



Comments of GNSO Intellectual Property Constituency

April 23, 2014

The GNSO Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the Draft Implementation Plan for the WHOIS Online Accuracy and Reporting System. See <http://www.icann.org/en/news/public-comment/whois-accuracy-reporting-11mar14-en.htm>.

IPC is pleased to see progress toward implementation of ICANN's important commitment to "proactively identify potentially inaccurate gTLD registration information." ICANN made this commitment to the community in the Action Plan adopted by the ICANN Board in November 2012.¹ On behalf of the Board, the New gTLD Program Committee reiterated it in June 2013 in response to GAC Advice.² In general, we believe that the Draft Implementation Plan is a positive step forward. However, we do wish to note some concerns.

(1) The draft implementation plan reads much more like a research project than a compliance tool. As a review of the commitments from which it arose clearly indicates, it needs to be both. The WHOIS Online Accuracy and Reporting System is not intended merely to provide empirical data for future ICANN policymaking regarding WHOIS, although that could certainly be an important benefit. It also is – and IPC would argue, is primarily – aimed at making the gTLD WHOIS database more accurate, and making ICANN's compliance function more effective in this regard, by requiring registrars with higher levels of inaccurate listings to take corrective measures to improve WHOIS data accuracy, and requiring registrants whose WHOIS data is inaccurate to correct it. These measures would fulfill the stated goal of the WHOIS Online Accuracy and Reporting System "to improve the overall effectiveness and accuracy of the WHOIS system."³

¹ Appendix to ICANN Board Submission 2012-11-08-01 (1 November 2012)(incorporated into resolution 2012.11.08.02):

"The Board directs the CEO to proactively identify potentially inaccurate gTLD registration information in gTLD registry and registrar services, explore using automated tools, and forward potentially inaccurate records to gTLD registrars for action."

² NGPC Proposal for Implementation of GAC Safeguards Applicable to All New gTLDs (19 June 2013), adopted in Resolution 2013.06.25.NG02:

"ICANN is concluding development of a WHOIS tool that gives it the ability to check false, incomplete, or inaccurate WHOIS data as the Board previously directed staff [citing to resolution in footnote #1 above]....Given these ongoing activities, ICANN (instead of Registry Operators) is well positioned to implement the GAC's advice that checks identifying registrations in a gTLD with deliberately false, inaccurate or incomplete WHOIS data be conducted at least twice a year. To achieve this, ICANN will perform a periodic sampling of WHOIS data across registries in an effort to identify potentially inaccurate records."

The Draft Plan correctly notes that forwarding potentially inaccurate records to registrars for action is “a key requirement” of the overall system, but puts off until later “the operational aspects of this functionality” and “the impact that this new reporting will [sic] system will have on ICANN’s Contractual Compliance operations.” Draft Plan at 3. The “updated implementation plan” that ICANN commits to producing, id., must address this “key requirement” more concretely.

(2) The Implementation Plan should place dialogue with users on a par with dialogue with contracted parties. Previous administrations at ICANN seemed to adopt the stance that compliance issues – including but not limited to WHOIS accuracy – were essentially for negotiation between ICANN staff and the contracted parties whose compliance was being sought. IPC has consistently objected to this approach. Unfortunately, it makes a re-appearance in the Draft Plan, which proposes “initiating a dialogue with the Registrar Stakeholder Group” about the issues noted in the preceding paragraph, but gives no indication that ICANN wishes to engage in a similar dialogue with WHOIS users and their representatives, who also have a vital stake in improving the accuracy and reliability of WHOIS data. While the IPC appreciates ICANN staff’s consistent willingness to discuss these issues with the IPC, the Implementation Plan should reflect equal inclusiveness of other stakeholders in the WHOIS Accuracy and Reporting process.

(3) Efforts that focus on making the WHOIS database as accurate as possible on the syntactic and operational (contactability) levels will be the most effective approach in reducing the population of inaccurate and unusable registration data. The Draft Plan (or more precisely, the NORC Design of Experiment document annexed to it) adopts the typology suggested by the Security and Stability Advisory Committee (SSAC) in its SSAC 58 Report on Domain Name Registration Data Validation. This typology distinguishes among syntactic, operational, and identity aspects of accuracy. See Draft Plan at 6-7.⁴ While IPC agrees this typology is useful, we are concerned that too much weight is being given to the most complex, expensive, and labor-intensive – and least readily achievable -- aspect of verifying the accuracy of WHOIS data: the “identity” aspect. In fact, as the label “operational” strongly implies, the more achievable practical goal is to make the database as accurate as possible in terms of the first two aspects.

