

ICANN Generic Names Supporting Organisation

WHOIS Study Group Report to the GNSO Council

Recommendation on further studies of WHOIS

**Prepared by the WHOIS Study Group
(see list of participants in Annex I)
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1. Overview and background

In its communiqué of 28 March, 2007, the Government Advisory Committee recommended to the ICANN Board that the ICANN community gather information on gTLD domain name registrations and registrants and how WHOIS data is used and misused. The GAC further recommended that the information be publicized and used to inform future debate on the issue.

Subsequently, when the GNSO Council rejected the OPOC proposal on 31 October 2007, it also decided on that a comprehensive, objective and quantifiable understanding of key factual issues regarding WHOIS will benefit future GNSO policy development efforts. Before defining the details of these studies, the Council solicited suggestions for specific topics of study on WHOIS from community stakeholders. Public comments were sought until 15 February 2008. Approximately 25 suggestions were received. In addition, on 16 April 2008, the GAC elaborated on its earlier recommendations, enumerating 15 questions that might be answered using data that is compiled on who uses WHOIS data and for what purposes, and the types and extent of misuses and the harm, including economic harm, caused by different types of misuse of personal data (spam, identity theft, other data losses).

On 27 March 2008 the GNSO Council convened a small group to assess which studies should be conducted. The small group has been asked by the GNSO Council to evaluate the suggestions previously submitted, including recommendations offered by the GAC, and develop a recommendation that would be submitted to the Council. The Council is currently expecting this report by May 22. During the Paris meeting, the Council plans to consider the report prepared by this small group, and will then provide additional direction to staff on recommended data gathering and study requirements. Based on that direction, staff will provide rough cost estimates for various components of data gathering and studies and the Council will then decide what data gathering and studies should be pursued, if any. Staff will then perform the resulting data gathering and studies and report results to the Council for further policy action.

A significant number of WHOIS Study Group participants have the view that no further WHOIS studies should be conducted at this time. This viewpoint and accompanying rationale is set forth in Section 2 below.

In contrast, a significant number of WHOIS Study Group participants have the view that further WHOIS studies should be conducted. This viewpoint and accompanying rationale is set forth in Section 3 below.

Annex I provides a tally of the specific viewpoints voiced by group participants and constituencies. The WHOIS Study Group requests that the Council consider carefully both of the viewpoints and supporting rationale expressed in this document before deciding on next steps.

2. Viewpoint #1 – No further studies of WHOIS should be initiated at this time

The following viewpoint is held by those who voted “no” on the tally of WHOIS studies included in Annex I of this report. WHOIS study group participants contributed as individuals, not as official constituency representatives, though they worked to represent the interests of their constituencies, and they communicated with their constituencies during this work effort as they deemed appropriate.

JOINT STATEMENT OF STUDY GROUP REPRESENTATIVES OF THE FOLLOWING CONSTITUENCIES:

NONCOMMERCIAL USERS CONSTITUENCY
REGISTRARS CONSTITUENCY
REGISTRIES CONSTITUENCY

WHOIS has been the subject of consensus policy work for over seven years, and it is painfully clear that consensus on the majority of issues does not exist.

We object to spending any of ICANN's registrant-derived funds on WHOIS studies without clear evidence that these studies will (i) advance the policymaking process, and (ii) contribute something to the creation of a consensus on the fundamental issue of protection of personal privacy.

So long as there is no universal acceptance of the fundamental principle that personal privacy is a value to be protected by ICANN policy, it is futile to commission further studies. The primary barrier to resolving WHOIS/privacy issues is not lack of data, but lack of political will. Any results of the proposed studies will simply be accepted by those whose agendas they further, and criticized by those on the other side. Even well engineered studies with strong conclusions have no compelling force against the interest group politics that have been going on for more than seven years so far.

The demand for studies appears to be fueled by a realization, on the part of those previously satisfied with the status quo of full published access to registrants' identifying information, that their status quo is threatened by proxy registrations. Indeed, at this time, there is not even consensus on the status quo. Requesting further studies is a way of appearing to move forward while avoiding the lack of consensus on the fundamental principle - personal privacy.

