



REPLY COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY

March 31, 2013

The Intellectual Property Constituency (IPC) of the ICANN Generic Names Supporting Organization appreciates this opportunity to submit reply comments regarding the Draft Project Summary Report (Draft Report) of the Whois Registrant Identification Study. See <http://www.icann.org/en/news/public-comment/whois-regid-15feb13-en.htm>.

IPC agrees with the initial round comments that the results contained in the Draft Report are “very useful” [see ALAC comment, <http://forum.icann.org/lists/comments-whois-regid-15feb13/pdfHpRA7K1AYw.pdf>] “successful in producing data that can be used to facilitate future Whois (registrant identification) policy development efforts” [see Registry Stakeholder Group comment, <http://forum.icann.org/lists/comments-whois-regid-15feb13/pdfz3N9CDmu2k.pdf>]. In support of this view we offer the following observations on three aspects of the Draft Report’s findings. The first two concern data that is highly relevant to discussions about requirements for proxy or privacy services, either on an interim basis as proposed in the now-pending draft 2013 Registrar Accreditation Agreement, or in a longer-range plan for accreditation of such services. The third area involves data in the Draft Report relevant to broader questions of Whois accuracy and the feasibility of verifying or validating Whois data.

1. Extent and nature of proxy/privacy services

The Draft Report confirms the findings of previous studies concerning the prevalence of proxy and privacy registrations across the gTLDs. According to the Draft Report (p. 2), 20% of its sample were registered using a privacy or proxy service. Although this is slightly lower than the 24% found in a previous study (pp. 14-15), it still suggests that there are more than 28 million such registrations. If “.proxy” were its own TLD, it would be more populous than all but one of the existing gTLDs.¹

The Draft Report also indicates that privacy services, in which the name of the registrant is publicly displayed in Whois, account for only 3% (10 of 320) of the proxy/privacy service

¹ As of March 26, 2013, there were 142.882 million registrations in the 5 largest gTLDs. Only one registry -- .com -- exceeds 20% of the total. <http://www.dailychanges.com/>

registrations (p. 15). This suggests that the “.proxy” world is one in which no contact information whatever concerning the true registrant – even its name – is made accessible to the public.

The Draft Report also establishes how geographically concentrated the main proxy services are. Based on the Whois data for these services, 74.3% of proxy registrations are associated with services located in a single jurisdiction – the U.S. Three additional countries – Australia, New Zealand, and Canada – account for another 15.6% of these registrations. (Table F.4, p. A-25).

2. Who is making proxy registrations and how are they being used

The Draft Report contains some illuminating and perhaps surprising data on these questions. The picture some have painted of the typical user of a proxy registration is an individual seeking to register a domain name in order to have an address for a family website, or perhaps even to express political or personal views. The data suggests that this picture may be misleading. Compared to the sample as a whole, domain names registered using a proxy service are more likely to be used for “some kind of potentially commercial activity”² – 65% of proxy registrations reflected this use, contrasted with 57% of the entire sample (p. 4). Indeed, “domains registered by a privacy/proxy service were the most likely to be used for some kind of potentially commercial activity,” compared with those registered by legal persons, natural persons, or unknown registrant types. (p. 32) Along the same lines, domains with potentially commercial activity were slightly more likely (22.9%) to be registered using a proxy or privacy service than the 20% observed for the sample as a whole, although the difference was not statistically significant (p. 51).

3. Overall Whois accuracy and verification. The Draft Report also contains valuable data illustrating the persistence of grossly inaccurate Whois data throughout the gTLD environment. For more than 5% of the registrations in the sample (81 of 1600), the Whois data was so poor that it was not even possible to determine in what country the registrant was located (p. 15).³

The concentration of gTLD registrants in different jurisdictions is also relevant to ongoing debates regarding how difficult it would be to verify the physical address of domain name registrants. Table F-1 (pp. A-22-23) shows that 54% of all domain name registrants are located in the United States, according to their Whois data, and that relatively large numbers are located in other countries for which reliable databases correlating names with physical locations

² IPC is puzzled by the Draft Report’s intimation that sites featuring pay-per-click ads might be considered as not associated with potentially commercial activity (see pp. 23-24). Such ads are a prime example of how websites are easily monetized. Nonetheless, the break-out of this use is also illuminating: almost 45% of proxy registrations in the sample were associated with pay-per-click ads, far more than any other category of “registrant type.” (p. A-15).

³ Exhibit 13, on page 33, seems to indicate that it was almost always possible to determine the country for the 320 registrants who were proxy/privacy services (though of course, not at all for their customers). To the extent this is so, it means the gross inaccuracy problem is even worse than stated in the text. For instance, if none of the registrations for which Whois indicated no country were privacy/proxy registrations, then the 81 such registrations would represent over 6.3% (81/1280) of the sample for which registrants were purportedly identified.

may be available. This data should be studied to determine the feasibility of requiring verification or validation of Whois address data, at least for the great majority of gTLD registrations, even if not for all. For example, based on the data in the draft report, a verification or validation requirement that is feasible for the US, Western Europe, Australia/New Zealand, and Canada would improve Whois data quality for well over 70% of all current gTLD registrations.

Respectfully submitted,

INTELLECTUAL PROPERTY CONSTITUENCY
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