



Comments of the Intellectual Property Constituency on the Next-Generation gTLD Registration Directory Services to Replace WHOIS Preliminary Issue Report

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) appreciates this opportunity to comment on the “Next-Generation gTLD Registration Directory Services to Replace WHOIS Preliminary Issue Report” (the “Report”). See <https://www.icann.org/public-comments/rds-prelim-issue-2015-07-13-en>. IPC members have a strong and abiding need for reliable, consistent access to accurate and comprehensive gTLD registration data. As a result, IPC has actively participated in the development of and discussions relating to the WHOIS system and Registrant Directory Services over at least the past decade. IPC is therefore intensely interested in and will remain an active participant in these further considerations of the WHOIS system, including the Next-Generation Registration Directory Services.

IPC supports the important goals of a system to promote registration data accuracy and to allow for effective access to information to address legitimate needs of Internet users. To that end, IPC supports the creation of this PDP to address the full range of legacy WHOIS and proposed Registration Directory Service (“RDS”) issues. We also support the characterization of the scope of the PDP contained at page 38: “The PDP has been requested to analyze the purpose of collecting, maintaining and providing access to gTLD registration data and consider safeguards for protecting that data, determining *if and why* a next-generation Registration Directory Service (RDS) is needed to replace WHOIS, and then creating policies and coexistence and implementation guidance to meet those requirements.” (emphasis added)

IPC also supports the underlying principle that registration information and access is critical to the Domain Name System infrastructure. IPC applauded the efforts of the EWG in developing a proposed Aggregated Registration Directory Service model to help guide the community to address the shortcomings of the current WHOIS system of distributed Registration Directory Services and believes this PDP to be an essential step in the maturing of the WHOIS Directory Services system. However, we are concerned that many of the observations regarding, and proposed procedures for, the PDP working group (the “Working Group”) may embody conclusions reached by the EWG on issues that should be reserved for the Working Group itself. These include the notion that the current model must be abandoned and cannot be fixed, which should not be accepted as a given, but considered as part of the process. Whether such a complete replacement is necessary remains an open question.

IPC believes that this PDP is a timely and essential endeavor. However, we also note that the Report may unduly weight the issues and considerations of the Working Group toward the conclusions of the EWG Final Report. The analytic and implementation structure proposed by the combined Board-EWG group should be considered a guide rather than a required procedure. While we acknowledge that the EWG report is the most complete and best thought-out analysis of the current WHOIS system to date, we believe the PDP working group should also consider less radical adjustments to the existing system – adjustments that could be implemented without reconfiguring the entire system (a task that could require 5 to 10 years to complete), or even adjustments that could be implemented while reconfiguration is contemplated further. We believe that the Working Group should not be created with the presumption that such radical restructuring is the only solution to the current system’s issues; it should instead identify the successes of the current system as well as its shortcomings and consider how those elements can be incorporated in the new system.

The 11 questions identified in the Report appear to cover the range of issues recognized to date as essential for the Working Group’s consideration of the formulation and operation of the Registration Directory Services. However, the framing of these issues and the scope of the Working Group’s Charter must ensure that the scope of questions and the scope of inquiry are adequate to the task and avoid creating prejudices in the analysis of the issues or the development of Policy. The Working Group Charter must also allow for the inclusion of any issues that have not yet been contemplated but that may arise or be recognized as the community tackles this complicated and multi-faceted project.

As for the process through which the Working Group should conduct its important work, we believe that the process should be more fluid than the extremely well thought-out, but fairly rigid procedures set forth in the Report. Attention also needs to be taken of appropriate scoping of both the Charter and the work of the Working Group itself. This will require consideration of data, in support of which we believe empirical information must be obtained to formulate metrics by which both problems and solutions may be measured rather than postulated.

We also continue to stress that the interests and concerns of intellectual property owners, consumers and consumer protection organizations must be fully considered in developing any new system. These need to be fully taken into account in any appropriate balancing with legitimate and relevant privacy concerns.

