ICANN BOARD PAPER NO. 2020.02.25.1a

TITLE:	**Registration Directory Service Review (RDS-WHOIS2) Final Report**
PROPOSED ACTION:	**For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board is being asked to take action on the recommendations of the community-led review team addressing Registration Directory Services. The Final Report issued by the Registration Directory Service Review Team (RDS-WHOIS2-RT) is the culmination of over two years of work, assessing:

- the extent to which prior Directory Service Review recommendations (WHOIS Policy Review Team) have been implemented and implementation has resulted in the intended effect; and
- 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.

Additionally, the RDS-WHOIS2-RT took on an evaluation of ICANN Contractual Compliance's performance, as announced in its Terms of Reference.

The RDS-WHOIS2-RT is one of the four Specific Reviews anchored in Section 4.6 of the ICANN Bylaws. Reviews are critical to helping ICANN achieve its Mission, as detailed in Article 1 of the Bylaws. Section 4.6 of the ICANN Bylaws call for the Board to take action on the RDS-WHOIS2 Final Report within six months of receipt, i.e., by 3 March 2020.

The Board notes that there is ongoing community work and initiatives that have a direct impact on feasibility of a number of RDS-WHOIS2 Final Recommendations, a concern that was raised in the public comment proceeding on the Final Report.

Additionally, some recommendations have dependencies with other multistakeholder processes across ICANN, and for these cases it is important that the Board maintain and confirm its role, as specified in the Bylaws.

Recognizing that the Board has the obligation and responsibility to balance the work of ICANN in order to preserve the ability for ICANN org to serve its Mission and the public interest, and in light of the additional considerations enumerated above, the Board decided on five categories of action:

- approving;
- placing recommendations in "Pending" status;
- passing recommendations through to a designated community group for consideration;
- approving in part and passing through in part to a designated community group for consideration; and
- rejecting.

The rationale section below includes additional details on all elements that were considered in taking action on the recommendations, including public input.

RDS BOARD CAUCUS GROUP RECOMMENDATION:

ICANN Bylaws call for the ICANN Board to take action on the RDS-WHOIS2 Final Report within six months of receipt, i.e., by 3 March 2020.

The RDS Board Caucus Group recommends that the Board take action on the RDS-WHOIS2-RT Final Report and Recommendations, as enumerated in the scorecard titled "Final RDS-WHOIS2 Recommendations - Board action (xxxxx)". The proposed Board action falls into five categories:

- approving;
- placing recommendations in "Pending" status;
- passing recommendations through to a designated community group for consideration;
- approving in part and passing through in part to a designated community group for consideration; and
- rejecting.

PROPOSED RESOLUTION:

Whereas, under Section 4.6 of the ICANN Bylaws, ICANN is obligated to conduct a "periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("Directory Service Review")". A community-led review team - the Registration Directory Service Review Team (RDS-WHOIS2-RT) - was announced on 2 June 2017 to fulfill that mandate.

Whereas, the RDS-WHOIS2-RT released a Draft Report for public comment on 4 September 2018.

Whereas, the RDS-WHOIS2-RT submitted a Final Report containing 22 full consensus recommendations to the ICANN Board for consideration on 3 September 2019.

Whereas the RDS-WHOIS2 Final Report is the culmination of over two years of work by 11 review team members, representing over 1,000 hours of meetings and countless more hours of work.

Whereas the RDS-WHOIS2 Final Report and Recommendations were published for public comment on 8 October 2019, to inform Board action on the report, in accordance with Bylaw requirements. The summary of community input received on the Final Report highlights a variety of viewpoints.

Resolved (20xx.xx.xx.__[to be assigned by Secretary]), the Board thanks the members of the RDS-WHOIS2-RT for their dedication and over two years of work to achieve the RDS-WHOIS2 Final Report.

Resolved (2020.02.25.xx), the Board takes action on each of the 22 recommendations issued within the RDS-WHOIS2-RT Final Report, as specified within the scorecard titled "Final RDS-WHOIS2 Recommendations - Board action (xxxxx)". The Board directs ICANN's President and CEO, or his designee(s), to take all actions directed to the ICANN organization (ICANN org) within that scorecard. For each recommendation that the Board is not approving, the Board sets out its rationale below, as required by the Bylaws.

Resolved (2020.02.25.xx), for the 15 recommendations that are specified as approved in the scorecard, in whole or in part, the Board directs the ICANN President and CEO,

or his designee(s), to develop an implementation plan and to provide regular status progress updates to the Board.

Resolved (2020.02.25.xx), for the four recommendations it places into pending status, the Board directs the ICANN President and CEO, or his designee(s), to complete an impact assessment of the outcomes of ongoing community work, for which dependencies were identified. The Board will consider recommendations it places into pending status in light of the impact analysis, which is to be completed after Board action on Expedited Policy Development Process on Temporary Specification for gTLD Registration Data (EPDP) Phase 2 recommendations, as appropriate and applicable. The Board directs the ICANN President and CEO, or his designee(s), to produce the impact analysis as promptly as possible, once the dependencies have been resolved. The Board commits to including this topic on the Board agenda on a regular basis.

Resolved (2020.02.25.xx), for the two recommendations that the Board is passing through to the Generic Names Supporting Organization Council (GNSO Council) for its consideration, in whole or in part, the Board directs the ICANN President and CEO, or his designee(s), to notify the GNSO Council accordingly.

Resolved (2020.02.25.xx), the Board rejects two recommendations, R11.1 and BY.1. The rationale for rejection of each is set forth below.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The Registration Directory Service (RDS) Review is one of the four Specific Reviews anchored in Section 4.6 of the ICANN Bylaws. Specific Reviews are conducted by community-led review teams which assess ICANN's performance in reaching its commitments. Reviews are critical to maintaining an effective multistakeholder model and to helping ICANN achieve its Mission as detailed in Article 1 of the Bylaws. Review mechanisms also contribute to ensuring that ICANN serves the public interest.

The RDS Review is an important component of ICANN's commitment to continuous improvement of key areas. It originates from the Affirmation of Commitments (AoC)

and was moved to ICANN Bylaws in 2016. The RDS-WHOIS2 Review is the second iteration of the review; the first review effort concluded in 2012 through the WHOIS Policy Review Team.[1]

The RDS-WHOIS2 Review Team (RDS-WHOIS2-RT) produced 22 final recommendations for Board consideration and released its Final Report[2] on 3 September 2019. The Board notes that recommendations were submitted with full consensus and that a *Statement of the Non-Commercial Stakeholder Group Member of the RDS Review Team*[3], which includes areas of concerns, was attached to the RDS-WHOIS2 Final Report. As required by section 4.6 of ICANN Bylaws, the Final Report was published for public comment to inform Board action on the final recommendations.

Under the Bylaws, the Board is obligated to provide rationale for every recommendation issued by the RDS-WHOIS2 Review Team that that the Board does not approve. For completeness, the Board provides rationale below for its action on each recommendation, whether approved or not approved.

What is the proposal being considered?

