

Board Action/Rationale on & ICANN Assessment of Second Registration Directory Service Review (RDS-WHOIS2) Pending Recommendations 4.1, 4.2, 5.1, and 10.1

21 December 2023

The Board notes that at the time the [RDS-WHOIS2 Final Report](#) (dated 3 September 2019) and its recommendations were issued, the community was discussing the Phase 2 recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP), while implementation of the Phase 1 recommendations was ongoing.

The Board also recognizes that the regulatory environment around data protection and privacy has changed significantly since the RDS-WHOIS2 formulated its recommendations.

The Board acknowledges the ongoing community discussions that continue to shape the RDS landscape. The Board recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, and that it has been a longstanding topic of discussion within the community. While the Board is moving to reject these recommendations, the Board wishes to acknowledge the important ongoing community work, including scoping a possible policy development process, which may be beneficial in further defining registration data accuracy.

RDS-WHOIS # 4.1	<p>Recommendation language: 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.</p> <p>RDS-WHOIS2 priority: High</p>
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Board action/rationale:

The Board recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, and that it has been a longstanding topic of discussion within the community.

The Board acknowledges that ICANN Contractual Compliance (ICANN Compliance) actively enforces registrar obligations with regard to RDS (WHOIS) requirements as they currently exist within the Registrar Accreditation Agreement (RAA) and the Registration Data Directory Service (RDDS) Accuracy Program Specification of the RAA. These obligations include verification that either the registrant's email address or telephone number are operable, validation of format of contact information, and the requirement to investigate alleged inaccuracies within registration data. The Board understands that ICANN Compliance undertakes enforcement of these requirements through actions resulting from complaints received from external reports, as well as audit-related activities. The Board notes that ICANN Compliance regularly publishes [Contractual Compliance Reports](#) on the ICANN website, which include metrics relating to these enforcement activities. In addition, ICANN

has published [detailed information](#) regarding enforcement of these contractual obligations, including how data protection laws have impacted enforcement efforts.

Furthermore, the Board wishes to highlight the extensive work that ICANN org has been doing both to address community concerns and the requirements coming from evolving regulatory frameworks at a global level, including the recent [Assessment of Registration Data Accuracy Scenarios](#). This report, that identifies significant limitations as to what studies or reviews of registration data are feasible in light of current contractual requirements and existing data protection laws, was delivered to the Generic Names Supporting Organization (GNSO) Council on 13 October 2023 to help inform the work of the GNSO's Accuracy Scoping Team. As noted within this report, there is currently no consensus on how "accuracy" is defined with respect to registration data. Further, the Board highlights that there is no consensus on what would constitute a "systemic issue" concerning registration data accuracy.

Considering that ICANN Compliance already enforces existing requirements within the Registry Agreement and RAA provisions, and that further community discussions are required to define accuracy and what constitutes a "systemic issue" in registration data accuracy, the Board rejects Recommendation 4.1. The Board understands that ICANN org will continue to support the work of the community by providing detailed metrics relating to enforcement of current registration data requirements and supporting research to help understand best practices as it concerns registration data accuracy, as appropriate.

ICANN assessment:

Contractual Requirements and registration data accuracy

- Relevant requirements related to the accuracy of registration data in the contracted parties' agreements include:
 - Base Registry Agreement (RA) Art. 2.11 and Art. 2.2;
 - Registrar Accreditation Agreement (RAA) Art 3.7.8. in addition to complying with the provisions of the RDDS Accuracy Program Specification.
- Moreover, the RAA requires registrars to take certain actions related to registration data associated with their sponsored gTLD domain names. In particular, the RAA includes obligations relating to the investigation of allegations of inaccuracy, contact information verification, and data format validation. ICANN org enforces registry and registrar obligations through its Contractual Compliance team.
- Following the Board's adoption of the Temporary Specification for gTLD Registration Data, which was enacted to ensure compliance with the General Data Protection Regulation (GDPR), most contracted parties now redact personal data within gTLD registration data in public Registration Data Directory Services (RDDS). As a result, there is less visibility of registrant contact data in public RDDS, and potential complainants often lack direct access to registration data, making it much more difficult to identify instances of registration data inaccuracy or to take action to correct them.
- ICANN Compliance conducts regular audits of registries and registrars to ensure their compliance with the Registry Agreement (RA) and RAA. The RAA audit program includes a review of the requirements of RAA 3.7.8 relating to registrar compliance with the RDDS Accuracy Program Specification. Information regarding Contractual Compliance audits can be found here <https://www.icann.org/resources/pages/audits-2012-02-25-en>. The latest audit reports are published at <https://www.icann.org/resources/pages/compliance-reports-2023> while the latest contractual compliance dashboard is available at

<https://features.icann.org/compliance/dashboard/2023/0423/report>. The audits include confirming that registrars comply with their RDDS Accuracy Program Specification obligations (validation and verification).

