



Proposed Changes to the Whois Service ICANN Staff Discussion Points

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STATUS OF THIS DOCUMENT

This is the final version of a staff document produced for informational purposes. It has no formal status within the Generic Names Supporting Organisation (GNSO) policy development process.

SUMMARY

This document represents ICANN staff's consideration of the potential implementation aspects of the two major proposals considered by the Whois Task Force.

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1 Introduction

The GNSO's Whois Task Force has produced a considerable body of policy work regarding the Whois Services since its terms of reference were set in June, 2005. The Whois Task Force has worked diligently on a complex and often controversial set of issues that are of prime importance to many ICANN stakeholders.

This document represents ICANN staff's contribution to work on considering the potential implementation aspects of the two major proposals considered by the Whois Task Force. It aims to open questions for further discussion and support ongoing policy work on these issues in a constructive way. As ICANN staff is charged with implementing final policy decisions that may arise after the conclusion of a policy development process, this document has been prepared for consideration by the GNSO Council and other ICANN participants.

This document aims to:

- Identify issues for clarification or further discussion
- Identify potential implementation issues
- Suggest key items for further development

The ICANN meetings in Lisbon, March 2007, will see further discussions of Whois policy recommendations amongst a wide range of stakeholders, including governments, private sector representatives, and others. It is hoped that this document will help to inform those deliberations and provide a useful reference point for this debate.

2 Staff discussion points regarding the OPoC proposal

2.1 Role of the OPoC

The scope of the OPoC's role is not completely clear. The proposal aims to define the OPoC's role broadly enough so that different business models can apply. This leaves open some questions that might be considered:

- What contact data (registrant, admin, tech) is the OPOC obliged to release, to whom, and under what circumstances?
- What 'availability' characteristics should the OPOC have, and what escalation mechanisms might be required if these are not met?
- What characterizes the "registration relationship" between an OPOC and a registrant? i.e. it may be advisable to spell out that the OPOC, as an agent, has no rights regarding the domain name.
- Is it the case that the OPoC does not have a claim to the name when it expires? It is conceivable that if the OPoC has a preferential path to registering an expiring name itself, this may create a conflict of interest with the registrant. This might be avoided if the proposal stated that expiring names must be deleted from the registry and made available to the first party that attempts to register them through the normal process.

Recent experience with registrars has highlighted consumer protection issues for registrants regarding the use of privacy services. It is possible that a registrant that lists a registrar privacy service as their OPoC may increase the difficulty of transferring names to another registrar, or losing their domains altogether in the event of registrar failure. OPoC may exacerbate the risk to registrants of concealing the identity of the registered name holder. Privacy services may have risks, and not just benefits, for registrants.

If a name is hidden through a service of this kind, it is possible that no one aside from the provider of the privacy service can identify the customer. Therefore, data escrow may be insufficient to protect that data. In making a choice to use a proxy/privacy service, customers should be aware of balancing privacy against access to data.

- Is the intent of the OPOC to protect the registrant's privacy only or has the issue of "continuity of registration" been considered also? If the latter, can the OPOC be delegated the responsibility to see that registered names are renewed?
- Can safeguards be put in place to ensure registrants do not lose their registrations because of circumstances arising from an inability to show rights to a name through the Whois?

2.2 Technical and administrative contacts

The OPoC proposal states "Under this proposal, the administrative and technical contacts would no longer be displayed within the Whois system."

- When and over how long a period would the administrative and technical contacts be phased out in favour of the OpoC?

- What will happen to a registration if a registrant does not assign an OPoC? Will the admin contact automatically be assigned as the OPoC?
- What provisions might be made for organizations that prefer to have a separate tech contact and admin one? i.e. if they use two OPoCs, how might they indicate which is for what purpose?

2.3 Purpose of the contacts – user guide

The OPoC Proposal requires ICANN staff to prepare a user guide to the contracts and changes in information provided.

- It may be helpful for registrants if further information about the expected use of the OPoC was available, for example use cases that illustrate how different business models may provide OPoC services.

2.4 Registry Whois

The OPoC proposal requires registries to provide registry Whois data that is “solely limited to” a limited set of data that is generically referred to as ‘thin Whois’. The proposal “pre-supposes that 1) domain name contact data not be available through any sources other than those discussed by this proposal, unless by Registrars, and in that case at the Registrar’s option”.

Currently, the various registries operating in the gTLD space offer both ‘thin’ and ‘thick’ Whois, depending on their business model or the communities they serve in the case of sponsored TLDs. ICANN has not previously required a single type of Registry Whois.

