

RDS-WHOIS2 RT
Face-to-Face Meeting # 4, Brussels - Belgium
10-11-12 December 2018
Meeting Report #43

Meeting materials may be found on the wiki at: <https://community.icann.org/x/cyQFBQ>

DAY 1

Review Team Members:

Alan Greenberg, Susan Kawaguchi, Cathrin Bauer-Bulst, Volker Greimann, Dmitry Belyavsky, Lili Sun, Chris Disspain, Stephanie Perrin, Erika Mann

Apologies: Carlton Samuels

Observers:

ICANN Org:

Jean Baptiste Deroulez, Negar Farzinnia, Jackie Treiber, Brenda Brewer

1. Welcome

There were no updates to Statements of Interest.

Alan Greenberg introduced meeting objectives, highlighting that language might still change depending on the input received from ICANN Org.

The RDS-WHOIS2 defined the following goals for the meeting:

- Come out of this meeting with the recommendations locked in
- Reach consensus on recommendations
- Review ICANN org operational input

Negar Farzinnia mentioned that operational input will be provided on recommendations by ICANN org before the end of this week.

ICANN org presented the latest version of the workplan, the final report is planned to be sent to the ICANN Board by the 25 January 2019, Alan added that leaders will be present at ICANN64 to present the recommendations and meet with the ICANN Board (if need be).

2. Overview of Draft Report

ICANN org provided an assessment of the draft report, and what sections need updating, and covered any public comments received on the draft report structure.

Action item: Review and update glossary

Action item: Add explanation in the report on recommendations numbering

3. Discussion on Anything New in RDS Environment That May Require Additional Thoughts

Alan raised the fact that ePDP is now running and that the review team can already picture the output of its discussions. Susan also raised that there are several registrars who are not complying with the temporary specification as well.

4. WHOIS1 Rec #1: Strategic Priority

Review Team reviewed the public comments received on R1.1, R1.2 and R1.3.

Recommendation 1.1; 1.2:

Comment from NCSG:

Action item: In the implementation note, review team will appreciate further updates were also given on how previous recommendations from the WHOIS1 review team have been followed up on, in particular where the implementation checks that they did show deficiencies, as it is for the strategic priority

Action item: Reaffirm/strengthen strategic priority, making sure that in the implementation note, the reference to dialoging with stakeholders is there, and it should not be purely the board acting unilaterally.

Action item: In the implementation, do a request to make such reports to the ICANN Board public as appropriate.

R1.3

Action item: Reform it to say any “board working group” and any group that is focusing on RDS issues should be made public and not make specific reference to a particular WG.

Action item:

Comments from NCSG on R1.1, R1.2 and R3.1 need to be updated to Neutral, instead of Disagreement in the public comment summary.

5. WHOIS1 Rec #2 – Single WHOIS Policy

Was moved to Day 2 in Carlton’s absence.

6. WHOIS1 Rec #3: Outreach

Review Team reviewed the public comments received on section and recommendations.

Action item: Domain Name Rights Coalition comment: Alan to clarify that there has been a lot of internal communications within ICANN engagement groups, but it’s clear that there's a certain disconnect with the areas.

R3.1

Action items: NCSG comment: Need to be updated to Neutral, instead of Disagreement. Suggested response to PC: RT is sympathetic to the concerns expressed by NCSG. However, overall ICANN comment is larger and out of scope for this review. ICANN org has initiated the ITI project to address the overall website issue.

R3.2:

Action item: RrSG comment: add implementation note, that the RT does not have any input on ICANN budget

Decision reached: ALAC comment: implementation implies when policy work is done.

Action item: NCSG comment: Alan to work with Jackie on rewording of the recommendations to clearly articulate the need for outreach before and after RDS changes are finalized.

1. WHOIS1 Rec #4: Compliance

Item was moved to Day 2.

2. WHOIS1 Rec #5-9: Data Accuracy

Review Team reviewed the public comments received on section and recommendation.

