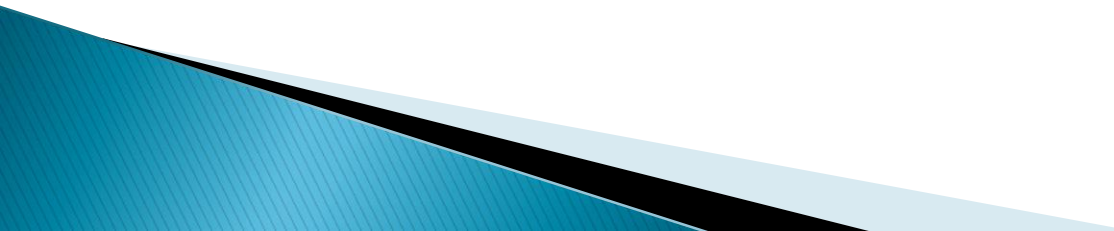# Future of WHOIS: Proposals of ICANN and Legal Assessment

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What is it about

- WHOIS Review Team of ICANN (2010−2011)

- Expert Working Group (EWG) of ICANN (2013)

- Legal Concerns of EWG proposals (July 2013)

WHOIS Review Team: {hi}story

- The WHOIS Review Team (WRT) has been constituted under the Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers of 30 Sept. 2009

- Composition: 15 members from different constituencies

- Work on Draft/Final reports: Dec.2010–May 2012

- WHOIS RT link: https://community.icann.org/pages/viewpage.action?pageId=33456480

WHOIS RT Recommendations *vs.* ICANN Board Decision (Nov.2012)

What was recommended by WHOIS RT	What was being iimpelented after the decision of ICANN Board
2. Board should oversee creation of a **single WHOIS policy document,** and reference it in agreements with Contracted Parties	The Board noted the lack of a single policy (the WHOIS RT's conclusion) and said "These presently available conditions and policies should be **publicly available from one source**." The result (that can be viewed at http://www.icann.org/en/resources/registrars/whois-policies-provisions) is largely **a set of pointers to various policy documents and contractual terms**. The end result does not meet the desired target of having the WHOIS requirements in an understandable form.
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.	New 2013 RAA includes additional enforcement provisions and sanctions applicable to registrars, registrants, and resellers with regards to WHOIS. New gTLD Registry Agreements include enhanced WHOIS obligations, however **ICANN received resistance from the contracted parties** during negotiations **resulted in language that differed from original proposals**.
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	**IETF WEIRDS Working Group currently evaluating** technical protocols. Once adopted by the IETF, new gTLD Registry Agreement and New 2013 RAA include commitments to adopt new protocols. ICANN is **commissioning a Study to Evaluate Available Solutions** for the Submission and Display of Internationalized Contact Data.

Expert Working Group

- EWG: The Expert Working Group on gTLD Directory Services is *first step* in fulfilling the ICANN Board's directive to help *redefine the purpose and provision of gTLD registration data* to help the ICANN community (through the Generic Names Supporting Organization, GNSO) <u>create a new global policy for gTLD directory services</u>
  - Replacement of current WHOIS standards and procedures

- The EWG proposed a paradigm shift – a new system in which gTLD registration data is collected, validated and disclosed for permissible purposes only, with some data elements being accessible only to authenticated requestors that are then held accountable for appropriate use.

- The initial report of EWG was presented in Durban (ICANN Meeting, June 2013)

- Further information available at https://community.icann.org/pages/viewpage.action?pageId=40175189

Proposals of EWG (*paradigm shift*)

- **Key elements of ARDS (Aggregated Registration Data Service):**

  - ARDS serves as an aggregated repository that contains a non-authoritative copy of all of the collected data elements
  - Each gTLD registry remains the authoritative source of the data
  - Requestors apply for access credentials to the ARDS
  - Registrars/Registries are relieved of obligations to provide Port 43 access or other public access requirements
  - ARDS would be responsible for performing validation services
  - ARDS is responsible for auditing access to minimize abuse and impose penalties and other remedies for inappropriate access
  - ARDS handles data accuracy complaints
  - ARDS manages licensing requirements for access to data