If the GNSO concludes that further studies are worthwhile, then any studies should be kept narrow in scope to ensure completion within a reasonable time frame - weeks or months, not years. In addition, some preliminary work should be done to

ensure that the data being sought is actually available, can be effectively gathered, and that any parties from which it is sought will cooperate.

Many of the proposed studies, if pursued, should have certain terms clearly defined in order to focus the effort appropriately. For example, in the GAC recommendations the following terms are used:

- Commercial, non-Commercial
- Proxy and privacy services
- Legitimate use
- Abusive use

No study on such concepts can be effectively pursued without first having an agreed upon understanding of what those concepts mean.

Our conclusion is that the Council should reject any further studies at this time. Failing that, any studies should meet the criteria above.

3. Viewpoint #2 – Certain studies of WHOIS would be valuable and should be initiated at this time

The following viewpoint is held by those who, on the tally of Whois studies, provided a ranking by category of those studies they recommend be conducted. WHOIS study group participants contributed as individuals, not as official constituency representatives, though they worked to represent the interests of their constituencies, and they communicated with their constituencies during this work effort as they deemed appropriate.

Since a supermajority of the GNSO council has already concluded that “a comprehensive, objective and quantifiable understanding of key factual issues regarding the gTLD Whois system will benefit future GNSO policy development efforts,”¹ we have undertaken the effort to determine which of the categories of studies proposed is addressed to key factual issues and likeliest to contribute to a comprehensive, objective and quantifiable understanding of those issues in order to benefit future GNSO policy development.

We provided rankings based on the categories into which staff sorted the study proposals suggested by members of the public and/or by the GAC. We have some observations on a few of the specific study proposals within some of those categories, but in the limited time available to the study group, much of which was consumed by debate over whether any proposed studies should even be considered, it was not possible to provide a more detailed critique of specific proposals.

The following study categories were identified among the top 3 priorities by at least 3 members of the group who provided priority rankings:

Category 4: Demand and motivation for privacy services (5 mentions)

Category 3: Availability of privacy services (4 mentions)

Category 1: Misuse of Whois (3 mentions)

In addition, the following categories were named among the top 3 priorities by 2 of those who identified priorities:

Category 5: Impact of Whois policy on crime and abuse (2 mentions)

Category 6: Proxy registrar compliance (2 mentions)²

We recommend that the other two categories be set aside for consideration, at least

¹ GNSO council Resolution 20071031-3, see <http://gns0.icann.org/meetings/minutes-gns0-31oct07.shtml>.

² The Registry Constituency did not provide a priority ranking but indicated that it could recommend some studies in categories 1, 3, 4 and 5 under some circumstances.

at this time. Category 2 (data protection laws and RAA compliance) attracted no priority support and in any case appears directed to legal analysis rather than “key factual issues.” Category 7 (WHOIS accuracy) was ranked high by two participants, but one is reviewing this ranking in light of the pendency of a study on this topic by ICANN’s contract compliance staff, while the other has urged that we review the results of the contract compliance study before specifically calling for another one, while noting that the results of that study need to be taken in context.³ Those who gave this category a low ranking did so on the basis of avoiding duplication while the contract compliance study is underway, and would agree that this may need to be revisited after the contract compliance study results are reviewed.

We conclude that categories 3 and 4 are the most promising candidates from which to draw for studies that meet the criteria set by the GNSO council in its supermajority vote. These study categories address privacy services that have developed in the marketplace and that may provide an important part of any revised ICANN gTLD Whois policy. Knowing more facts about the availability, take-up and operation of these services could significantly aid the policy development process.

We also note that the GAC RECOMMENDATIONS FOR WHOIS STUDIES specifically mentions “proxy or privacy services” in 6 of the 11 topics upon which further study is requested. Moreover, several of the studies recommended by the GAC fall within categories 3 and 4.

We believe that category 6 studies would be a logical next step to the studies in categories 3 and 4. Category 6 studies would determine the extent to which proxy service operators are revealing registrant information when presented with evidence of actionable harm, as required by the current Registrar Accreditation Agreement. The results of those studies would be of particular interest to the GAC and could be valuable in future policy-making. .

Within category 1, we believe the most promising study proposed would be #15, dealing with port 43 Whois queries, as a focus on the potential for misuse of different modalities of access to Whois data may be instructive for policy development.