RrSG Public Comment:

Cathrin Bauer-Bulst did not agree with the first part of the comment which said that there is absolutely no obligation to ensure accuracy other than if the registrant complains, however the comment from the Union very clearly says that every reasonable step must be taken to ensure that there is rectification and that there should be compliance also with the data quality principles. She noted that there is explicit reference, actually, to the relevant section in the Expert Working Group report from 2014 which had more detailed recommendations on this, including on the accuracy reporting system. She believes recommendation here should stand as it has been formulated, and added that when it comes to accuracy, contactability of an individual does not mean accuracy for the purposes of the GDPR, because it could be any given individual. Just the fact that there's syntax accuracy has nothing to do with the accuracy principle under the GDPR.

Action item: Cathrin to phrase a reply to RrSG public comment. Cathrin to provide Jackie with the correct references.

BC Public Comment:

Action item: Mark comment as noted, and include in recommendation rationale that of course one benefit of greater data accuracy would be that we could be more confident in distinguishing as appropriate according to the new rules as to whether you're dealing with a legal entity and where that entity sits.

R5.1

Decision reached: Recommendation needs to be reworked, it is conceivable that the recommendation could be removed or replaced with a different one. Consider changing the recommendation to say “ARS” (or some sort of accuracy-reporting system) must continue, even post-GDPR because the then-users of the data will want accuracy of data available to them. (There must be some level of contactability/accuracy of the data and we must consider the resources of Compliance)

Action item: Add a bookmark “if indeed it is conceivable that the outcome of ePDP is that the work that Compliance does today becomes more complex than it currently is, compliance must be properly resourced to do its job.” Wording to be discussed.

Action item: Double check whether the recommendation number R5.1 was in response to whois1 rec5 or rec 5-9. Adjust numbering as needed.

NCSG:

Action item: The data will be lawfully available by some means and it is for those who will have access that the accuracy matters. Cathrin will include citations from GDPR that will address this.

7. WHOIS1 Rec: #4: Compliance

Review Team reviewed the public comments received on section and recommendations.

4.1:

Action item: Clarify that ICANN will not go on face-finding missions but use the information they currently have on hand (input received). Clarify that Compliance enforces Registrars to enforce data accuracy for registrants.

DNRC comment:

Action Item: Volker to provide language to update recommendation 4.1, adding a limitation “use incoming complaints to proactively monitor” to make sure that the recommendation itself states this limitation in scope.

Action item: Report in Public Comment form “as we read this, you’re requesting that we essentially ignore certain current contractual terms. That would require policy change and that is outside of this review’s scope”

RrSG and NCSG comments:

Action item: Volker to provide language (suggested text: “Enforce registrar obligations with regard to RDS data accuracy requirements.”) to update recommendation 4.1 based on RrSG and NCSG comments.

NCSG comment:

Action item: RT is not advocating random sampling of the data. We are suggesting looking at Rr X based on number of complaints received.

4.2:

Action item: Volker and Alan work on rewording R4.2 and add some metrics in for measurability and success of implementation.

Action item: I2C & RrSG: Noted. RT will take this under consideration.

Action item: DNRC: What is in the WHOIS database, whatever will be available after RDS changes have been implemented, still needs to remain accurate.

Action item: NCSG: Given that the ePDP changes have not been implemented, this RT is not able to make a recommendation for enforcing new requirements that have not been finalized yet.

8. Objective 6: ICANN Contractual Compliance Actions, Structure and Processes

Decision reached: public comment from Business Constituency on issues following the adoption of ICANN's Temporary Specification for gTLD registration data are out of review team's scope.

Action item: public comment from Domain Name Rights Coalition: Review team is not aware that we are recommending brute force enforceability and anything relating to suspending domains other than what is in our current policies. Review team is not aware of any abuse issues of the ARS because the data in the ARS is randomly sampled. The review team is not aware of the legal issues surrounding unilateral release of the domain name, it is an option given to the complainant currently.

CM.1

Action item: reply to RrSG public comment: The only mechanisms by which ICANN can change a contract are through negotiations or, if applicable, a PDP and we are simply giving the board full latitude to use whatever tools are available.

Action item: Alan to reword CM.1 so that it does not say "the Board should negotiate ...". The goal is to ensure the recommendation is not dictating a PDP but suggesting a change somehow.

