Dear Members of the ICANN Board,

We are pleased to provide you with the conclusions of the GNSO with respect to the recommendations of the WHOIS Review Team Final Report. As you will recall, the WHOIS Review Team was formed in October 2010 to review the extent to which ICANN's WHOIS policies – and the implementation of those policies – have been effective. Also within the mandate of the WHOIS Review Team was to determine whether the legitimate needs of law enforcement have been met and whether the policies at issue effectively promoted consumer trust.

The WHOIS Review Team, composed of various ICANN constituencies, a law enforcement representative, and two independent experts, delivered its Final Report on May 11, 2012. Shortly thereafter, the Board requested a response from the GNSO with regard to the sixteen (16) recommendations in the final report and where a Policy Development Process may be required. In turn, the GNSO Council constituted a small team of Council members to determine where points of consensus existed from within the GNSO's constituencies. The members of the Council who participated in this review were Wendy Seltzer, Thomas Rickert, Wolf-Ulrich Knoben, Jeff Neuman, and Brian Winterfeldt. As part of their review process, and with the assistance and support of ICANN's Senior Policy Councilor, Margie Milam, the small team reviewed feedback on the WHOIS Review Team Final Report that has already been submitted to the Board of Directors. The small team also solicited additional feedback from the Council itself and the individual GNSO stakeholder groups and constituencies.

The small team, as well as the larger GNSO community, continues to hold divergent views as to whether a Policy Development Process is required to implement certain recommendations from WHOIS Review Team Final Report. This issue remains unresolved.

Full Consensus

There is unanimity that recommendation ten from the WHOIS Review Team Final Report should require a Policy Development Process to regulate and oversee privacy and proxy service providers. Recommendation ten included the following specific recommendations that:

(a) ICANN should initiate processes to regulate and oversee privacy and proxy service providers;

(b) One possible approach to achieving this would be to establish, through the appropriate means, an accreditation system for all proxy/privacy service providers. As part of this process, ICANN should consider the merits (if any) of establishing or maintaining a distinction between privacy and proxy services;

(c) The goal of this process should be to provide clear, consistent and enforceable requirements for the operation of these services consistent with national laws, and to strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum, this would include privacy, data protection, law enforcement, the industry around law enforcement and the human rights community;

(d) ICANN could, for example, use a mix of incentives and graduated sanctions to encourage proxy/privacy service providers to become accredited, and to ensure that registrars do not knowingly accept registrations from unaccredited providers;

(e) ICANN could develop a graduated and enforceable series of penalties for proxy/privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial or otherwise serious breaches; and

(f) In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to a set of detailed objectives.

<u>Partial Agreement</u>

Unanimity could not be reached with respect to the other fifteen recommendations in the WHOIS Review Team Final Report. Instead, the GNSO Council has opted to provide the attached matrix of stakeholder and constituency positions and substantive commentary.

Though it is unfortunate that unanimity could not be reached from within the GNSO, or at the GNSO Council level, we nonetheless hope you find the attached matrix informative as to the positions of the GNSO's various constituencies when formulating implementation plans for the sixteen recommendations in the WHOIS Review Team Final Report.

As always, the Council remains available for further consultation on this matter should the Board desire any additional input.

Respectfully submitted,

Jonathan Robinson
Chair, GNSO Council

#	WHOIS Review Team Recommendation[1]	Agree with Recommendation?	PDP Required?	Comments:
1	*It is recommended that WHOIS, in all its aspects, should be a strategic priority for ICANN the organization. It should form the basis of staff incentivization and published organizational objectives.*			
	Registry Stakeholder Group	Partial agreement	No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, most important review team recommendation	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	Note the edit in the recommendation – not the SOLE basis of incentivization.
2	*The ICANN Board should oversee the creation of a single WHOIS policy document, and reference it in subsequent versions of agreements with Contracted Parties.*			
	Registry Stakeholder Group		?	It is not clear whether this means a single Whois document in contrast to a single Whois policy. If it is the former, we believe it is a matter of creating a document that summarizes all relevant Whois polices. If it is the latter, we believe that a PDP would be required.
	Registrar Stakeholder Group		?	Agrees with the Registry Stakeholder Group's concerns.
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, but without delaying or reducing commitment to accessible and accurate Whois	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	On the basis that this is a nonbinding guidance document that collects existing policy, which we feel is the best course of action. If the intent is to change policy, then there should be a PDP

