG and the broad guidelines given for its work constitutes a good faith effort by the Board to initiate the single WHOIS policy framework? And, if this fulfils the commitment to fill out gaps in the WHOIS policy framework and holistically address current fragmented and decentralized WHOIS policy, itself a result of history and the structural framework for the ICANN policy development process?

It is the team's view that on the balance of the evidence provided by the charter for the Expert Working Group, the Final Report delivered to the ICANN Board and subsequent deliberations and published outcomes from those deliberations, the ICANN Board responded to the WHOIS1 RT's recommendation and initiated the broad assault on the fragmented WHOIS policy with the objective of a single WHOIS policy emerging at the end.

Finally, insofar as the EWG's Final Report recommendations are actioned, whether the collaborative 3-phase framework developed to guide action of the GNSO policy-making plus the specific request to the GNSO to initiate the PDP process and reboot green field WHOIS policy making will see an emergence of a single comprehensive WHOIS policy?

It is the team's view that had the plan seen execution to the end, the single comprehensive WHOIS policy would have emerged. In any event, the ICANN Board-supplied Temporary Specification that supplanted and the Expedited PDP that conforms to bye-law and raised to anchor that specification as consensus policy will suffice and produce the single WHOIS policy as anticipated.

**Summary Findings:**
- ⊙ That the web page is a good and sufficient substitute for the single authoritative WHOIS policy document but with navigational improvements and further organization of content could be better

- ⊙ The GNSO ePDP chartered to address the next generation Registration Data Directory Services is in progress and guided by the Board-developed Temporary Specification for Registration Data, will likely report a single fit-for-purpose gTLD registration data service (WHOIS) policy for the first time, at last.

- ⊙ When a single fit-for-purpose consensus gTLD registration data policy has emerged, The WHOIS website will be superseded by another digital artefact documenting this policy.

## 1.1.4 Problem/Issue

While the team believes the website is sufficient as indicator of a single document for WHOIS-related policies, the team believes the organization of the content could be further optimized for navigation and readability. However, in the event that the Temporary Specification takes hold and is affirmed by the ePDP, then the existing website and its contents become archival artefacts. That said, reorganization of its contents is moot and no longer an active matter. We would expect the affirmed Temporary Specification will exist as a digital artefact and will be the new base for a single documented source of all things pertaining gTLD Registration Data (WHOIS).

## 1.1.5 Recommendations (if any)

DECISIONS REACHED
No objections from the Team to decision reached by this sub-group and there are no further recommendations. However, the team:

1. Accepts that WHOIS1 RT Recommendation 2 is fully implemented.

2. That the adoption of the EWG's Final Report and development of the framework for the Board-initiated GNSO RDS PDP[s] is intended to deliver a holistic next generation WHOIS policy framework that would address current set of fragmented and decentralized WHOIS policies.

3. Notwithstanding its temporary nature – to be sunsetted in one (1) year - that the Temporary Specification for WHOIS promoted by the Board in May 2018 constitutes for the first time the framework for a single WHOIS policy.

4. That the expedited policy development process (ePDP) raised by the GNSO to address the adoption or adaption of the temporary specification will, likely affirm a single WHOIS policy at the end of its work.

## 1.1.6 Possible impact of GDPR and other applicable laws

The considerations by the ICANN Board and emergence of the Temporary Specification from the Board is a direct result of the GDPR and implications for the collection, publication and curation of registration data. The charter of the ePDP advised by the Board and raised by the GNSO specifically obliges the policy development working group in its deliberations towards outcomes to specifically address as far as possible, conformance with the GDPR and other applicable laws.

All stakeholders will be impacted by these developments.