

## Whois Study Table – Updated 18 February 2009

This table is based on the chart included in the WHOIS Hypothesis Report of 26 August 2008, amended to show related or overlapping studies clustered into “letter groupings”. This lettering and numbering scheme corresponds to the study numbers referenced in the motion currently being considered by the GNSO Council.

Study	Hypotheses
<b>Area 1</b>	<b>WHOIS misuse studies</b>
15	Those using Whois data to facilitate illegal or undesirable activities (such as spam) depend on port 43 access to Whois to obtain Whois data. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00018.html">http://forum.icann.org/lists/whois-comments-2008/msg00018.html</a>
A  (includes studies 1, 14, 21 & GAC data set 2)	<p>Study 1 hypothesis: Public access to WHOIS data is responsible for a material number of cases of misuse that have caused harm to natural persons whose registrations do not have a commercial purpose. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00001.html">http://forum.icann.org/lists/whois-comments-2008/msg00001.html</a></p> <p>Study 14 hypothesis: The Whois database is used only to a minor extent to generate spam and other such illegal or undesirable activities. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00017.html">http://forum.icann.org/lists/whois-comments-2008/msg00017.html</a></p> <p>Study 21 and GAC data set 2 hypothesis: There are significant abuses caused by public display of Whois. Significant abuses would include use of WHOIS data in spam generation, abuse of personal data, loss of reputation or identity theft, security costs and loss of data. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00026.html">http://forum.icann.org/lists/whois-comments-2008/msg00026.html</a></p>
GAC 3	There are technical measures available that would effectively curtail misuse of data published on WHOIS databases while preserving legitimate use and open access to the databases.
<b>Area 2</b>	<b>Compliance with data protection laws and the Registrar Accreditation Agreement</b>

16	<p>Two hypotheses:</p> <ol style="list-style-type: none"> <li>1. Registrars do not have a uniform method of disclosing or obtaining consent for collection of data for WHOIS purposes.</li> <li>2. The methods employed by registrars to disclose and obtain consent have not been adjudicated with regard to consistency with national law.</li> </ol> <p><a href="http://forum.icann.org/lists/whois-comments-2008/msg00019.html">http://forum.icann.org/lists/whois-comments-2008/msg00019.html</a></p> <p>Because there may be significant variations in consent among jurisdictions, the analysis should be segmented by common legal consent regimes.</p>
22	<p>(a) More restrictive Whois policies than the general ICANN Whois requirements have been adopted by some of the 30 top ccTLDs.</p> <p>(b) ccTLD operators report that Whois policies have been adopted in order to become compliant with the data protection laws of the territory.</p> <p>(c) ccTLDs are moving towards more restrictive WHOIS policies motivated by national data protection laws.</p> <p><a href="http://forum.icann.org/lists/whois-comments-2008/msg00024.html">http://forum.icann.org/lists/whois-comments-2008/msg00024.html</a></p>
23	<p>Some national data protection laws explicitly apply, or have been adjudicated to apply, to information submitted by gTLD registrants and made available via Whois. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00025.html">http://forum.icann.org/lists/whois-comments-2008/msg00025.html</a></p>
24	<p>Some Registrars are not obtaining agreement to terms required under section 3.7.7 of the RAA. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00013.html">http://forum.icann.org/lists/whois-comments-2008/msg00013.html</a></p>
GAC 12, GAC 13, GAC 14 & GAC 15	<p>GAC 12 - As reported by gTLD registries or registrars, as reflected in their contractual documents, or as adjudicated in relevant fora, the WHOIS contractual obligations of gTLD registries and registrars are governed by:</p> <ul style="list-style-type: none"> <li>• the laws of their local jurisdiction, or</li> <li>• the laws of the jurisdictions of their Registrants, or</li> <li>• the laws of ICANN (California, U.S.), or</li> <li>• some other jurisdiction.</li> </ul> <p>GAC 13 - Those gTLD registries or registrars that are governed by a local jurisdiction provide a contractual mechanism (or have had a mechanism imposed upon them by law or binding decision) to resolve any conflicts between the law applicable to their WHOIS requirements and the law of any other jurisdiction.</p> <p>GAC 14 - Incorporated into GAC 12.</p> <p>GAC 15 - Out of scope for proposed studies of “key factual issues”</p>
<b>Area 3</b>	<b>Availability of privacy services</b>

2	The cost of proxy services precludes some registrants from using them. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00002.html">http://forum.icann.org/lists/whois-comments-2008/msg00002.html</a>
5	Whois at present allows resellers and registrars to offer privacy services to differentiate themselves on value. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00005.html">http://forum.icann.org/lists/whois-comments-2008/msg00005.html</a>
GAC 7	A growing share of registrants is protecting the privacy of their Whois data by using proxy registrations and/or privacy services.
GAC 8	A growing share of registrars and affiliates are offering proxy registration and/or privacy services.
<b>Area 4</b>	<b>Demand and motivation for use of privacy services</b>
D (includes studies 18, 19, GAC 9, GAC 10)	<p>Study 18 hypothesis: The majority of domain names registered by proxy/privacy services are used for commercial purposes and not for use by natural persons. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00021.html">http://forum.icann.org/lists/whois-comments-2008/msg00021.html</a></p> <p>Study 19 hypothesis: A disproportionate share of requests to reveal the identity of registrants who use proxy services is directed toward registrations made by natural persons. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00022.html">http://forum.icann.org/lists/whois-comments-2008/msg00022.html</a></p> <p>GAC Study 9 hypothesis: A growing and significant share of proxy/privacy service users are legal persons.</p> <p>GAC Study 10 hypothesis: A growing and significant share of domains that are registered using proxy/privacy services are used for commercial purposes.</p>
<b>Area 5</b>	<b>Impact of WHOIS data protection on crime and abuse</b>
6	There is a statistically significant correlation between more restrictive ccTLD Whois policies and levels of cybercrime in a domain. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00006.html">http://forum.icann.org/lists/whois-comments-2008/msg00006.html</a>
GAC 2	Restrictions on some or all of the legitimate uses of WHOIS have a negative economic impact.
<b>Area 6</b>	<b>Proxy registrar compliance with law enforcement and dispute resolution requests</b>
12	Registrants would be less likely to falsify their Whois data if the sensitive information of private persons can be secured while giving law enforcement access. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00015.html">http://forum.icann.org/lists/whois-comments-2008/msg00015.html</a>

