



Reply Comments of Intellectual Property Constituency April 8, 2012

<http://www.icann.org/en/news/public-comment/sac-051-draft-roadmap-18feb12-en.htm>

The GNSO Intellectual Property Constituency (IPC) appreciates this opportunity to provide reply comments regarding the Draft Roadmap to Implement SAC 051 (“Roadmap”). See <http://www.icann.org/en/committees/security/sac051-draft-roadmap-18feb12-en.pdf>. IPC believes that ensuring the accuracy and accessibility of Whois data is among ICANN’s most critical tasks, and we view the Roadmap as making an important contribution to that goal.

The Roadmap builds on earlier work by the Security and Stability Advisory Committee (SSAC) regarding a replacement for the Whois protocol that will accommodate internationalized registration data. IPC commends the drafters of the Roadmap, for bringing greater clarity to a critical group of questions that have generated much confusion, indecisiveness, and uncertainty within ICANN.

IPC agrees with Recommendation 1, to clarify terminology so as to distinguish among registration data, the technical protocol for accessing such data, and the directory service through which members of the public may access such data – all of which are now sometimes confusingly referred to as “WHOIS.” We also support the Roadmap’s recommendations for adopting this terminology. In this regard, we question whether a “formal process to examine the new terminology,” as called for by the Registries Stakeholder Group in its comments (see <http://forum.icann.org/lists/sac051-draft-roadmap/msg00006.html>), is really needed. While it will certainly take time to transition to consistent use of the new terminology, that transition should start as soon as practicable, without going through an additional four-step review process as recommended by the Registries.

IPC also agrees with Recommendation 2, that a replacement technical protocol is needed in this area. This is so for many reasons, not least of which is the need to better accommodate domain name registration data that may be submitted, and may need to be accessed, in non-ASCII scripts (internationalized registration data). Indeed, it is little short of astonishing that ICANN is already accepting applications for IDN gTLDs, and is planning to delegate them as early as the beginning of next year, without having effectively addressed the challenges of internationalized domain name registration data.

We note that the italicized list of recommendations on page 7 of the Roadmap document are drawn from previous SSAC documents, and are not intended to constitute a complete list of the capabilities of the new protocol, nor of the associated directory service. We also note that the listed need to “support searching in the current architecture of distributed indices and separated registry and registrar services” could be ameliorated were ICANN to complete the transition to a uniform “thick WHOIS” environment, by setting the three remaining gTLD thin registry outliers

on the path toward the mainstream. See IPC's comments on the Thick Whois Preliminary Issue Report, http://ipconstituency.org/PDFs/IPC_Comments_on_Thick_Whois_Preliminary_%20Issue_Report.pdf. We also underscore the Roadmap's statement that the new protocol should be designed to enable implementation of policies (including regarding access to registration data), but must not be allowed to dictate such policies.

Recommendation 3 addresses the thorniest issue: how to get from here to there with respect to an improved registration data access protocol. In general, IPC supports the "multi-pronged approach" advocated in the Roadmap. While clearly it is vital to engage registrars and registries to a much greater degree than has occurred to date, it is also essential for consumers of domain name registration data to have seats at every table where the new protocol and new directory services are discussed. These consumers include owners of intellectual property rights, of course, who rely very extensively on access to this data. But in addition, a wide range of businesses, individual consumers, parents, law enforcement and consumer protection agencies, and many others who count on reliable and unencumbered access to this data for a host of beneficial social purposes, have much at stake in these discussions and must be included. At the same time, we are skeptical of the approach advocated by the Registries Stakeholder Group, which seems to presume that everything must be channeled through multiple formal Policy Development Processes. This is a recipe for further delay in a field where ICANN has already dawdled for too long.

IPC has participated actively in nearly all the ICANN community discussions regarding domain name registration data issues since the inception of the organization. Most recently, this includes bodies such as the Internationalized Registration Data Working Group and the Whois Survey Drafting Team, which were created to advance some of the issues discussed most prominently in the Roadmap. It is disappointing to us that so little progress has been made, when there seems to be general agreement that the current protocol is outdated, and that preparations must urgently be made for a much higher volume of internationalized registration data.

One issue the Roadmap sidesteps is how to break this pattern of drift and tackle the problem as a strategic priority for ICANN. It seems clear that responsible leadership at the highest level is needed. IPC supported the recommendation of the Whois Review Team draft report that more accurate and accessible Whois data should be "a strategic priority" for ICANN, and that "a senior member of the executive team" should be responsible for achieving this goal. We recommended that "that senior executive be the CEO, and that fulfillment of data accuracy objectives should be a major factor in performance evaluations and bonus decisions for this office." See IPC comments on Whois Review Team Draft Final Report at <http://forum.icann.org/lists/whois-rt-draft-final-report/msg00012.html>. We believe the same should be true of the effort to replace the Whois protocol and to accommodate internationalized registration data: these should be strategic priorities for ICANN, and the new CEO should be directly responsible for advancing them.

We recognize that this recommendation involves some risk, based on the recent track record. In January 2012, ICANN's current CEO asserted to several senior US government officials that "ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of Whois information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force." See (<http://www.icann.org/en/correspondence/beckstrom-to-strickling-11jan12-en.pdf>); <http://www.icann.org/en/news/correspondence/beckstrom-to-leibowitz-10jan12-en>. This statement was, at best, highly misleading regarding the status and timetable for an internationalized registration data solution. (The Roadmap contains a much more accurate description on pages 14-15, noting that an IETF working group on the topic had not even been formed as of February 2012.)

In its comments on the Whois Review Team Draft Final Report, IPC has previously cited "the depressing long-term trend in which ICANN has proven to be an ineffective steward of Whois as a critical public resource." ICANN's failure to act on the challenges outlined in the Roadmap before embarking on the launch of hundreds or thousands of new gTLDs, notably including IDN gTLDs, exemplifies this trend. IPC hopes that the Roadmap document, which clearly and calmly describes the issues and outlines at least in part a way forward, will help to reverse this trend. This is not likely to occur, however, without far stronger, more candid and more committed leadership than ICANN has brought to the task to date.

Respectfully submitted on behalf of IPC by Steve Metalitz, IPC president