CM.2

Action item: Volker to add more details to CM.2 to clarify the registrant fields being addressed in the recommendation. Additionally, the whole recommendation should be reworded to better convey intent. Alan and Volker to re-write.

CM.3

Action item: Recommendation CM.3 to be deleted. Alan to add this as a more targeted outreach in the relevant recommendation. The existence of ARS is not relevant in the future and this item will be moved under outreach.

CM.4

Action item: Alan to write to ICANN org Compliance and negotiate language to be added to relevant page(s). If successful, recommendation will be deleted.

CM.5

Action item: No change. All comments are supportive.

9. WHOIS1 Rec #10: Privacy/Proxy Services

R10.1

Action item: Recommendation stands but need to make sure wording is clear.

Decision reached: Comments on R10.1: As we are reviewing this document, we will verify that the wording is crystal clear. No other action is necessary.

Comments on R10.2:

Noted. All comments are supportive.

10. Day 1 wrap-up

ICANN org presented the agenda for Day 2.

DAY 2

Review Team Members:

Alan Greenberg, Susan Kawaguchi, Cathrin Bauer-Bulst, Volker Greimann, Dmitry Belyavsky, Lili Sun, Chris Disspain, Stephanie Perrin, Erika Mann, Carlton Samuels

Apologies:

Observers:

ICANN Org:

Jean Baptiste Deroulez, Negar Farzinnia, Jackie Treiber, Brenda Brewer

1. Welcome

Alan Greenberg started the meeting reviewing sections and recommendations discussed on Day 1, and assigned review team members to action items when necessary.

Icann org provided an update on what were the action items identified yesterday on the call.

Alan then enunciated the “day two” objectives:

3. Continue working on review of public comments and related action items.
4. Finish the full review of public comments

Alan reminded all that it is important the review team finalizes and does consensus calls on all recommendations well prior to Christmas, adding that a good part of January will be used to clean up the report.

2. WHOIS1 Rec. #2 – Single WHOIS Policy

Decision reached: Jackie to work with Alan to mention the problems of the policy development process regarding a single RDS (WHOIS), to be placed in the Executive Summary.

3. WHOIS1 Rec. #11: Common Interface

R11.1

Action item: ALAC comment: At this point, there is data available and lawfully available that the portal is not delivering, and RT believes that needs to be rectified and not wait for things to change. The portal may well have to change going forward, but not delivering data currently implies broken, RT stands by the current request to do this in a shorter term.

Action item: BC/NCSG Comment: RT to respond to these two comments, but no action taken to change the recommendation.

R11.2

Action item: RySG comment: Complete agreement and certainly in line with what RT were imagining would be done, even though RT is not recommending what to change the name of the page to.

4. WHOIS1 Rec #12-14: Internationalized Domain Names

R12.1

Decision reached: No changes needed to this recommendation and that Dmitry will address the comments.

Decision reached: Recommendation numbering: No changes needed to this recommendation and that Dmitry will address the comments.

5. WHOIS1 Rec #15-16: Plan & Annual Reports

R15.1

Action item: RT to add a sentence to that effect, focusing on outcomes and effectiveness on an annual report basis.

Action item: Stephanie to liaise with Jackie on adding a sentence in recommendation to amplify the impact evaluation. “The impact evaluation not being just greater accuracy for the benefit of third parties seeking data from ICANN, but response burden on the contracted parties that inevitably winds up for higher cost for end users.”

6. Objective 2: Anything New

No substantive comments were submitted on this section.

7. Objective 4: Consumer Trust

Only one public comment was received from Business Constituency.

Decision reached: No change in the recommendation We acknowledge and agree with the comment, and RT will make some – probably substantial – change in the text but still resulting in no recommendation.

