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## **AT-LARGE ADVISORY COMMITTEE**

### **Statement of the ALAC on the WHOIS Policy Review Team – Discussion Paper**

#### **Introduction**

By the Staff of ICANN

Carlton Samuels, ALAC Secretariat and member of the Latin American and Caribbean Islands Regional At-Large Organization (LACRALO), composed the initial draft of this statement, based on discussion of the topic within the At-Large Community.

On 11 July 2011, as requested by ALAC Chair Olivier Crépin-Leblond, At-Large staff posted this draft to a [dedicated wiki workspace](#) and sent out a call for comments to all At-Large members (using the ALAC-Announce mailing list), with a deadline of 18 July 2011.

Based on the comments received, Carlton Samuels revised the draft on 26 July 2011 – creating the ALAC's final Statement (below).

On 26 July 2011, the ALAC Chair requested that Staff open a five-day ALAC ratification vote on this statement, and the statement was submitted to both the public comment forum and to Olof Nordling (the Staff person responsible for the public comment forum).

[End of Introduction]

The original version of this document is the English text available at [www.atlarge.icann.org/correspondence](http://www.atlarge.icann.org/correspondence). Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

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The ALAC welcomes the Discussion Paper as a laudable step in the WHOIS Review Team's goal to solicit structured feedback from the community as guidance for its continued work.

Notwithstanding, we would have liked to see additional Discussion Papers that sought to define the problems regarding the current WHOIS definition, utilization and compliance that are properly before the Review Team for exploration and advice to the Board and global ICANN community. We also heartily endorse the series of community-specific conversations that the Review Team hosted during the ICANN 41st International Meeting in Singapore, at which time members of the ALAC and others of our community participated and observed.

The ALAC is on record as to its concerns with aspects of certain WHOIS-related matters from which we do not retreat. (See [ALAC Statement on the Whois Review Team's RFC on Scope of Work and Roadmap, Outreach and Action Plans for Whois Review Exercise](#).) And having participated and observed the interactions with other communities, we are now more convinced than ever that the single most important objective for the Team is to report a perspective and/or recommend a set of policy initiatives or refinements to existing policy that realize a balancing of the competing interests with regard to the entire WHOIS ecosystem. We are particularly interested in the possibility that, once executed as proposed, the Team would be in a position, in the near to mid-term, to identify and define all of the problems regarding WHOIS, prioritize their impact on consumer trust and confidence in the domain names system and make an unambiguous recommendation as to areas of need and focus of the correctional policy work.

With respect to process and while our community has concerns about whether this new consumer-focused study now authorized by Board funding (see [Affirmation of Commitments, paragraph 9.3.1](#)) will add any new information, the ALAC on general principle will always be for more and complete information as possible on this knotty issue, if only to satisfy ourselves that all possible sources of information and the interests of all sectors are fully aired and considered before a decision. To reiterate, the ALAC believes that this Review Team, whether embracing or rejecting several related principles, must pronounce its decisions unambiguously. It is our view that this Team must treat with and declare (1) whether the WHOIS construct as originally devised and for the purpose intended is still necessary, (2) whether the WHOIS dataset as originally determined remains fit to its original purpose, and (3) whether the several identifiable uses made of both the WHOIS data and processes that have expanded the original intent are useful and in the public interest.

In reference, we would surely expect recommendations from the Team as to whether these additional uses made of WHOIS are within the terms and intent of the Registrar Accreditation Agreement (RAA) and, as such, are to be embraced by the global community and, by virtue of this embrace, are in the remit of ICANN Compliance. In the end, answers to these questions will allow thoughtful interpretations as to (1) whether the present WHOIS dataset is good and sufficient to

meet these needs and likely others that might be contemplated, (2) whether the WHOIS information processes used to meet WHOIS information compliance and now in production are fit to the purpose. Using this framework, for example, the Team may be able to acknowledge the instance of Privacy Proxy Services and the role they play in the WHOIS ecosystem and chart and recommend some workable solution that acknowledges and fully embraces privacy concerns of the community, including ways that these may be answered in a balanced way.

With regard to compliance, the ALAC now believes that maybe the time has come for a change in the philosophical approach to WHOIS compliance. Over the years, it has become almost an article of faith that ICANN Compliance is responsible for WHOIS data accuracy. There is also widespread acceptance that the registry/registrar community is responsible and must bear the cost and burden of both data accuracy as well as availability. The lowered expectations of registrants in this area are often remarked. We now acknowledge the complexity of these issues and on record, reject these views as too unilateral and simplistic in definition and, thusly, undermine the opportunity to be effectively addressed.

Compliance in particular has a great need for a balanced approach, given the three sets of actors – registrants, registrars and ICANN Compliance. Undoubtedly, WHOIS data accuracy is a cost/value proposition with differing perspectives from registrants as original data providers and registrars as collectors and hosts for the data and users of the WHOIS dataset. We do not doubt that 100% accuracy is laudable as an objective. But we recognize that, as a practical matter, 100% accuracy may just be unobtainable in the present dispensation and places an unfair burden on one set of actors in the WHOIS triangle. In fact, this objective creates an insurmountable threshold for ICANN Compliance, even with its best effort and more resources available to them. We believe that the all-round public interest may be better served by recognizing that the risks from the fraudulent actions of bad actors are not the same throughout the WHOIS data cycle but tend to be cyclical – higher following the establishment of new domains and decreasing thereafter. Neither is it rational for the same risk in class or kind to be ascribed to all domains; domains used primarily for support of business transactions on the Web have a higher risk of consequential fraudulent activities than do those used for more personal or informational pursuits. As such, certain adjustments in approach to compliance and our expectations of the impact from compliance might benefit from a change in the philosophical construct of compliance and the processes used to affect the assurance of compliance.

The ALAC remains keenly committed to the Review Process and awaits the outputs with heightened anticipation.