Accuracy Scoping Team

- In August 2021, the GNSO Registration Data Accuracy Scoping Team (Accuracy Scoping Team) was chartered to scope the issue of gTLD registration data accuracy for a possible policy development process. The aim of the Accuracy Scoping Team was to understand current enforcement and reporting, as well as define and measure levels of accuracy.
- The Accuracy Scoping Team was asked to “consider what working definitions should be used in the context” of its deliberations. However, the team has not reached agreement on any working definition of accuracy in the context of registration data nor defined what data specifically would help identify whether or not there is an accuracy problem.
- In response to a Board request, formulated prior to ICANN73, ICANN org identified four scenarios for which it would consult with the European Data Protection Board (EDPB) concerning the legality of the proposed data processing under the General Data Protection Regulation (GDPR). Assessing these specific steps would allow ICANN org to consider the state of compliance with current requirements and registrar processes regarding registration data collection to try to move the community conversation forward. These included: 1) analyzing publicly available registration data; 2) conducting a compliance audit regarding current contractual requirements; 3) analyzing a set of full registration data voluntarily provided by registrars; and 4) a voluntary registrar survey.
- In October 2023, ICANN org shared its [assessment](#) of the 4 scenarios with the GNSO Council, which identified several deficiencies and challenges in pursuing them. The assessment identified possible alternative steps that can be taken, which may provide information that helps advance the Accuracy Scoping Team’s work, including reviewing existing ICANN Contractual Compliance RAA Audit Program Data, and engaging with contracted parties on current developments with respect to European policy-making.

Accuracy Studies

- The WHOIS Accuracy Reporting System was placed on hold in June 2018 due to ICANN org’s continuing assessment of the legalities of processing the data in light of GDPR, as well as due to the lack of available data in the public directories.
- While the [ICANN Contractual Compliance audit program](#) provides data regarding the level of compliance with the current contractual obligations, this data would not provide any meaningful insight as to whether the underlying data relates to the registrant or data subject. For instance, it will not confirm the identity of the registrant, or that the physical address or email/phone number belong to the registrant.
- The Domain Abuse Activity Reporting (DAAR) project offers a platform for studying concentrations of security threats (DNS abuse) in domain names within the gTLD space in an aggregated and anonymous manner, and provides coverage of those ccTLDs that have voluntarily adhered to the project.
- ICANN org notes that these studies do not explore the causes or impacts of registration data inaccuracy.

Systemic Issues

To date, there is no agreed definition of what a systemic issue is, nor methodology to detect or measure these systemic issues.

RDS- WHOIS2 REC # 4.2	<p>Recommendation language: 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.</p> <p>RDS-WHOIS2 priority: High</p>
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Board action/rationale:

The Board recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, that it has been a longstanding topic of discussion within the community, and that strong cooperation and dialogue with contracted parties contribute to tackling this matter in an effective way.

The Board notes that ICANN org enforcement actions with regard to RDS (WHOIS) requirements are limited to those obligations that currently exist within the Registrar Accreditation Agreement (RAA) and the RDDS (Registration Data Directory Service) Accuracy Program Specification of the RAA. The Board understands that ICANN Compliance undertakes enforcement of these requirements through actions resulting from complaints received from external reports, as well as audit-related activities. This includes incorporating compliance monitoring of these requirements as part of its standard Registrar Audit Program under the 2013 RAA. The Board also notes that ICANN Compliance regularly publishes [Contractual Compliance Reports](#) on the ICANN website, which include metrics relating to these enforcement activities. In addition, ICANN has published [detailed information](#) regarding enforcement of these contractual obligations, including how data protection laws have impacted enforcement efforts. Furthermore, the Board wishes to highlight that ICANN org is regularly assessing contracted parties' compliance with their respective agreements, and that a contracted party's failure to comply with its agreement may result in a notice of breach, suspension, termination or nonrenewal that is documented on a [dedicated ICANN org website page](#).

The Board also notes that the WHOIS Accuracy Reporting System was placed on hold due to ICANN org's continuing assessment of the legalities of processing the data in light of GDPR, as well as due to the lack of available data in the public directories.

