WHOIS and Data Protection Policy (incl. Accuracy)

Gabriel Andrews (US Federal Bureau of Investigation)
Laureen Kapin (US Federal Trade Commission)
Kenneth Merrill (US Department of Commerce, NTIA)
Melina Stroungi (European Commission)

<u>Guest Speakers:</u>
Patrick Flaherty (Verizon)
Sarah Wyld (Registrar Stakeholder Group)

ICANN79
5 March 2024

ICANN | **GAC**
Governmental Advisory Committee

Agenda

1. **Background on WHOIS and Data Protection** (15 min)

2. **Registration Data Request Service (RDRS) and Impact of Privacy/Proxy Services** (45 min)
    - Business User Experience with RDRS
    - Law Enforcement Experiences with RDRS
    - Rr Experience with RDRS
    - <u>GAC Q&A</u> on RDRS

3. **Updates** (15 min)
    - Urgent Requests
    - Registration Data Accuracy

4. **Considerations for ICANN79 San Juan Communiqué** (15 min)

WHOIS and Data Protection: Importance to the GAC

Why this is important for the GAC

Per the GAC Principles Regarding gTLD WHOIS Services (28 March 2007), recalled in the GAC Abu Dhabi Communiqué (1 Nov. 2017), the GAC noted they "*continue to reflect the important public policy issues associated with WHOIS services*" including that "*WHOIS data [...] is used for a number of legitimate activities, including:*

1. *Assisting law enforcement authorities in **investigations and in enforcing national and international laws**, assisting in **combating against abusive use** of internet communication technologies;*

2. *Assisting businesses, other organizations, and users in **combating fraud, complying with relevant laws, and safeguarding the interests of the public**;*

3. *Combatting **infringement and misuse of intellectual property**; and*

4. ***Contributing to user confidence in the Internet** as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online.*"

And still relevant when considering compliance with Data Protection Law

The GAC advised the ICANN Board "*it should use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 Principles, including by:*

1. ***Keeping WHOIS quickly accessible for security and stability purposes**, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.*

2. ***Keeping WHOIS quickly accessible to the public** (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications*"

WHOIS and Data Protection: Timeline to New Framework
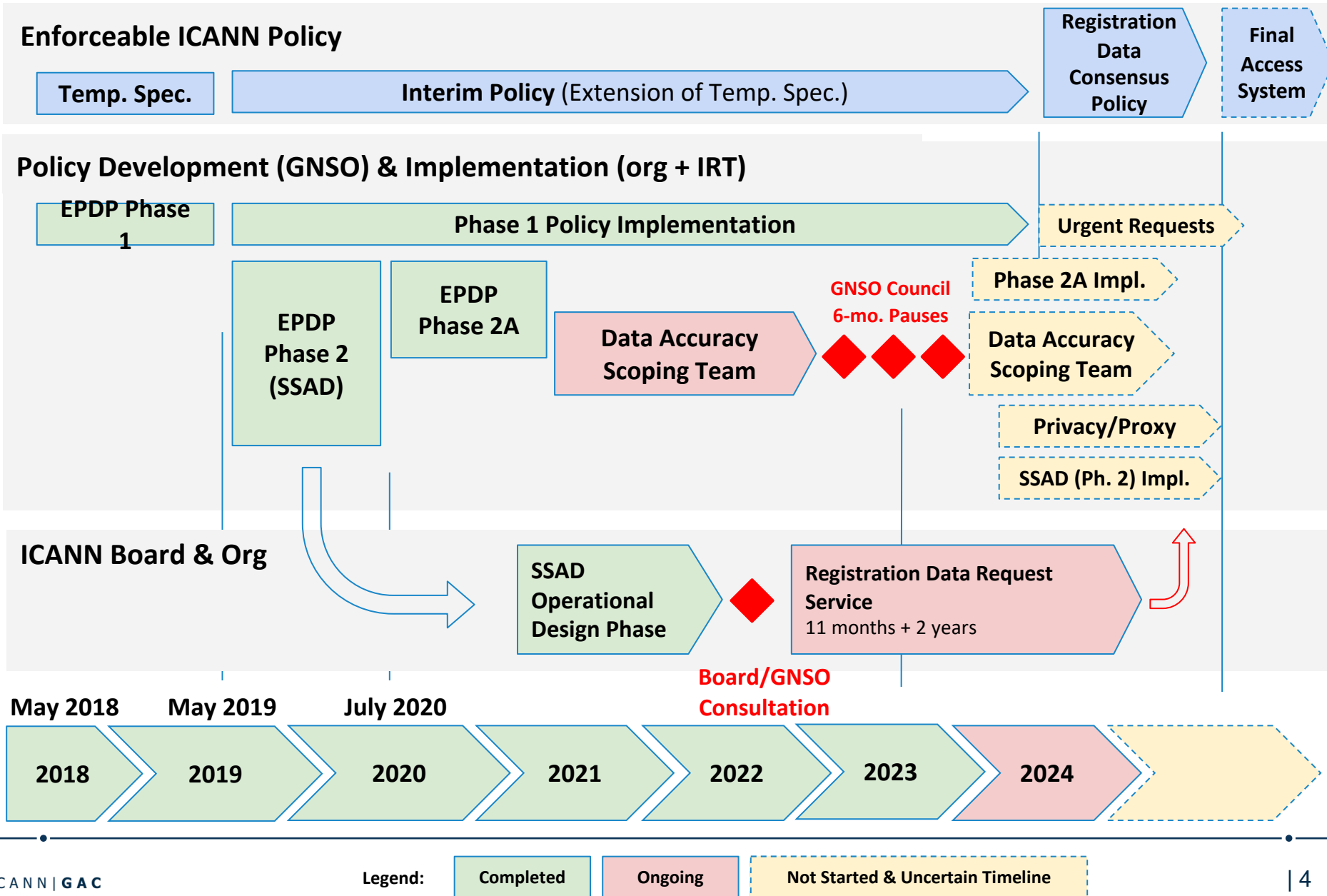
Draft Registration Data Consensus Policy (EPDP Phase 1)