8. Objective 3: Law Enforcement Needs

There was one comment on this section from the RrSG: *RrSG encourages the use of outside facilitators to draft and conduct surveys to ensure that results or questions are not biased towards the interests of any particular group. RrSG notes that only a select number of LEAs, ie those that had a direct relationship with the GAC and members of the Review Team, participated in the questionnaire and so the results do not necessarily reflect the views of a full cross-section of national and local LEAs around the world.*

In reply to this comment, Cathrin Bauer-Bulst mentioned that, *because of data protection concerns, there was a concern on the part of ICANN Legal that we could not just spam the world with this but only we’re allowed to contact those who had already agreed to be contacted for such purposes. So that is what we did, and then there is an underrepresentation in particular when it comes to the global south which we contacted by reaching out through regional GAC representatives and other contacts that we had, for example in the OAS to try and improve the feedback from those regions. and Alice, when you all*

for example also tried to reach out to the African Union Commission, the fact of the matter is that just as we see less uptake of domain name registrations in that area, we also see much less law enforcement activity, and to find law enforcement in those areas which are, in a sense, involved enough in the issues to provide feedback on this proved extremely difficult, which I think is the same experience that has come up in many places, and so I don't think we were in a position to take measures to address the general issue that we have as a multi-stakeholder community with the representation of the global south. When it comes to the drafting of the survey questions, while we didn't use facilitators, we did work of course with representation on the review team of the different ICANN parts of the community to make sure that the questions were not biased."

Action item: reply to BC comment: As representation of the community, we tried to formulate the questions in a nonbiased manner. Cathrin to provide language.

LE.1

Action item: reply to RySG, BC and ALAC comment: Noted, and Cathrin to work with Jackie to add clarifying text/update rationale to reflect difference between use of surveys and studies. Surveys and studies may allow us to recognize we have to make changes and that is a multi-stage project.

Action item: reply to RrSG comment: RT takes this comment onboard, the need should be addressed in future iterations.

Action item: reply to NCSG comment: MSSJ to estimate number of hours spent on the LE survey in response to NCSG request for estimated cost associated with conducting the survey.

LE.2

Action item: Response to ALAC comment: "The only way that they do that is their results may cause entities to take action which may enhance law enforcement activities. There is no direct connection, it depends on the details. Such enhancements may not be possible."

Action item: Response to I2C comment: "regular basis was our best attempt at identifying a group of people who often work in conjunction with law enforcement but not on a formal basis".

Action item: Response to NCSG comment, add a clause "factoring costs/benefits analysis". Also, reword the recommendation to define what "extend" means.

Action item: Response to DNRC comment: "RT is not clear as to how your comment responds to the possibility of polling the third parties that are not law enforcement agencies. We are not proposing noncompliance with law, we are proposing an assessment of needs."

Action item: Response to RrSG comment: Review team will consider extending concept of surveys and studies but not the pool of the survey takers.

Decision reached: New suggested text: The ICANN Board should consider extending and **should consider to extend comparable surveys and/or studies** (as described in LE.1) to other RDS (WHOIS) users working with law enforcement on a regular basis.

- **Updates to Contractual Compliance section**

Alan and Volker submitted a new recommendation to replace recommendation CM.2., based on action item identified on Day 1, when talking about the 180 million grandfathered domains, not subject to the validation verification rules in the 2013 RAA. Those rules only applied essentially to new domains or new registrations or those transferred in or otherwise had their contact information changed.

The recommendation that we are talking about reads: “The ICANN Board should initiate action intended to ensure that for all gTLD domain name registrations at least one full set of contact details as required for new registrations under the 2013 RAA or any subsequent version thereof or applicable policies must be collected or be present for either registrant or admin contact.”

Action item: Susan/Jackie to rework some of the basic language in this section to lead it up to that recommendation.

9. Law Enforcement Needs (continued)

Due to the absence of Cathrin earlier that morning, review team went through identified action items for her review.

10. Objective 5: Safeguarding Registrant Data

Action item: Reply to I2C comment: “we support compliance with law and support compliance with ICANN contracts.”

Action item: Reply to BC comment “RT is specifying that they believe ICANN org must be notified of data breaches. Review team is saying use reasonable industry standards in protecting data.”

Decision reached: Update recommendation to say “The board should consider whether and to what extent notifications it receives of breaches should be made public.”

11. Objective 7: ICANN Bylaws

Decision reached: Our intent was to replace data safeguards with applicable data protection across border regulations laws and best practices, and we presumed that safeguarding registrant data was implied in that. RT will amend the recommendation to include those explicit words to make clear that RT was not omitting them; RT was just omitting them as a separate action of future review teams. RT will incorporate the term “safeguarding registrant data” into the last half of the recommendation.