ICANN's recent report on its [Assessment of Registration Data Accuracy Scenarios](#) further identified significant limitations as to what studies or reviews of registration data are feasible in light of current contractual requirements and existing data protection laws. This report was delivered to the Generic Names Supporting Organization (GNSO) Council on 13 October 2023 to help inform the work of the GNSO's Accuracy Scoping Team. As noted within this report, there is currently no consensus on how "accuracy" is defined with respect to registration data. Further, the Board highlights that it is not clear what "patterns of failure" might be as it relates to the verification and validation of registration data accuracy, and understands that any identified instance of noncompliance with current obligations must be corrected to maintain accreditation with ICANN.

Considering that ICANN Contractual Compliance enforcement actions must be based on the existing Registry Agreement and Registrar Accreditation Agreement provisions, that the ability to cross-reference data from multiple resources is unrealistic considering the current

data protection legal landscape, and that ICANN Compliance already undertakes enforcement action upon any identified deficiency within complaints received and the standard Registrar Audit Program, the Board rejects Recommendation 4.2. The Board understands that ICANN org will continue to support the work of the community by providing detailed metrics relating to enforcement of current registration data requirements and supporting research to help understand best practices as it concerns registration data accuracy, as appropriate.

ICANN assessment:

Accuracy Studies

- The WHOIS Accuracy Reporting System was placed on hold in June 2018 due to ICANN org's continuing assessment of the legalities of processing the data in light of GDPR, as well as due to the lack of available data in the public directories.
- While the [ICANN Contractual Compliance audit program](#) provides data regarding the level of compliance with the current contractual obligations, this data would not provide any meaningful insight as to whether the underlying data relates to the registrant or data subject. For instance, it will not confirm the identity of the registrant, or that the physical address or email/phone number belong to the registrant.
- The Domain Abuse Activity Reporting (DAAR) project offers a platform for studying concentrations of security threats (DNS abuse) in domain names within the gTLD space in an aggregated and anonymous manner, and provides coverage of those ccTLDs that have voluntarily adhered to the project.
- ICANN org notes that these studies do not explore identifying causes or impacts of registration data inaccuracy.

Contractual Requirements and registration data accuracy

- Relevant requirements related to the accuracy of registration data in the contracted parties' agreements include:
 - Base Registry Agreement (RA) Art. 2.11 and Art. 2.2;
 - Registrar Accreditation Agreement (RAA) Art 3.7.8. in addition to complying with the provisions of the RDDS Accuracy Program Specification.
- Moreover, the RAA requires registrars to take certain actions related to registration data associated with their sponsored gTLD domain names. In particular, the RAA includes obligations relating to the investigation of allegations of inaccuracy, contact information verification, and data format validation. ICANN org enforces registry and registrar obligations through its Contractual Compliance team.
- Following the Board's adoption of the Temporary Specification for gTLD Registration Data, which was enacted to ensure compliance with the General Data Protection Regulation (GDPR), most contracted parties now redact personal data within gTLD registration data in public Registration Data Directory Services (RDDS). As a result, there is less visibility of registrant contact data in public RDDS, and potential complainants often lack direct access to registration data, making it much more difficult to identify instances of registration data inaccuracy or to take action to correct them.
- ICANN Compliance conducts regular audits of registries and registrars to ensure their compliance with the Registry Agreement (RA) and RAA. The RAA audit program includes a review of the requirements of RAA 3.7.8 relating to registrar compliance with the RDDS Accuracy Program Specification. Information regarding Contractual Compliance audits can be found [here](#). The latest audit reports are published at <https://www.icann.org/resources/pages/compliance-reports-2023> while the latest contractual compliance dashboard is available at

<https://features.icann.org/compliance/dashboard/2023/0423/report>. The audits include confirming that registrars comply with their RDDS Accuracy Program Specification obligations (validation and verification).