Registration Data Consensus Policy

- The Registration Data Consensus Policy, **is now published (with the exception of provisions related to the timeline for response to Urgent Requests)** and must be implemented by 21 August 2025**.**

  - This Consensus Policy **will become part of ICANN's contractual requirements for Registries and Registrars within 18 months of its adoption** and replace the Interim Registration Data Policy for gTLD (20 May 2019)

  - **The GAC provided input** at several stages of the developments leading to the adoption of this policy.

Timeline for response to Urgent Requests

- **Agreeing on a timeline for response to Urgent Requests for disclosure of registration data** in *"circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation"* **proved unattainable** in the policy implementation process.

- Most recently, the ICANN Board responded to the GAC Chair (11 Feb. 2024) noting that "*t**he Board concluded that it is necessary to revisit Policy Recommendation 18 concerning urgent requests** [...] and the manner in which such emergencies are currently handled"* and indicating that *"[f]or this, we believe that consultation with the GNSO Council is required*".

- The **SSAC has recommended that the policy be substantially reconsidered** to become fit for purpose **and that**, in the meantime, **ICANN gathers and shares data** about Urgent Requests (SAC 122)

RDRS Experiences & Initial Feedback (Business Users)

Business User Feedback

Patrick Flaherty, Verizon

Senior Managing Associate General Counsel

Intellectual Property Law and Policy Group

RDRS Experiences & Initial Feedback (PSWG)

Law Enforcement Experiences

(provided to the Public Safety Working Group)

Gabriel Andrews, Public Safety Working Group

U.S. Federal Bureau of Investigation

RDRS Experiences & Initial Feedback (PSWG)

Noble Intentions

"Free, global, one-stop shop to submit registration data requests to participating registrars."

"Instead of filling out multiple forms with varying sets of required information, requestors will only need to complete a single, standardized form through the service."

/brief tangent - raising awareness of RDRS

ICANN|LOOKUP

Registration data lookup tool

Enter a domain name or an Internet number resource (IP Network or ASN)   Frequently Asked Questions (FAQ)

icann.org

[Lookup]
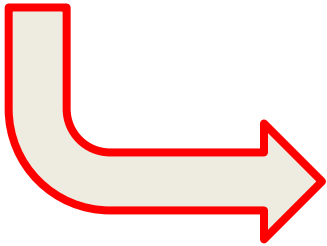
Contact Information

Administrative:

Redacted for privacy:
some of the data in this object has been removed.

