Summary and Analysis of Public Comments on *Privacy Proxy Registration Services Study Report*

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Disclaimer: This summary is intended to comprehsively summarize the broad topics and themes found within the public comments relevant to the Privacy Proxy Registration Services Study Report ("Report") http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-14sep10-en.pdf. *It is not an exact replication of the comments, and therefore, not every specific position present in each comment will be reflected in this document. If readers are interested in learning more about specifics or the comments in general, the comments may be viewed in their entirety at* http://forum.icann.org/lists/privacy-proxy-study-report/.

I.   BACKGROUND

To ensure that the public can identify who is responsible for a domain name, a registered name holder is required to provide and update, as needed, its contact information with its registrar of record. This contact information is known as "Whois data." Registrars are required by ICANN to collect and provide free public access to the name of the registered domain name and its name servers and registrar, the date the domain was created and when it expires, and the contact information for the registered name holder, the technical contact, and the administrative contact. Similarly, many gTLD registries are required by ICANN to make these data elements, and in some cases, contact information for billing contacts, available via their own Whois services.

Registered name holders can limit the amount of personal information that is made available to the public through Whois queries of registrar domain name databases. To do so, they can use a privacy service. In other cases, the beneficial user of a registration can utilize a "proxy service" that acts as registered name holder while licensing use of the registration to the beneficial user of the domain.

The ICANN community has expressed a considerable amount of interest in and raised questions about domain names registered using a privacy and proxy service. However, there is an absence of factual information on the prevalence of their use, which is why ICANN conducted this exploratory study.

The objective of this study was to establish an approximation of the percentage of domain names (through a statistical sampling plan) among the top five (5) gTLD registries that used (1) a privacy or (2) proxy registration services.

II.   COMMENT CONTRIBUTORS

During the period of time between 14 September 2010 and 28 October 2010, seven (7) comments were submitted to the public forum.

    The contributors are as follows:

Khoo, David
Volodya (2 comments submitted)
ECTA: European Communities Trade Mark Association
MAAWG: Messaging Anti-Abuse Working Group
INTA: Internet Committee of the International Trademark Association

IPC: Intellectual Property Constituency

III.   SUMMARY & ANALYSIS

While the focus of this study aimed at quantifying the prevalence of domain names registered using a Privacy or Proxy service among the top five (5) gTLDs, the majority of the comments submitted in response to the Report addressed opinions and issues concerning Privacy and Proxy registration that are larger in scope than the intended objective of the study. Most of the comments received state that further Whois studies are necessary. In general, the opinions and issues raised in the comments may be categorized as follows:

> A. The Executive Summary (1 comment received)
> B. Methodology (2 comments received)
> C. Prevalence (4 comments received)
> D. Further Study (5 comments received)
> E. Regulation and the Registrar Accreditation Agreement ("RAA") (3 comments received)
> F. Support for Privacy/Proxy Registration (1 comment received)

Comments concerning each of these categories are summarized below.

> A. The Executive Summary:

Regarding the Executive Summary of the Report, INTA proposes the following edits:

- Rather than provide a full background on the "Whois system, Whois privacy services and Whois proxy services," place greater emphasis on the "empirical results of the study and make greater use of citations to refer readers to background material…"
- The "Executive Summary should incorporate any other important conclusions of the study," such as the study's note that the prevalence of privacy or proxy registrations may be higher than 18%.
- As the statistical sampling was drawn from domains created as of March 2009, the executive summary should state that it may "undercount the proportion of domains registered using proxy services, if as many observers of the domain name system would agree, there has been an increasing trend toward proxy registrations."
- The "Executive Summary should highlight the interdependency between this Report and the other studies that are under consideration or are being conducted by ICANN concerning the Whois system…"

> B. Methodology:

While MAAWG states that the "methodology appears reasonable for a small-scale study," INTA's position is that there are "several places in the Report where the methodology should be clarified to better understand the results and to determine whether they accurately reflect the prevalence of domain names registered using a privacy or proxy registration service."

