AT-LARGE ADVISORY COMMITTEE
ALAC STATEMENT ON REGISTRATION DIRECTORY SERVICE (RDS-WHOIS2) REVIEW TEAM DRAFT REPORT OF RECOMMENTATIONS

Introduction

On 04 September 2018, public comment opened for the Registration Directory Service (RDS-WHOIS2) Review Team Draft Report of Recommendations. The At-Large Consolidated Working Group decided it would be in the interest of ALAC to develop a statement on behalf of Internet end users. During ICANN63, members of the working group discussed the comment and assigned penholders to draft the statement.

On 11 November 2018, Holly Raiche, ALAC Member of the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO), drafted an initial draft of the statement on behalf of the At-Large Advisory Committee (ALAC). ICANN policy staff in support of the At-Large community sent a call for comments on the statement to the At-Large community via the ALAC work mailing list. The At-Large community and ALAC Members began commenting on the topic on its At-Large workspace.

On 16 November 2018, Bastiaan Goslings, ALAC Member of the European Regional At-Large Organization (EURALO), incorporated comments into a revised draft of the statement.

On 18 November 2018, comments from the community, including Alan Greenberg, former ALAC Chair, were taken into account in revising the statement. The final statement was posted to the workspace incorporating the revisions from both penholders, Holly Raiche and Bastiaan Goslings.

On 18 November 2018, the ALAC Chair, Maureen Hilyard, requested that the statement be transmitted to ICANN public comment process, copying the ICANN staff member responsible for this topic, with a note that the statement is pending ALAC ratification.

On 26 November 2018, staff confirmed that the online vote results in the ALAC endorsing the statement with 15 votes in favor, 0 votes against, and 0 abstentions. Please note 100% (15) of the 15 ALAC Members participated in the poll. The ALAC Members who participated in the poll are (alphabetical order by first name): Bartlett Morgan, Bastiaan Goslings, Hadia Elminiawi, Holly Raiche, Humberto Carrasco, Javier Rua-Jovet, Joanna Kulesza, John Laprise, Kaili Kan, Marita Moll, Maureen Hilyard, Ricardo Holmquist, Sebastien Bachollet, Seun Ojedeji and Tijani Ben Jemaa. Please note 1 ALAC Member voted after poll close. You may view the result independently under: https://www.bigpulse.com/pollresults?code=13361804QaWcxIMM3dgjA2M5Dcz.

ALAC STATEMENT ON REGISTRATION DIRECTORY SERVICE (RDS-WHOIS2) REVIEW TEAM DRAFT REPORT OF RECOMMENTATIONS

The primary concern for ALAC in this review is the accuracy of registrant data (WHOIS data) and its use by security and law enforcement bodies in addressing the misuse and abuse of the DNS system. We recognize that the GDPR and ICANN's response to its requirements mean that some of the Report's recommendations should await outcomes of ICANN's policies in response to the GDPR. However, other recommendations impact directly on the accuracy of registrant data and should be addressed without waiting for outcomes of ICANN's response to the GDPR.

The ALAC commends the work done by Registration Directory Service (RDS-WHOIS2) Review Team: they have come up with a very thorough and extensive report, the recommendations of which are mostly supported by the ALAC. Below, a couple are mentioned that according to the ALAC deserve highlighting.

In general terms, somewhat to the ALAC's surprise, the report starts off with stating:

> "*ICANN Org implementation reports for the sixteen recommendations from the WHOIS1 Review Team state that all sixteen have been fully implemented.*
>
> *The RDS-WHOIS2 Review Team's conclusions are that, of the sixteen recommendations, eight were fully implemented, seven were partially implemented and one was not implemented.*"

As it has been six years since the first WHOIS Review Team published its findings, the ALAC finds it concerning that the current report establishes the fact that recommendations have not been implemented in line with what ICANN Org says. Six years is a very long time, and when it comes to the assessing the initial WHOIS1 Review recommendations, the ALAC thinks that the large time period before the second review was finalized, has lead to a situation that several of the original recommendations are overtaken by developments such as:

- Work on the adoption by ICANN of RDAP, replacing the WHOIS protocol
- Changes to the RAA in 2013, including new requirements on WHOIS accuracy
- Compliance adoption of enhanced monitoring of accuracy requirements and tools
- Most significantly, the initiation within ICANN of the EPDP and related Unified Access Model discussions to address issues on the collection of, access to and further processing of personal information by contracted parties because of RAA/Registry agreements they have with ICANN.

