

**Staff Report on the Whois Study Requested by the GNSO Council
(Draft for GNSO and ICANN Constituency Comment)**

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On 6 September, 2007, the ICANN GNSO Council approved a resolution requesting ICANN staff to proceed with certain studies of gTLD registrations, uses and misuses of Whois and a review and analysis of available proxy services. The specific language in the resolution, and staff's initial assessment of the "study to-date", are provided below.

GNSO Council Resolution language requesting a study on WHOIS:

"[The GNSO Council] requests ICANN Staff proceed with a study of gTLD registrations and registrants and how WHOIS data is used and misused as described in the GAC Principles Regarding gTLD WHOIS Service paragraph 4.2, and by the Working Group Final outcomes report. This study should include a review and analysis of the different proxy services available today and a summary of any other statistical studies that Staff can locate. We ask staff to report back to the council on the 'study to date' by October 4."

This is broad language and is subject to interpretation in terms of the scope of what is actually being called for. Staff assumes (but would welcome confirmation) that the GNSO Council intended to call for four distinct study components, as follows:

1. A "study of gTLD registrations and registrants" --

Scope of study -- How should the scope of this study be defined? What does the GNSO Council want to know about registrations and registrants? Possible characteristics the Council might want to know include:

- The GNSO Council may want to know how many registrants are natural persons (real, living individuals) vs. legal persons (business, association, non-profit, etc.).
 - GNSO might consider studying only those gTLDs that have registrants who are natural persons
 - Guidelines would need to be developed to specify how determinations of legal vs. natural persons would be made and there would be some margin of error
 - The GNSO Council might consider sorting registrants who are natural persons by country
- The GNSO Council may want to know how accurate registration data is. If so, an ICANN WHOIS Compliance audit is underway, and is assessing questions of accuracy. However, this is the first audit of its type. An update will be provided in LA, but comprehensive data may not be available for some time.
- The GNSO Council may want to know the percentage use of proxy services and privacy services among all registrants.
- What other characteristics of registrations and registrants should be studied?

Other study options and considerations:

- A 2005 study by Verisign (see attached "summary of Whois data points") has data about natural vs. legal persons in .com and .net. Is this kind of data what the GNSO Council is seeking?

Staff recommendation:

- The GNSO Council should provide any further guidance to ICANN staff as to the information about registrations and registrants that is being requested.
- Staff should consult with internal subject matter experts, a knowledgeable statistician (or study “designer”) and external stakeholders about what specific characteristics of registrations and registrants should be studied. Are the characteristics suggested above correct?
- Staff should work with experts as needed to develop cost and time-frames for delivering such a study.
- Staff should respond to the GNSO Council with a specific study recommendation, based on the preceding, and any other useful data. At that time staff may also determine anticipated costs and time frames for completion.

2. A “study of how WHOIS data is used and misused” –

Scope of Study -- What does the GNSO Council want to know about uses and misuses of WHOIS query data?

Study options and considerations:

From a qualitative perspective, there are a number of existing references that describe uses and misuses of Whois data. Several useful documents identify and describe ways in which Whois data is used to support both “legitimate” and “illegitimate” activities. For example, the GAC Principles enumerate many ways that Whois data is used in support of legitimate activities. One possibility is that ICANN staff could use resources such as the GAC Principles as a foundation to develop a compendium of different uses and misuses of Whois. Such a compendium might be a useful set of descriptions but would not provide insight into relative volumes or the scope of various types of misuses.

It is difficult to gather and analyze accurate quantifiable data about the uses and misuses of Whois query data. The quantitative data we do have is more limited. A recent SSAC spam study focuses on just one type of misuse of Whois data, and points to evidence that Whois queries are misused by spammers to harvest email addresses, but there currently is no public data that analyzes the purposes or amounts of various data queries overall. A 2002 study, the “Whois Survey Report”, identified in the recent summary of available Whois data points compiled by ICANN staff, examined over 3000 Whois queries in an effort to understand better who uses Whois data and for what purposes. Though the 2002 survey provides interesting insights about users of Whois, the report’s authors caution repeatedly that the study is neither statistically valid nor definitive. If ICANN staff were to initiate a similar survey, we would need to consider potential challenges and any limitations of such an approach. One possibility is to craft a survey that registrants complete when registering for a domain name, similar to the one employed in the 2002 Whois Survey Report. We would likely need a willing registrar or two, or registries, to participate, and the data would be self-reported, a limitation given the need to understand misuses of data which would not be captured by self-reported data.

Alternatively, we could consider developing an independent study (one not dependent on self-reported data), but the feasibility of such a study would need to be studied further. Such a study would require a larger budget and could take several months to design and implement. Expertise would be needed as to how this might be done without relying on self-reported data regarding misuses.

Summary of above – three possible options (any/all could be refined further as requested):

- 2.1 – Compile descriptive compendium of uses and misuses of Whois data
- 2.2 – Work with willing registrars and registries to conduct a survey of those who use Whois data. Caveat: need willing service providers
- 2.3 – Work with an independent study expert to design and implement a study of uses and misuses of Whois data. This study might also benefit from use of data from willing registrars and/or registries.

Staff recommendation:

- The GNSO Council should provide further guidance about the scope and approach to the study it envisions.
- Staff would scope further (cost, timeline) following GNSO guidance.
- Implement as requested.

3. A “...review and analysis of the different proxy services available today” –

Scope of study --

- The GNSO Council has requested that staff examine proxy services – (proxy: when a party enters into an agreement with a registrar and becomes the registrant as a proxy for a beneficial user). Numerous companies act as proxy registrants, including web design firms, law firms, marketing firms, web hosts, registrar subsidiaries, resellers and individuals. The "proxy" serves as the registered name holder, and the domain is then licensed to the beneficial user. Section [3.7.7.3 of the RAA](#)¹ addresses this scenario.
- The GNSO Council may also want to examine other privacy services, such as registrars or resellers that supply customers with alternate contact information and a mail forwarding service while leaving their customer identified as the actual registered name holder.
- The GNSO Council might consider a review of any terms of service that might be of particular interest, such as a review of provisions which describe the circumstances under which personal contact information of a registrant might be revealed.
- What is the information we want to have about the different proxy services available today?

Staff recommendation:

- The GNSO Council should provide any further guidance on the scope and details of the study requested.
- Staff will proceed with review and analysis of proxy services available today by engaging a researcher to perform an analysis of the proxy marketplace.
- Staff will provide a time frame for completion once the GNSO Council confirms the scope of the study requested.
- Note also the suggestion made in Study # 1 above that quantifiable data be gathered about the use of proxy services as part of a study on registrations and registrants.

4. “summary of any other statistical studies that Staff can locate” –

Staff recommendation: Staff plans to provide an updated version of the “summary of available WHOIS data points” – this may be further updated in the course of review of studies 1-3 above or as more data points are identified.

¹ 3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.