



Whois & National Laws Procedure

São Paulo

4 December 2006



Consensus Policy Directs ICANN to:

“Develop and publicly document a procedure for dealing with the situation in which a registrar or registry can credibly demonstrate that it is legally prevented by local/national privacy laws or regulations from fully complying with applicable provisions of its ICANN contract regarding the collection, display and distribution of personal data via the gTLD Whois service.”

Procedure's goals

(from policy recommendations)

1. Describe how ICANN staff will deal with potential conflicts
2. Inform registry / registrars and the rest of the community how to address conflicts arise if they arise
3. Ensure that ICANN is informed of a potential conflict at the earliest appropriate juncture
4. Resolve the conflict, if possible, in a manner conducive to ICANN's Mission, applicable Core Values
5. Provide a mechanism, when necessary and appropriate, for developing an exception to the contractual obligations to display contact data via WHOIS
6. Preserve sufficient flexibility for ICANN to respond to situations as they arise

The Proposed Procedure

- Procedure closely follows the WHOIS Task Force's 'well-developed advice on a procedure'
- For complete information relating to the procedure, see <http://www.icann.org/announcements/announcement-2-03dec06.htm> Board decision
- ICANN is launching a public comment period on the Procedure for Dealing with Potential Conflicts Between Whois Requirements and Privacy Laws
- Recognising the public policy aspects of this procedure, ICANN has written to the Chair of ICANN's Governmental Advisory Committee (GAC) seeking GAC advice

Phase I: Notification of Whois Proceeding

Registry/Registrar receives notification of a Whois proceeding and provides ICANN staff with essential information

Phase II: Consultation

If appropriate, ICANN staff will contact the national agency

If proposed changes result in non-compliance with contractual Whois requirements, ICANN staff will refer to the Board

Phase III: Referral To Board

Staff may refrain from taking enforcement action for non-compliance against the registrar/registry.

Staff may prepare a detailed public report and recommendation and submit it to the ICANN Board for a decision.

Phase IV: Resolution By Board

The Board may consider and take appropriate action as soon as possible:

- 1) Approve/reject/modify report recommendations
- 2) Seek additional information
- 3) Start a public comments period
- 3) Refer to the GNSO for review and comment

Phase V: Publication of Board Action

Board resolution (if taken) and the detailed report will ordinarily be posted on the ICANN website.

Confidential information of the contracting party will generally not be published

Phase VI: Periodic Review

ICANN staff will review the effectiveness of the process annually, with input from the public and relevant parties, and report to the GNSO

Difference from the GNSO advice

- Relaxed guideline for first notification by contracted party to “earliest possible juncture” (from 30 days)
- For actions by contracted parties: changed “must” to “should” and added “if appropriate” to avoid creating the appearance of contractual obligations
- Ask contracted party to make good faith effort *initially* to resolve conflict before triggering procedure
- ICANN will prepare a public report (taking into account confidentiality of certain information provided by the contracting party) prior to Board action
- In its consideration of the matter, the Board may seek additional information

Next Steps

- Public comment period closes 15 January 2007
- GAC will be provided sufficient opportunity to provide advice
- Subsequent implementation will include reporting and analysis of experiences to measure effect, inform other Whois policy development and suggest possible changes to this policy