Formally convened in June 2017, the RDS-WHOIS2-RT's Final Report is the culmination of over two years of work by 11 review team members, representing over 1,000 hours of meetings and countless more hours of work[4], assessing the extent to which prior Directory Service Review recommendations (WHOIS Policy Review Team) have been implemented and whether implementation has resulted in the intended effect. The review team also examined 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. Additionally,

[1] The WHOIS Policy Review Team released 16 recommendations in May 2012. See https://www.icann.org/resources/files/final-report-2012-05-11-en for more information.
[2] AR, ES, FR, RU, ZH translations of the RDS-WHOIS2 Final can be found in section III of the public comment period on the RDS-WHOIS2 Final report - https://www.icann.org/public-comments/rds-whois2-rt-final-report-2019-10-08-en.
[3] See p. 125-127 of the RDS-WHOIS2 Final Report - https://www.icann.org/en/system/files/files/rds-whois2-review-03sep19-en.pdf.
[4] See the FY19 Q4 fact sheet for more information - https://community.icann.org/download/attachments/64084088/RDS%20Fact%20Sheet%20%28June%202019%29.pdf?version=1&modificationDate=1565824368000&api=v2.

the RDS-WHOIS2-RT performed an evaluation of ICANN's Contractual Compliance function "with the intent of (a) assessing the effectiveness and transparency of ICANN enforcement of existing policy relating to RDS (WHOIS) through ICANN Contractual Compliance actions, structure and processes, including consistency of enforcement actions and availability of related data, (b) identifying high-priority procedural or data gaps (if any), and (c) recommending specific measurable steps (if any) the team believes are important to fill gaps".

To complete its analysis of law enforcement needs, the RDS-WHOIS2-RT issued a survey[5] intended "to collect evidence on whether WHOIS meets the legitimate needs of law enforcement agencies and to assess the impact of changes in the context of current adaptations to data protection laws".

The RDS-WHOIS2-RT was informed by ICANN org briefings and available documentation. Exchanges with the ICANN org took place throughout the review cycle, including the submission of written input[6] for consideration.

The Board thanks the RDS-WHOIS2 for its dedication and extensive work throughout the review process. The Board appreciates that the RDS-WHOIS2-RT acknowledged the changing RDS landscape and ongoing initiatives in its Terms of Reference, and notes that given the significant importance of GDPR, the RDS-WHOIS2-RT decided to consider GDPR effects on the RDS to the extent possible.

In assessing the RDS-WHOIS2 Final Report and Recommendations, the Board Caucus Group dedicated to this effort (the RDS Board Caucus Group) reached out to RDS-WHOIS2 Implementation Shepherds to obtain a set of clarifications and confirm understanding of some recommendations. Implementation Shepherds are review team members who volunteered to be a resource for clarifications needed on: recommendations' intent, rationale, facts leading to conclusions, envisioned timeline, and successful measures of implementation[7]. The RDS Board Caucus Group and ICANN org have engaged with the RDS-WHOIS2 Implementation Shepherds since the review team concluded its work. The purpose of this engagement has been to get

[5] See Appendix G (p.161) of the RDS-WHOIS2-RT Final Report - https://www.icann.org/en/system/files/files/rds-whois2-review-03sep19-en.pdf.
[6] See https://mm.icann.org/pipermail/rds-whois2-rt/2018-December/001026 html.
[7] See Section 4.5 of the Operating Standards for more information.

clarification regarding the intent of certain recommendations in order to inform the Board's consideration of Final Recommendations. A preliminary assessment, including questions requesting RDS-WHOIS2 Implementation Shepherds' guidance, was shared to frame the discussion.[8] Such clarifications provided by the Implementation Shepherds are referenced as appropriate within this rationale section and within the Scorecard.

In relation to the recommendations, the Board noted some broad areas and themes that it took into consideration in determining Board action for each recommendation.

Prioritization of Recommendations

ICANN Bylaws (Section 4.6 (a)(vii)(A)) stipulate that "the review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization." In its Final Report, the RDS-WHOIS2 indicated that 11 recommendations are "High Priority", 6 are "Medium Priority" and 5 are "Low Priority", stating that "Implementation of all recommendations identified as High Priority should begin as soon as possible once approved by the Board and once all preconditions are met. Recommendations assigned medium or low priority need to be considered with respect to overall ICANN priorities, but should not be deferred indefinitely." The RDS-WHOIS2-RT included its prioritization rationale for each of the 22 recommendations.

The Board notes that currently there are over 300 recommendations resulting from Specific Reviews (not including the Third Accountability and Transparency Review Team (ATRT3) and Second Security, and Second Security, Stability, and Resiliency Review Team (SSR2), Organizational Reviews and the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability)'s Work Stream 2 (WS2), that are either pending consideration by the Board, or awaiting implementation following Board action; the 22 recommendations issued by the RDS-WHOIS2-RT are part of this count. Neither the Bylaws nor the Operating Standards provide a clear and consistent methodology or basis for evaluating resource requirements associated with these recommendations, prioritizing recommendations across the universe of review teams and cross-community working groups or for budgeting for prioritized recommendations. The Board has started a conversation with the community on the topic of prioritization;see Resourcing and Prioritization of Community

[8] See https://community.icann.org/display/WHO/Implementation+Shepherds for more information.

Recommendations: Draft Proposal for Community Discussion, and the discussion continued at the public session at ICANN66 in November 2019, Enhancing the Effectiveness of Review Recommendations and Their Implementation. Additionally, the ATRT3 determined that the topic of prioritization of recommendations was relevant to its work and important to the ICANN community, thus including its views on this topic for community consideration in its Draft Report. The public comment proceeding closed on 31 January 2020 and the ATRT3 will consider the comments it received as it refines its report in preparation for the issuance of the Final Report in April 2020. In its public comment to the ATRT3, the ICANN Board indicated that it supports the proposal of a "holistic suggestion with respect to prioritization." The Board reiterated "that prioritization of review recommendations cannot take place in isolation and that the prioritization process must fit into ICANN's existing budget and planning mechanisms. Furthermore, all parts of ICANN need to take part in the prioritization – ICANN community, ICANN Board and ICANN org. Prioritization of community-issued recommendations needs to take place within the broader context of all ICANN work and must consider implications on community and ICANN org resources and bandwidth, as well as the availability of resources (including funds) whether required up-front only, or on an ongoing basis."

Considering the ongoing work to prioritize the large number of recommendations, the Board considers that the community prioritization work should be considered as a "precondition" specified by the RDS-WHOIS2-RT in its definition of "High Priority" recommendations. In line with the approach for Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) recommendations, the Board believes that implementation work, where no significant incremental costs and resources are needed, should begin as soon as possible. Any recommendations that require significant resources and budget, should be included into operational planning and budgeting processes, allowing for appropriate community consideration and prioritization, as applicable, of planned work.

Recommendations the Board Approves

In total, the Board approves 14 recommendations, as specified in the Scorecard: R1.1, R1.2, R1.3, R3.1, R3.2, R10.2, R11.2, R12.1, R15.1, LE.1, LE.2, CC.1, CC.2, CC.3.

Each of these recommendations are consistent with ICANN's Mission, serve the public interest, and are within the Board's remit.

The Board approves the recommendations that call for a forward-looking mechanism that monitors legislative and policy developments (R1.1 and R1.2) and notes that the Board has already endorsed this work more broadly through the charter for the legislative and regulatory tracking initiative in January 2019, through the FY20 goals the Board set for ICANN's President and CEO, and the priorities the Board has identified for itself. Proactively monitoring impacts on the RDS from legislative and policy development around the world is an operational task, and therefore an ICANN org responsibility. The RDS-WHOIS2 Implementation Shepherds clarified, and the Board concurs, that ICANN org's existing initiative already addresses these concerns and - through ongoing collaboration between ICANN org departments - the requisite analysis of global policy developments could be provided to the Board Working Group on Internet Governance which is regularly briefed by ICANN org and updates the ICANN Board as needed. In addition, through the revised public reports and briefings, this information can be shared with the full ICANN community. This aligns with a suggestion made by the Registrar Stakeholder Group (RrSG), supported by Non-Commercial Stakeholder Group (NCSG) in the public comment proceeding, that "such updates also be provided to the GNSO Council to enable it to initiate timely policy development processes where necessary". Recognizing that there are ongoing discussions with the community on how to improve the mechanism and process in place, the Board notes that the Governmental Advisory Committee (GAC) made a reference to the GNSO Council letter to ICANN org (date 24 July 2019) that offers feedback on existing efforts. The Board therefore adopts recommendations R1.1, and R1.2, with the clarification that this work is already underway within ICANN org.