- Is a ‘one size fits all’ approach to Registry Whois both necessary and consistent with ICANN’s competition and choice objective?

If all gTLD registries were obliged to change their operations, when and over what period would this requirement be introduced?

- What provision, if any, would be made for the costs of changeover? Would sponsored TLD registries be required to change their operations?
- What, if any, would the impact be on the information registries collect from registrars?

Requiring registries to only operate ‘thin Whois’ may have unintended consequences on consumer protection and stability in the case of a business or operational failure of a registrar. In the event of registrar failure, a thick registry can enable the availability of information to allow the continuation of registrar services. It is not unforeseeable that a registrar failure might also be accompanied by incomplete registrar data escrow.

- What are the possible consequences of ‘thin registries’ on consumer protection for registrants in the case of registrar failure?

2.5 Dealing with inaccurate data

The procedure for dealing with inaccurate data notifications appears to require the registrar to contact the registrant each time the registrar receives a query about the accuracy of Whois data. A rote process for responding each notice, without a role for

some registrar judgment may create difficulties because of the nature of a significant portion of WDPRS requests. For example, if multiple requests are repeatedly sent regarding the same registration, an OPoC would appear to be obliged to respond to each one or risk having the registration suspended or even deleted.

The 2006 WDPRS report¹ produced by ICANN registrar liaison staff shows that of the 3,568 individuals who submitted WDPRS requests during 2005, “the top 20 contributing individuals accounted for over 59% of the 51,664 reports.” In addition, the report noted that “it appears that a handful of users of the WDPRS have intentionally filed redundant complaints without allowing the registrar or registrant an opportunity to take action.” ICANN staff has noted that a minority of users are abusively filing multiple reports and effectively “spamming the system and the registrars subject to its automated processes”.

- Further attention may need to be given to the provisions in the OPoC proposal for dealing with inaccurate data in order to prevent unintended consequences of abusive data inaccuracy reports.

2.6 Transfers

The OPoC proposal recommends that “the existing Inter-registrar Transfer policy be amended to recognize the authority of the Operational Point of Contact and sunset that of the Administrative, Technical and Billing Contacts”.

- Is staff expected to propose amendments to the Transfer Policy and initiate a new PDP?
- It may be advisable to consider the effect of the OPoC on the operation of the Transfer Policy to avoid creating incentives or opportunities for transfer abuses. For example, if the OPoC is also the losing registrar in a transfer, this proposal may give that registrar increased opportunity to avoid cooperating with the transfer.

2.7 Jurisdiction

Under the OPoC proposal, the name, country and state/province of the registrant would be published in Whois, at least in part to allow third parties to determine the jurisdiction of the registrant.

- Information sufficient to indicate a registrant’s jurisdiction may in some countries require more detailed geographic information such as city or county.
- This jurisdiction consideration may run counter to the privacy objective of the proposal and might need to be considered further.

2.8 OpoC Proposal: Framework for further discussion

Further discussion of the OPoC Proposal might usefully focus on the scope and responsibilities of OPoCs’ potential role(s), implications for gTLD registries and for consumer protection, and the implementation issues raised.

¹ Whois Data Problem Reminder Service Report, 31 March, 2006,
<http://www.icann.org/announcements/wdprs-report-final-31mar06.pdf>

3 Staff discussion points regarding the Special Circumstances proposal

3.1 Cost and Budget Considerations

It is proposed that the costs of administering the Special Circumstances exceptions process be defrayed by using “a pre-set proportion of one or more existing volume-sensitive (i.e. per transaction) fees currently paid by registrars and/or registries to ICANN would be budgeted for the third-party vendor’s operations. Under this model, neither registrants, registrars nor registries would incur additional costs.”

The proposal appears to involve a potentially significant expenditure of ICANN funds which has not been foreseen or considered in the context of ICANN’s strategic and budget planning cycle. This indicates that current ICANN activities would need to be reduced or eliminated, but guidance is not given as to which ones. Nor is it clear which of ICANN’s current strategic objectives this proposal would fall under.

Information sufficient to allow staff to estimate the likely costs of this proposal is not provided. Although the proposal presumes that a tiny minority of exceptions to Whois publication would ultimately be granted, it does not make an estimation as to the number of applicants. Nonetheless, it seems the costs of engaging third parties in multiple regions to develop criteria and processes, implement the processes and police compliance would be significant. The scale of building out such a programme may be comparable to work currently being developed on managing applications for new gTLDs. While the number and complexity of applications may or may not be similar, the system capacity required to build a global programme is likely to be significant.

