Internet Corporation for Assigned Names and Numbers

Whois Working Group Charter

Approved by the GNSO Council on 16 April, 2007

STATUS OF THIS DOCUMENT

This is the FINAL Whois Working Group Charter agreed following the GNSO Council meeting on 12 April, 2007.

SUMMARY

This document sets out the essential information regarding the ICANN Whois Working Group created by the GNSO Council on 28 March, 2007. It includes that Working Group's objectives, work plan and methods, timeline, information on participation and decision-making and basic background information regarding ICANN and Whois.

1   INTRODUCTION

The GNSO Council voted on 28 March, 2007 to create a Whois Working Group with a broad, balanced and representative membership to take the output of the WHOIS task force and carry out further work to address concerns raised by the community and seek to reach greater consensus around improvements to the WHOIS service that achieve a balance between providing contact information adequate to facilitate timely resolution of any problems that arise in connection with the Register Name, and the need to take reasonable precautions to protect the data about any identified or identifiable natural person from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

2   OBJECTIVE

The objective of the WG is to examine the issues raised with respect to the policy recommendations contained in section 4 of the Whois Task Force (Final Task Force Report on Whois Services[1])and make recommendations concerning how those policy recommendations may be improved to address these issues.

3   PARTICIPATION

The WG will allow for new insights regarding this issue, with people drawn from the GNSO, members of the GAC, government agencies (such as law enforcement agencies), and the broader community.

The membership of this WG extends to the following:

- Nominating Committee appointed GNSO councilors

- GNSO constituency members

In addition, observers and liaisons may join the working group on the following basis:

Observers shall not be members of or entitled to vote on the working group, but otherwise shall be entitled to participate on equal footing with members of the working group. Observers will be able to join and participate in the mailing list(s), and attend teleconferences or physical meetings.

Observers must provide their real name, organization (if associated with an organization) and contact details to the GNSO secretariat, and the GNSO secretariat will verify at least their email address and phone contact information. Observers will also be requested to provide a public statement of interest, as for working group members.

The GNSO Council has appointed Philip Sheppard as the Interim Chair of the WG and the working group can elect a chair at its first meeting.

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[1] http://gnso.icann.org/issues/whois-privacy/whois-services-final-tf-report-12mar07.htm

4 WORK PLAN

The WG will report back to the GNSO Council by 30 July on the following tasks:

4a Define the roles, responsibilities, and requirements of the contacts available for unrestricted public query-based access, and what happens if the responsibilities are not fulfilled.

4b. Determine how and which legitimate third parties may access registration data that is no longer available for unrestricted, public, query-based access.

4c Determine whether and how a distinction could be made between the registration contact information published based on the nature of the registered name holder (for example, legal vs. natural persons) or its use of the domain name (for example, commercial versus non-commercial use).

5 WORKING METHODS

The WG will work using the following methods:

- Teleconferences, likely to be once a week

- Wiki / other participatory forum or platform for group decision-making

- Face to face meeting at ICANN Puerto Rico meeting, 25-29 June, 2007 (remote participation in this meeting will be supported).

- Email list

6 DECISION-MAKING

The WG will operate using a rough consensus approach. The WG will work to achieve agreement on positions that most or all of the group members are willing to support.

For the expression of views, the Working Group will use the following conventions:
- **Agreement** – there is broad agreement within the Working Group (largely equivalent to "rough consensus" as used in the IETF)
- **Support** – there is some gathering of positive opinion, but competing positions may exist and broad agreement has not been reached
- **Alternative view** – a differing opinion that has been expressed, without garnering enough following within the WG to merit the notion of either Support or Agreement.

Working with the group, the Chair will have the authority to establish where agreement/support/alternative views exist.

7 TIMELINE

The WG will convene within one week of the GNSO Council's agreement of its Charter, by 20 April, 2007, latest.

The WG will work to achieve the following targets:

1. Produce for publication on the ICANN website a progress reports by each of the following dates: 25 May, 2007, and 22 June, 2007.