Regarding recommendation R1.3, which recommends certain transparency requirements for the Board's working group on RDS activities, the Board notes general support in the public comment proceeding. The Board notes the clarification received from the RDS-WHOIS2 Implementation Shepherds that the recommendation is not determining a specific set of records to be developed, but instead seeks the availability of information to demonstrate that activities are taking place. In light of the RDS-WHOIS2 Implementation Shepherds' clarification, the Board approves R1.3.

On updating publicly available information related to RDS (R3.1), the Board notes that ICANN org has already launched an effort to redraft the content and improve navigation of the Whois portal. It is anticipated that the involvement of user and focus groups suggested by the RDS-WHOIS2-RT could potentially extend the time period for completion by another two to three months. The Board notes broad support in the public comment proceeding for this recommendation. The At Large Advisory Committee (ALAC), for instance, notes that documentation is "important to end users and to registrants". The Board adopts recommendation R3.1.

On the outreach-related recommendation (R3.2), the Board notes concerns expressed in the public comment proceeding. While the RrSG, supported by the NCSG, agrees with recommendation R3.2, the RrSG cautions against costs and increase of the ICANN budget costs. The NCSG questions the need for this outreach and believes the level of priority (high) assigned to this recommendation by the RDS-WHOIS2 is inappropriate "given the lack of readiness of the data", and the uncertain situation "with respect to any replacement for WHOIS or RDAP implementation". To address budgetary concerns expressed in the public comment period, the Board urges ICANN org, when implementing this recommendation, to consider where efficiencies can be gained by pairing engagement efforts related to RDS with education and awareness related to the implementation of the Registration Data Access Protocol (RDAP). The Board adopts recommendation R3.2.

Recommendations R10.2 and R12.1 recommend the deferral of an assessment of the effectiveness of WHOIS1 Policy Review Team recommendations on privacy/proxy as well as International Registration Data to a future RDS Review Team. The Board approves this recommendation insofar as it agrees to recommend to the next RDS Review Team that these items should be part of its work plan. However, the Board does not set the charters for the RDS Review Teams and therefore cannot dictate that either of these items are addressed. The Board cautions that the RDS-WHOIS3-RT might not consider itself bound by such recommendations. The Board notes broad support in the public comment proceeding for Recommendations R10.2 and R12.1, with the exception of the NCSG, which, in the context of 10.2, cautions that many recommendations will no longer be relevant in light of the new system anticipated for development by the Expedited Policy Development Process on the Temporary

Specification for gTLD Registration Data Policy (EPDP). The NCSG suggests a fresh start might be necessary and is concerned that it would be a "waste of money" to do otherwise. The Board approves recommendations R10.2 and R12.1 with the caveat that the subsequent review team (RDS-WHOIS3-RT) might not consider itself bound by these recommendations.

On the recommendation to ensure that the common interface displays all applicable output (R11.2), the Board notes that RDAP was designed with the anticipation of the future need to update or address any future policy or contractual changes. From a feasibility standpoint, the Board notes that there may be a need to program the RDAP lookup tool to note differences between registrar and registry data for a domain name. The Board observes support in the public comment proceeding for this recommendation. For instance, the ALAC notes that "although GDPR has reduced the amount of information publicly available, [...] maintaining full functionality is required" and "the portal must provide all available information in a clear and usable fashion". The Board approves this recommendation R11.2.

Recommendation R15.1 makes recommendations on the methodology and tracking of implementation of the RDS WHOIS2 recommendations. The Board notes that while project management methodologies and best practices and reporting mechanisms can be implemented in short order, the effectiveness of ICANN org's implementation will likely be assessed based on how these methodologies, best practices and reporting mechanisms lead to what the community would consider to be a successful implementation. As a result, time may be required to observe the effectiveness of implementation of the recommended methodologies. Additionally, the Board acknowledges that work is currently underway in the ATRT3 sphere on streamlining of reviews and prioritization of community-issued recommendations. The outcome of these efforts will inform how this recommendation will be implemented. The Board notes that while no objections were raised in the public comment proceeding, the Registries Stakeholder Group (RySG) cautions against reporting burdens on contracted parties. The Board approves R15.1 recognizing that the potential recommendations on streamlining of reviews and prioritization arising from ATRT3 may have an impact on this recommendation.

With respect to data gathering initiatives pertaining to law enforcement (LE.1 and LE.2), the Board notes that it is unlikely these recommendations are completed in time to inform the EPDP's work. The Board instead directs ICANN org to define a timeline to consult with the GNSO Council on the type of survey data needed (including approach, deadline, and meaning of "other users") as well as targeted audiences, and when such survey efforts should be completed to inform future policy work. The Board observes support in the public comment proceeding - for instance, the ALAC supports surveys and information gathering and views the review team's findings with regards to law enforcement as "very important". The GAC confirms its support for the use of surveys and information gathering including surveying non-law enforcement cyber security practitioners to help mitigate all forms of crime and of cybersecurity threats to the DNS. The Board also notes that comments revealed a number of concerns and objections, such as from the NCSG, the RySG, and the RrSG, including concerns on survey bias, alignment with contracts, the uncertainties of law enforcement needs in light of the GDPR, and others. Even with the concerns raised, and while this work cannot be completed in time to benefit EPDP Phase 2, the Board approves these recommendations as they are aligned with and could be integrated with those efforts to support informed policy making work across the ICANN community.

Recommendation SG.1 recommends that the Board require ICANN's contracts to include uniform and strong requirements for the protection of registrant data (SG.1). The Board notes there are provisions already in the Registrar Accreditation Agreement (RAA) regarding notification to ICANN on certain security breaches, and that the Registry Agreement (RA) does not currently require registry operators to inform ICANN in the event of security breaches. As contemplated by the RDS-WHOIS2 RT, these contracts would have to be amended. However, the Board cannot unilaterally impose new obligations on contracted parties through acceptance of a recommendation from the RDS-WHOIS2 RT. The RA and RAA can only be modified either via a policy development process (PDP) or as a result of contract negotiations. In either case, the Board does not have the ability to ensure a particular outcome. The Board notes the RDS-WHOIS2 Implementation Shepherds' clarification that the RDS-WHOIS2-RT expects the Board to take appropriate action either via a PDP or through directing contract negotiations, including their input that they do not expect that specific contract negotiations be initiated in response to an individual recommendation; rather the

contract negotiation approach could be pursued the next time contracts are negotiated. In assessing input received in the public comment proceeding, the ICANN Board notes that the RySG believes the recommendation bleeds into compliance with data protection laws and should be handled between ICANN org and the contracted parties directly. The RrSG, with support from NCSG, has no issue with these requirements "with the assumption that any update of contracts will not be extended to anything outside of them" and adds that "such requirements should be general, not specific and merely reference best practice legal regulations such as the GDPR". In contrast, the Business Constituency (BC) feels that data breach reporting is "critical for the protection of registrant data", and recommends it to be a requirement; a sentiment echoed by the Intellectual Property Constituency (IPC) which considers tracking minimal data on data breaches to be a "simple but necessary step" in further protecting registrant data. Others raise issues. The Board acknowledges that working toward the inclusion of such provisions could be appropriate, but also cautions that the scope of notifications needs to be tethered to ICANN's Mission and contractual role, such as related to circumstances that threaten to undermine the stability, security, and resiliency of the Internet's DNS. The Board therefore approves recommendation SG.1, and directs this item to be included in the next round of contractual negotiations with the Contracted Parties, insofar as it relates to ICANN receiving notification of data breaches in circumstances that threaten to undermine the stability, security, and resiliency of the Internet's DNS. The Board cannot require or guarantee any negotiation outcomes.

