

Analysis of Board action on the AoC WHOIS Review Team Recommendations

There has been much discussion about why the WHOIS RT members and others in the community have taken the position that the Board chose to not implement the RT recommendations. The following attempts to draw together the web of “evidence” that has led to that conclusion. Much of it has to do with how written communications have been perceived and my analysis does imply that these perceptions accurately reflect the actual motive and intents of those who crafted the various documents. Although various aspects of this document have been discussed with some of the RT and parts of the community, they are presented as a whole under my name alone. I will be passing it by a number of RT members to see if it tallies with their perceptions.

The three relevant sections of the 08 November 2012 Board resolution are:

Resolved (2012.11.08.01), the Board directs the CEO to launch a new effort to redefine the purpose of collecting, maintaining and providing access to gTLD registration data, and consider safeguards for protecting data, as a foundation for new gTLD policy and contractual negotiations, as appropriate (as detailed in the 1 November 2012 Board paper entitled, "Action Plan to Address WHOIS Policy Review Team Report Recommendations"—ICANN Board Submission Number 2012-11-08-01 [PDF, 266 KB]), and hereby directs preparation of an Issue Report on the purpose of collecting and maintaining gTLD registration data, and on solutions to improve accuracy and access to gTLD registration data, as part of a Board-initiated GNSO policy development process;

Resolved (2012.11.08.02), the Board directs the CEO to continue to fully enforce existing consensus policy and contractual conditions relating to the collection, access and accuracy of gTLD registration data (referred to as gTLD WHOIS data), and increase efforts to communicate, conduct outreach on, and ensure compliance with existing policy and conditions relating to WHOIS (as detailed in the 1 November 2012 Summary of the Board Action entitled, "WHOIS Policy Review Team Report Recommendations").

Resolved (2012.11.08.03), pursuant to Article III, Section 5.4 of the Bylaws, the Board directs that the contents of this resolution and rationale shall not be made publicly available until 19 November 2012.

Taking them in parts:

***Resolved** (2012.11.08.01), the Board directs the CEO to launch a new effort to redefine the purpose of collecting, maintaining and providing access to gTLD registration data, and consider safeguards for protecting data, as a foundation for new gTLD policy and contractual negotiations, as appropriate (as detailed in the 1 November 2012 Board paper entitled, "Action Plan to Address WHOIS Policy Review Team Report Recommendations"—ICANN Board Submission Number 2012-11-08-01 [PDF, 266 KB]), and hereby directs preparation of an Issue Report on the purpose of collecting and maintaining gTLD registration data, and on solutions to improve accuracy and access to gTLD registration data, as part of a Board-initiated GNSO policy development process;*

This resolution launches what is now known as the EWG. It is not directly relevant to the specific WHOIS RT recommendations, and that fact that this is the first action listed sent a message (rightly or wrongly) that the Board considered the RT recommendations as secondary. Note also that the title of the document is slightly incorrect, although the document number is correct.

The SSAC report that was used as the rationale for the EWG repeatedly talks about addressing the core issue of why we need WHOIS using words like “first”. The actual recommendation included:

3. the Board should explicitly defer any other activity (within ICANN’s remit) directed at finding a “solution” to “the WHOIS problem” until the registration data policy identified in (1) and (2) has been developed and accepted by the community.

The “defer” reinforced the belief that the SSAC was saying do these things *before* anything else (including addressing the WHOIS RT recommendations).

The SSAC report goes on to address the specific RT recommendations and assigns priorities. The implication is that the high priority ones be carried out immediately, but it is not clearly stated, and in the light of the earlier strong statements about carrying out the new work first and deferring other work, the message to many readers was clear.

At the time the SSAC report was issued, both the SSAC Chair and Vice Chair agreed that there was a distinct potential to read the report this way, but decided to leave it without amendment.

The fact that the Chair was the Board was the former Chair of SSAC added a nice opportunity for conspiracy theorists to believe that the Board had requested the SSAC report to give it the basis for not implementing the WHOIS RT recommendations.

Resolved (2012.11.08.02), *the Board directs the CEO to continue to fully enforce existing consensus policy and contractual conditions relating to the collection, access and accuracy of gTLD registration data (referred to as gTLD WHOIS data)*

Although the reverse of this clause would have been intriguing (that is, instructing the CEO to NOT enforce existing policy and contracts), this clause does confirm the this set of resolutions is not changing any operational issues immediately.

and increase efforts to communicate, conduct outreach on, and ensure compliance with existing policy and conditions relating to WHOIS (as detailed in the 1 November 2012 Summary of the Board Action entitled, "WHOIS Policy Review Team Report Recommendations").

There are a number of problems here. On a mundane level, the document title here is correct, and presumably references the document incorrectly named document cited in the first Resolved. That document is not the one actually used by the Board in its deliberations, since the resolution text and rationale were later deleted presumably because the wording of the Board action was re-worked. However, the title of the Appendix was not changed and remained “*Proposed Board Action and Rationale*”. As such, it is less than clear that this is the actual actions to be implemented. Presumably at times the Board decides to not implement EXACTLY what staff recommends, so the existence of a staff proposal is not proof of Board action.

More substantive, however, is the fact that the Board instructed staff to take actions as detailed in the proposed Board action only with relation to:

- Increase efforts to communicate;
- conduct outreach on; and
- ensure compliance with

existing policy and conditions relating to WHOIS.

Which of the 16 RT Recommendations does this refer to? A cursory review indicates that Recommendations 3 (outreach), 4 (compliance), 5, 6, 7, 8 (data accuracy), 9 (WDRP), 15 (detailed plan) and 16 (annual reports) fall directly within this list. 11 (Internic) and (12, 13, 14 (IDN registration data) can be construed as being included since it is close to impossible (although the current situation!) to have accurate WHOIS information without these capabilities.

That leaves 1 (make WHOIS a strategic priority), 2 (single WHOIS policy document), 10 (privacy and proxy services) left out.

One can disagree with the above classification, but by explicitly saying that staff should implement recommendations only with regard to the three phrases implies that there may be some exclusions, but which those are is a relatively complex exercise for the reader. And by making the long and detailed list of actions and rationales an Appendix of Board briefing document pointed to within the body of the resolution distanced it sufficiently from the resolution as to make it effectively invisible to the all but most meticulous readers. Those to whom this connection was NOT obvious included several members of the ATRT2 until the explicit connection was pointed out to them. And most RT members.

Lastly, Recommendation 15 called for a *detailed and comprehensive plan*. Since ICANN did not explicitly publish such a plan, and in fact staff told the ATRT2 that the “plan” was in fact the proposed actions embedded in the appendix of the briefing document, an exceedingly difficult document to locateⁱ, the perception of there being no plan and thus no action was reinforced.

Resolved (2012.11.08.03), pursuant to Article III, Section 5.4 of the Bylaws, the Board directs that the contents of this resolution and rationale shall not be made publicly available until 19 November 2012.

This clause of the Board motion was apparently inserted to ensure that the full contents would not be made public until the rationale explaining the motion was ready. Unfortunately, a decision was taken to inform the RT (or some subset of it) of the motion before the rationale was available.

Alan Greenberg
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ⁱ Without knowing where Board resolutions are filed, and the exact date of the relevant meeting, a Board action is rather difficult to locate. There is an index of such actions (<https://community.icann.org/display/tap/ICANN+Board+Resolutions>), but it went without updates for quite a long time with this one being added only in June 2013 (the text on the page still says it is current only to 2010). There is a pointer to this index on the ICANN web site, but it is listed under Board documents where it is easy to miss.