

REGISTRIES STAKEHOLDER GROUP  
of the GNSO

October 8, 2010

Mr. Peter Dengate Thrush  
Chairman of the Board  
Internet Corporation for Assigned Names and Numbers

Dear Peter,

This letter is submitted to you on behalf of the Registries Stakeholder Group (RySG) regarding resolution 2.10 passed by the ICANN Board on September 25, 2010 with respect to the Board's action items on "Searchable Whois". The letter is supported by a supermajority of members of RySG.

According to resolution 2.10, it appears the ICANN Board has set up a new "Data Consumer Protection Working Group" to study the issues with greatly expanded WHOIS search capabilities and to provide information to the Board relating to access and privacy, specifically, "to develop recommendations for possible inclusion in the forthcoming version of the applicant guidebook." This resolution greatly concerns the RySG. Not only does it completely circumvent the GNSO's policy development process, but it presents a direct threat to the multi-stakeholder bottom up model. In addition, we believe that consideration of this issue will also result in a delay in the implementation of the next round of TLDs - something none of us want to see.

As you know, the issue of Whois has been, and continues to be, a matter before the GNSO for the past 9 or 10 years. The RySG noted in its comments to the Draft Applicant Guidebook, version 4, that the provisions unilaterally added by ICANN staff were highly problematic.<sup>1</sup> We stated "by making the service mandatory, ICANN would make gTLD policy unilaterally via the contract process." It would also circumvent current GNSO efforts related to Whois. This Whois service is currently under review at the GNSO via its "Inventory of WHOIS Service Requirements" effort (<http://gns0.icann.org/issues/whois/whois-service-requirements-draft-final-report-31may10-en.pdf>) The technical experts who reviewed the service via the GNSO process noted that it presented a variety of technical, privacy, and social issues that needed further examination.

Despite the comments made by the RySG that ICANN staff was proposing to circumvent the policy process, it appears now that the ICANN Board, by creating a new Working Group of the Board, will be contributing to this circumvention by perpetuating policy development in a top-down fashion. The RySG can see no justification for the ICANN Board itself imposing requirements on new gTLDs in this top-down manner and is disturbed with the precedent being set by the Board.

The RySG therefore requests that (i) all materials provided to the ICANN Board regarding this issue immediately be made public so that the community can see the basis for the creation of this

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<sup>1</sup> For your convenient reference, we have attached an Appendix with excerpts from the relevant documents.

new Board Working Group; and (ii) the Board refer this issue to the GNSO for consideration for subsequent rounds of top-level domains (after this initial round).

Yours very truly,

REGISTRIES STAKEHOLDER GROUP

By:/s/David

David W. Maher, Chair, RySG

cc: Rod Beckstrom, President and CEO  
Chuck Gomes, Chair, GNSO Council  
Diane Schroeder, Director of Board Support

## APPENDIX TO RySG LETTER TO PETER DENGATE-THRUSH

### *Proposed Specification 4, Section 1.8:*

[1.8]. In order to assist complainants under the UDRP to determine whether a pattern of "bad faith" has been demonstrated by a particular registrant, the information set forth above will be available on a publicly accessible database, subject to applicable privacy policies, which will be searchable by domain name, registrant's name, registrant's postal address, contacts' names, Registrars Contact IDs and Internet Protocol address without arbitrary limit. In order to provide an effective WHOIS database, Boolean search capabilities may be offered.

### *From the Registries Stakeholder Group Comments to DAG4 on the Base Agreement:*

#### “SPECIFICATION 4: WHOIS

Specification 4 contains a new section ( 1.8) that is highly problematic. It presents technical, policy, privacy, security, and legal issues for the wider ICANN community. The DAG process is insufficient for understanding those issues and making informed, fact-based decisions about them. The RySG requests that 1.8 be deleted for the following reasons:

1. Policy: By making the service mandatory, ICANN would make gTLD policy unilaterally via the contract process. And it would circumvent a current GNSO policy-making effort. This WHOIS service is currently under review at the GNSO via its “Inventory of WHOIS Service Requirements” effort ( <http://gns0.icann.org/issues/whois/whois-service-requirements-draft-final-report-31may10-en.pdf> ) The technical experts who reviewed the service via the GNSO process noted that it presented a variety of technical, privacy, and social issues that needed further examination.
2. Technical: it is unknown if such services can be provided within the contract’s WHOIS SLAs. Such a service is not technically easy to provide. To our knowledge, a service of this nature has never been attempted on a large scale. The requirement “without arbitrary limit” means the service must allow extremely large, broad searches, which could swamp or stall the service. They might also require cookie tracking, which is not even possible for port 43 queries.
3. Cost: the service will impose new, significant, and unknown costs on registry operators.
4. Legal: The service is not required to establish bad faith under the UDRP. Many adequate resources and tools exist to do that, and have been used successfully for the past ten years.
5. Technical: Specification 4 deals specifically with Port 43 and Web-based WHOIS. Those may be inappropriate mechanisms to perform such searches.
6. Privacy: the service presents some obvious issues that members of the wider ICANN and Internet community may be concerned about. The privacy issues should be examined carefully, and more attention should be brought to them than the DAG4 affords. The phrase “subject to applicable privacy policies” is confusing, and the RySG does not know what it might mean.

7. Security: The DAG process is insufficient to quantify the possible malicious uses of such a service. The issue deserves greater study.

8. Technical / Security: it is unknown what “control structure” may be sufficient “to reduce the malicious use of the searching capability itself.” It is impossible for Registry Operators to build compliant control solutions since no one seems to have defined the problem.

9. Security: there are other, existing tools that provide cross-identification of domain names during professional investigations of malicious conduct. The proposed WHOIS service is not yet justified on the basis of security because no one knows if the service’s drawbacks outweigh the supposed security benefit.

10. Security: the SSAC has demonstrated that WHOIS is mined by spammers. (See SAC023: <http://www.icann.org/en/committees/security/sac023.pdf> ) The service above could make this even easier for spammers and other bad actors.

11. Legal and cost: The parenthetical comments in 1.8 DAG4 misunderstand existing contracts. Existing contracts say that such WHOIS access *may optionally* be provided by “*a participating registrar, at the registrar’s expense*” [emphasis added] - not provided by the registry, or at the registry’s expense, as DAG4 *requires*.