On the RDS-WHOIS2-RT's recommendation CC.2 that ICANN initiate action intended to ensure that all gTLD domain name registration directory entries contain at least one full set of either registrant or admin contact details, the Board notes that the EPDP recommendation 29 provides that, before deleting any administrative contact details, the registrar must ensure that it has contact details for the Registered Name Holder. However, the contact details required to be collected and displayed for the Registered Name Holder under the EPDP's Phase 1 recommendations are not identical to those required in the 2013 Registrar Accreditation Agreement (RAA). The Board also notes divergence of opinion in the public comment proceeding: the RrSG, supported by NCSG, does not support this recommendation and considers it as "very problematic". Furthermore, the RySG believes CC.2 has "significant overlaps with community-

developed policies that are in place or in the process of being implemented". The BC discusses competing requirements for longstanding registrations. The Board notes clarification received from the RDS-WHOIS2 Implementation Shepherds that the RDS-WHOIS 2 recommendation CC.2 is aligned with and addressed as part of the implementation of the EPDP phase 1 recommendations. In light of this clarification, and as this is already proceeding to implementation within the EPDP work, the Board approves recommendation CC.2.

The Board approves recommendation CC.3 which calls for adequate resources for ICANN Contractual Compliance and notes that this is already part of ICANN org's existing budgeting and planning process. No concerns are recorded in the public comment proceeding. For instance, the IPC notes that it "remains critical for the Compliance team to be adequately staffed and resourced to fulfill its important function in furtherance of ICANN's mission" and the BC notes that "with the recent changes and staff departures on the Compliance team, this recommendation is more critical".

Recommendations the Board is Placing in "Pending" Status

The Board places four recommendations (4.1, 4.2, 5.1, 10.1) in a pending status in light of dependencies enumerated below. The Board commits to resolve the pending status and take appropriate action on these four recommendations once all dependencies pertaining to ongoing community work and activities allow for an assessment of feasibility and compatibility. The Board expects to monitor progress on these recommendations through progress updates to be delivered by ICANN org on a regular basis.

For Recommendations R4.1, R4.2, R5.1 and R10.1, these recommendations each have dependencies and overlap with the EPDP Phase 2, priority 2 topics. Taking action on these in advance of Board action on the recommendations that will come out of the EPDP risks duplication and overlap. As a result, the Board places all four of these recommendations into pending status until after Board action on the EPDP Phase 2, priority 2 topics. The Board acknowledges that ICANN org provided information on the considerations for each of these four recommendations that are captured in the Scorecard, however the Board is not in a position to consider the substance of these recommendations at this time.

Recommendation the Board is Passing through to a Designated Community Group for Consideration

The Board passes recommendation (CC.4) to the GNSO Council. This recommendation calls for the GNSO to adopt a risk-based approach to incorporating requirements for measurement, auditing, tracking, reporting and enforcement in all new RDS policies. In passing this recommendation through, the Board is neither accepting nor rejecting the recommendation. The Board is careful to respect the remit and roles of the different parts of the ICANN community and is not directing Board or ICANN org action that would usurp another group's remit. The recommendation calls for work or outcomes that are outside of the Board's remit to direct, and is contingent on community work. The Board is not in a position to direct that the community group come to any particular outcome, nor is the Board initiating any policy development work. The Board notes absence of concern in the public comment proceeding with the exception of the RySG, which finds overlap with community-developed policies that are in place or in the process of being implemented. The Board also recalls a clarification received from RDS-WHOIS2 Implementation Shepherds that this recommendation could be directed to the GNSO. Accordingly, the Board passes recommendation CC.4 through to the GNSO Council for consideration.

Recommendation the Board is Approving in Part and Passing through in Part to a Designated Community Group for Consideration

Recommendation CC.1 calls for the Board to initiate action related to treatment of gTLD domain names suspended due to RDS contact data known to be incorrect. This recommendation requires either a policy to be developed or an amendment to the RA and RAA. As discussed above, in either case, the Board is not able to guarantee an outcome from either process. In the event the GNSO Council wishes to initiate a policy development process in order to address the RDS-WHOIS2 recommendation, the Board passes this Recommendation CC.1 to them for that purpose. While the Board has the ability under the Bylaws to initiate policy work within the GNSO, the Board confirms that in acting on the CCT-RT recommendations, the Board passed through recommendations that require policy development to the GNSO Council in recognition of the policy role of the GNSO and the community's prerogative to initiate policy development processes. There is no reason to deviate from that precedent here. The Board is also approving this recommendation in part, for ICANN org to include in the

next round of contractual negotiations for the RA and RAA. The RDS-WHOIS2 Implementation Shepherds confirmed that action on this recommendation could include Board initiation of a policy development process or contract negotiations, and as the Board has previously recognized the community role in initiation of policy development based upon Specific Review team recommendations, the Board once again confirms this role.

Recommendations the Board Rejects

The Board rejects recommendation R11.1 as the interface tool referenced in the recommendation is no longer in use, and the RDS-WHOIS Implementation Shepherds have clarified the same. In July 2019, ICANN org launched a Registration Data Access Protocol (RDAP) lookup service. This new lookup service standardized data access and query response formats and allows the results from data searches to be directly returned from the server to the end-user, without passing through ICANN org servers. As such, ICANN org does not collect or log any information relating to what data is being returned from search queries since ICANN does not touch the data. The current web client cannot support the metrics defined in the recommendation. While there is expression of support in the public comment proceeding for R11.1 (for instance: the GAC "supports the gathering of data recommended by the RDS-WHOIS Review Team), the NCSG is of the opinion that "this recommendation may be redundant after the SSAD is developed". The RySG is "unclear on if or how the SLAs mentioned in R11.1 for the common RDS lookup interface would overlap with the SLAs registries and registrars must meet in responding to RDAP queries" and calls for consideration to be "given to this question before ICANN Org determines which metrics to measure around the interface". In light of the above considerations, the Board is in a position where it cannot approve this recommendation as the interface tool referenced in the recommendation is no longer applicable, and the system in use cannot be modified to support this recommendation. This decision is in alignment with clarification received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group that the recommendation does not apply to the current version of the portal.