3	*ICANN should ensure that WHOIS policy issues are accompanied by cross-community outreach, including outreach to the communities outside of ICANN with a specific interest in the issues, and an ongoing program for consumer awareness.*			
	Registry Stakeholder Group		No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	
4	*ICANN should act to ensure that its compliance function is managed in accordance with best practice principles .*			
	Registry Stakeholder Group	Partial agreement	No	The RySG questions the wisdom of the following parts of this recommendation: having the head of compliance report directly to a Board subcommittee and thereby having the Board perform a management function; disallowing committee members from the regulated industry and possibly not having needed expertise. The RySG also thinks that the following could cause serious delays in the introduction of new gTLDs and therefore play into the hands of those who have sought delays along: ". . . all relevant compliance processes and tools should be reviewed and improved, and new tools developed where necessary, in advance of any new gTLDs becoming operational."
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	This is about reporting lines and accountability for an operational function. Therefore no PDP required.
5	*ICANN should ensure that the requirements for accurate WHOIS data are widely and pro-actively communicated, including to current and prospective Registrants, and should use all means available to progress WHOIS accuracy, including any internationalized WHOIS data, as an organizational objective.*			

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			No	
	Registry Stakeholder Group		No	
	Registrar Stakeholder Group			
	Intellectual Property Constituency	Yes, strongly support better communication to all current and prospective registrants.	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	This is about reporting and accountability and raising the profile of a key service to stakeholders who are not currently aware of it, and who could benefit from it.
6	*ICANN should take appropriate measures to reduce the number of WHOIS registrations that fall into the accuracy groups Substantial Failure and Full Failure (as defined by the NORC Data Accuracy Study, 2009/10) by 50% within 12 months and by 50% again over the following 12 months.*			
	Registry Stakeholder Group		?	To the extent that the 'appropriate measures' necessary meet to these goals required new contractual compliance mechanisms or consensus policies, a PDP might be necessary. The RySG is not sure this goal is achievable because of the complexities involved in achieving it.
	Registrar Stakeholder Group		?	Agrees with Registry Stakeholder Group concerns. Further "all appropriate measures" is undefined and is unfortunately subject to differing interpretation. The RrSG recommends the GNSO Council request that ICANN Compliance outline a plan to reach these goals, along with their expected timeframe and metrics. These should be published before implementation of any new compliance initiatives meant to address these metrics
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	This is about operationalizing a report's findings along with an existing contractual obligation for accurate data. It's compliance not policy.
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	Possibly	With regard to the "appropriate measures" language: including PDP if policy change is needed.
7	*ICANN shall produce and publish an accuracy report focused on measured reduction in WHOIS registrations that fall into the accuracy groups Substantial Failure and Full Failure, on an annual basis.*			

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	Registry Stakeholder Group		No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	This is purely operational reporting.
8	*ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreements with registries, registrars, and registrants to require the provision and maintenance of accurate WHOIS data. As part of these agreements, ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its WHOIS policies. These sanctions should include de-registration and/or de-accreditation as appropriate in cases of serious or serial non-compliance.*			
	Registry Stakeholder Group		No	With regard to the "chain of contractual agreements with registries, registrars, and registrants" language: to ensure the protections built into contractual policy requirements, it should be noted that 'Whois policies' must be 'consensus policies' as defined within registry and registrar agreements.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	Unless consensus policy elements of contracts must be changed. Proceed quickly with implementing things that can already be done without PDP with the goal of minimizing delays. A great deal can be achieved here without a PDP.