Accuracy Scoping Team

- In August 2021, the GNSO Registration Data Accuracy Scoping Team (Accuracy Scoping Team) was chartered to scope the issue of gTLD registration data accuracy for a possible policy development process. The aim of the Accuracy Scoping Team was to understand current enforcement and reporting, as well as define and measure levels of accuracy.
- The Accuracy Scoping Team was asked to “consider what working definitions should be used in the context” of its deliberations. However, the team has not reached agreement on any working definition of accuracy in the context of registration data nor defined what data specifically would help identify whether or not there is an accuracy problem.
- In response to a Board request, formulated prior to ICANN73, ICANN org identified four scenarios for which it would consult with the European Data Protection Board (EDPB) concerning the legality of the proposed data processing under the General Data Protection Regulation (GDPR). Assessing these specific steps would allow ICANN org to consider the state of compliance with current requirements and registrar processes regarding registration data collection to try to move the community conversation forward. These included: 1) analyzing publicly available registration data; 2) conducting a compliance audit regarding current contractual requirements; 3) analyzing a set of full registration data voluntarily provided by registrars; and 4) a voluntary registrar survey.
- In October 2023, ICANN org shared its [assessment](#) of the 4 scenarios with the GNSO Council, which identified several deficiencies and challenges in pursuing them. The assessment identified possible alternative steps that can be taken, which may provide information that helps advance the Accuracy Scoping Team’s work, including reviewing existing ICANN Contractual Compliance RAA Audit Program Data, and engaging with contracted parties on current developments with respect to European policy-making.

RDS- WHOIS2 REC # 5.1	Recommendation language: 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. RDS-WHOIS2 priority: High
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Board action/rationale:

The Board recognizes that accuracy of registration data is an important matter for ensuring a stable and secure Domain Name System, that it has been a longstanding topic of discussion within the community, and that strong cooperation and dialogue with contracted parties contribute to tackling this matter in an effective way.

The Board wishes to highlight that since the launch of the Accuracy Reporting System (ARS), the regulatory environment around data protection and privacy has changed significantly. Such changes necessitated the Board’s adoption of the Temporary

Specification for gTLD Registration Data, which resulted in the obfuscation of most registrant contact information that was previously available in the public directories. As a result, the ARS was placed on hold, where it remains. ICANN continues to assess the legalities of processing registration data within the current regulatory environment. In the [Assessment of Registration Data Accuracy Scenarios](#) that was recently sent to the GNSO Council, “ICANN has identified alternative steps that can be taken, which may provide information that helps advance the Accuracy Scoping Team’s work”.

Considering the pause of ARS and questions surrounding the legalities of the contemplated data processing, and the recent assessment that org shared with the GNSO Council, the Board rejects this Recommendation as it concerns the monitoring of accuracy and/or contactability through either the ARS or a comparable tool, noting that ICANN continues to enforce registration data obligations within the remit of the contracted parties’ agreements through inaccuracy complaints and audit-related activities.

ICANN assessment:

WHOIS Accuracy Reporting System

- The Temporary Specification for gTLD Registration Data resulted in limited access to gTLD registration data for all parties, including ICANN org. This limited ICANN org’s ability to perform checks on gTLD registration data within the public RDDS. The WHOIS Accuracy Reporting System was subsequently placed on hold in June 2018 due to ICANN org’s continuing assessment of the legalities of processing the data in light of GDPR, as well as due to the lack of available data.
- See ICANN org [memo](#) on the WHOIS Accuracy Reporting System:
 - “In line with EPDP Phase 1 recommendations, registrars will no longer be required to collect information for many of the nine fields noted above. In fact, only the registrant email, address, and phone will be required.
 - “Continuing the ARS with publicly available registration data may not be useful. ICANN org has expressed to the GNSO Council concerns with continuing the ARS using publicly available data, which it has relied on to measure accuracy. There is a question as to whether publicly available data will provide useful results in terms of the overall accuracy of registration data; indeed, any results may be biased toward those contracted parties who do publish contact details in registration data and/or those registrants who consent to publication.”
 - “While ICANN org could restart ARS using public registration data, ICANN org does not have the contractual ability to require the contracted parties to provide access to non-public registration data to ensure that the ARS is collecting a representative sample of registrations (i.e., not simply domains for which registration data is publicly available).”
 - “The ARS is focused on a static moment of the accuracy of registration data but not necessarily on how to improve it. While one of the intended functions of the ARS is to provide information on registration data inaccuracies to ICANN Contractual Compliance for follow-up with registrars, which could in turn lead to improvement of accuracy of registration data, the ARS itself is generally focused on a snapshot of accuracy, not on ways to improve accuracy over time. It should be considered whether this method of reviewing accuracy meets the needs and demands of the ICANN community, or whether, at this time, a different mechanism should be considered for reviewing and improving accuracy of registration data.”
 - “ICANN org believes it is important to view the question of measuring registration data accuracy in light of ongoing conversations on data protection” [...]. “The discussion of accuracy measurement should not be solely focused on the ARS but should encompass the wider range of issues

related to the GDPR and data protection”.

