



IPC Comments
Study on Whois Privacy & Proxy Service Abuse
October 22, 2013

The Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the Study on Whois Privacy & Proxy Service Abuse. See <http://gnso.icann.org/en/issues/whois/pp-abuse-study-20sep13-en.pdf>.

The Study provides some statistical evidence of what many IPC members have known for a long time – that domain name registrants engaged in illicit or harmful conduct often obfuscate their identities by using privacy and proxy services or by entering erroneous contact information into the Whois database—generally at a much higher rate than domain name registrants engaged in legitimate activities. As Ed Seaford correctly observed in his public comment, “Our experience is that people use the privacy service to hide their details because of the questionable nature of the registration. . . . We see [privacy and proxy services] as a tool that is predominantly being used for dubious purposes.” See <http://forum.icann.org/lists/comments-whois-pp-abuse-study-24sep13/msg00000.html>.

The Study, though a useful first step, provides an incomplete picture when it comes to theft of intellectual property by wrongdoers who hide behind privacy and proxy services. For example, the Study’s focus on typosquatting rather than more broadly examining trademark infringement and cybersquatting understates the overall level of wrongdoing and privacy and proxy service abuse in this area. Indeed, there are many examples (including in reported court decisions and other matters of public record) of cybersquatting of hundreds of domain names associated with a trademark in which the trademark is spelled correctly, and the experience of IPC members is that many of these domain names are also registered using proxy or privacy services. Even though the authors of this Study declined to study intellectual property issues more completely, it is critical that ICANN action to reform the privacy and proxy system consider and reflect these aspects of and protect against such abuse, particularly considering that intellectual property violations are a common form of Internet wrongdoing.

Despite these deficiencies, the abuse of privacy and proxy services and the Whois database detailed in the Study still shows why we need to create an enhanced system for collecting, validating, and storing complete and accurate domain name registrant contact information.

It also explains why we need a privacy and proxy service provider accreditation program to regulate the privacy and proxy service marketplace more effectively. These needs are even more pressing in light of the imminent roll-out of the new gTLDs. Such an accreditation program should require privacy and proxy service providers to deny use of these services to those who would use them to facilitate harmful activities, while preserving access to those who use the services legitimately. Such a program should also require improved remedial measures for instances where these services are nevertheless abused.

Indeed, IPC recognizes that privacy and proxy services can be used legitimately—for example, by banks, by companies seeking to maintain the security of their confidential information, by businesses undergoing mergers and acquisitions, and by others with legitimate privacy concerns.

IPC appreciates ICANN’s ongoing efforts to facilitate a new registration data service, and to implement a consistent data collection system across all registries, as is required by its Affirmation of Commitments.¹ We hope that the Study findings provide additional incentive for ICANN and the community to redouble their efforts to address the shortcomings of the current Whois database and privacy and proxy services. IPC will continue to provide assistance in addressing these matters.

Respectfully submitted,

Intellectual Property Constituency (IPC)

¹ ICANN’s Affirmation of Commitments requires that it implement “measures to maintain timely, unrestricted and public access to *accurate and complete* WHOIS information.” See <http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm> (emphasis added).