The Board is also rejecting Recommendation BY.1, regarding proposed changes to the scope of the RDS Review mandate as set out in the Bylaws. The Board notes that

language in the recommendation could serve to significantly broaden the scope of work for future RDS teams, as well as require specific review team expertise in identifying the "applicable" regulations and laws and then interpreting how current practice addresses those regulations and laws. Keeping up-to-date cross-jurisdictional surveys of data protection and data transfer laws can be quite expensive, and such an effort is quite broad when considering the currently-defined role of the RDS Review in the Bylaws. To that end, the reference to the OECD guidelines that is currently in the Bylaws provides an objective referential starting point, i.e. standards, as opposed to the less defined general scope of a legal database that is called for within the recommendation. The likely expansion of the RDS Review scope as a result of this recommendation also appears to be out of sync with the ongoing community conversations on review streamlining. Because of the overbreadth and impractical nature of what this recommendation suggests, the Board rejects, as approving such a recommendation does not appear to be in the best interests of ICANN. The Board notes that if this or a future Accountability and Transparency Review Team recommends changes to the scope of the RDS Review (as is within the ATRT mandate), the Board will consider such recommendations at the appropriate time.

Which stakeholders or others were consulted?

As required by ICANN Bylaws, the RDS-WHOIS2-RT sought community input on its Draft Report, including 23 draft recommendations, through a public comment period in September 2018. A total of 7 (seven) community submissions were posted to the forum. Additionally, the RDS-WHOIS2-RT conducted engagement sessions, as documented on its wiki space[9]. The RDS-WHOIS2-RT summarized its approach to how public comments and inputs received were considered in Appendix H of its Final Report.

ICANN Bylaws call for the Final Report to be posted for public comment to inform Board action on the RDS-WHOIS2 Final Recommendations. The public comment proceeding opened on 8 October 2019, closed on 23 December 2019, and yielded a total of nine (9) comments, which were considered during the Board's assessment of Final Recommendations.

[9] See https://community.icann.org/pages/viewpage.action?pageId=64084098.

The Board also, through the RDS Board Caucus Group, consulted with the RDS-WHOIS2 Implementation Shepherds to gain clarification on some recommendations to help inform the Board action. Information on those interactions is available here.

What concerns or issues were raised by the community?

The summary of community input received on the RDS-WHOIS2-RT Final Report public comment proceeding highlighted that the community was of divergent opinion on the report. While the ALAC, IPC, BC, GAC and two individuals have no concerns on any of the recommendations, the RrSG, RySG and NCSG raise some issues on some recommendations. Concerns include, but are not limited to, overlap with ongoing community initiatives, impact of ongoing community work on feasibility and/or raison d'être of recommendation, compatibility with model or requirements resulting from community work, appropriate allocation of resources, potential interfering with community prerogatives or policy processes, and overall feasibility.

There is general recognition in the public comment proceeding on the Final Report that the RDS-WHOIS2 was faced with challenges given the ongoing changes to the RDS landscape. Concerns and objections specific to recommendations are included in the above.

Are there positive or negative community impacts?

Taking action on these recommendations will contribute to ensuring ICANN meets its commitments relative to the RDS and enhances security, stability and resiliency of the DNS. Potential actions resulting from these recommendations could affect community bandwidth and resources, in addition to other ongoing work.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The implementation of the RDS-WHOIS2 recommendations that the Board has accepted pursuant to the Scorecard will have budgetary impact on the organization. It is expected that any recommendations that require incremental resources should be included into operational planning and budgeting processes, allowing for appropriate community consideration and prioritization, as applicable, of planned work.

Are there any security, stability or resiliency issues relating to the DNS?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS, though the outcomes may have an impact in the future.

Is this action within ICANN's Mission? How does it relate to the global public interest?

This action is within ICANN's Mission and mandate and in the public interest as it is a fulfillment of an ICANN Bylaw, as articulated in Section 4.6. ICANN's reviews are an important and essential part of how ICANN upholds its commitments. The scope of this review is inherently tied to ICANN's commitment to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

Public comments were received prior to Board consideration.

Signature Block:

Submitted by: Theresa Swinehart

Position: Senior Vice President

Date Noted: 24 February 2020

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RDS-WHOIS2 Final Recommendations
Board Action 25 February 2020

