



## IPC COMMENTS ON

### **“ICANN Study on the Prevalence of Domain Names Registered**

#### **Using a Privacy or Proxy Service among the top 5 gTLDs”**

The Intellectual Property Constituency appreciates this opportunity to comment on the “ICANN Study on the Prevalence of Domain Names Registered Using a Privacy or Proxy Service among the top 5 gTLDs.” See <http://www.icann.org/en/public-comment/#privacy-proxy-study-report>.

This is at least the third time that ICANN has sought to quantify the prevalence of proxy or privacy registrations in the sample drawn by NORC in early 2009 from the 5 largest gTLDs. In a previously released report, ICANN staff concluded that such registrations might range from 14.6 % to as high as 25% of all gTLD registrations. See <http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-28sep09-en.pdf>. On the second pass, NORC classified 14.7% of registrations in its sample in this category. See <http://www.icann.org/en/compliance/reports/whois-accuracy-study-17jan10-en.pdf>, at page 9. Now, after further analysis, ICANN concludes that the right number is “at least 18%” and perhaps more, since the study excluded the 2% of registrations in the sample for which no Whois data at all was available.

There is one new datum in this report: the overwhelming majority of registrations studied – “close to 91%” of the 18% – contained absolutely no data in their Whois records to identify the “beneficial user,” i.e., the party actually responsible for the domain name registration. That meant that they qualified as “proxy registrations” under ICANN’s definition. (So-called “privacy services,” which at least purport to name the registered name holder in Whois results, accounted for the remainder.)

As of October 25, 2010, there were 122,270,795 active domain name registrations in the 5 gTLDs included in the NORC sample. See <http://www.domaintools.com/internet-statistics/>. Adopting the conservative figure of 18%, and counting only the “proxy registrations,” this means 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.

ICANN staff has already conducted two studies that indicate that proxy registrations are disproportionately used by registrants engaged in abusive behaviors such as spam, and “a range of criminal activities.” See <http://securityskeptic.typepad.com/the-security-skeptic/2010/04/domain-name-privacy-misuse-studies.html>. The GNSO council is currently considering commissioning a more comprehensive study of the same question. See [WHOIS Privacy and Proxy Abuse Study Staff Analysis 5 October 2010](#).

In the vast world of proxy registrations, the key issue – for law enforcement, anti-fraud investigators, child protection specialists, consumer groups, intellectual property owners, and all Internet users with a stake in security and safety online – 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. The experience of many IPC members is that proxy and privacy services frequently do not reveal this data, even when presented with what the Registrar Accreditation Agreement (RAA), in section 3.7.7.3, describes as “reasonable evidence of actionable harm” resulting from use of the domain name.

The findings of the latest study underscore the need for ICANN to ramp up its efforts to address the abuses inherent in the current system of proxy and privacy registrations, where anarchy reigns, and adult supervision is long overdue. In this regard, it is not surprising that several of the identified “high priority topics” listed by a GNSO drafting team for needed revisions to the Registrar Accreditation Agreement concern proxy registrations. See [Final Report on Proposals for Improvements to the Registrar Accreditation Agreement](#), page 20, items 4-6 (listing “registrar disclosure of privacy/proxy services made available in connection with registration; and responsibility of registrar for compliance by such services; Obligations of privacy/proxy services made available in connection with registration re data escrow; Relay function; Reveal function; Registrar responsibility for cancellation under appropriate circumstances of registrations made by other privacy/proxy services for noncompliance with Relay and Reveal”).

IPC 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.