9a	*The ICANN Board should ensure that the Compliance Team develop, in consultation with relevant contracted parties, metrics to track the impact of the annual WHOIS Data Reminder Policy (WDRP) notices to registrants. Such metrics should be used to develop and publish performance targets, to improve data accuracy over time.*			
	Registry Stakeholder Group		No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	This is about metrics not policy.
9b	*If this is unfeasible with the current system, the Board should ensure that an alternative, effective policy is developed (in accordance with ICANN's existing processes) and implemented in consultation with registrars that achieves the objective of improving data quality, in a measurable way.*			
	Registry Stakeholder Group		Yes	It is not clear how the Board can "ensure that an alternative, effective policy is developed (in accordance with ICANN's existing processes)"; existing processes require consensus; what happens if consensus cannot be found? Should the multi-stakeholder, bottom-up processes be bypassed if some stakeholders do not get what they want?
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	Unless consensus policy elements of contracts must be changed. It is hoped that current consensus policy is sufficient to support this goal
10a	*The Review Team recommends that ICANN should initiate processes to regulate and oversee privacy and proxy service providers.*			

			Yes	How would ICANN staff do this if there were not a means (i.e., consensus policies) to require compliance? Policies resulting from a PDP would provide the means for enforcement.
	Registry Stakeholder Group		Yes	How would ICANN staff do this if there were not a means (i.e., consensus policies) to require compliance? Policies resulting from a PDP would provide the means for enforcement.
	Registrar Stakeholder Group		Yes	The RrSG agrees again with the RySG. The Whois RT report plainly says privacy / proxy accreditation should be developed in consultation with all interested stakeholders. While regulation of privacy / proxy may be a laudable outcome, nowhere does the RAA suggest the ICANN corporation has the authority to make such an imposition, and it's false to say it does. The RrSG has discussed privacy / proxy accreditation with ICANN staff in the course of RAA negotiations and our experience is that, unfortunately, like many community desires, it is complex, involves the interests of multiple stakeholders, and has cost an resource impacts on ICANN staff and the community. It is an appropriate issue for a PDP and not unilateral action.
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, essential and must be implemented on prompt timeline.		
	Business Constituency	Yes	Yes	
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
10b	*The Review Team considers that one possible approach to achieving this would be to establish, through the appropriate means, an accreditation system for all proxy/privacy service providers. As part of this process, ICANN should consider the merits (if any) of establishing or maintaining a distinction between privacy and proxy services.*			
	Registry Stakeholder Group		Yes	This should be included in the Issue Report or Charter for the PDP.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, but accreditation not the only means, could be handled through RAA in accordance with high priority topics identified by GNSO/ALAC Drafting Team.	Maybe	Recommendation ten can be read to describe a GNSO policy development process.

8

		Yes	Yes	
	Business Constituency	Yes	Yes	
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
10c	*The goal of this process should be to provide clear, consistent and enforceable requirements for the operation of these services consistent with national laws, and to strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum, this would include privacy, data protection, law enforcement, the industry around law enforcement and the human rights community.*			
	Registry Stakeholder Group		Yes	This should be included in the Issue Report or Charter for the PDP.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes.	Maybe	Recommendation ten can be read to describe a GNSO policy development process.
	Business Constituency	Yes	Yes	
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
10d	*ICANN could, for example, use a mix of incentives and graduated sanctions to encourage proxy/privacy service providers to become accredited, and to ensure that registrars do not knowingly accept registrations from unaccredited providers.*			
	Registry Stakeholder Group		Yes	This should be included in the Issue Report or Charter for the PDP.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, see above re alternatives to accreditation	Maybe	Recommendation ten can be read to describe a GNSO policy development process.
	Business Constituency	Yes	Yes	
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
10e	*ICANN could develop a graduated and enforceable series of penalties for proxy/privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial or otherwise serious breaches.*			

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			Yes	This should be included in the Issue Report or Charter for the PDP.
	Registry Stakeholder Group		Yes	This should be included in the Issue Report or Charter for the PDP.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	Maybe	Recommendation ten can be read to describe a GNSO policy development process.
	Business Constituency	Yes		
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
10f	*In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to the following objectives: . . .*			
	Registry Stakeholder Group		Yes	This should be included in the SOW for the PDP.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, support these objectives.	Maybe	Recommendation ten can be read to describe a GNSO policy development process.
	Business Constituency	Yes	Yes	
	ISP Constituency	Yes	Yes	There needs to be a policy framework within which to build these processes.
11	*It is recommended that the Internic Service is overhauled to provide enhanced usability for consumers, including the display of full registrant data for all gTLD domain names (whether those gTLDs operate thin or thick WHOIS services) in order to create a one stop shop, from a trusted provider, for consumers and other users of WHOIS services.*			
	Registry Stakeholder Group	Yes	No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, but note that requirement for thick Whois may be more immediately feasible.	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.