RDS-WHOIS2 RT Recommendation	RT Priority (1)	Dependencies	Considerations	Anticipated Resources/Costs	Board Actions
1) *ICANN Bylaws (Section 4.6 (a)(vii)(A)) stipulate that "The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization." In its Final Report, the RDS-WHOIS2 indicated that 11 recommendations are "High Priority", 6 are "Medium Priority" and 5 are "Low Priority", stating that "Implementation of all recommendations identified as High Priority should begin as soon as possible once approved by the Board and once all preconditions are met. Recommendations assigned medium or low priority need to be considered with respect to overall ICANN priorities, but should not be deferred indefinitely." The RDS-WHOIS2 included its prioritization rationale for each of the 22 recommendations.*					
Recommendations the Board Approves					
R1.1 To ensure that RDS (WHOIS) is treated as a strategic priority, the ICANN Board should put into place a forward-looking mechanism to monitor possible impacts on the RDS (WHOIS) from legislative and policy developments around the world.	High		Proactively monitoring impacts on the RDS from legislative and policy development around the world is an ICANN organization (ICANN org) implementation responsibility. It is an operational task, not a Board responsibility. The Board has already endorsed this work more broadly through the charter for the legislative and regulatory tracking initiative in January 2019, through the FY20 goals the Board set for ICANN's President and CEO, and the priorities the Board has identified for itself. The existing initiative could be understood to cover these concerns and through ongoing collaboration between Government Engagement (GE), Global Stakeholder Engagement (GSE) and Policy Development staff supporting GNSO work, the requisite analysis of global policy developments could be provided to the Board Working	Existing legislative monitoring and tracking may require additional consultation resources to support the strategic priority at scale over what is already projected for FY20. As more governments look at data protection and RDS issues, this may increase the cost for monitoring and tracking. Costs will go up if ICANN org has to do anything proactive in response to potentially damaging legislation targeting ICANN or its remit. It is anticipated that the GE Team's headcount will be realigned to further support this initiative by the end of FY20. GSE will collaborate with GE on resource needs.	The Board approves this recommendation with clarification that the corresponding activities are already part of ICANN's plans.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			Group on Internet Governance which is regularly briefed by ICANN org and updates the ICANN Board. In addition, through the revised public reports and briefings, this information can be shared with the full ICANN community. There is ongoing dialogue with the ICANN community on how the existing mechanism/process could be improved. The Governmental Advisory Committee (GAC) notably made a reference to the GNSO Council correspondence https://mm.icann.org/pipermail/council/attachments/20190726/39bc6981/ICANNsLegislativeRegulatoryTracker--RecommendedImprovements-0001.pdf in its public comment on the RDS-WHOIS2 Final Report.		
R1.2 To support this mechanism, the ICANN Board should instruct the ICANN organization to assign responsibility for monitoring legislative and policy development around the world and to provide regular updates to the ICANN Board.	High		ICANN org has already assigned responsibility for monitoring legislative and policy development around the world and for providing regular updates to the ICANN Board. There is ongoing dialogue with the ICANN community on how the existing	It is anticipated that the GE Team's headcount will be realigned to further support this initiative by the end of FY20. GSE will collaborate with GE on any resource needs to implement this recommendation.	The Board approves this recommendation.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			mechanism/process could be improved. GAC notably made a reference to the GNSO Council correspondence https://mm icann org/pipermail/council/attachments/20190726/39bc6981/ICANNsLegislativeRegulatoryTracker--RecommendedImprovements-0001 pdf in its public comment on the RDS-WHOIS2 Final Report.		
R1.3 The ICANN Board, in drafting the Charter of a Board working group on RDS, should ensure the necessary transparency of the group's work, such as by providing for records of meetings and meeting minutes, to enable future review of its activities.	Medium		This recommendation could have potential implications for Board governance matters more broadly on the transparency obligations for non-Bylaws defined groupings of Board members. ICANN Board Committees have formal transparency requirements and have certain responsibilities, as defined by the ICANN Board. Working Groups (be they in the form of Working Groups or Caucus Groups) do not have delegated authority by the Board and serve to keep the Board informed on progress on certain issues through groupings of Board members expert or interested in the topic under discussion. There could be, of course, other means of achieving		The Board approves this recommendation, with reference to clarifications received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			transparency of Working Group activities, such as through reporting to the relevant Board Committee or Board on activities. Clarification was received from RDS-WHOIS2 Implementation Shepherds that records showing that activities are taking place would be sufficient.		
R3.1 The ICANN Board should direct the ICANN organization to update all of the information related to RDS (WHOIS) and by implication other information related to the registration of second-level gTLDs domains. The content should be revised to make the information readily accessible and understandable, and it should provide details of when and how to interact with ICANN organization or contracted parties. Although not the sole focus of this recommendation, interactions with ICANN organization Contractual Compliance, such as when filing WHOIS Inaccuracy Reports, should be a particular focus. The revision of this web documentation and instructional material should not be undertaken as a purely internal operation but should include users and potentially focus groups to ensure that the final result fully meets the requirements. The resultant outward facing documentation of registrant and RDS (WHOIS) issues should be kept up to date as changes are made to associated policy or processes.	Medium		Work has already begun to re-draft the content and navigation of the WHOIS portal. ICANN Compliance will update the Compliance pages with links to the new information in the Whois Portal once it has been completed.	Estimate is that the implementation would occupy one FTE for three to six months and could potentially be completed in FY 2020. The involvement of user and focus groups would extend the time period for completion by another two to three months.	The Board approves this recommendation.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
R3.2 With community input, the ICANN Board should instruct the ICANN organization to identify groups outside of those that routinely engage with ICANN organization, and these should be targeted through RDS (WHOIS) outreach. An RDS (WHOIS) outreach plan should then be developed, executed, and documented. There should be an ongoing commitment to ensure that as RDS (WHOIS) policy and processes change, the wider community is made aware of such changes. WHOIS inaccuracy reporting was identified as an issue requiring additional education and outreach and may require a particular focus. RDS (WHOIS) outreach should be included when considering communications in underserved regions. The need for and details of the outreach may vary depending on the ultimate General Data Protection Regulation (GDPR) implementation and cannot be detailed at this point.	High	Both the GNSO's Expedited Policy Development Process on Temporary Specification for gTLD Registration Data (EPDP) and the Registration Data Access Protocol (RDAP) phased implementation could impact the information or the messaging to be delivered by ICANN to new target groups.	ICANN org's Global Stakeholder Engagement (GSE) function's current efforts should be considered in determining what additional efforts are needed. For example, GSE may need to implement new tracking regarding RDS-related content, which should be designed according to specified goals, for future analysis. GSE's efforts center on engagement, which is bidirectional and encourages active participation from stakeholders, as opposed to outreach, which is viewed as one-way. For new efforts, ICANN may be reaching out to populations more difficult and expensive to target. It will be important to weigh the quality and impact of these new efforts against the cost of such outreach/engagement and clearly measurable expectations of this recommendation. Clarification was received from RDS-WHOIS2 Implementation Shepherds that there should be clear merit and added value in conducting this	Estimating costs and feasibility of implementation are dependent on several factors. For example, if more targeted engagement can be incorporated into current work done by ICANN org, the cost may be on the lower end. The higher end of the budget could include creating an educational course for ICANN Learn, a paid online awareness campaign, the development/placement of targeted content to specific audiences using multiple channels, and outside resources to accomplish these tasks. Efficiencies can be gained by pairing engagement efforts related to RDS with education and awareness related to the implementation of the RDAP.	The Board approves this recommendation, with reference to clarifications received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			additional outreach, as opposed to ticking boxes.		
R10.2 Reviewing the effectiveness of the implementation of WHOIS1 Recommendation #10 should be deferred. The ICANN Board should recommend that review be carried out by the next RDS (WHOIS) Review Team after PPSAI Policy is implemented.	Low		Under the current Bylaws, the Specific Reviews review teams have the ability to set their charter according to the Bylaws, precluding the Board from dictating their mandate. As such, while the Board could make a recommendation to a future review team, the Board could not require that said review team to take on the recommendation as part of their mandate. The subsequent review team (RDS-WHOIS3) might not consider itself bound by this recommendation and the desired outcome of this recommendation, as a result, is not warranted.		The Board approves this recommendation with the caveat that the subsequent review team (RDS-WHOIS3) might not consider itself bound by such a recommendation.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
R11.2 The ICANN Board should direct the ICANN organization to ensure that the common interface displays all applicable output for each gTLD domain name registration as available from contracted parties, including multiple versions when the outputs from registry and registrar differ. The common interface should be updated to address any policy or contractual changes to maintain full functionality.	High		RDAP was designed with the future need to update or address any future policy or contractual changes, so ICANN is already compliant with this portion of the recommendation. It is feasible for ICANN to program the RDAP look-up tool to note differences between the registrar vs. registry data for a domain name, but it should be defined as to which data needs to be compared, since, for example, certain status codes are only set by registries and would be found absent in the registrar's information.	Programming is needed. There may be a need to bring a resource to build software.	The Board approves this recommendation.
R12.1 Reviewing the effectiveness of the implementation of Recs #12-14 should be deferred. The ICANN Board should recommend that review to be carried out by the next RDS Review Team after RDAP is implemented, and the translation and transliteration of the registration data launches.	Low		Experience gained in implementation of RDAP, as well as the Translation & Transliteration policy recommendations, would be very relevant to carrying out these reviews. Under the current Bylaws, the Specific Reviews review teams have the ability to set their charter according to the Bylaws, precluding the Board from dictating their mandate. As such, while the Board could make a		The Board approves this recommendation, with note that the subsequent review team (RDS-WHOIS3) might not consider itself bound by such a recommendation.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			recommendation to a future review team, the Board could not require that said review team to take on the recommendation as part of their mandate. The subsequent review team (RDS-WHOIS3) might not consider itself bound by this recommendation and the desired outcome of this recommendation, as a result, is not warranted.		
R15.1 The ICANN Board should ensure that implementation of RDS-WHOIS2 Review Team recommendations is based on best practice project management methodology, ensuring that plans and implementation reports clearly address progress, and applicable metrics and tracking tools are used for effectiveness and impact evaluation.	Medium	The Third Accountability and Transparency Review Team (ATRT3)'s work on streamlining of reviews and prioritization of community-issued recommendations may have an impact on how this recommendation can be implemented.	The intent of this recommendation has broader implications for all community recommendations, and appears to have an ongoing element, suitable for continuous improvement. While the project management methodologies/best practices and reporting mechanisms may be implemented in reasonably short order, the effectiveness of this implementation will likely be judged based on how these methodologies/best practices and reporting mechanisms lead to what the community would consider to be successful implementation of all Board-approved RDS-WHOIS2 recommendations. This could take several years.		The Board approves this recommendation, recognizing the work currently underway, in alignment with ATRT3.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
LE.1 The ICANN Board should resolve that ICANN organization conduct regular data gathering through surveys and studies to inform a future assessment of the effectiveness of RDS (WHOIS) in meeting the needs of law enforcement. This will also aid future policy development (including the current Temporary Specification for gTLD Registration Data Expedited Policy Development Process and related efforts) .	High		It is unlikely that the study will be completed in time to inform the EPDP. A defined time should be set up to consult with the GNSO Council on the type of survey data needed and when such survey efforts should be completed to inform future policy work.		The Board approves this recommendation, with the caveat that it cannot be completed in time for the EPDP Phase 2. To implement, ICANN org will identify an appropriate timeline to help inform future work, in consultation with GNSO.
LE.2 The ICANN Board should consider conducting comparable surveys and/or studies (as described in LE.1) with other RDS (WHOIS) users working with law enforcement on a regular basis.	High		A defined time should be set up to consult with the GNSO Council on the type of survey data, survey approach, survey deadline and meaning of "other users" to inform future work. This recommendation could be paired with the use of other survey and feedback mechanisms across ICANN org to ensure there is a coordinated process for surveying the community and stakeholders.		The Board approves this recommendation, with the caveat that it cannot be completed in time for the EPDP Phase 2. To implement, ICANN org will identify an appropriate timeline to help inform future work, in consultation with GNSO.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
SG.1 The ICANN Board should require that the ICANN org, in consultation with data security and privacy expert(s), ensure that all contracts with contracted parties (to include Privacy/Proxy services when such contracts exist) include uniform and strong requirements for the protection of registrant data and for ICANN to be notified in the event of any data breach. The data security expert(s) should also consider and advise on what level or magnitude of breach warrants such notification. In carrying out this review, the data security and privacy expert(s) should consider to what extent GDPR regulations, which many but not all ICANN contracted parties are subject to, could or should be used as a basis for ICANN requirements. The ICANN Board should initiate action intended to effect such changes. The ICANN Board should consider whether and to what extent notifications of breaches that it receives should be publicly disclosed.	Medium		Section 3.20 of the 2013 RAA requires registrars to notify ICANN for security breaches. 3.20 Notice of Bankruptcy, Convictions and Security Breaches. Registrar will give ICANN notice within seven (7) days of (i) the commencement of any of the proceedings referenced in Section 5.5.8. (ii) the occurrence of any of the matters specified in Section 5.5.2 or Section 5.5.3 or (iii) any unauthorized access to or disclosure of registrant account information or registration data. The notice required pursuant to Subsection (iii) shall include a detailed description of the type of unauthorized access, how it occurred, the number of registrants affected, and any action taken by Registrar in response. The Registry Agreement (RA) does not currently require Registry Operators to inform ICANN in the event of security breaches. This part of the recommendation would require a change to the current contracts. The Board cannot unilaterally impose new obligations on		The Board approves this recommendation, and directs this item to be included in the next round of contractual negotiations with the Contracted Parties, insofar as it relates to ICANN receiving notification of data breaches in circumstances that threaten to undermine the stability, security, and resiliency of the Internet's DNS. The Board cannot require or guarantee any negotiation outcomes.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			contracted parties through acceptance of a recommendation from the RDS-WHOIS2 Review Team. The RA and Registrar Accreditation Agreement (RAA) can only be modified either via a policy development process or as a result of contract negotiations. In either case, the Board does not have the ability to ensure a particular outcome. Clarification was received from RDS-WHOIS2 Implementation Shepherds that it is not expected that specific contract negotiations be initiated in response to an individual recommendation; rather the contract negotiation approach could be pursued the next time contracts are negotiated.		
CC.2 The ICANN Board should initiate action intended to ensure that all gTLD domain name registration directory entries contain at least one full set of either registrant or admin contact details comparable to those required for new registrations under the 2013 RAA (or any subsequent version thereof) or applicable policies.	Medium		For reference, EPDP recommendation 29 states: "Recognizing that in the case of some existing registrations, there may be an Administrative Contact but no or incomplete Registered Name Holder contact information, the EPDP team recommends that prior to eliminating Administrative Contact fields, all Registrars		The Board approves this recommendation, with reference to clarifications received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			must ensure that each registration contains Registered Name Holder contact information." This recommendation provides that, before deleting any administrative contact details, the registrar must ensure that it has contact details for the Registered Name Holder. However, the contact details required to be collected and displayed for the Registered Name Holder under the EPDP's Phase 1 recommendations are not identical to those required in the 2013 RAA. Clarification was received from RDS-WHOIS2 Implementation Shepherds that this recommendation is part of EPDP phase 1 implementation.		
CC.3 The ICANN Board should take steps to ensure that ICANN Contractual Compliance is adequately resourced factoring in any increase in workload due to additional work required due to compliance with GDPR or other legislation/regulation.	High			This is already included in the existing budgeting and planning process. Compliance will request for resources, as required, as part of the existing planning process.	The Board approves this recommendation.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
Recommendations the Board Places in Pending Status					
R4.1 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.	High	Given the ongoing community work relative to registration data, the Board believes it is prudent to consider this recommendation after any GNSO recommendations from the EPDP Phase 2 work have been completed and analyzed. It is unclear at this time what type of accuracy system would be feasible under the new model.	ICANN's Contractual Compliance department currently proactively monitors registrar obligations as well as uses risk-based analysis in its enforcement activities. However, there is an important consideration to this recommendation with regard to accuracy studies. Due to changes in the level of publicly available registration data, there are challenges in completing compliance monitoring and studies. This is also impacted by the EPDP Phase 2 recommendations when the EPDP Team completes its work.		The Board places this recommendation in pending status until completion of Board action on the EPDP Phase 2, priority 2 topics.The Board will consider the recommendation after evaluating the outcomes of the EPDP Phase 2.
R4.2 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.	High	Given the ongoing community work relative to registration data, the Board believes it is prudent to consider this recommendation after any GNSO recommendations from the EPDP Phase 2 work have been completed and analyzed. It is unclear at this time what type of	Due to changes in the level of publicly available registration data, there are challenges in cross-referencing data with ARS studies. This will also be impacted by the EPDP Phase 2 recommendations when the EPDP Team completes its work. Other areas that do not require cross referencing of RDS (WHOIS) data will continue to be reviewed by Contractual Compliance.		The Board places this recommendation in pending status until completion of Board action on the EPDP Phase 2, priority 2 topics.The Board will consider the recommendation after evaluating the outcomes of the EPDP Phase 2.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
		accuracy system would be feasible under the new model.	ARS was paused in 2018 prior to RDS producing this recommendation. ICANN has engaged in discussion with the GNSO, to clarify the work of EPDP (see Correspondence, item dated 5 December 2019 and related correspondence items). The intent of this correspondence was to seek to understand the scope of planned policy work to inform ICANN org's thinking on the future of ARS. Since the Board adoption of the Temporary Specification, ICANN org has not published ARS reports due to the recognition that there are changes to gTLD registration data requirements and the public availability of such data, which has an impact on the viability of the WHOIS ARS.		
R5.1 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.	High	Given the ongoing community work relative to registration data, the Board believes it is prudent to consider this recommendation after any GNSO recommendations from the EPDP	The original purpose of ARS was to be a reporting tool rather than a means of ensuring data accuracy. There is currently no clear path forward for restarting ARS. It is not yet clear what type of accuracy reporting system would be feasible under the model for accessing		The Board places this recommendation in pending status until completion of Board action on the EPDP Phase 2, priority 2 topics.The Board will consider the recommendation after

