

Issue: **Registration Directory Service (RDS-WHOIS2) Review Team Draft Report of Recommendations**

Date statement submitted: **17 November 2018**

Reference URL: <https://www.icann.org/public-comments/rds-whois2-review-2018-09-04-en>

Background¹

The draft report of the Registration Directory Service Review Team assesses the extent to which prior Directory Service Review recommendations have been implemented and implementation has resulted in the intended effect. The review team also assesses the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promotes consumer trust and safeguards registrant data.

Registries Stakeholder Group (RySG) comment:

The RySG welcomes the opportunity to provide input on the Registration Directory Service (RDS-WHOIS2) Review Team Draft Report of Recommendations (“Draft Report”). We understand that WHOIS/RDS data plays a significant role in supporting the important work that many parties inside and outside of the ICANN community do. As such, we support ICANN’s continued treatment of WHOIS/RDS as a strategic priority, as long as all WHOIS/RDS activities and the corresponding requirements placed on contracted parties are compliant with all relevant data protection laws and are commercially reasonable and feasible to implement. We also advise that future work around reviewing WHOIS/RDS and implementing the recommendations contained in this report be based on empirical and measurable data and metrics wherever possible.

The RySG also supports the comments that the RySG has submitted on the Draft Report, with the following notes and additions:

- The RySG strongly endorses Recommendation 1.2 that ICANN Org monitor legislative and policy developments that could impact the WHOIS/RDS services and requirements. Monitoring should be comprehensive and all reports to the ICANN Board should be balanced, free of bias, and reflect the full spectrum of legislative and policy developments.

¹ *Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.*

- The RySG supports Recommendation 11.2 that ICANN should continue to maintain a common RDS interface. We believe that once the RDAP protocol is adopted by registries and registrars, ICANN should use RDAP as the underlying protocol to support the functionality of this interface, and eventually work towards retiring the WHOIS protocol for this feature.
 - With regards to Recommendation 15.1, the RySG supports the sentiment of this recommendation, but cautions that the implementation of the recommendation should not create new reporting burdens on contracted parties.
 - While the RySG generally supports the approach outlined in Recommendation LE.1 to gather data around the effectiveness of RDS data in meeting the needs of law enforcement, we caution that ICANN should not conflate surveys with more rigorous studies. Surveys often result in a response bias, where only those parties interested in a certain topic take the time to respond to the survey. ICANN should seek out ways to ensure that it is gathering data from a broad and truly representative cross-section of law enforcement to understand how RDS data does or does not meet their needs. Furthermore, ICANN must ensure that any studies or surveys directed to contracted parties are either voluntary or based on an explicit requirement in the parties' agreements with ICANN.
 - The RySG has some concerns about the wording of Recommendation CM.2, specifically around who would be the party responsible for taking the actions described on domains suspended due to RDS data. We echo the RrSG's concerns that the RT should not be dictating contractual terms and believe the recommendation as written is imprecise and potentially problematic.
 - The RySG is not clear on what the desired outcome of Recommendation CM.3 is, and recommends that the Review Team make that more explicit and consider revising this recommendation accordingly.
 - The RySG supports the second part of Recommendation BY.1 to replace section 4.6(e)(iii) of the ICANN Bylaws with a more generic requirement for RDS (WHOIS) review teams to assess how well RDS (WHOIS) policy and practice addresses applicable data protection and cross border data transfer regulations, laws and best practices. However, we do not support the first part of this recommendation to eliminate the reference to "safeguarding registrant data" in ICANN Bylaws section 4.6(e)(ii).
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