Action item: Carlton to reword BY.1

12. Day 2 wrap-up

ICANN org reported on all identified action items during Day 2.

Alan Greenberg wants review team members to examine the Executive Summary on Day 3.

Review team then decided to go back to discussion on Data Accuracy as Stephanie had not yet arrived at the face-to-face meeting.

13. WHOIS1 Rec #5-9: Data Accuracy

Review team then decided to go back to discussion on Data Accuracy as Stephanie had not yet arrived at the face-to-face meeting, public comments and action items were reviewed.

Meeting was then adjourned so that review team members can work on their respective sections.

DAY 3

Review Team Members:

Alan Greenberg, Susan Kawaguchi, Volker Greimann, Dmitry Belyavsky, Lili Sun, Stephanie Perrin, Erika Mann, Carlton Samuels, Chris Disspain

Apologies:

Observers:

ICANN Org:

Jean Baptiste Deroulez, Negar Farzinnia, Jackie Treiber, Alice Jansen

1. Welcome

2. ICANN org operational input

ICANN org operational input was sent to the review team just before Day 3 started, ICANN org proceeded with a presentation.

Recommendations (ALL)

Action item: Instead of trying to assign a high, medium or low priority, describe when RT believes this recommendation should be implemented and what the target completion date should be. Include a description of an ideal completion date recognizing some of the ongoing dependencies, and consideration should be given to resources (costs, community resources) that would be needed.

R1.1 | R1.2 (Cathrin)

Action item: Implementation note “review should be implemented as soon as possible and at the latest within 6 months” should be reviewed to factor in section 4.6 of the ICANN Bylaws where the ICANN Board has six months within receipt of the final report to consider the review team’s recommendations.

Action item: Recommendation refers to reports covering all the ongoing legislative initiatives, but in fact, should also identify previous legislative efforts across the globe.

R1.3 (Cathrin)

Action item: Implementation note “review should be implemented as soon as possible and at the latest within 6 months” should be reviewed to factor in section 4.6 of the ICANN Bylaws where the ICANN Board has six months within receipt of the final report to consider the review team’s recommendations.

R4.2 (Susan)

Action item: Remove “Sanctions should be applied if significant deficiencies in RDS (WHOIS) data validation or verification are identified.” Or make it clear that we are talking about sanctions that are on the books.

Law Enforcement Needs Section

Action item: Clarify what regular refers to in the recommendations, and potentially refine the scope of the envisioned survey so that its purpose is well defined.

LE.1 (Cathrin)

Action item: Implementation note “review should be implemented as soon as possible and at the latest within 6 months” should be reviewed to factor in section 4.6 of the ICANN Bylaws where the ICANN Board has six months within receipt of the final report to consider the review team’s recommendations.

Action item: Review this recommendation and specify what we mean by regular, by perhaps clarifying recommendation itself and also adding a little rationale to explain the two reasons that review team see for conducting such surveys and studies, which are, A, to do an ex-ante impact assessment of projected new policies or prepare a review team, or B, to evaluate new policies once they are in place.

Action item: Bring the above and survey questions to the EPDP (Alan) and GAC (Cathrin)

LE.2 (Cathrin)

Action item: Implementation note “review should be implemented as soon as possible and at the latest within 6 months” should be reviewed to factor in section 4.6 of the ICANN Bylaws where the ICANN Board has six months within receipt of the final report to consider the review team’s recommendations. and to consider he review team’s recommendations.

SG.1 (Alan)

Action item: Alan to add clarification as well as a reference to the RAA 2013 section 3.2.

CM.1 (Susan)

Action item: Rephrase the recommendation so that the board decide how to best implement this recommendation.

CM.3 (Susan)

Action item: Review team to use the GAC term, which is underserved regions, as there are some conflicting views on Global South.

CM.5 (Susan)

Action item: Clarify in recommendation what a “risk base approach is”. Stephanie provided: “A risk-based approach simply means that you do a risk assessment before you take an action to determine whether it’s really necessary.”

