

Dear Mr. Tonkin,

Thank you for your observations regarding the comments of the American Intellectual Property Law Association on the GNSO Council vote on the Formulation 1 definition of the purpose of the WHOIS service. Please find attached our reply to your observations.

Regards,  
Mike Kirk

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June 21, 2006  
Mr. Bruce Tonkin  
Chair, GNSO Council

Dear Mr. Tonkin,

Thank you for your reply to the comments submitted by the American Intellectual Property Law Association regarding the GNSO Council vote favoring the Formulation 1 definition of the purpose of the WHOIS service and for your reassurances about the "aims of the GNSO." We understand that no final decisions have been made, however, we must respectfully say that we are perplexed by your statements that you "don't understand how the letter relates to formulations 1 or 2" and that "members of the community have made pre-mature judgements on the eventual outcomes of the WHOIS work."

In the Final task force report on the purpose of WHOIS and of the WHOIS contacts dated March 15, 2006, it is stated that "Task 1 of the task force terms of reference requires the WHOIS Task Force to define the purpose of WHOIS. Defining the purpose is important as it will guide work on the other work items in the terms of reference. [BEGIN emphasis] The purpose of WHOIS - when defined - will have a significant impact in determining the operation of WHOIS." [END emphasis]

Looking at the two formulations,

Formulation 1:

"The purpose of the gTLD WHOIS service is to provide information sufficient to contact a responsible party for a particular gTLD domain name who can resolve, or reliably pass on data to a party who can resolve, issues related to the configuration of the records associated with the domain name within a DNS nameserver."

Formulation 2:

"The purpose of the WHOIS service is to provide information sufficient to contact a responsible party or parties for a particular gTLD domain name who can resolve, or reliably pass on data to a party who can

resolve, technical, legal or other issues related to the registration or use of a domain name."

We simply cannot see how using the narrower definition of WHOIS in Formulation 1 will not affect the outcome, or "have a significant impact in determining the operation of WHOIS" as stated in the final task force report. The future work of the task force, if it follows Formulation 1, will focus on providing information "...sufficient to...reliably pass on data [for resolving]... issues related to the configuration of the records associated with the domain name within a DNS nameserver." This is considerably narrower and more limited than the Formulation 2 definition "...to provide information sufficient to...pass on data...to resolve, technical, legal or other issues related to the registration or use of a domain name."

While it is technically correct to state as you do that "that there are no changes in collected data, nor in the requirement for that data to be accurate," basing the further work of the task force on the narrow definition of the purpose of WHOIS in Formulation 1 will almost inevitably lead to recommendations that the data collected and the access provided to that data be more limited than is currently the case.

AIPLA therefore maintains its request that the GNSO adopt a definition meeting the needs of all Internet users and that the ICANN Board closely monitor the policy development process, bearing in mind the importance of preserving the existing requirements to make up-to-date and accurate WHOIS information available to all who have a legitimate need to obtain such information.

Thank you for consideration of the views of AIPLA.

Sincerely

Michael Kirk

Executive Director