- **ICANN contracts with an international third-party provider to develop and operate the ARDS**
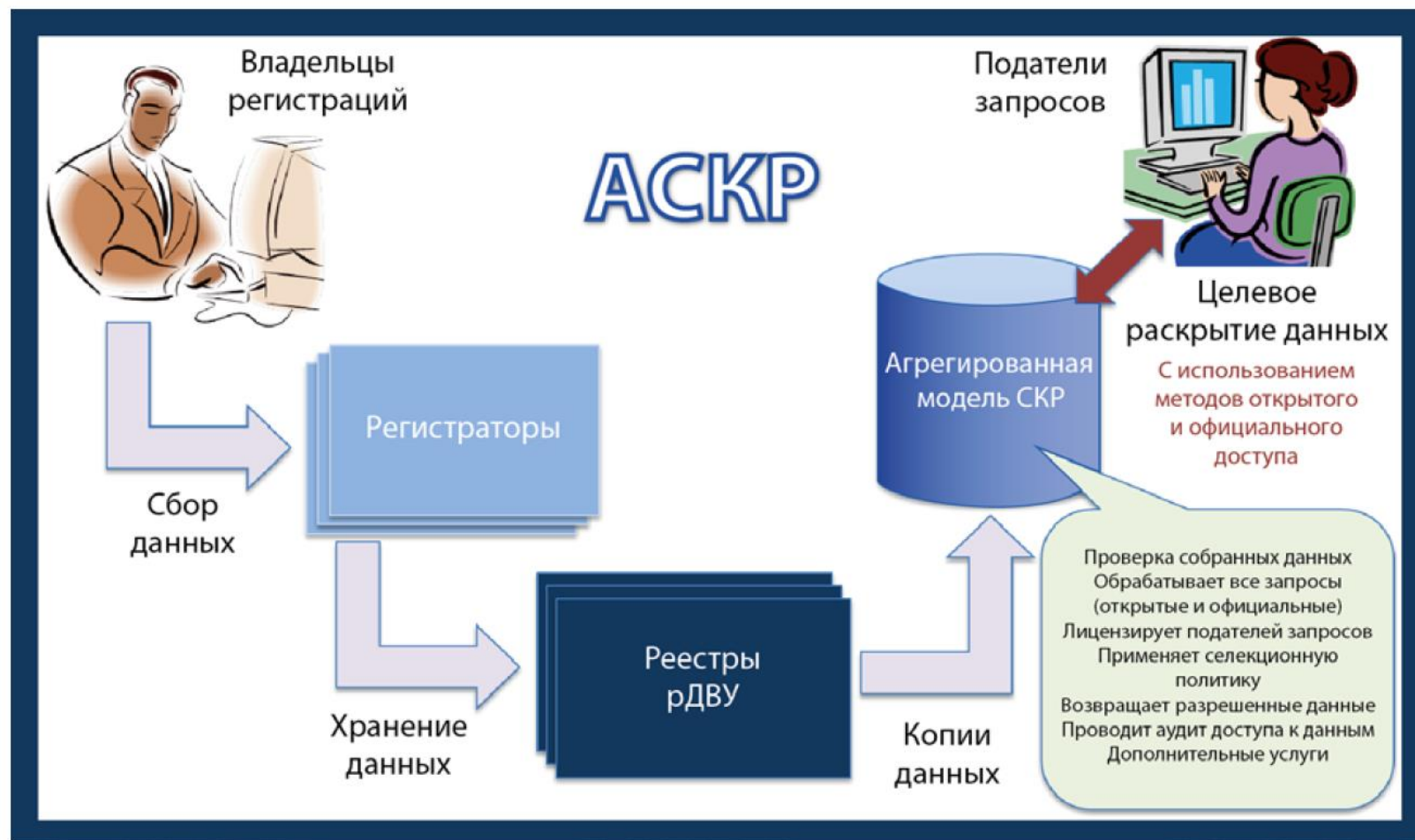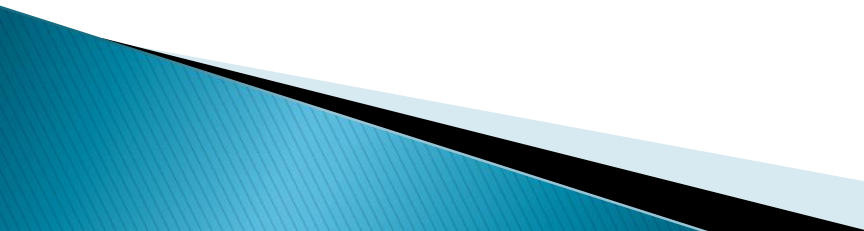
How the new system is visualized by ICANN