E (studies 3 and 20)	<p>Study 3 hypothesis: Some proxy and privacy services are not revealing registrant/licensee data when presented with requests that provide reasonable evidence of actionable harm, as required to avoid liability under registration agreement provisions that reflect the requirements of RAA 3.7.7.3.  <a href="http://forum.icann.org/lists/whois-comments-2008/msg00003.html">http://forum.icann.org/lists/whois-comments-2008/msg00003.html</a></p> <p>Study 20 hypothesis: Some proxy and privacy services do not promptly and reliably relay information requests to and from registrants/licensees.  <a href="http://forum.icann.org/lists/whois-comments-2008/msg00023.html">http://forum.icann.org/lists/whois-comments-2008/msg00023.html</a></p> <p>Note: this language has been changed from the original text reflected in the 26 August GNSO Hypothesis Group Report by agreement of the GNSO drafting team (and in consultation with ICANN staff) on 18 February 2009.</p>
Metalitz b.	<p>b. A party's use of a proxy/privacy registration service reduces the party's ability to respond to a UDRP proceeding.  <a href="http://forum.icann.org/lists/whois-comments-2008/msg00012.html">http://forum.icann.org/lists/whois-comments-2008/msg00012.html</a></p>
<b>Area 7</b>	<b>WHOIS data accuracy</b>
8	<p>Some Registrars knowingly tolerate inaccurate or falsified Whois data so as to attract and retain registrations by spammers and other bad actors, and do not face deterrent consequences for doing so.  <a href="http://forum.icann.org/lists/whois-comments-2008/msg00008.html">http://forum.icann.org/lists/whois-comments-2008/msg00008.html</a></p>
11	<p>The use of non-ASCII character sets in Whois records will detract from data accuracy and readability.</p> <p>Note: This is a proposed technical analysis and not a study, that is, a technical analysis of how the use of non-ASCII characters in Whois data elements might increase risks of inaccurate data, particularly through use of client-side software that fails to properly check the syntax of fields that contain both ASCII and non-ASCII strings. This analysis should examine and recommend methods for web display and Port 43 retrieval of non-ASCII Whois data, such that those accessing Whois can effectively read, recognize, and reliably use the information to reach registrant contacts and name server resources.  <a href="http://forum.icann.org/lists/whois-comments-2008/msg00014.html">http://forum.icann.org/lists/whois-comments-2008/msg00014.html</a></p>

<p>C</p> <p>(GAC studies 5 and 6)</p>	<p>GAC Study 5 hypothesis: A significant percentage of registrants who are legal entities are providing inaccurate Whois data that implies they are natural persons. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration.</p> <p>GAC Study 6 hypothesis: A significant percentage of registrants who are operating domains with a commercial purpose are providing inaccurate Whois data that implies they are acting without commercial purposes. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration.</p>
<p>GAC 4</p>	<p>A significant number of Registrars do not apply effective methods to detect fraudulent domain name registrations, and do not take adequate corrective measures when fraudulent information is detected.</p>
<p><b>(Areas 4 &amp; 5)</b></p> <p>B (includes 13, 17, GAC 1, GAC 11)</p>	<p>Study 13 hypotheses: a) The number of proxy registrations is increasing when compared with the total number of registrations; b) Proxy and private WHOIS records complicate the investigation and disabling of phishing sites, sites that host malware, and other sites perpetrating electronic crime as compared with non-proxy registrations and non-private registrations; c) Domain names registered using proxy or privacy services are disproportionately associated with phishing, malware, and other electronic crime as compared with non-proxy registrations or non-private registrations. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00016.html">http://forum.icann.org/lists/whois-comments-2008/msg00016.html</a></p> <p>Study 17 hypothesis: The majority of domain names registered by proxy/privacy services are used for abusive and/or illegal purposes. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00020.html">http://forum.icann.org/lists/whois-comments-2008/msg00020.html</a></p> <p>GAC Study 1 hypothesis: The legitimate use of gTLD WHOIS data is curtailed or prevented by the use of proxy and privacy registration services.</p> <p>GAC Study 11 hypothesis: Domain names registered using proxy or privacy services are disproportionately associated with fraud and other illegal activities as compared with non-proxy registrations.</p>
<p><b>(Area 6)</b> Metalitz a.</p>	<p>Some registrars operating proxy/privacy services are not revealing registrant data when requested in a UDRP proceeding. <a href="http://forum.icann.org/lists/whois-comments-2008/msg00012.html">http://forum.icann.org/lists/whois-comments-2008/msg00012.html</a></p>