To request redacted information, please see rdrs.icann.org

Technical:

Redacted for privacy:
some of the data in this object has been removed.

To request redacted information, please see rdrs.icann.org

Registrant:

Organization: Internet Corporation for Assigned Names and Numbers

Mailing Address: CA, US

Redacted for privacy:
some of the data in this object has been removed.

To request redacted information, please see rdrs.icann.org

RDRS Experiences & Initial Feedback (PSWG)

RDRS Experiences & Initial Feedback (PSWG)

RDRS Experiences & Initial Feedback (PSWG)

Inputting the Domain: ccTLDs

Request for nonpublic registration data

All fields required unless marked as optional

Provide full domain name subject to the request. The data entered must be a fully qualified domain name matching the format *icann.org*.

example.ccTLD

❌ Domain Lookup Fail: ccTLD

The RDRS does not support data requests for domains under country code top-level domain (ccTLD) names. You can find who operates the ccTLD at https://www.iana.org/domains/root/db and contact them directly.

RDRS Experiences & Initial Feedback (PSWG)

Inputting the Domain: Fully Qualified Domain Names

Requests » Create New Request

Request for nonpublic registration data

① ——— ② ——— ③

All fields required unless marked as optional

Provide full domain name subject to the request. The data entered must be a fully qualified domain name matching the format *icann.org*.

[   ]nc.kozow.com

❌ Domain Lookup Fail: Invalid format

The domain name you entered is not in the proper format. Please use the *icann.org* format.

RDRS Experiences & Initial Feedback (PSWG)

Confidential Requests: "Denial", & diverts outside of RDRS
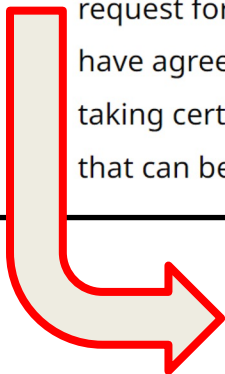
"We are not able to handle confidential request through this platform. If you would like request this data please visit…"

RDRS Experiences & Initial Feedback (PSWG)

Has a Law Enforcement request for data such as subpoena, court order, warrant or any other form of legal request been issued requesting the disclosure of the requested data?

- ● Yes
- ○ No

Indicate if there is any specific date by which the registrar must respond (optional).

YYYY-MM-DD 📅

Please attach a copy of the Law Enforcement request (subpoena, court order) as identified above.

Choose a File (5MB Maximum)

Risk that these look mandatory, when actually optional

Suggest clarifying…
- **court orders**
- **GDPR expertise**
…aren't requirements to successfully use RDRS.

Are you asserting a legal basis under which you would process the requested data pursuant to the European Union General Data Protection Regulation or other applicable law?

- ● Yes
- ○ No

Identify your asserted legal basis.

× ▲

GDPR Art. 6(1)a, data subject consent

GDPR Art. 6(1)b, contractual necessity

GDPR Art. 6(1)c, compliance with a legal obligation to which the controller is subject

GDPR Art. 6(1)d, processing is necessary to protect the vital interests of a data subject or other natural person

GDPR Art. 6(1)e, processing is necessary for a task carried out in the public interest,

Back | Review

RDRS Experiences & Initial Feedback (PSWG)

#s taken from ICANN's RDRS Usage Metrics
Publication date: February 2024
Reporting period: 1-31 January 2024

any typo's are the fault of the presenter =)

