Registries Stakeholder Group Statement

Issue: Revised Proposed Implementation of GNSO Thick Whois Consensus Policy Requiring Consistent Labeling and Display of RDDS (Whois) Output for All gTLDs

Date statement submitted: December 11, 2016

Reference URL: https://www.icann.org/public-comments/rdds-labeling-display-2016-10-21-en

The Registries Stakeholder Group (RySG) appreciates the opportunity to comment on the second proposed implementation of the Registry Registration Data Directory Services Consistent Labeling and Display Policy (CL&D Policy). We strongly support the revisions made to the CL&D policy since it was initially published through the July 26 implementation notice, namely to remove the requirement to implement the Registration Data Access Protocol (RDAP).

Further, we believe that the implementation course for the CL&D policy exemplifies serious issues with the public comment process and ICANN staff's approach to policy implementation. These include maximalist approaches by staff to policy implementation, and cursory treatment of issues raised during the prior public comment process. We are not requesting further changes to be made to the current iteration of the policy, but we believe that it is important to go on record with these concerns so that they can guide further policy implementation. They represent recurrent issues in ICANN staff's handling of the bottom-up, multi-stakeholder policy development process.

The RySG supports the removal of the references to implementation of the Registration Data Access Protocol (RDAP) and the associated Operational Profile from the CL&D Policy.

As noted in comments by the RySG and some of its individual members during the prior comment period on CL&D Implementation, as well as in our reconsideration request, RDAP is outside the scope of the Thick Whois PDP recommendations. The RySG's concerns with the inclusion of RDAP were compounded by the introduction of a requirement to implement the RDAP in accordance with an Operational Profile that was introduced unilaterally by ICANN staff via the CL&D Policy. The RA text regarding RDAP implementation only requires implementation of the IETF standard itself. It does not allow ICANN to overlay additional requirements and policies in lieu of actual policy development.

Therefore, we strongly support the retraction of the the prior implementation notice that conflated these two issues by the removal of the RDAP reference from this version of the proposed CL&D Policy. These changes bring the text of the CL&D Policy in line with the consensus policies developed by the Thick Whois PDP and address some of the issues around scope that were raised during the prior comment period.

We acknowledge the requirements to implement RDAP provided that it is commercially reasonable to do so and that ICANN provides the requisite notice to registries. We are prepared to implement RDAP downstream in accordance with these conditions.

The implementation course for the CL&D policy exemplifies a maximalist approach by ICANN staff to policy implementation.

We note the comment made by ICANN staff in the CL&D Policy that "ICANN's objective in implementing the GNSO Policy recommendation has been to minimize the impact to registrants, end users, and contracted parties." We strongly support this as a priority for ICANN staff in policy implementation; where there is ambiguity in how a particular policy should be implemented, ICANN staff should endeavor to take the narrowest approach that minimizes impact and implementation burden.

We acknowledge that some revisions were made to the proposed policy to minimize its impact, most notably striking the requirement for registrars to implement RDAP and addressing the gaps raised by registrars' non-implementation of the RDAP through minor updates to the CL&D policy. However, these changes were raised exclusively by members of the contracted party house and saw significant opposition from ICANN staff when they were initially raised.

ICANN staff's initial proposed implementation exceeded the scope of the Thick Whois PDP recommendations in several respects. Additions made by staff included incorporating RDAP; operational profile requirements; and new required fields, including the reseller field that would have required further technical work by the IETF. Given the intent to run WHOIS and RDAP in parallel until further policy development work is complete, we do not believe that ICANN's initial proposal to require the RDAP operational profile would have minimized the impact to registrants or end users.

While the proposed implementation has gradually narrowed, it has been in spite of and not because of the effort of ICANN staff. The issues encountered in CL&D implementation process do not exist in isolation. The past years have seen repeated effort by ICANN staff to expand requirements for registries and registrars through clarifications and advisories that circumvent the established community processes. Where possible, staff has attempted to harden these requirements by incorporating them into implementation guidelines for loosely related community policies.

In the future, we urge ICANN staff to actually adopt a principle of minimality at the outset, and not just in the face of community opposition.

The previous public comment period on CL&D Implementation demonstrates a cursory treatment by ICANN staff of Public Comments.

We appreciate the decision by ICANN and the Thick Whois PDP Implementation Review Team to put the revised CL&D Policy out for a further comment period. Public comment periods provide for transparency and public dialog, both of which are integral to the multi-stakeholder model. However, these benefits only exist where public comment periods are meaningful and feedback is duly considered and addressed, either through changes to the policy or through meaningful analysis and response through the staff reports. We do not believe that these criteria were met in the prior public comment periods on CL&D and RDAP implementation.

While some improvements, noted above, were adopted in response to the comments and engagement with the implementation review team, staff overlooked widespread opposition to their RDAP profile raised during the previous comment period. Just as problematically, in response to these concerns, the staff report states the following:

"The RDAP profile is a document that applies to gTLDs, and maps ICANN policy, requirements from the Registry Agreement and the Registrar Accreditation Agreement with the technical requirements of RDAP. Stakeholders from the different communities, and specialties (e.g. policy and technical specialists) participate in the ICANN forum; therefore this forum should capture the comments from the diverse community."

This justification is highly misleading; it falsely implies that the RDAP profile was developed by the diverse stakeholder communities referenced, rather than unilaterally by ICANN staff. Further, this response ignores the underlying question of whether implementation of the operational profile is justified considering significant opposition to the profile on both procedural and substantive grounds. These grounds were raised during the public comment periods by the very community ICANN staff claims to represent. Other comments concerning the excessive scope of ICANN's implementation framework vis-a-vis the actual language of the CL&D policy were not raised at all in the associated staff report and thus did not benefit from response or analysis.

We believe that these issues represent a recurring problem in ICANN staff's treatment of the public comment periods. Had comments from the previous round been duly considered, it is unlikely that a retraction of the implementation notice for the CL&D Policy would have been required, or that a second public comment period would be necessary.