



WHOIS Policy Review Team Draft Report

Status: Draft
Version: 6
14 Mar. 2012

**Commercial & Business Users
Constituency Submission**

GNSO//CSG//BC

Submission:

The WHOIS Policy Review Team, guided by the Affirmation of Commitments (AoC), was formed in October 2010 to review the extent to which WHOIS policy and its implementation are effective, meet legitimate needs of law enforcement, and promote consumer trust.

As the result of numerous meetings, both face-to-face and by phone, the WHOIS Policy Review Team developed 20 unique recommendations.

The BC wishes to thank the Working Group and the ICANN staff for their hard work and commitment to completing the work of the WHOIS RT and publishing the report in a timely manner which has allowed the community to thoroughly review and provide comments on the report.

The BC generally agrees in principle with most of the recommendations, however, the BC also believes that many of the recommendations do not go far enough to ensure that WHOIS is effective, meets legitimate needs of law enforcement and promotes consumer trust.

Please find below the BC's analysis and recommendations relative to each of the 20 recommendations.

1. Single WHOIS Policy

The BC fully supports the requirement for the creation of a single WHOIS policy document. The BC also believes that this policy document should be referenced in all subsequent agreements with Contracted Parties. Moreover, as per the AoC and the initial White Paper, ICANN must implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information.

2. Policy Review – WHOIS Data Reminder Policy (WDRP)

The BC believes that the WDRP, while well-intentioned, is inefficient. Consequently, the BC supports the recommendation that an alternative effective policy should be developed and implemented that achieves the objective of improving data quality, in a measurable way.

3. Strategic Priority

The BC supports making WHOIS a strategic priority and agrees with the recommendation that WHOIS issues and the strategy to address those issues requires executive level commitment from the CEO, who should ensure necessary resources and commitment from across all ICANN staff. The ICANN Board's Risk Committee and the SSAC should be asked to specifically provide oversight and guidance to the executive team member responsible for WHOIS.

4. Outreach

The BC supports cross-community outreach especially to those outside of ICANN with a specific interest in WHOIS. This should take the form of standard notices that are also posted on the ICANN website in a manner that will inform Registrants, and users of WHOIS of their rights and obligations. In addition, the BC recommends providing standardized and clearly worded notification to Registrants (at the time of registration) of the requirement for accurate WHOIS, as well as the penalties for providing inaccurate information. Information clearly describing the definition of Privacy and Proxy services should also be provided to Registrants. Applicable Contracted Parties should be required to maintain this information available both to Registrants, and to users of WHOIS.

5. Data Accuracy

While the BC agrees that improving WHOIS data accuracy is of utmost importance, the recommendation that WHOIS accuracy be improved by 50% within 12 months and by another 50% over the following 12 months leaves many open questions with regard to the approach and metrics used. For example, what is the baseline by which accuracy will be measured? How will improvements be measured? What specifically will be used to determine accuracy - phone numbers, e-mail addresses, street addresses? While it may not have been within the scope of the Review Team to identify these answers, the BC does recommend that this information should be clarified.

6. Accuracy Report

The BC supports the production of an accuracy report focused on measured reduction in unreachable WHOIS in order to give the ICANN community and

subsequent review teams some factual basis for policy making. However, the BC believes that such a report should be published quarterly, for at least a three year period. By conducting every 3 months, trends can be identified much more quickly, and the impacts of new policies can be more closely tracked. At the time of the next Review Team's evaluation, this can be reassessed for change to a six month reporting basis.

7. Status Report

The BC supports the production of a broadly-focused annual status report on the progress made towards achieving the goals set forth by the WHOIS Review Team. Additionally, the BC also recommends that other directly related WHOIS activities are also incorporated into the status report so that the report reflects the current status of WHOIS and all related initiatives such as amendments to the RAA, changes to technical protocols, etc.

8. Chain of Agreements

The BC agrees that ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreements that requires the provision and maintenance of accurate WHOIS. This chain of agreements must include Registrants and the Resellers and Proxy and Privacy Service providers who have responsibilities for access to, or accuracy of WHOIS.

While the requirement for accuracy exists today, enforceable sanctions are missing. Such sanctions should include graduated penalties, such as (in the case of Registrants) suspension of domains and ultimately de-registration of domains. In the case of service providers these graduated sanctions would, in the worst case, include de-accreditation of Registrars, and Proxy and Privacy Service providers. While some Registrants may find the registration process confusing and insert incomplete information, such Registrants will undoubtedly correct inaccurate WHOIS when notified. Other inaccuracies are purposeful. Without punitive measures, there is no incentive for Registrants to provide accurate WHOIS.

ICANN compliance must take a greater role in ensuring that these de-registrations take place when Registrants fail to update inaccurate WHOIS with accurate and complete information, including implementing consequences for non-compliant Registrars.

9. Registrant Communication

The BC agrees that Registrants should be notified of their Rights and Responsibilities prior to registration of domains via an e-mail with a link that requires the Registrant to view and accept these terms. Registrants who fail to view and accept the Rights and Responsibilities should not be allowed to complete the registration process.