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
		Phase 2 work have been completed and analyzed. It is unclear at this time what type of accuracy system would be feasible under the new model.	non-public data being discussed by EPDP Phase 2.		evaluating the outcomes of the EPDP Phase 2.
R10.1 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.	Low	Regardless of the model recommended by the EPDP Phase 2 Team for access to non-public data, coordinating implementation of the Privacy Proxy (PP) Accreditation Issues (PPSAI) with the EPDP recommendations will ensure that PP requirements can be implemented to work within the resulting model.	Given the time constraint, neither the implementation of the PPSAI policy, nor an RAA amendment is feasible by the 31 December 2019 date, which has already passed. Per section 7.4 in the RAA, proposed revisions or negotiations can only occur once a calendar year, and there are other negotiations being planned (for RDAP and possibly other issues). This item could be included in the next round of contractual negotiations with the Contracted Parties, though the Board notes that it cannot guarantee the outcome of such negotiations. The impact of the EPDP Phase 1 recommendations on the PPSAI recommendations approved by the GNSO in 2016 is being analyzed currently, and it is anticipated		The Board places this recommendation in pending status until completion of Board action on the EPDP Phase 2, priority 2 topics.The Board will consider the recommendation after evaluating the outcomes of the EPDP Phase 2.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
			that the EPDP Phase 2 recommendations, when completed, will also require a detailed analysis of the impact on the original PPSAI recommendations, prior to completing their implementation.		
Recommendation the Board Passes Through to a Designated Community Group for Consideration					
CC.4 The ICANN Board should recommend the GNSO adopt a risk-based approach to incorporating requirements for measurement, auditing, tracking, reporting and enforcement in all new RDS policies.	Low		The Board is careful to respect the remit and roles of the different parts of the ICANN community and cannot direct Board action that would usurp another group's remit. This recommendation calls for work or outcomes that are outside of the Board's remit to direct, and are contingent on community work. The Board is not in a position to direct that the community groups come to any particular outcome. Clarification was received from RDS-WHOIS2 Implementation Shepherds that this recommendation could be directed to the GNSO.	Requirements for measurement, auditing, tracking, reporting and enforcement are likely to have an impact on the ICANN budget and resources.	The Board passes the recommendation through to the GNSO Council, with reference to documentation of clarifications received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group.

