



IPC COMMENTS ON RDS-WHOIS2 REVIEW FINAL REPORT

The Intellectual Property Constituency (IPC) appreciates the opportunity to comment on the “Registration Directory Service (RDS)-WHOIS2 Review Final Report” (“Final Report”). At the outset, the IPC sincerely thanks the RDS-WHOIS2 Review Team (“Review Team”) for its diligent work in producing the comprehensive Final Report assessing the current gTLD Registry Directory Service (RDS).

As a preliminary comment, the IPC agrees with and supports the comments submitted by the Business Constituency in identifying actions ICANN Org and the community can take immediately to make improvements to the RDS. Specifically:

- ICANN Compliance may implement proactive steps to winnowing inaccuracies in Registrant data.
- The community has observed failed and/or stalled accuracy initiatives. Community-driven initiatives like cross-field validation should be implemented immediately.
- According to the Accuracy Reporting System (ARS), inaccuracy rates remain unacceptably high (in the 30-40% range). Inaccuracies in the RDS continue to cause harm and confusion in the marketplace and facilitate DNS abuse. Simple validation at the outset of WHOIS entry is an easy remedy to help reduce inaccuracy rates.

SPECIFIC IPC COMMENTS ON REVIEW TEAM RECOMMENDATIONS

The IPC understands that ICANN is seeking community input on the Review Team recommendations:

Recommendation R4.1: The ICANN Board should initiate action to ensure ICANN Contractual Compliance is directed to proactively monitor and enforce Registrar obligations with regard to RDS (WHOIS) data accuracy using data from incoming inaccuracy complaints and RDS accuracy studies or reviews to look for and address systemic issues. A risk-based approach should be executed to assess and understand inaccuracy issues and then take the appropriate actions to mitigate them.

IPC Comment: The IPC agrees that ICANN Compliance should be instructed to proactively monitor and enforce Registrar obligations to enforce WHOIS data accuracy stemming from inaccuracy complaints and information on inaccuracies coming other sources. Further, this recommendation is intended to broaden the Compliance team’s investigations capabilities in furtherance of identifying and addressing inaccuracy complaints.

Recommendation R4.2: The ICANN Board should initiate action to ensure that ICANN Contractual Compliance is directed to cross-reference existing data from incoming complaints and studies such as the ARS to detect patterns of failure to validate and verify RDS (WHOIS) data as required by the RAA. When such a pattern is detected, compliance action or an audit should be initiated to review compliance of the Registrar with RDS (WHOIS) contractual obligations and consensus policies.

IPC Comment: The IPC supports any recommendation to require Compliance to proactively investigate using all data sources available to detect systemic information failure.

Recommendation R5.1: The Accuracy Reporting System, which was instituted to address concerns regarding RDS (WHOIS) contact data accuracy, has demonstrated that there is still an accuracy concern and therefore such monitoring must continue. ICANN organization should continue to monitor accuracy and/or contactability through either the ARS or a comparable tool/methodology.

IPC Comment: ICANN remains responsible for the security and stability of the internet. In furtherance of this obligation, maintaining access to registrant data and ensuring the accuracy and quality of this data is paramount for ICANN to uphold its obligations.

Recommendation R10.1: The Board should monitor the implementation of the PPSAI. If the PPSAI policy does not become operational by 31 December 2019, the ICANN Board should ensure an amendment to the 2013 RAA (or successor documents) is proposed that ensures that the underlying registration data of domain name registrations using Privacy/Proxy providers affiliated with registrars shall be verified and validated in application of the verification and validation requirements under the RAA unless such verification or validation has already occurred at the registrar level for such domain name registrations.

IPC Comment: The IPC reiterates its earlier stated position that PPSAI implementation should be a HIGH priority. At the time the RDS-WHOIS2 Final Report was being considered, the PPSAI IRT was working toward its implementation, after having been unanimously approved by the GNSO Council on 21 January 2016 (<https://gnso.icann.org/en/council/resolutions#201601>). The IRT's work was unilaterally stopped by ICANN Org, with no clear path forward.

Post-GDPR has seen an increase in usage of privacy/proxy registrations (contrary to expectations that privacy/proxy would decrease and be seen as unnecessary in the post-GDPR environment). Further, some registrars are moving large numbers of registrations into their privacy/proxy services in order to avoid the redaction obligations required by the Temporary Specification. The result is that access to important registrant information, even where a legitimate basis exists, results in the need for formal legal proceedings to obtain it. This is untenable, as it facilitates abuse in the DNS. For the benefit of individuals who may be the subjects of abuse and those attempting to obtain relief from abuse, it is imperative that the underlying data be sound.

Recommendation SG.1: The ICANN Board should require that the ICANN org, in consultation with data security and privacy expert(s), ensure that all contracts with contracted parties (to include Privacy/Proxy services when such contracts exist) include uniform and strong requirements for the protection of registrant data and for ICANN to be notified in the event of any data breach. The data security expert(s) should also consider and advise on what level or magnitude of breach warrants such notification.

In carrying out this review, the data security and privacy expert(s) should consider to what extent GDPR regulations, which many but not all ICANN contracted parties are subject to, could or should be used as a basis for ICANN requirements. The ICANN Board should initiate action intended to effect such changes.

The ICANN Board should consider whether and to what extent notifications of breaches that it receives should be publicly disclosed.

IPC Comment: The IPC supports a requirement for ICANN Org to track data breaches in furtherance of protecting registrant data. Tracking minimal data on data breaches, in consultation with data security and privacy experts, is a simple but necessary step in assessing the number of breaches occurring (which, by third party accounts, are on the rise) and will assist in further protecting registrant data.

Recommendation CC.1: The ICANN Board should initiate action intended to ensure that gTLD domain names suspended due to RDS (WHOIS) contact data which the registrar knows to be incorrect, and that remains incorrect until the registration is due for deletion, should be treated as follows:

- (1) The RDS (WHOIS) record should include a notation that the domain name is suspended due to incorrect data; and
- (2) Domain names with this notation should not be unsuspended without correcting the data.

IPC Comment: The simple inclusion of a notation that a domain name is suspended for incorrect data will serve to improve accuracy on any metrics maintained. Further, maintaining domains in suspension until inaccurate information is corrected is a simple and effective means for encouraging rapid correction of RDS information and/or keeping bad actor domains out of the system.

Recommendation CC.3: The ICANN Board should take steps to ensure that ICANN Contractual Compliance is adequately resourced factoring in any increase in workload due to additional work required due to compliance with GDPR or other legislation/regulation.

IPC Comment: It remains critical for the Compliance team to be adequately staffed and resourced to fulfill its important function in furtherance of ICANN's mission, including the added elements outlined in the Final Report and reinforced in these comments.

Final Comments

The IPC believes the ICANN Board should move forward with urgency in adopting all of the RDS Review Team's recommendations. Further, as noted above, Recommendation 10 of the Final Report (pertaining to PPSAI implementation) is singled-out as a high priority for the IPC and the global intellectual property community it represents, given the changed circumstances from the situation where the Final Report was being developed. Further delay in implementation of the PPSAI is unwarranted.

ICANN's obligation to maintain the security, stability and reliability of the internet is predicated on ensuring and protecting the accuracy of its data quality and the integrity of registrant data. In order to do so, it must have access to this data and be in position to ensure this data is available to those with a legitimate interest.

Thank you.