Accuracy Scoping Team

- In August 2021, the GNSO Registration Data Accuracy Scoping Team (Accuracy Scoping Team) was chartered to scope the issue of gTLD registration data accuracy for a possible policy development process. The aim of the Accuracy Scoping Team was to understand current enforcement and reporting, as well as define and measure levels of accuracy.
- The Accuracy Scoping Team was asked to “consider what working definitions should be used in the context” of its deliberations. However, the team has not reached agreement on any working definition of accuracy in the context of registration data nor defined what data specifically would help identify whether or not there is an accuracy problem.
- In response to a Board request, formulated prior to ICANN73, ICANN org identified four scenarios for which it would consult with the European Data Protection Board (EDPB) concerning the legality of the proposed data processing under the General Data Protection Regulation (GDPR). Assessing these specific steps would allow ICANN org to consider the state of compliance with current requirements and registrar processes regarding registration data collection to try to move the community conversation forward. These included: 1) analyzing publicly available registration data; 2) conducting a compliance audit regarding current contractual requirements; 3) analyzing a set of full registration data voluntarily provided by registrars; and 4) a voluntary registrar survey.
- In October 2023, ICANN org shared its [assessment](#) of the 4 scenarios with the GNSO Council, which identified several deficiencies and challenges in pursuing them. The assessment identified possible alternative steps that can be taken, which may provide information that helps advance the Accuracy Scoping Team’s work, including reviewing existing ICANN Contractual Compliance RAA Audit Program Data, and engaging with contracted parties on current developments with respect to European policy-making.

RDS- WHOIS2 Rec 10.1	<p>Recommendation language: 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.</p> <p>RDS-WHOIS2 priority: Low</p>
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Board action/rationale:

The ICANN Board has been monitoring the progress and community discussions regarding the implementation of Privacy and Proxy Service Accreditation Issues (PPSAI) since it was placed on hold due to issues related to the General Data Protection Regulation (GDPR), the adoption of the Temporary Specification, the policy development and subsequent implementation of the EPDP Phase 1 (Registration Data Policy) and the then-forthcoming EPDP Phase 2 policy recommendations.

The Board will continue to monitor the activities relating to implementation of the GNSO PPSAI policy recommendations and acknowledges ICANN org plans to work with an Implementation Review Team (IRT) to help consider these recommendations in light of the community's work and changes in the RDS landscape since the recommendations were issued.

The Board understands that under the current requirements of the 2013 Registrar Accreditation Agreement (RAA) and RDDS (Registration Data Directory Service) Accuracy Program Specification of the RAA, registrars must validate and verify registrant contact data, and account holder contact data (if different). Where a privacy service is used, the registrant contact data is that of the privacy services customer. Where a proxy service is used, the account holder's contact data is also subject to these requirements, which is defined as the person or entity that pays for the domain or otherwise controls the management of the registered name, when different from the registrant. Accordingly, the underlying data of a privacy services customer or proxy customer managing the registered name is already subject to requirements under the RAA and RDDS Accuracy Program Specification. The Board considers the recommendation to ensure an amendment to the 2013 RAA by 31 December 2019 as unnecessary in light of existing requirements and therefore, rejects this recommendation.

ICANN assessment:

- Due to the overlap between the PPSAI recommendations and the work of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP), the implementation of PPSAI remains on hold.
- ICANN org expects to allocate resources to continue the implementation of the PPSAI recommendations once the implementation of EPDP Phase 1 is complete.
- The [2013 Registrar Accreditation Agreement \(RAA\)](#) includes requirements for registrars to validate and verify contact data of the registrant, and Account Holder, if different. This applies to the underlying registrant contact information for privacy registrations, and Account Holder contact information for proxy registrations (in all cases where the person or entity that pays for the Registered Name or otherwise controls the management of the registered name is not the proxy service itself). Notwithstanding the existing requirements, and once the EPDP Phase 1 implementation is complete, the PPSAI, once implemented, will provide additional explicit requirements to verify and validate contact data of both privacy and proxy customers.
- In [July 2022](#), ICANN org and the Registrar Stakeholder Group (RrSG) agreed that the P/P Specification will [remain in place](#) until the PPSAI recommendations are implemented.
- ICANN org plans to resume the implementation of PPSAI once Registration Data Policy (EPDP Phase 1) implementation is complete, including an Implementation Review Team (IRT) that will help look into implementing recommendations in compliance with the new RDS landscape.