Positively identifying domain name registrants is certainly important; but in practical terms, the touchstone of an effective WHOIS system is contactability (which is nearly synonymous with “operational accuracy”). If the contactability aspect is satisfied—i.e. the party listed as responsible for a domain name can be located and reached—then the burden of ensuring that this identified party is in fact the registrant of the domain name can often be dealt with through processes extrinsic to the WHOIS service itself. For instance, if the WHOIS database

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³ Of course, a fully effective system must also include a system of penalties for registrants who provide inaccurate data and for registrars who do not take adequate steps to address significant levels of inaccuracy among their registrants. We recognize that these aspects of the system fall outside the scope of the Draft Plan.

⁴ The Draft Plan summarizes these three aspects of accuracy as follows: “Syntactic: assesses accuracy of WHOIS data by examining syntactic elements such as formats, standards, and logical values. Operational: assesses accuracy of WHOIS data based on practical applicability of information provided in a WHOIS record. Identity: assesses accuracy of a WHOIS record by determining if the information provided can be used to confirm the identity of the registrant.” Draft Plan at 6-7.

can be relied upon to enable delivery of a cease and desist letter to a party who appears to be using a domain name in connection with illegal activities, the party's response to that letter (or to subsequent litigation) helps to resolve whether the third level of accuracy has been satisfied.

By contrast, an approach that focuses on resolution of identity accuracy problems, which are almost impossible to automate and relatively expensive and time-consuming, risks misallocating finite resources. While seeking to establish the "identity accuracy" of every registration in the sample that is found to be syntactically and operationally accurate is a worthy goal and may be attractive to researchers, it delivers far less practical value to the community than would be achieved by, for example, increasing the sample size to be subjected to the cheaper, more automatable syntactic and operational checks.

The Draft Plan's emphasis on the third level of accuracy may reflect an overall bias toward exhaustive empirical research, and away from practical benefits in terms of improvements to the overall accuracy of WHOIS, the primary purpose of which is to enable contact with domain name registrants. See point (1), above. While IPC does not object to pursuing the identity of some subset of the registrations that are found to be completely accurate with regard to syntactic and operational aspects, we urge ICANN to focus first on the syntactic and operational checks to improve WHOIS data accuracy.

(4) As a final point, we must express our disappointment that the means by which ICANN has made the Draft Plan available for public comment falls far short of what should be expected from an organization that seeks to be a model for obtaining and considering public input from the community. First, until a day or two before the expiration of the public comment deadline, neither the public comment page on this topic, nor the entry on the "announcements" page on March 21, contained a link to the document on which comment was sought. Clearly, this discourages public comment from anyone who was not able to track down the Draft Plan in the "Knowledge Center" of ICANN's WHOIS beta site, see <http://whois.icann.org/en/file/online-accuracy-reporting-plan-11mar14-en>.⁵ Second, the Draft Plan refers readers (on page 9, note 7) to an Appendix A; but that document was not initially posted anywhere (although it was made available to IPC after we requested it). Third, although it has long been ICANN's practice to exclude from the calculation of public comment deadlines the 7-10 day periods occupied by ICANN public meetings, also taking into account travel time to and from such meetings, the initial public comment period for the Draft Plan opened on March 11 and closed April 1. This period meets the official ICANN minimum of 21 calendar days, but includes an ICANN public meeting, including pre- and post-meetings announced on the ICANN meeting site, that span an eight day period. Thus, by ICANN's normal means of calculation, and without even taking into account travel time, this public comment period lasted only 13 days. While we appreciate staff's reassurances (communicated at the IPC meeting in Singapore) that April 23 would be treated as the operative deadline, it should not have been necessary to ask for these, if the initial comment deadline had been calculated properly.

Respectfully submitted,

⁵ A new web page, whose creation date was April 22, 2014, has been substituted for the earlier version at <http://www.icann.org/en/news/public-comment/whois-accuracy-reporting-11mar14-en.htm>. This new version contains all necessary links.

Intellectual Property Constituency (IPC)

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