



Comments of Intellectual Property Constituency

December 4, 2015

The Intellectual Property Constituency (IPC) of the GNSO appreciates this opportunity to comment on the proposed removal of searchable Whois from the .MEET registry agreement. <https://www.icann.org/public-comments/meet-proposed-amendment-2015-10-22-en>

IPC does not object to the request of the new registry operator of .MEET to remove from its registry agreement with ICANN the obligation to provide a publicly accessible Whois service which can be searched by multiple data elements and using Boolean search capabilities (“searchable Whois”). With some caveats noted below, we would not expect to object to similar requests in the future. However, it is important to place this issue in context.

The Whois service for gTLDs for which ICANN assumed stewardship at the organization’s inception was a searchable service. ICANN inherited a .com/.net/.org Whois service compliant with RFC 1580 that could be searched on a variety of data elements, such as by e-mail address appearing in the Whois results. Under ICANN’s stewardship, this service was rapidly allowed to degrade.¹ Today, very few gTLD registries or accredited registrars offer searchable Whois services that could, for instance, enable search by registrant as well as by domain name, and thus identify multiple registrations by the same registrant.

When ICANN launched the still-current new gTLD process, IPC and a number of other commenters urged it to repair the deterioration it had allowed to occur, at least in part, by mandating searchable Whois as a feature of new gTLDs, as it had done with a few of the gTLDs delegated in the previous “sponsored gTLD” round. ICANN declined to do so, and IPC publicly expressed that it was “disappointed that ICANN has backed away from the provisions of 3 of the most recent registry agreements, and will not require new gTLDs either to offer a fully searchable Whois at the registry level, or to ensure that all registrars do so.” See IPC Comments on Proposed Final Applicant Guidebook, Dec. 9, 2010, at 11.² Thus, while the new gTLD

¹Indeed, as early as December 2000, ICANN’s General Counsel concluded that “most registrars appear not to be in compliance with the requirement for true ‘Whois’ service,” one that offered the features, such as greater searchability, of the Internic Whois that preceded the introduction of competition in gTLD domain name registration. See <http://www.icann.org/en/committees/whois/touton-letter-01dec00.htm> .

² These comments re available on the IPC website at <http://www.ipconstituency.org/storage/position-statements/2010-public->

registry operator for .MEET is correct that searchable Whois is not a mandatory feature of new gTLDs in the current round, IPC continues to believe that searchable Whois should have been required for all new non-.BRAND gTLDs.

Instead of requiring new gTLD registries to offer searchable Whois, ICANN decided to award an additional point in the evaluation process to those applicants that chose to offer such a service, subject to certain conditions.³ The public comment notice states that offering such a service “is associated with 2 points in the Initial Evaluation of the application.” Evidently, the original applicant for .MEET proposed to offer a searchable Whois service, and benefitted from these additional 2 points in its initial evaluation score. The evaluation report on .MEET (see <http://newgtlds.icann.org/sites/default/files/ier/viun4exoaqie2hl0qojm7uvi/ie-1-868-85241-en.pdf>) indicates that the application received 28 points for technical and operational capability, with a 22 point score required to pass. Thus, it seems clear that any additional evaluation points attributable to the application’s proposal to offer searchable Whois were not determinative of whether it passed the Initial Evaluation. Were the contrary the case (i.e., if the application’s technical and operational score were 23 or 22), a much different scenario would have been presented. Accordingly, while IPC would not in principle object to modification of the registry agreement to eliminate searchable Whois for any new gTLD (following an opportunity for review and public comment on the contract modification), our position would be quite different if the application would not have passed evaluation but for its proposed offering of the service.⁴

IPC’s non-objection is subject not only to this caveat (i.e., that the application would have passed evaluation even had it not offered searchable Whois), but also to two other conditions. The first is that the modification does not have any adverse impact on the offering of publicly accessible Whois service by the registry.⁵ Second, IPC reserves the right to re-evaluate this position should it appear that this modification leads to unacceptably reduced availability of searchable Whois service for this registry from third-party (non-registry) sources.

Consistent with these caveats, IPC rejects the assertion made by the .MEET registry operator in its RSEP submission that dropping the searchable Whois service would benefit the privacy interests of registrants, at least without any acknowledgement that, if this were so, it would be more than counterbalanced by a detriment to all Internet users who depend upon

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[comments/1.%20IPC%20Comments%20on%20the%20Proposed%20Final%20New%20gTLD%20Applicant%20Guidebook%202010_12December_09.pdf](http://www.icann.org/comments/1.%20IPC%20Comments%20on%20the%20Proposed%20Final%20New%20gTLD%20Applicant%20Guidebook%202010_12December_09.pdf).

³ Some of these conditions remain objectionable. As IPC noted in its December 2010 comments cited above, “We welcome the incentive provided in application criterion 26 for applicants to offer such a service, but reject the conclusion that any ‘extra point’ for such a service would be forfeited if the applicant chose to make the service available to the public at large.”

⁴ In future requests for public comment regarding searchable Whois services in new gTLDs, we recommend that ICANN disclose the evaluation score and whether any additional points were awarded due to the proposal to offer the service.

⁵ In this case, according to the excerpt contained in the public comment notice, “Google Registry will continue to comply with all other WHOIS requirements set forth in the .MEET registry agreement.”

accurate and accessible Whois data to protect their rights, safeguard their families, and in general to know with whom they are doing business or otherwise interacting online.

Thank you for considering the views of IPC.

Respectfully submitted,

GNSO INTELLECTUAL PROPERTY CONSTITUENCY
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