Initial Lookups 2,051

Domain Not Found 324

ccTLD, .gov, .mil, etc 349

Registrar not Participating 660

Success 718

Request not Allowed 1,009

Request Made 291

No Request Made 427

Approved 46

Denied 126

Partially Approved 4

Data "Publicly Available" 25

Domain was Transferred 1

Fails to comply w RDRS Legal Terms 23

Rr cannot disclose due to law 40

More info required 30

Other 24
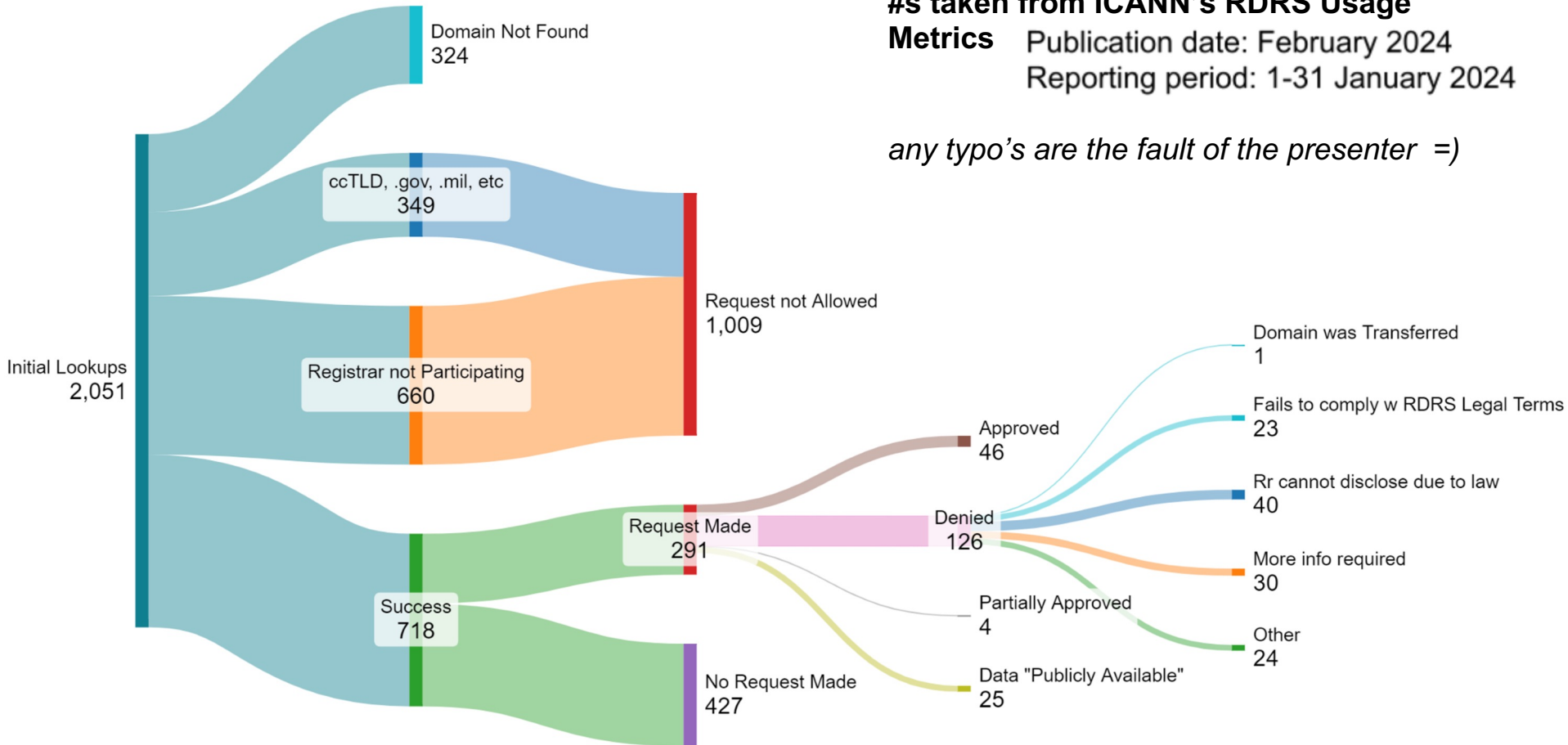
RDRS Experiences & Initial Feedback (Registrars)

Registrars Perspective

Sarah Wyld, Tucows
Policy & Privacy Manager

Registration Data Request Service

Latest Updates (since ICANN77)

- **Urgent Requests changed to "Expedited Review Request"**

<u>**Disclaimer Language to Requestors:**</u>

Disclaimer: Expedited Review Request Clarification
Please be advised that selecting the "Expedited" option for your request does not obligate the Registrar to provide an expedited response. The "Expedited" designation primarily signifies your view that the nature of your request warrants a faster processing time, but it does not guarantee an accelerated resolution.