In particular, INTA seeks clarification regarding the classification method used to determine a domain's utilization of a privacy or proxy service. Regarding the "Initial Classification," INTA's view is that the Report "should explain whether there was some minimum number of domain registrations" falling into the category of multiple domains containing the same registrant name, organization, and address to "initially classify at least one of those registrations as potentially employing a privacy or proxy service." INTA asserts that "If there was such a minimum number required under the initial classification, the

higher the minimum, the more likely that some privacy or proxy registrations were not classified accurately." Further to the initial classification, INTA suggests the Report should state if any subjective criteria was involved in the cases identified in the 'highly likely' category and "the Report should state clearly whether a domain name registration that met only one of the three criteria could be initially classified as using a privacy or proxy service and, if so, the circumstances under which one criteria was deemed sufficient". INTA further requests that, regarding the "Final Classification," the Report should explain the "threshold" implemented by the National Opinion Research Center (NORC) to be "fairly certain" of the privacy or proxy classification.

INTA also seeks clarification on the reason behind why "47 of the 2400 records chosen for the study could not be extracted," and whether those 47 records were "removed from the study," whether they were "replaced with new domains," or if they were "included but were not counted as a privacy or proxy registration." It should be noted, however, that in this section of the original Report, the final approximate number of privacy or proxy registrations would have been higher had the 47 records been included and the reported prevalence percentage also would have increased. Finally, INTA proposes that the Report "include a more detailed explanation" of how the distinction was made between a privacy or proxy registration as it pertains to "91% of the registrations identified as employing a privacy or proxy services had no information to identify the 'beneficial user.'" and the reasons for such a distinction. INTA states its experience that "privacy registrations frequently identify a beneficial user whereas proxy registrations never do."

C. Prevalence

Regarding the prevalence of privacy or proxy registrations, MAAWG states that "the results – that about 20% of domains use a proxy or privacy service, and of those 20%, the vast majority provide no clue to the beneficial user's identity – are consistent with our observations." The IPC further elucidates the results by representing the prevalence percentage in real world figures:

> *As of October 25, 2010, there were 122,270,795 active domain name registrations in the 5 gTLDs included in the NORC sample…Adopting the conservative figure of 18%, and counting only the "proxy registrations," this meant that, for some 20 million gTLD registrations, the current Whois system is completely failing in its objective (as stated in the report) of "ensur[ing] that the community can identify who is responsible for a domain name." If ".proxy" were its own TLD, it would be larger than every other gTLD in the world, except for .com.*

INTA, in the edit proposals for the Executive Summary and the comments on methodology, emphasizes the potential for a higher prevalence percentage of privacy and proxy domain registrations. INTA states the "Executive Summary should incorporate any other important conclusions of the study, including the study's note that the true percentage of domain names registered using privacy and proxy services may well be higher than the 18% figure that resulted from the study." In the comments on Methodology and classification, INTA's view is that regarding the "threshold" implemented by NORC to be "fairly certain" of privacy or proxy registration, "the higher the threshold…the more likely it is that the ultimate number undercounts many actual privacy or proxy registrations." Also, INTA's view concerning the Report's use of domain samples from March 2009, is that the Report "may if anything undercount the proportion of domains registered using proxy services if, as many observers of the domain name system would agree, there has been an increasing trend toward proxy registrations."

ECTA echoes this last viewpoint by stating that "ECTA is well aware of the fact that privacy/proxy service providers do exist, are well established and it is most likely that the number of domain names registered through them will increase in the future."

D. Further Study

The results of this study and the increasing focus on privacy and proxy registrations has caused commenters to call for a study that goes beyond quantification. MAAWG states that they "would encourage ICANN to do further analysis to see whether some TLDs and/or some registrars have a disproportionately high or low number of proxy or privacy registrations." MAAWG also states "we note ICANN is in the midst of an RFP for a further proxy/privacy study to document the relay and reveal practices of privacy/proxy issues. We agree that this study is the essential next step, but we are baffled at ICANN's statement that the study will not even start until a yet to be determined time in 2011. If this study is worth doing, which it certainly is, it is worth doing now."

The practices of the privacy and proxy registration services, as well as the practices of the registrants utilizing these services emerge as the dominant focus in the various comments that were submitted. Indeed, David Khoo states that "tracking the percentages of privacy registrations versus fraudulent domain activity per registrar is warranted." INTA's edits to the Executive Summary suggest referencing proposed studies by ICANN that concern "(i) the degree to which privacy and proxy services are being abused to shield the identity of registrants who are engaged in illegal or harmful Internet activities and (ii) the level of compliance by these privacy and proxy services when they are required to reveal non-public contact information." INTA's conclusion is that "it will certainly be helpful to any discussion and resolution of such issues to have a comprehensive, objective and quantifiable understanding of the extent to which privacy and proxy registration services are being employed, as well as the results of the other studies being conducted or under consideration by ICANN regarding the gTLD Whois system."