Рис. 4. Агрегированная модель СКР

How it can (should) be assessed

- EWG proposals (as reported in Durban, June 2013) in the **framework of applicable ICANN procedures, accountability and transparency**

- Centralized approach: **compliance with the existing legal framework and national laws**

- New ARDS: *gTLD + ccTLD* **or** *gTLD vs. gTLD* ?

- Language of the proposals: compliance with national legal practice and traditions

Accountability and Transparency

- Do the proposals of EWG **correspond to the WHOIS RT recommendations** (as assessed by the ICANN Board) ?

- Was (is / will be) the process of promoting and implementation of EWG recommendations **transparen**t? Is it in line with all applicable **internal procedures**?

- What about the famous **multi-stakeholders approach** ?

- Will the {mostly negative} **community feedback be taken into account** while final decision on EWG proposals is taken by the ICANN Board ?

Compliance with existing legal framework

- National legislation on (personal) **data protection**

- "**Licensing**" of the domestic law-enforcement agencies to access ARDS data
  ◦ Hard to imagine Russian FSB (or Chinese State Security body) applying for any kind of 'license' to get ARDS data

- **Centralized database** vs. existing distributed WHOIS system

- **Coexistence** of the 'old' ccTLD WHOIS-like policies and the proposed 'new' ARDS

(General) Language issues

- **Natural** (e.g.Russian) **language**
  - ◦ Терминология, применяемая в документах **национальных регистратур и регистраторов**
- Wording of the **domestic legislation**
  - ◦ Терминология, применяемая в **законах и правовых актах национального уровня**
- ICANN Language
  - ◦ Терминология, **«принятая» в ICANN** и требующая дополнительных разъяснений

A Next Generation Registration Directory Service (2013)	This **is an initial** report from the Expert Working Group on gTLD Directory Services (EWG) providing **draft** recommendations for a **next generation** gTLD **Registration Directory Service** (the "RDS") to replace the current WHOIS system	Настоящий документ **представляет собой** отчёт экспертной рабочей группы (ЭРГ) с рекомендациями по замене существующей системы WHOIS на **службу каталогов регистрации рДВУ («СКР») следующего поколения**	This is a [**initial –missing**] report of the Expert Working Group on [**draft – missing**] recommendations to replace the existing WHOIS system with the office (service) of **the catalogues of registration of the generic** Domains of the Top Level (**abbreviation never used in Russian**) of the following generation	Настоящий документ является предварительным отчётом Экспертной рабочей группы (ЭРГ) с рекомендациями по замене системы WHOIS **справочным сервисом нового поколения («ССНП») по** регистрационным данным доменов общего пользования
(multiple documents)	**registry**	**реестр**	register (list)	регистратура
(multiple documents)	**registrant**	**владелец регистрации**	owner of registration	администратор домена
(multiple documents)	**generic** domain names	**родовые** домены	ancestral, tribal domains	домены общего пользования

▸So let's work together ☺

Thanks for your attention!