RDS-WHOIS2 RT Recommendation	RT Priority	Dependencies	Considerations	Anticipated Resources/Costs	Possible Board Actions
Recommendation the Board Approves in Part and Passes through in Part to a Designated Community Group for Consideration					
CC.1 The ICANN Board should initiate action intended to ensure that gTLD domain names suspended due to RDS (WHOIS) contact data which the registrar knows to be incorrect, and that remains incorrect until the registration is due for deletion, should be treated as follows: (1) The RDS (WHOIS) record should include a notation that the domain name is suspended due to incorrect data; and (2) Domain names with this notation should not be unsuspended without correcting the data.	High		The Registry Agreement (RA) and Registrar Accreditation Agreement (RAA) can be modified either via a policy development process or as a result of contract negotiations. In either case, the Board does not have the ability to ensure a particular outcome. In order to have a suspension notation, the registry or registrar would have to provide the suspension notation and transmit it, both on the RDAP and on the WHOIS protocol. ICANN org would only need to ensure that the suspension notation was shown in the queried data. The RDS-WHOIS2 Implementation Shepherds indicated their position that action on this recommendation could either be via a PDP or through directing contract negotiations. Clarification was also received from RDS-WHOIS2 Implementation Shepherds that it is not expected that specific contract negotiations be initiated in response to an individual recommendation; rather the	Registrars and registries would bear the costs of engineering changes to update specifications and systems to support this notation.	The Board approves this recommendation and directs this item to be included in the next round of contractual negotiations with the Contracted Parties. The Board cannot require or guarantee any negotiation outcomes. The Board also notes that this is an area that the GNSO Council might wish to take into a policy development process separate from any recourse to the policy development process that might be incorporated into the negotiation process, and passes through this recommendation to the GNSO Council for purposes of considering such initiation.

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			contract negotiation approach could be pursued the next time contracts are negotiated. In recognition of the community's prerogative to initiate policy development processes, the Board also notes that this is an area that the GNSO Council might wish to take into consideration, separate from any recourse to the policy development process that might be incorporated into the negotiation process.		
Recommendations the Board Rejects					
R11.1 The ICANN Board should direct the ICANN organization to define metrics or SLAs to be tracked and evaluated to determine consistency of results of queries and use of any common interface (existing or future) used to provide one-stop access to registration data across all gTLDs and registrars/resellers. Specific metrics that should be tracked for any such common interface include: - How often are RDS (WHOIS) fields returned blank? - How often is data displayed inconsistently (for the same domain name), overall and per gTLD? - How often does the tool not return any results, overall and per gTLD? - What are the causes for the above results?	Low	Resolution of privacy and other risk considerations surrounding ICANN potentially handling the data from the queries.	The current web client cannot support the metrics defined in the recommendation as ICANN does not touch the data being queried. Changing the client to support these metrics would essentially require developing a new look-up tool and addressing concerns with ICANN org processing the data. In reviewing the specific bulleted SLA requests from the recommendation, the second bullet would require more definition from the review team: "*How often is*		The Board rejects this recommendation as the interface tool referenced in the recommendation is no longer in use. In July 2019, ICANN org launched a Registration Data Access Protocol (RDAP) lookup service. This new lookup service standardized data access and query response formats and allowed for ICANN to be removed from the transaction of a registration data lookup. ICANN org will also

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			data displayed inconsistently (for the same domain name), overall and per gTLD?" The last bullet point, "*What are the causes for the above results?*" is not feasible even if ICANN touched the data. This is because the data itself, or lack of data in a field, provides no clues as to why it is missing or inconsistent. Manual inquiries with the registries and registrars would be required for each blank query result. Clarification was received from RDS-WHOIS2 Implementation Shepherds' that the recommendation does not apply to the current version of the portal. In July 2019, ICANN org launched a Registration Data Access Protocol (RDAP) lookup service. The RDS-WHOIS2 Implementation Shepherds added that while metrics included in the recommendation had meaning in the former version, it is now unclear whether they are applicable to the current version.		disseminate additional information on use of this tool as part of the overall education effort regarding RDAP. In light of this, the Board has chosen not to accept this recommendation as it is no longer applicable. This is in alignment with clarification received from RDS-WHOIS2 Implementation Shepherds in the 29 January 2020 discussion with the RDS Board Caucus Group.

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BY.1 The ICANN Board should take action to extend the reference to "safeguarding registrant data" in ICANN Bylaws section 4.6(e)(ii) and replace section 4.6(e)(iii) of the ICANN Bylaws (which refers to the OECD Guidelines) 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.	Medium	The ATRT3's work on streamlining of reviews and prioritization of community-issued recommendations may have an impact on this recommendation.	The recommendation is dependent on Fundamental Bylaws processes and community consent to Bylaws changes. On the part of the recommendation that requests "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", this language could serve to significantly broaden the scope of work for future RDS teams, as well as require specific Review Team expertise in identifying the "applicable" regulations and laws and then interpreting how current practice addresses those regulations and laws. Keeping up-to-date cross-jurisdictional surveys of data protection and data transfer laws can be quite expensive and require maintenance. The reference to the OECD guidelines provides an objective referential starting point, i.e. standards, as opposed to the less defined general scope within the recommendation. There is a high risk that what the RDS-		The Board rejects this recommendation, as approving such a recommendation does not appear to be in the best interests of ICANN. The Board notes that if this or a future Accountability and Transparency Review Team recommends changes to the scope of the RDS Review (as is within the ATRT mandate), the Board will consider such recommendations at the appropriate time.

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			WHOIS2 RT is suggesting is impracticable and is not in the best interests of ICANN to approve.		