Do not rely on this Expedited Review Request functionality in emergency situations such as but not limited to an imminent threat to life, serious bodily injury, critical infrastructure (online and offline), or child exploitation. *In these circumstances you should contact the Registrar directly for immediate assistance. For the Registrar's contact information, please refer to this* page.

Please exercise caution and discretion when selecting the "Expedited" option, as it is not a substitute for direct communication in emergency situations, and it is not necessary for all requests. If you select "Expedited Review Request", provide an explanation in the box below.

Registration Data Request Service

Latest Updates (since ICANN77)

- **Confidentiality Request from LEA added**

- **"Expedited" category replaces "Urgent"** (----> further discussion needed on how to collect data for urgent requests)

- **Registrar Onboarding** into the RDRS has started. ICANN [reports](#) (18 October) that:

  - 19 registrars have onboarded RDRS, representing 10% of total gTLD domains
  - Registrars having pledged to onboard represent 45% of total gTLD domains
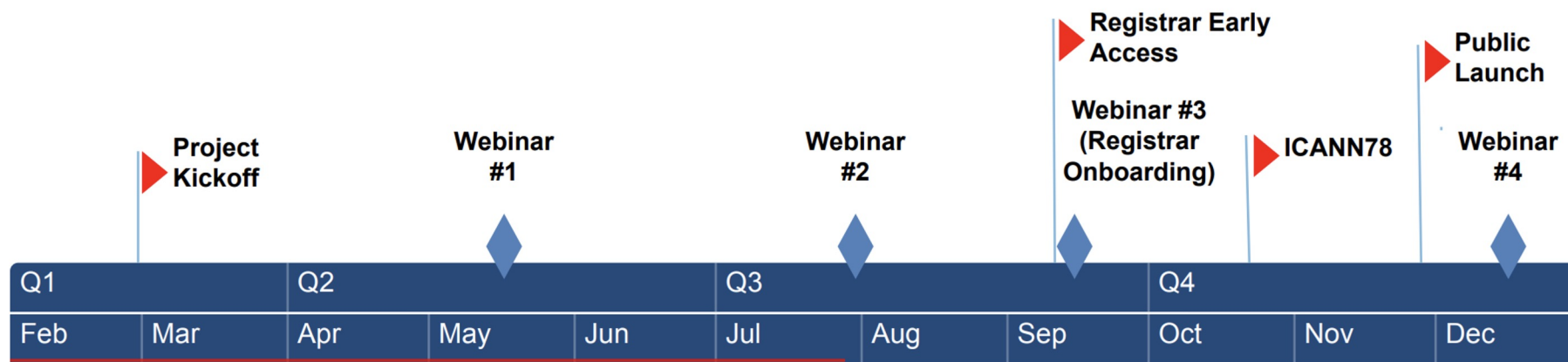
Privacy/Proxy Services

ICANN | LOOKUP

Registration data lookup tool

Try it yourself!
(lookup.icann.org)

Enter a <u>domain name</u> or an Internet number resource (<u>IP</u> Network or <u>ASN</u>)   <u>Frequently Asked Questions (FAQ)</u>

cnn.com|

[Lookup]

By submitting any personal data, I acknowledge and agree that the personal data submitted by me will be processed in accordance with the ICANN <u>Privacy Policy</u>, and agree to abide by the website <u>Terms of Service</u> and the <u>registration data lookup tool Terms of Use</u>.

Registrant:

Name: Domain Name Manager

Organization: Turner Broadcasting System, Inc.

Email: tmgroup@turner.com

Phone: tel:+1.4048275000

Fax: tel:+1.4048271995

Mailing Address: One CNN Center, 13N, Atlanta, GA, 30303, US

This is what Registrant information looks like *without* P/P services

Privacy/Proxy Services

ICANN | LOOKUP

Registration data lookup tool

(lookup.icann.org)

Enter a domain name or an Internet number resource (IP Network or ASN)   Frequently Asked Questions (FAQ)

exampleproxy.com

Lookup

By submitting any personal data, I acknowledge and agree that the personal data submitted by me will be processed in accordance with the ICANN Privacy Policy, and agree to abide by the website Terms of Service and the registration data lookup tool Terms of Use.