IPC generally agrees that the 11 Issues set forth in Section 4 of the report define essential (although potentially non-exhaustive) areas of inquiry and structure. The IPC presents the following comments concerning particular issues or definitions:

Section 4.1, Users/Purposes: The language of section 4.1 seems to presume the conclusion that there should be limits on the access to registrant data -- both on who may obtain access and what information would be available. This should be an open question for the Working Group rather than a foregone conclusion.

Section 4.2, Gated Access: The wording of this issue heading presupposes that the EWG concept of gated access is the appropriate solution to certain WHOIS system issues. We believe this should be one possible approach, but believe the issue needs to be reformulated to allow for other approaches. We also note that the discussion includes no reference to the importance of free access for legitimate purposes. In fact, in a phased analysis, Phase 1 on this issue should conclude with whether there is a need for gated access and the justification for that gated access, if needed.

Section 4.3, Data Accuracy: The PDP should consider the interaction between the new policy and the 2013 RAA. We note that there are several ongoing efforts to improve the current state of the Whois, including those involving data accuracy and standards for privacy and proxy services. These efforts should continue, as it will be a long time before the fruits of this new RDS labor will be realized. The PDP should consider how to best leverage and integrate the community input and the outcomes from currently ongoing efforts.

Section 4.4, Data Elements: In addition, the PDP should not only consider whether existing registration data elements are sufficient for each purpose but also the whether they might be clarified or improved, or whether a new purpose-driven policy framework is needed. The PDP should determine the purposes in a way which adequately reflects the needs of all IP rights holders.

Section 4.5, Privacy: The IPC notes that the ongoing work of the Privacy and Proxy Services Accreditation Issues (PPSAI) PDP Working Group is relevant to these considerations. A well formulated and consensus driven accreditation structure resulting from the work of the PPSAI would potentially render discussion in the context of the proposed Working Group redundant and unnecessary. The IPC looks forward to reviewing the final recommendations of the PPSAI and identifying what issues, if any, remain relevant for discussion in the context of this (and other) PDPs. We also believe that consideration should be given to analyzing privacy concerns and policies separately in order to avoid delaying consideration of the other Issues.

Section 4.6, Coexistence: As noted above, we believe the Working Group should consider whether an entirely new RDS system is necessary. In addition, to the extent that existing gTLDs may continue to utilize the WHOIS system, consideration needs to be given to how the different systems can operate together effectively.

Section 4.7, Compliance: Compliance is essential to any effective system, and we have seen firsthand the issues stemming from unclear, ambiguous compliance policies and murky (and possibly biased) enforcement. The PDP should ensure that the views of the community—including IPC—inform compliance expectations and that these expectations are clearly and unambiguously communicated to all affected parties – not just contracted ones – ensuring transparency in compliance efforts/measures, and promoting effective enforcement. As a member of the ICANN community with a strong stake in the results of this effort, the IPC looks forward to a significant continuing role in developing appropriate compliance expectations and methods.

Section 4.8, System Model: This Section is premature. The Report presupposes that a next generation RDS will be implemented and discusses the system to implement it, rather than waiting for the PDP process to decide IF there should be a next generation RDS.

Section 4.9, Cost Model: This issue appears to presume that there will be a fee associated with accessing registrant data, and that this cost would be borne by the requestor. This would be especially troubling for smaller IP owners and IP owners with numerous enforcement concerns who must access a greater number of registrant records in order to protect their rights and prevent consumer confusion.

Sections 4.10 and 4.11, Benefits and Risk Analysis: IPC has no comments on these sections, as they reflect the high level, open-ended approach that we believe the Working Group needs to perform its analysis and carry out its work.

IPC appreciates this opportunity to express its support for the Report, and to note our concerns regarding the proposed structure of the PDP and the scope of the issues required to be covered. We look forward to a final Report and Charter that takes these concerns and those of the ICANN community into consideration.

Respectfully Submitted,

Intellectual Property Constituency