While category 5 includes 3 studies requested by the GAC, we recommend study #13 as the most valuable in this category. Study #13 is tightly focused on phishing for which APWG data is apparently available.

³ The April 2008 edition of ICANN’s Contract Compliance newsletter noted that “accuracy of Whois data is of great importance to many ICANN stakeholders. In November 2007, ICANN launched a Whois Data Accuracy Study to provide useful information to ICANN constituencies and the Internet Community about Whois data accuracy. This study uses statistical sampling of a random sample of the gTLD population to assess the percentage of certain Whois data accuracy. ICANN has engaged with a consultant to provide name and address verification services. This will take at least 90 days and results are expected by August, 2008.... A full report on the findings from this study is expected in October, 2008.” <http://www.icann.org/compliance/archive/compliance-newsletter-200804.html>

Annex I -- List of study group participants and individual/constituency viewpoints

WHOIS study group participants contributed as individuals, not as official constituency representatives, though they worked to represent the interests of their constituencies, and they communicated with their constituencies during this work effort as they deemed appropriate.

Participant/constituency	1. Misuse	2. DPA laws and RAA compliance	3. Availability of Privacy services	4. demand & motivation for privacy services	5. Impact of WHOIS D.P. on crime & abuse	6. Proxy RR compliance with law enforcement & dispute resolution	7. WHOIS accuracy
Registry constituency <ul style="list-style-type: none"> • Jordi Iparraguirre • David Maher • Ken Stubbs 	#15 only	Only if factual compliance	Yes except #2 & #5	Only w/ metrics to determine use for illegitimate purposes	yes	no	no
Steve Metalitz - IPC	4	7	1	2	5	3	6
Lee Eulgen - IPC	3	5	2	1	6	4	7
Steve Del Bianco - BC	4	6	1	2	5	3	7
Tony Harris - ISPC	7	5	4	3	2	6	1
Tim Ruiz - RR	no	no	no	no	no	no	no
Paul Stahura - RR	no	no	no	no	no	no	no
James Bladel - RR	no	no	no	no	no	no	no
Stephane Van Gelder - Registrar	1	no	2	3	no	no	no
Danny Younger – indiv.	no	no	no	no	no	no	no
Beau Brendler - ALAC	3	5	7	4	1	6	2
Wendy Seltzer - ALAC	no	no	no	no	no	no	no
NCUC: <ul style="list-style-type: none"> • Robin Gross • Norbert Klein 	no	no	no	no	no	no	no

Annex II – Links to relevant GNSO Council actions, staff documents and GAC communications on WHOIS studies

1. Minutes of 31 October meeting at a resolution was approved to initiate studies of WHOIS: <http://gns0.icann.org/meetings/minutes-gns0-31oct07.shtml>
2. Minutes of 27 March 2008 meeting at which a resolution was approved to form a group of volunteers to: Review and discuss the 'Report on Public Suggestions on Further Studies of WHOIS', develop a proposed list, if any, of recommended studies for which ICANN staff will be asked to provide cost estimates to the Council; and deliver the list of recommendations with supporting rationale not later than 24 April 2008 (later delayed to 22 May): <http://gns0.icann.org/meetings/minutes-gns0-27mar08.shtml>
3. GAC Communiqué of 28 March, 2007, in which the Government Advisory Committee recommended to the ICANN Board that the ICANN community gather information on gTLD domain name registrations and registrants and how WHOIS data is used and misused. The GAC further recommended that the information be publicized and used to inform future debate on the issue: <http://gac.icann.org/web/communiques/gac27com.pdf>
4. GAC letter of 16 April, which elaborated on its earlier recommendations, enumerating 15 questions that might be answered using data that is compiled on who uses WHOIS data and for what purposes, and the types and extent of misuses and the harm, including economic harm, caused by different types of misuse of personal data (spam, identity theft, other data losses): <http://www.icann.org/correspondence/karlins-to-thrush-16apr08.pdf>
5. Summary of Public Suggestions on Further Studies of WHOIS (updated 10 May 2008 with GAC recommendations of 16 April): <http://gns0.icann.org/issues/whois/whois-study-suggestion-report-10may08.pdf>