Both ECTA and the IPC reference the studies being done by the GNSO in the area of privacy and proxy registration abuse to highlight the importance of the subject. ECTA notes that "the GNSO is undertaking work to look at whether a significant percentage of the domain names used to conduct illegal or harmful Internet activities are registered via privacy or proxy services to obscure the perpetrator's identity. One part of the study is to try to determine how many abusive domain registrations (cyber squatting) were registered through privacy/proxy service providers." Regarding this Report, however, the IPC ultimately states that the "findings of the latest study underscore the need for ICANN to ramp up its efforts to address abuses inherent in the current system of proxy and privacy registrations, where anarchy reigns, and adult supervision is long overdue."

E. Regulation and the RAA

The IPC comments that the key issue concerning proxy registrations is "whether it is ever possible to contact, or even to learn the identity and contact data, of the party actually responsible for the registration." It is stated that, in IPC's experience, the "proxy and privacy services frequently do not reveal" this data despite citing Section 3.7.7.3 of the RAA.

ECTA also encounters this situation and states that "privacy/proxy service providers generally decline revealing who is effectively behind a domain name that was registered through them, or will only after the domain name is challenged through a UDRP complaint." They continue that "as a result, often cease and desist letter sent before the filing of a UDRP complaint remain unanswered and the trade mark owner is deprived of the possibility to settle the matter amicably or elaborate useful arguments and find adequate evidence to support a UDRP procedure." It is in ECTA's experience that the identity and contact information is only revealed once a complaint is filed against the privacy or proxy service provider "in order to not be involved with the dispute resolution procedure."

ECTA comments that "trade mark owners should be able to protect their trade mark rights rapidly and effectively and to do so they need to know, in advance, who is the person or entity that registered the domain name they want to challenge." Consequently, ECTA "believes that the Whois proxy/privacy service rules should be regulated more strictly to ensure that mechanisms to reveal undisclosed information be implemented, if particular circumstances so require." As a method of achieving such results, ECTA supports the practice of "filing an expressed and motivated request" with the concerned Registrar to reveal the registered domain holder data, which does so "once they have verified that the petitioner has a prima facie legitimate reason for obtaining the requested information."

ECTA takes issue with the RAA and comments that the "RAA does not contain any provision regulating Whois information provided by privacy/proxy service providers," while IPC goes further and "urges ICANN to enforce rigorously the current inadequate RAA provisions governing the operation of proxy and privacy registration services, while at the same time giving top priority to improvement of the RAA on this topic, for the benefit of all Internet users."

F.   Support for Privacy/Proxy Registration

Only one commenter, Volodya, expresses caution with regard to restriction of privacy or proxy registration services. Volodya states that the findings in the Report:

> *Should never be used as evidence to restrict or forbid Privacy or Proxy services for the domain name registration because:*
>
> * *Restricting privacy services would open the domain owner to the spam attack*
> * *Restricting privacy or proxy services would open the domain owner to attacks from fundamentalists, employers, or law enforcement agencies*
> * *Restricting privacy services would become a tool in the arsenal of an identity thief.*

IV.   NEXT STEPS

The use of privacy/proxy registration services is one of the many, intensely debated, complex policy issues concerning Whois. Consistent with the provisions of the Affirmation of Commitments (AoC), ICANN organized a Whois Policy Review Team in October 2010 to assess the effectiveness of current Whois policies and make determinations regarding whether the implementation of these policies meet the legitimate needs of law enforcement and promote consumer trust. The Whois Policy Review Team anticipates publishing a report of its findings in November 2011.

The findings of this Study and the public comments and suggestions received by ICANN concerning this Study will inform the AoC Whois Policy Review Team and ICANN's Whois policy development work. The GNSO is proceeding with a Whois Misuse Study to determine the extent to which Whois data is misused. It is estimated this study will take one year to complete. The study will commence in March 2011. The GNSO is also considering studies regarding:

1. Whois privacy and proxy abuse;
2. Whois registrant identification;
3. Whois service requirements; and
4. Non-ASCII registration information.

While the GNSO considers other Whois studies and the Whois Policy Review Team makes its assessments, ICANN will continue to enforce the Whois provisions in the Registrar Accreditation Agreement and remains committed to improving the accuracy of Whois data.

This summary and analysis document will be posted to the ICANN public forum.