Despite the RDS-WHOIS2 Review Team explicitly not focusing on ICANN's actions in response to the relatively new European Union General Data Protection Regulation (GDPR), the ALAC is happy to see that the report takes the following into account:

> "*Those actions are ongoing and the outcomes are not sufficiently firm as to allow them to be reviewed here. However, the review team recognized the issue is of significant importance and that it would probably impact several policies related to registrant data. To the extent GDPR and its effects on the RDS (WHOIS) could be factored in, the RDS-WHOIS2 Review Team did so.*"

The ALAC agrees with the report's recommendations on Strategic Priority (R1.1, R1.2), especially as it seems as if findings from the WHOIS1 Review team to support its recommendations are still true:

> "*Although WHOIS services are provided by ICANN's contracted parties, WHOIS look ups have now become detached from the domain name supply chain. Users of WHOIS tend not to be customers of registries and registrars, but are law enforcement, or those enforcing private law rights, and those seeking to get in touch with registrants for whatever reason. There are no income streams associated with providing WHOIS. It is viewed by many in the industry as a cost and is often difficult to locate on registrar websites. As a result, it is not a priority for many of ICANN's contracted parties - who provide funding for ICANN the corporation. It is, however, a*

high priority for many users who are outside the ICANN inner circle, but for whatever reason their needs have not found organizational priority to date."

The ALAC also strongly agrees with the draft report's recommendations on Single WHOIS Policy, Contractual Compliance, and the emphasis put on these topics.

Based on the Review Team's findings the one with regard to Data Accuracy is a concern (R4.1, R4.2, CM.1), and the ALAC looks very much forward to the Board's response on how to handle this in the long run. One of the issues found in surveying Law Enforcement Needs (Objective Three) is that those who were asked in which ways RDS (WHOIS) did not meet their investigative needs responded in line with the following:

"A large proportion of respondents (38%) cited inaccurate data, 12% referred to no data being available, and 50% named other issues, such as incomplete information, inaccurate data (despite the separate answer category), falsified information, and the use of privacy and proxy services."

And other input from Law Enforcement Agencies apparently confirms these findings:

"law enforcement struggles both with inaccurate data (while highlighting that even inaccurate data may allow the detection of patterns or provide helpful leads)"

Besides the primary task of reviewing the recommendations of the 2012 WHOIS Final Report, the WHOIS2 Review Team set itself additional Objectives. As a final comment the ALAC wants to once more refer to Objective Three of the Review Team: "Law Enforcement Needs":

"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) meets legitimate needs of law enforcement for swiftly accessible, accurate and complete data."

Inaccurate records, the use of privacy and proxy services, as well as changes brought about by the Temporary Specifications to secure compliance with the General Data Protection Regulation (GDPR), seem to have impacted the work, particularly investigational, of law enforcement. The ALAC can agree with the recommendation to continuously monitor the impact of WHOIS/RDS related developments, but it is unclear to the ALAC how surveys and data gathering are to lessen the potential negative consequences on law enforcement work.

The ALAC response to each of the recommendations is summarized below:

Objective 1:

Recommendation 1: Strategic Priority

ALAC Response: Support the aim of the recommendation in the WHOIS Policy Review Team Final Report of 2012 (WHOIS1) for the ICANN Board adopting a "culture of proactive monitoring and planned improvement in RDS (WHOIS)."

Recommendation 2: Single WHOIS Policy

ALAC Response: Support for regular revision and updating to the WHOIS information, particularly as ICANN policies on registrant data are finalized.

Recommendation 3: Outreach

ALAC Response: ALAC support in principle, but only when ICANN policies on Registrant Data are finalized.

Recommendation 4: Compliance

ALAC Response: Support recommendation.

Recommendation 5 - 9: Data Accuracy

ALAC Response: Support recommendations for determination of causes of data inaccuracy and actions to be taken to address the inaccuracy.

Recommendation 10: Privacy/Proxy Services

ALAC Response: Support recommendation.

Recommendation 11: For common interface on all publicly available registrant data, and suggestions metrics/SLAs to track and evaluate access and accuracy of registrant data.

ALAC Response: Support recommendation, particularly when ICANN policies on registrant data finalized.

Recommendation 12- 14: Internationalized Domain Names

ALAC Response: Support deferral of review of effectiveness until the program is fully implemented.

Recommendations 15 - 16: Plan and Annual Reports

ALAC Response: Accept recommendation.

Objective 3: Law Enforcement Needs

ALAC Response: Support recommendation, particularly after finalization of registrant data policies.

Objective 5: Safeguarding Registrant Data

ALAC Response: Support recommendation.

Objective 6: ICANN Contractual Compliance Action, Structure and Processes

ALAC Response: Support recommendations.

ICANN Bylaws

ALAC Response: Support recommendation.