

WHOIS Draft Report

Comments of the United Kingdom Government

Summary

The UK Government believes that ICANN's WHOIS policy needs to be fundamentally reformed in order to be globally effective and consistent, to promote greater consumer trust and to serve the legitimate needs of law enforcement.

ICANN's failure over a long period to establish a consistent and globally accessible WHOIS database of complete and accurate registrant data (subject to applicable data protection laws and respectful of individual privacy) has in our view seriously undermined ICANN's performance in serving the global public interest. The UK Government therefore welcomed the inclusion in the Affirmation of Commitments (AoC) of a requirement for a review of WHOIS policy, its effectiveness and its implementation, and for successive reviews to be conducted every three years.

The UK Government greatly appreciates the thorough and well-structured work of the WHOIS Review Team in preparing its Draft Report and the set of comprehensive Recommendations contained therein. We strongly support these Recommendations as establishing a coherent and practicable course to implement reform and thereby secure an effective WHOIS Policy. This course of action should be implemented by the ICANN community as soon as practicable as a matter of strategic urgency.

In particular, the UK Government believes that the Draft Report correctly identifies the need for a centralised strategic command for WHOIS policy orientation and that the policy will only be successfully implemented if there is:

- comprehensive measurement of actual performance;
- establishment of accuracy targets;
- strategic resourcing of compliance;
- institution of comprehensive chain of accountability and compliance enforcement with effective powers of sanction for non-compliance;
- constructive engagement of privacy services and proxy service providers in the policy implementation;
- greater consumer awareness and acceptance at point of sale of their responsibilities, privacy rights and applicable data protection safeguards;
- full consistency with the law enforcement agencies' recommendations for amendments to the Registrar Accreditation Agreement (RAA).

Most importantly, we support the Draft Report in making clear that WHOIS policy reform and its implementation need to be established as a coherent global policy that engages all communities and which is consistent with national laws (especially with regard to privacy and data protection) and cultural diversity (including multilingualism).

Without the implementation of these changes, the WHOIS system and database will become increasingly devalued by all the stakeholders who need to use it, in

particular business, law enforcement agencies and consumers, at a crucial time for the domain name system with a major expansion in the number of generic top level domains (gTLDs). The urgency and timing of implementing these reforms could not be more critical therefore.

The UK Government believes that implementation of these Recommendations will necessitate the commitment by ICANN of increased resources as soon as practicable to ensure more effective compliance. ICANN's framework for monitoring and enforcing compliance will therefore need to be urgently reassessed accordingly.

Inevitably implementation of these Recommendations will create additional costs, notably relating to ICANN resourcing, and to data validation and verification. It is especially important therefore that the Registrars Stakeholders Group (RrSG) be fully engaged in the implementation of WHOIS policy reform. The UK Government strongly believes that these additional costs should not be regarded, in particular by registrars engaging consumers at the point of sale, as a barrier to implementation of the Draft Report's Recommendations. All members of the ICANN community should now seize as a matter of urgency the long overdue opportunity provided by the WHOIS Review Team to achieve real benefits for all Internet stakeholders, to foster greater consumer trust and access, and to reduce criminal misuse of the system.

UK Government Comments on Specific Recommendations and Timeframes

Recommendation 1: Single WHOIS Policy

The UK Government agrees that this will better articulate the strategic framework for WHOIS policy so that all parties have a full understanding of their role and contributions to ensuring effective and consistent implementation.

Recommendation 2: WHOIS data reminder policy

The UK Government agrees that this will lead to improvements in accuracy and transparency. We believe that it will be necessary to develop a new system that identifies the most meaningful metrics and ensures consistency and timely provision of data.

Recommendation 3: Strategic Priority

The UK Government agrees that this Recommendation is of paramount importance central to ICANN's commitment to promote the global public interest. This is therefore in our view the first priority. The Board should immediately resolve to adopt responsibility for strategic oversight of WHOIS policy and implementation.

When establishing the structure of ICANN's oversight of policy and implementation, we suggest that one possible option that should be considered is the appointment of an external, independent "WHOIS Compliance Czar" (or similar designation) who would report on progress to the Board on a regular basis, no less frequently than at every public ICANN meeting. This high level appointee should also be an advisor to, but not be a member of, the successor AoC WHOIS Review Teams.

Recommendation 4: Outreach

Awareness of WHOIS policy and its importance is generally considered to be low amongst the business community and consumers. Its requirements are often perceived to be burdensome and not respecting personal privacy and data protection laws. Furthermore the current awareness effort has proved ineffective in helping to tackle criminal misuse of the DNS. It is widely assumed that criminals are able to shield and hide their online activities, thereby undermining trust and frustrating the legitimate efforts of law enforcement agencies to identify, track, counter and ultimately prosecute such criminal behaviour.

The UK Government therefore agrees with the Review Team that more effective communication of the policy by means of a dedicated and well resourced global outreach programme is essential to address these problems. All registrars must be made aware of their responsibilities for ensuring the WHOIS system works and meets the expectations of users as the DNS continues to evolve and expand. Similarly, all business and consumer registrants must be made aware of their responsibilities as well as rights to privacy and data protection under the WHOIS policy.

An effective communication programme will also help ensure that early implementation of reforms is successfully achieved and that the benefits for all stakeholders are realised.

Recommendations 5-9: Data Accuracy

The UK Government believes that maximising the level of WHOIS data completeness and accuracy is a critical priority for sustainability of the WHOIS policy. We agree that the setting of specific and stringent targets of the kind proposed by the Review Team will provide the focus for the organisational change in ICANN that is needed.