- The proposal’s supporters should consider participating in the ICANN budgeting and strategic planning process to help prioritise spending and identify areas that would need to be eliminated or reduced to enable this proposal to be funded.
- Further information or estimates about the number of applicants would be needed to assess the cost of providing an exceptions process.
- It may be useful in the future to carry out a cost benefit analysis on the costs required to create the system envisaged in this proposal, and the potential compliance burden this would create for ICANN.

3.2 Third party exceptions process vendor

- Staff would appreciate additional detail about how third parties to provide the exceptions process might be identified and what type of existing organisation might provide this service.
- Further guidance would be required on the criteria for how a vendor(s) would determine whether an individual/organisation employees’ physical security is jeopardized by the publication of contact details. For example, what type of proof or affirmations would be required to prove jeopardy? Would the vendor be indemnified in case of harm caused to an individual who was denied an exception? Guidance would be needed as to how/if consideration would be given to providing the programme in countries with varying degrees of political oppression.

- Further information would be needed to determine how/if this might scale globally if, as in one variant of the proposal, ICANN would be required to choose five vendors who would apply a common set of criteria.

3.3 Exceptions criteria, determination of 'commercial' use

The proposal suggests that the third party exceptions process provider would itself develop the criteria and procedures it would use to adjudicate requests.

The criteria for determining whether exceptions should be made would need to be developed in detail. The proposal states the objective of the exceptions procedure but does not currently offer guidance on what criteria might be used in the processes whose outcome is to achieve this objective. It is not clear from the proposal whether developing the exceptions criteria might be considered a policy or an operational task.

During the life of the domain name, the third party vendor(s) would be required to spot-check the Internet for commercial uses of the domain name.

- Further consideration might be given to developing guidance on the criteria for granting or denying exceptions. This should also include work on how to maintain global uniformity of the criteria while ensuring that they are of relevance and use in different political and cultural environments.
- Consideration might be given to whether development of such criteria is a suitable task for the vendor organisations whose task it would also be to implement those criteria.
- Consideration might be given to whether a separate PDP would be used by the ICANN community to develop and agree the framework for these criteria.
- Consideration might be given to what criteria would be used to determine whether the name was being used commercially. For example, a range of Internet activities may involve financial transactions, but are not necessarily profit-making. There is considerable debate and differing cultural and legal norms internationally regarding the nature of commercial activity.

3.4 Role of the Government Advisory Committee (GAC)

The proposal suggests a role for the GNSO and GAC to jointly develop further exceptions criteria developed by the vendor(s).

- More detailed discussion about the role of the GNSO and appropriate expansion of the GAC's role into an area which is not yet clearly a policy or an operational task would need careful thought. It is also unclear that the GAC's expected agreement on high level principles for Whois would be sufficient to allow its members to agree on exceptions criteria.

3.5 Proxy registrations

The proposal calls for the elimination of proxy registrations services, saying they "would be phased out." Proxy registrations are reported to be commonly used by individual registrants in the .nl ccTLD on which the Special Circumstances proposal is modelled.

- Information and guidance are needed on the details of how, when and over what time frame proxy services would be phased out.

- Consideration needs to be given to the effect of outlawing proxies on registrars or other businesses that may have contracted to provide proxy services for registrants for some years into the future.
- Consideration needs to be given to how compliance would be carried out to prevent the use of proxy services. For example, a registrant can delegate any third party to be their proxy. It is not necessarily evident that the designated contact information relates to the registrant or a third party. It may be beyond ICANN's scope to regulate with the intention of forbidding registrants to enter into independent arrangements with third parties acting as proxies.
- Further consideration should be given to whether the elimination of proxy services would require a separate policy development process and whether such an initiative might be within the scope of ICANN's PDP policy areas.

3.6 Transfers

It is likely that registrations that have been granted exceptions to Whois data publication may be transferred between registrars.

- Would the exceptions transfer from one registrar to another?
- What effect, if any, would the non-publication of Whois data have on transfers to other registrars?

3.7 Display of data

In the cases of non-display of data:

- Which data would be withheld from publication in the Whois?
- What would be the procedures for third parties, e.g. law enforcement, to access that data?
- Would excepted registrants be able to use a proxy or other type of services to allow them to receive communications related to their registration?

3.8 Special Circumstances Proposal: Framework for further discussion

Further discussion of the Special Circumstances Proposal might usefully focus on whether it is possible to successfully scale up an exceptions procedure currently in use in a single and relatively small jurisdiction, for use on a global scale.