10. Requirements for Privacy Services

The BC strongly supports the need for clear, consistent and enforceable requirements for Privacy Services and supports the following WHOIS Policy Review Team's recommendations:

- WHOIS entry must clearly label that this is a private registration
- Privacy services must provide full contact details as required by the WHOIS which are available and responsive as required by the framework mentioned above.
- Standardized relay and reveal processes and timeframes.
- Rules for the appropriate level of publicly available information on the registrant
- Maintenance of a dedicated abuse point of contact for the privacy service provider
- Privacy service provider shall conduct periodic due diligence checks on registrant contact information

The BC recognizes that in some cases there may be jurisdictional privacy issues, but recommends that those issues are handled on an exception basis via RSEP as is the case with .CAT.

The BC also recommends that a special accreditation for Privacy Service providers be developed and implemented so that Registrars are contractually bound to comply with standardized reveal and relay processes, designated formatting, abuse points of contacts, and special requests by Law Enforcement and ICANN. Incentives should be implemented to encourage adoption of this new accreditation.

11. Penalties for Privacy Service Providers

The BC strongly supports graduated and enforceable penalties for Privacy Service providers who violate terms of their special accreditation. Without

these penalties, Privacy Service providers will not be incented to comply with newly implemented requirements.

In addition, the BC recommends that only accredited Privacy Services providers be allowed to register domain names using 'privacy' in their name. If a Registrant misuses the privacy label, it should result in suspension and ultimately in the worst case de-registration of the domain name.

12. Proxy Service Providers Review

The BC supports facilitating a review of Proxy Service providers to better understand current processes employed. This should be done on a fast track basis, by a neutral source, and the results published to the community.

13. Disclosure of Registrar Relationships with Retail Proxy Service Providers

The BC supports the disclosure of Registrar relationships with affiliated Proxy Service providers.

Failure to disclose relationships should result in graduated sanctions up to and including Registrar de-accreditation.

Additionally, the BC recommends that processes for the disclosure of this relationship information are defined in terms of how, when and to whom this information is made available.

The BC also recommends that a clearer definition of the term Retail Proxy Service Provider be provided in the final recommendations of the Review Team. Does this refer to the type of customer the service provider targets, or the place that the service provider occupies in the registration-service value chain?

14. Guidelines for Proxy Service Providers

For true Proxy Service providers, (where there is no relationship of any kind to the Registrar, and the Proxy Service provider is acting on behalf of another party) the Proxy Service Provider should assume all responsibility for the domain name and its manner of use.

Registrars utilizing a Proxy Service provider where a relationship exists between the two entities should be required to obtain special accreditation.

Moreover, the BC supports graduated and enforceable penalties for Registrars utilizing Proxy Service providers who violate terms of their special accreditation. Without these penalties, Registrars will not be incented to comply with newly implemented requirements.

Finally, the BC recommends that only accredited Proxy Services providers be allowed to register domain names using 'privacy' or 'proxy' in their name. If a non-accredited Registrar misuses the privacy / proxy label, it should result in suspension of domains and ultimately de-registration of the domain name.

15. Incentives for Registrars

As mentioned above, the BC recommends that Registrars utilizing a Proxy Service provider where a relationship exists should be required to obtain special accreditation. Incentives should be implemented to encourage adoption of this accreditation.

16. Clarification of Proxy Services

The BC agrees that the to-be created WHOIS policy document should include a clear definition of Privacy Services, Proxy Services and the Rights and Responsibilities of the Registrant. As this is an implementation issue, the BC believes that a staff developed document, then shared with the community for public comment and input, may be a starting point on developing these definitions.

17. WHOIS Access

The BC supports the recommendation that ICANN should set up a multilingual interface website to allow unrestricted and public access to accurate and complete WHOIS information for all gTLD domain names.

For the development of this website, the BC also recommends that ICANN be required to utilize the services of a highly-competent user design group to perform usability testing (with average consumers).

18. Internationalized Registration Data

The BC agrees that the ICANN Community should task a working group within 6 months of publication to finalize (i) encoding, (ii) modifications to

data model, and (iii) internationalized services, to give global access to gather, store and make available internationalized registration data.

The BC believes that this defining these standards requires special expertise and is not well-suited to a PDP.

19. Internationalized Registration Data Agreements

The BC agrees that the final data model and services should be incorporated and reflected in Registry and Registrar agreements within 6 months of Board adoption. If these new requirements cannot be finalized in time for the next versions of Registry and Registrar agreements, then an explicit placeholder should be implemented. For existing agreements, the new provisions should be incorporated at the time of renewal.

20. Registration Data Accuracy in Local Languages

The BC agrees that requirements for registration data accuracy and availability in local languages should be finalized along with efforts on internationalization of registration data.

Finally, as identified by the Review team, the BC believes strongly that ICANN must work to ensure that Compliance is properly staffed to enforce these recommendations as stated above. The BC also agrees that, “Without a significant injection of resources, and more strategic focus on priorities, ICANN’s compliance effort will continue to fall short of expectations.”