



WHOIS Policy Review Team Final Report

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**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.

The Business Constituency (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.

The BC represents commercial Internet users within ICANN. Business users rely on a stable and secure Internet and online experience, one that serves their users and customers on a global basis.

The BC represents business of all types - multi-nationals, medium-size companies and small enterprises. One of the Constituency's strengths is its association membership - which extends BC outreach directly to over 50,000 companies and indirectly to over 1.5 million companies – large and small -- worldwide. Over 88% of the companies in these associations are small and medium enterprises (SMEs).

Public access to reliable accurate, and complete WHOIS is a considered a priority by the Business Constituency's members. The responsibility for Whois was a part of the terms of the White Paper in 1998, and was reaffirmed in the Affirmation of Commitments in 2009. The BC has broadly endorsed the Review Team's final Conclusions and Recommendations, and reaffirms that endorsement, while offering comments on the specific recommendations.

Please find below the BC's analysis and recommendations relative to each of the 16 recommendations.

1. 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. As stated in previous comments, 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.

2. Single WHOIS Policy

As stated in previous comments, 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.

3. 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 / 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.

4. Compliance

While not previously identified in the Draft report, the BC supports the recommendation that its compliance function is managed in accordance with the following principles:

- a. Full transparency regarding resourcing and the structure of compliance.
- b. Clear and appropriate lines of reporting and accountability to allow compliance activities to be pursued pro-actively and independently of other interests.
- c. Necessary resources to ensure that the compliance team has the processes and tools necessary to manage and scale its compliance activities.

5. Data Accuracy

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

6. Data Accuracy

The BC appreciates the clarification provided by the Final report in identifying the approach and metrics to be used to measure improvements in data accuracy.

7. 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. As stated previously, 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.

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 /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. Impact of 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.

10. Privacy and Proxy Services

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

- Clearly labeling WHOIS entries to indicate that registrations have been made by a privacy or proxy service;
- Providing full WHOIS contact details for the Privacy / Proxy service provider, which are contactable and responsive;
- Adopting agreed standardized relay and reveal processes and timeframes; (these should be clearly published, and pro-actively advised to potential users of these services so they can make informed choices based on their individual circumstances);
- Registrars should disclose their relationship with any Privacy / Proxy service provider;
- Maintaining dedicated abuse points of contact for each provider;
- Conducting periodic due diligence checks on customer contact information;
- Maintaining the privacy and integrity of registrations in the event that major problems arise with a Privacy / Proxy provider.
- Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the Privacy / Proxy environment.

The BC recognizes that in some cases there may be jurisdictional privacy issues, but recommends that those issues are handled on an exception basis.

The BC also recommends that a special accreditation for Privacy / Proxy 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.

The BC strongly supports graduated and enforceable penalties for Privacy / Proxy Service providers who violate terms of their special accreditation. Without these penalties, Privacy / Proxy Service providers will not be incented to comply with newly implemented requirements.

In addition, the BC recommends that only accredited Privacy / Proxy 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.

11. Data 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).

12. Internationalized Registration Data

The BC agrees that the ICANN Community should task a working group within six months of publication to determine appropriate internationalized domains name registration data requirements.

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

13. 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.

14. 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.

15. Comprehensive Plan

The BC supports the recommendation that ICANN should develop a comprehensive plan within 3 months of the Final WHOIS Review Team report that outlines how ICANN will move forward in implementing these recommendations.

16. 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.