	ISP Constituency	Yes	No	This is an operational improvement to Internic that could be done in accordance with current policy. If other PDPs changed this policy, Internic could be required to conform with those changes. But no dedicated PDP is required for this action item.
12	*ICANN should task a working group within six months of publication of this report, to determine appropriate internationalized domain name registration data requirements and evaluate available solutions (including solutions being implemented by ccTLDs). At a minimum, the data requirements should apply to all new gTLDs, and the working group should consider ways to encourage consistency of approach across the gTLD and (on a voluntary basis) ccTLD space. The working group should report within a year of being tasked.*			
	Registry Stakeholder Group	Partial agreement	No	We believe that this work is already underway.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes, but note other workstreams underway on this within ICANN.	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	No – unless policy changes are required in order to promulgate the rules across all gTLDs.
13	*The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in the relevant Registrar and Registry agreements within 6 months of adoption of the working group's recommendations by the ICANN Board. If these recommendations are not finalized in time for the next revision of such agreements, explicit placeholders for this purpose should be put in place in the agreements for the new gTLD program at this time, and in the existing agreements when they come up for renewal.*			

	Registry Stakeholder Group	Partial Agreement	Yes	It appears that the RT is recommending that existing processes be modified in this case by going directly from a WG to the Board without following all steps of a PDP. It also appears that the RT is suggesting that the Board unilaterally amend registrar and registry agreements to incorporate the new data model. The RySG appreciates the urgency of the need but does not think that existing processes should be ignored. At the same time, the RySG wants to communicate its intention to cooperate constructively in the efforts to fulfill these recommendations in as timely a manner as possible.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	Maybe	Support the Ry view that policy-based (inside the picket fence) changes to Ry and Rr agreements should flow through the PDP process. However, changes outside the consensus-policy "picket fence" do not need to flow through the PDP process and care should be taken to ensure that the policy process is not inserted inappropriately into those decisions. Doesn't seem to tally with current RAA negotiations that haven't gone through a PDP.
14	*In addition, metrics should be developed to maintain and measure the accuracy of the internationalized registration data and corresponding data in ASCII, with clearly defined compliance methods and targets, as per the details in Recommendations 5-9 in this document.*			
	Registry Stakeholder Group	Yes	No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	Unless the compliance function needs policy underpinnings upon which to base its actions. Developing the metrics is an operational function.

15	*ICANN should provide a detailed and comprehensive plan within 3 months after the submission of the Final WHOIS Review Team report that outlines how ICANN will move forward in implementing these recommendations.*			
	Registry Stakeholder Group	No	No	This might be feasible if done unilaterally by ICANN Staff but the time target is terribly unrealistic if done following the multi-stakeholder model.
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes but note this deadline has already passed.		
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	No, although this planning should be done in collaboration with the policy-making body so as to set realistic timing goals and expectations, this is purely operational and does not require a PDP.
16	*ICANN should provide at least annual written status reports on its progress towards implementing the recommendations of this WHOIS Review Team. The first of these reports should be published one year, at the latest, after ICANN publishes the implementation plan mentioned in recommendation 15, above. Each of these reports should contain all relevant information, including all underlying facts, figures and analyses.*			
	Registry Stakeholder Group	Yes	No	
	Registrar Stakeholder Group			
	Non Commercial Stakeholder Group		Yes	
	Intellectual Property Constituency	Yes	No	
	Business Constituency	Yes	No	ICANN staff should be directed to complete / implement recommendations.
	ISP Constituency	Yes	No	

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