Registrant:

Handle: 1

Name: Registration Private

Organization: Domains By Proxy, LLC

Kind: individual

Mailing Address: DomainsByProxy.com 2155 E Warner Rd, Tempe, Arizona, 85284, US

Contact Uri: https://www.godaddy.com/whois/results.aspx?domain=exampleproxy.com

When Proxy services are used, the Proxy information is displayed *instead.*

Privacy/Proxy Services

Latest Developments on Privacy/Proxy Policy

- ICANN org reported (22 October 2023) to the GNSO Council that:

  - Work on Privacy/Proxy Services Accreditation Issues (PPSAI) policy implementation is still paused

  - The assumption is that there are approximately 500 affiliated P/P service providers affiliated with ICANN-accredited registrars currently in existence (The 2017 estimation during the first IRT was 250 providers)

  - ICANN org has done planning for some directions that could be taken in implementation, in anticipation of being able to move resources onto PPSAI once EPDP Phase 1 is completed

  - This week: an informal discussion with members of the previous IRT

  - **ICANN Staff have just released (last night)** a *working draft* analysis of the policy recommendations in the PPSAI Final Report,

    – an assessment of whether each recommendation from the PPSAI would be high, medium, or low level of effort to try to implement today. .

PPSAI Implementation Analysis - Recommendation by Category, Difficulty of Implementing

Registration Data Accuracy

GAC Positions on Accuracy and work of the GNSO Scoping Team

- In the ICANN73 GAC Communiqué, the GAC *"emphasized the importance of holding contracted parties accountable for their compliance with the existing accuracy requirements, as well as the importance of increasing transparency about compliance, in order to inform an evidence-based analysis of these issues"* while noting that *"maintaining accuracy must be considered along with any policy's impact on the privacy needs of all registrants, including those registrants with enhanced privacy needs."*

- In the ICANN74 GAC Communiqué, the GAC called for the Scoping Team to move toward resolution of Assignment 1, stressing that *"contractual requirements are not limited to accurate but also reliable data,"* while welcoming continued work on the development of a Registrar Survey and *"additional and complementary work items, such as testing of accuracy controls in a manner that is not dependent on access to personally identifiable data."*

Registration Data Accuracy

Interim Report of the Scoping Team to the GNSO Council

- On 6 September 2022, the Scoping Team's Interim Report was delivered to the GNSO covering:
  - assignment #1: a "Current Description" of Accuracy
  - assignment #2: Possible ways to measure the current state of accuracy that require or do not require access to registration data.

- The report includes three recommendations in total:

  1. **A Registrar Survey be conducted** on the status of accuracy of their domains under management.

  2. **A Registrar Audit be considered** regarding procedures for determining the accuracy of registration data.

  3. **A pause of the Scoping Team's work on _only_ those proposals that require access to registration data** until such time when it is sufficiently clear whether proposals that require access to registration data are a viable path to assess the current state of accuracy.

Registration Data Accuracy

ICANN77 GAC Washington D.C. Communiqué

- Accuracy of registration data is an important element in law enforcement and cybersecurity investigations, domain name registration management, and other legitimate third-party interests. At the same time, the GAC reiterates that maintaining accuracy must be considered along with any policy's impact on the privacy needs of all registrants, including those with enhanced privacy needs… it would be helpful to receive quarterly updates on the status of the DPAs and to give further consideration to activities that may be resumed by the Accuracy Scoping Team in the interim.

- In response, the ICANN Board indicated that "***ICANN is preparing a comprehensive assessment of what activities it may undertake to study accuracy*** *[…]*".

Registration Data Accuracy

ICANN org [Report to the GNSO Council](#) (19 October 2023)

- **Several deficiencies and challenges** in pursuing the 4 scenarios envisioned to study accuracy:
  - Scenario 1 - Analyze publicly available registration data
  - Scenario 2 - Proactive Contractual Compliance audit
  - Scenario 3 - Analyze a (representative) sample of full registration data provided by registrars to ICANN
  - Scenario 4 - Registrar registration data accuracy survey (voluntary)

- **ICANN has identified alternatives to study accuracy:**
  - Inter alia, Historical data on compliance with current contractual validation and verification requirements