



Reply Comments of the Intellectual Property Constituency (IPC)
on the Whois Misuse Study

January 18, 2014

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) welcomes the opportunity to provide reply comments on the Whois Misuse Study performed by Carnegie Mellon University's Cylab (CMU). *See* <http://whois.icann.org/sites/default/files/files/cmu-misuse-study-26nov13-en.pdf> .

Introduction

The IPC supports reliable, accurate, comprehensive, and consistently accessible Whois data. The IPC also supports the study of Whois misuse, and the development of policies and procedures to mitigate such misuse, especially as it relates to protecting consumers on the internet. The CMU study, however, has limited value to the ICANN community as a result of various deficiencies including inadequate sample size and geographic representation, and poor variable control, among other deficiencies. Because of its deficiencies, this study does not provide an adequate basis for ICANN policymaking regarding Whois. Any such policymaking should also refrain from undermining the need for reliable, accurate, comprehensive, and consistently accessible Whois data, for the purpose of eliminating some marginal portion of spam and unauthorized contact of domain name registrants.

Comments

The IPC agrees with the comments submitted by Greg Aaron,¹ and M3AAWG² in which several deficiencies in the study are succinctly and clearly addressed. In particular, the IPC agrees with Mr. Aaron that the small sample size of fifty-seven registrants (only 41 of whom completed the survey), and the potential for errors in the self-reporting methodology, are extremely problematic. Additional issues--including the failure to address the possibility that some Registrars may provide registrant information directly to third parties, and the poorly supported conclusion that domain name registration cost correlates to likelihood of Whois misuse--also call into question the validity of the study's conclusions. In short, as a result of such deficiencies, the study failed to provide meaningful evidence linking the public availability of Whois data to Whois misuse.

¹ Comments regarding the WHOIS Misuse Study, January 10, 2014, at <http://forum.icann.org/lists/comments-whois-misuse-27nov13/msg00005.html>.

² M3AAWG Comments on the WHOIS Misuse Study, December 19, 2013, at <http://forum.icann.org/lists/comments-whois-misuse-27nov13/msg00003.html>.

The IPC also supports the comments from Stephen (no last name provided)³ on the importance of weighing the impact of the most common forms of Whois misuse against the harm that the broader community would face if Whois information were not consistently accessible.

Spam and unauthorized contact through the internet are inevitable consequences of having an online presence. As discussed above, this study does not demonstrate that the public nature of Whois information is the actual or primary cause of the problem, or, more importantly, that restricting access to Whois information would result in a demonstrable decline in misuse. Without clear evidence showing that restricting access to Whois information would result in a meaningful decrease in misuse, ICANN should take no measures that would interfere with access to Whois information. This access must be preserved to enable efforts to protect consumers and companies online from malicious conduct such as counterfeiting, the distribution of malware, defamation, and so on.

Conclusion

The conclusions of the CMU study are of limited value to the ICANN community as a result of the deficiencies noted above. Furthermore, the benefits of publicly available Whois information far outweigh the costs of potential misuse, and further ICANN policymaking should bear in mind the value of ensuring public access to accurate and reliable Whois data, which this study does not address. Consequently, the IPC urges ICANN not to give any weight to the study's conclusions, or direct any Whois policy development based upon them. If the ICANN community feels that further investigation of Whois misuse is warranted, ICANN should commission a new study that rectifies the deficiencies in the CMU study.

Respectfully submitted,

Intellectual Property Constituency (IPC)

³ Domain Transparency, November 29, 2013, at <http://forum.icann.org/lists/comments-whois-misuse-27nov13/msg00002.html>.