The Review Team has proposed a 50% reduction in the number of unreachable registrants. However, we believe further consideration should be given to the value of targets through consultation with stakeholders to ensure they are rigorously ambitious, enforceable and in line with the timetable for the introduction of new gTLDs.

The UK Government also believes that clear and enforceable contracts throughout the value chain of agreements are vital for achieving accurate data, starting with the Registrar Accreditation Agreement (RAA). Consideration should be given to including penalties (including financial) in a framework of sanctions for non-compliance.

We believe that the role of ICANN's Compliance Unit is therefore critical and that urgent consideration should be given to improving its accountability, transparency through more effective public reporting, and – crucially – to increasing the level of resourcing. We also believe that consideration should be given by ICANN to

including within this framework the collation of data relating to contractual compliance by registrars.

We also believe that the likely constitutional benefits of externalising the agency of compliance in order to ensure objectivity and avoidance of conflicts of interest should also be considered by the Board when implementing the Review Team's Recommendations.

The UK Government also agrees that regular reporting on accuracy is essential and that reports should be published on implementation of the Review Team's Recommendations. We recommend, however, that these reports should be compiled and submitted at 6 monthly intervals rather than annually as proposed in Recommendation 7.

Recommendations 10-11: Data Access/Privacy Services

The UK Government agrees that ICANN should develop a system of clear, enforceable requests for privacy services in gTLD registries for non-commercial registrants. Such private registrations should be clearly labelled in the WHOIS database entries with contact details, standardised relay and reveal processes, and timeframes, as set out in Recommendation 10.

We believe that ICANN must engage constructively with privacy services providers to ensure that they perform with due diligence. We agree that a dedicated point of contact for abuse should be identified for each provider. ICANN should also develop with them a coherent regime of penalties and sanctions for those providers that fail to meet requirements and expectations.

The UK Government believes that these measures will aid transparency and help law enforcement agencies more easily identify and prosecute criminal activity.

Recommendations 12-16: Data Access/Proxy Services

Recognising that proxy providers can shield criminal elements that harm consumers, the UK Government agrees that ICANN should review current processes followed by proxy service providers. It is also important that registrars be required to disclose relationships with affiliated retail proxy providers.

We also believe that ICANN should develop voluntary best practice guidelines encompassing the elements described in Recommendation 14 to which proxy service providers should sign up, identifiable to consumers by a single WHOIS trust mark or similar signifier of association. Key to this is awareness that the providers in effect assume responsibility for the domain name and its use. We also agree that the providers should identify an abuse point of contact. Further consideration should be given to negotiating a set of rules and sanctions that could be associated with such voluntary agreements, such as removal of the WHOIS trust mark or similar signifier.

Recommendation 17: Data Access/Common Interface

The UK Government believes that consistent and unrestricted public access to thick WHOIS data should be the overall aim for all gTLD domain names. We therefore

agree with the alternative Recommendation that there should be provision of thick WHOIS data access for the “.com” and “.net” registries in order to bring them into line with the other gTLDs, using a dedicated, multi-lingual website interface.

Recommendations 18-20: Internationalised domain names

The DNS should be fully international in scope and accessibility. A major contribution to this goal by ICANN is the introduction of internationalised domain names (IDNs). Accordingly the UK Government agrees with the Review Team’s recommendation that ICANN set up a Working Group to report within one year on global access to collate, store and make available internationalised registration data, with clearly defined compliance methods and targets. Metrics on accuracy and compliance should be developed in tandem with this work.

We also agree that the results of the Working Group should be reflected in registrar and registry agreements within 6 months of the Working Group’s recommendations being submitted to the ICANN Board.

UK Proposal for Implementation of the WHOIS Review Team Recommendations

The UK recommends that a WHOIS Reform Team (or similar designation) be established within two months of the Board’s decision to implement the Recommendations. We believe this team should fall under the stewardship of the “WHOIS Compliance Czar” (or similar designation) who has overall strategic responsibility reporting to the ICANN Board and who is fully accountable to the global Internet community. The team should have the support of at least two senior members of ICANN staff appointed on a long term basis.

We suggest that the WHOIS Reform Team should include:

- A GNSO representative responsible for overall policy implications for existing and new gTLDs in the current application round, and for preparation of metrics and achieving accuracy targets.
- A GNSO representative responsible for establishing a single framework of WHOIS compliance, penalties and sanctions for non-compliance applicable to all actors in the WHOIS chain of contracts.
- A GNSO representative responsible for thick WHOIS standardisation, internationalisation and multilingual access, who would *inter alia* liaise with a single point of contact nominated by the “.com” and “.net” gTLD registries.
- An RrSG representative responsible for promoting and ensuring consumer awareness at point of sale so that existing and future registrants are made fully aware of their responsibilities, privacy rights and applicable data protection safeguards.
- An RrSG representative with responsibility for negotiating the framework of commitments applicable to privacy services and proxy service providers (such as a WHOIS trust mark or similar signifier of association).

- A GAC representative who would generally act as the channel for governmental inputs on the global public policy aims relating to WHOIS and provide progress reports to the GAC.
- A representative of law enforcement agencies in order to ensure consistency with the implementation of the law enforcement agency recommendations for amending the RAA and due diligence.
- A representative of the ccNSO who would provide inputs on country code registry WHOIS best practice, their experience with compliance with national privacy laws and data protection, and with effective WHOIS operational procedures to ensure completeness and accuracy of data.
- A senior representative of the ICANN staff specialising in communications and global outreach.

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