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**AT-LARGE ADVISORY COMMITTEE**  
**ALAC Statement on the WHOIS Policy Review Team Draft Report**  
**Introduction**

By the Staff of ICANN

Carlton Samuels, ALAC Vice Chair and At-Large member from the Latin American and Caribbean Islands Regional At-Large Organization (LACRALO), composed an initial draft of this Statement after discussion of the topic within At-Large.

On 29 January 2012, this Statement was posted on the [At-Large WHOIS Policy Review Team Draft Report Workspace](#).

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested At-Large Staff to send a call for comments on the draft Statement to all At-Large members via the ALAC-Announce Mailing List.

On 14 March 2012, the Chair held a vote on this Statement at the 43<sup>rd</sup> ICANN Meeting in San Jose Costa Rica. Staff confirmed that the vote was quorate with 13 votes in favor, 0 against, and 1 abstention.

The Chair then requested that the Statement be transmitted to the public comment process, copying the ICANN Staff member responsible for this public comment topic.

[End of Introduction]

The original version of this document is the English text available at <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.

## WHOIS Policy Review Team Draft Report

The ALAC concurs unanimously with the Review Team's judgment that the WHOIS construct is broken and we support the tone and tenor of almost all of the twenty (20) recommendations made by Team for relief and/or remedy of existing disabilities. Going into this review process, the ALAC outlined our anticipations in our [Statement of March 2011](#). We are pleased to see that for the most part, our concerns were considered. However, details of the recommendations grouped under "Data Access" invite some residual concerns and for these reasons, we reserve judgment and offer our own perspectives.

The ALAC is pleased with the Review Team's acknowledgement that this WHOIS policy framework is properly within the purview of the Affirmation of Commitments. In this context, they affirmed our principled position: regardless of the vehicles or conduits used for policy implementation and enforcement, we endorse the equal representation of **all** ICANN community interests in the development of a WHOIS policy framework and their settled consensus should be reflected in all aspects of WHOIS implementation and enforcement. We therefore welcome the Review Team's recommendation in favour of 'a clear, concise and well-communicated' WHOIS policy that drives its development, thru implementation and enforcement. In this context, we see an expansion in the role that Cross Community Working Groups should play in further WHOIS policy development as a fit and proper response.

We do not anticipate a retreat from these positions: The ALAC believes that the public interest rationale for a WHOIS service and its contextual implementation remains and retains our support; it is absolutely required as a starting point for redress of grievance. We insist there should be no hindrance placed on the ordinary Internet user with regard to access of WHOIS data. In this context, we summarily reject the concept of differentiated access – via so-called white-listed IP addresses – some jurisdictions seem to be proposing as exception to otherwise embargoed WHOIS data under the guise of the 'privacy' retention of personal data. The ALAC also reiterates our fulsome support for enforcement of a purposeful WHOIS data accuracy regime without delay.

With respect to privacy and WHOIS, we acknowledge competing views in our community. The arguments intersect at the nexus of several fundamental principles; information rights vs. privacy vs. necessity vs. transparency vs. predictability. In context, this ALAC seeks to espouse a general principle that prioritizes and accepts some measure of convergence between competing principles.

We plainly accept the Internet as transnational and a perfect embodiment of the common; meaning a global collection of shared resources to the use and benefit of all of the world's peoples. The crucial distinction we recognize is that while data or content use is global, regulatory practice and/or enforcement tends to the local. As such, we have long recognized that the cross-border nature of Internet resources makes for persistent jurisdictional problems, especially those that tend to be narrowly nationalistic in outlook. Increasingly, we are witness to the development of regimes for collaboration and concurrent jurisdiction between and among metropolitan countries, especially with matters pertaining to law enforcement. We note the dissonance occasioned by class distinctions between 'natural' and 'legal' persons in the several jurisdictions.....and all that this implies for the virtual world. It is within reason to accept that even in this context, deception or unfair practices can be accommodated.

We accept that for the virtual world, the Domain Name System allows the connection of each of us to all of us; North and South, East to West. And in context of generic Top Level Domain structures, define a set of common pool resources, inclusive of WHOIS data. In furtherance of the global public interest, the ALAC has a duty of care to speak out and ensure that management or control initiatives for such resources are not

determined by the whims of hegemony or the cynical calculations of exceptionalism. We must look beyond the rhetoric.

It cannot be right for a national law or set of national laws to be deemed as superseding all other considerations. And while there is a time-honored tradition that parties to a contract may choose the legal jurisdiction to which they will submit for binding claims and judgments, we hardly think it useful in this 'one-to-many' relationship of common-pool resources for a claim of suzerainty of any particular national law or, set of laws. It is not unknown for members of a community to cede certain rights to be a part of a community. The Internet remaining as a global commons is worthy. And so we believe in extant case that it is not only politic but right for members of this global community to devise binding WHOIS rules and expect due respect for them from external parties, including governments.

The At-Large is properly mindful of claims to privacy for one or other purpose and willingly accede accommodation for such claims, so long as these do not degrade the ability of any user to effectively seek redress of grievance. Truth be known, what we have are persons, both natural and legal and for whatever reason, wishing to be on the commons but not of the commons. First, we cannot concede that commercial entities should prevail on any claim of a right to privacy. But we would wish to err on the side of caution and acknowledge that for perfectly reasonable political purposes, anonymity is sometimes good and necessary; we concede common cause and vouchsafe the anonymity of the [political] pamphleteer. This aside, we hold that redress begins with knowing who is liable and, where to find them, all relevant protocols observed.

In this context, we should care less whether privacy rights or claims are connected to a natural person or a corporation. In our view, the defining matter/ issue in the proxy relationship is an acceptance and adoption of certain rules. The ALAC accepts the RAA as fit and proper for enshrining WHOIS requirements. The ALAC further recommends that WHOIS proxies be regularized and privacy registrations accommodated so long as: a) the proxy provider acts on the expressed actual authority of the registrant b) the proxy provider accepts strict liability for the registrant on whose behalf it acts.

The ALAC extends its congratulations to the Review Team for what it considers one of the most exhaustive processes ever enabled to meet inclusion and transparency goals as it sought to explore the views of the entire ICANN community in this very important piece of work.