3. Review of Action Items/Updates

At the request of the leadership, ICANN org reviewed all identified action items.

Action item: Updates to be completed by 21st of December 2018.

4. Executive Summary

ICANN org presented several suggested changes to the Executive Summary:

- Consider using the methodology section as a place to explain the reasoning behind the numbering of recommendations
- Shorten the WHOIS background section by using or referring to an ICANN history link using that as shorthand
- First paragraph states that all recommendations were implanted, but the following paragraph notes that one recommendation was not implemented, which seems like a contradiction
- Add a summary of the WHOIS history

All suggested comments were accepted.

Alan Greenberg invited to take a break and invite all to work on their updates until 13.30.

5. Call for consensus on recommendations

The review team reviewed the following recommendations for final consensus, approval will need to be confirmed by Thomas and Volker who were not participating in this discussion (except Volker for 5.1).

R5.1:

Cathrin and Lili presented the updated version of R5.1 with changes to recommendation and rationale.

Decision reached: Following several concerns with the present updates, recommendation to be updated and re-discussed on plenary call #44.

R1.1 | R1.2 (Not updated):

Decision reached: Consensus reached

Action item: Cathrin/Dmitry to update surrounding text making sure that process will be more active for both ICANN and national stakeholders at least.

R1.3 (Not Updated):

Decision reached: Consensus reached on recommendation with the addition of “Board Committee or Working Group” instead of “Board Working Group”

R3.1 (Not updated):

Decision reached: Consensus reached

R3.2 (Updated):

Action item: Remove “in light of GDPR-driven changes,”, and remove “effectively” in the original text. Move the reference to GDPR, and other substantial policy changes into the dialogue. Add “in light of substantial policy changes, ICANN should consider the need for education.”

Decision reached: Consensus reached

R4.1 (Updated):

Decision reached: Consensus reached

R4.2 (Updated):

Decision reached: Consensus reached

R10.1 (Updated – not submitted on list):

Decision reached: Discussion deferred to plenary call #44.

Action item: Due to the many changes made to the recommendation, send out an email showing recommendation before and after changes.

R10.2 (Not updated):

Decision reached: Consensus reached

R11.1 (Updated – not submitted on list):

Language in “Implementation” was updated by Volker, which Susan disagreed with.

Action item: Language is accepted, with the addition that “should arise” to be changed with “be noted”

Decision reached: Consensus reached.

R11.2 (Updated – not submitted on list):

Decision reached: Consensus reached.

R12.1(Not updated):

Decision reached: Consensus reached.

R15.1 (Updated):

Decision reached: Consensus reached.

Action item: Language mentions 6 months, Jackie to update language as per operational input received in the morning: *“ICANN Bylaws, the ICANN Board has six months within receipt of the final report to consider the review team’s recommendations. We would suggest factoring this into implementation details you include in your recommendations (see 1.1 – 1.2 – 1.3 – 15.1 – LE.1 – LE.2)”*.

LE.1 (Updated):

Decision reached: Consensus reached.

LE.2 (Not updated):

Action item: Add a clause for factoring costs/benefits in this recommendation.

Action item: Remove “extending” , and add “conducting comparable” in the recommendation.

Decision reached: Consensus reached.

SG.1:

Action item: Alan to review body of the report with an eye to section 3.2 of the 2013 RAA.

CM.1 (minor update):

Decision reached: Consensus reached.

CM.2 (Updated):

Decision reached: Consensus reached.

CM.3:

Decision reached: Recommendation to be deleted, discussion scheduled on Plenary #44.

CM.4:

Decision reached: Consensus reached on deleting recommendation.

CM.5:

Decision reached: Consensus reached.

Action item: Numbering of recommendation should change to CM.3

BY.1:

Action item: Replace “Eliminate the reference” with “Extend the reference”, add “(which refers to the OECD Guidelines) after “replace section 4.6(iii) of the ICANN Bylaws.”

Decision reached: Consensus reached.

6. Face-to-Face Meeting #4 wrap-up

Workplan is confirmed, no changes are needed to current milestones.

Plenary call #44 to be scheduled next Monday at 15:00 UTC.