2. Conclude its work and submit a final report to the GNSO Council on or before 30 July, 2007.

If the WG has not been able to reach conclusions by 30 July, 2007, it will terminate its work and report its outcomes to the GNSO Council by that date.

8 BACKGROUND INFORMATION

A further 'Backgrounder' document has been prepared which should also be read by Working Group members – see section 9, 'Relevant Documents', below.

Whois
ICANN's agreements with gTLD registrars and gTLD registries require them to provide data concerning active Registered Names via three mechanisms: port-43 WHOIS, an interactive web page (often called WHOIS service), and third-party bulk access. The Registrar Accreditation Agreement (RAA) spells out which data is collected and which data is made available.   The data includes contact information of natural persons that includes names, postal addresses, email addresses, fax and voice telephone numbers.

Whois Policy Development Process (PDP) of the Generic Names Supporting Organisation (GNSO)
The GNSO is approaching the end of a policy development process (PDP) on Whois to fulfill terms of reference agreed in June 2005[2]. The Terms of Reference are to make policy recommendations to the ICANN Board on:

1. The purpose of the Whois service

2. The purpose of the Whois contacts (ie Registered Name Holder, technical contact, and administrative contact) and the purpose for which the data is collected.

3. Which data should be available for public access, and determine how to access data that is not available for public access.

4. How to improve the process for notifying a registrar of inaccurate data, and how to improve the process for correcting inaccurate data.

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[2] On 2nd June 2005, the GNSO Council set the Terms of Reference for the then Whois Task Force. Full text of the ToR is here; http://gnso.icann.org/policies/terms-of-reference.html,

5. How to deal with any conflicts between the requirements of ICANN agreements, and local or national privacy laws

Regarding Term of Reference #1, the purpose of Whois, the GNSO Council considered the work of the Whois Task Force and passed the following resolution on 12 April, 2006:

> "The GNSO Council recommends that the WHOIS task force use the following definition:
> "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."
> as a working definition to allow the task force to proceed on terms of reference (2), (3), and (4)."

In response to public input[3] received on the purpose, the GNSO Council clarified in its meeting of 20 July 2006[4] that the definition related to the service that provides public access to some of the data collected by registrars, and is not a definition of the purpose of the data collected by the registrars in the course of registering a domain name for their customers.   The GNSO Council also agreed to take the final report of the WHOIS task force, engage in further dialog with the advisory committees, and consider improving the wording of the WHOIS service definition so that it is broadly understandable.

Regarding Term of Reference #5, a Policy on conflicts between Whois requirements and local or national privacy laws was developed by the GNSO and approved by the Board on 10 May 2006.   A draft Procedure for Handling Whois Conflicts with Privacy Law has been published on the ICANN website at (http://gnso.icann.org/issues/whois-privacy/whois_national_laws_procedure.htm).

Regarding Terms of Reference 2, 3 and 4, the Final Task Force Report on Whois Services was created by the Whois Task Force and submitted to the GNSO Council on 12 March, 2007. The Task Force Report and Staff Discussion Points on Potential Implementation Issues are available at http://icann.org/announcements/announcement-16mar07.htm. The GNSO Council met to consider the WHOIS task force report on Saturday 25 March 2007, and also met with the Government Advisory Committee. Various concerns were raised regarding some of the recommendations in the report, and subsequently the GNSO Council met on Wednesday 28 March and decided to form a working group to attempt to resolve some of the issues raised. The former Whois Task Force has completed its work and the Whois Working Group is directed to develop this work as set out in this Charter.

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[3] 2006 Whois correspondence from organizations is archived here: http://gnso.icann.org/issues/whois-privacy/correspondence.html. Whois correspondence from governments and government agencies is archived here: http://gnso.icann.org/issues/whois-privacy/gov-input.html .

[4] http://gnso.icann.org/meetings/minutes-gnso-20jul06.shtml

On 28 March, 2007, the GNSO Council voted to pass the following resolution, creating this WG:

"The GNSO Council resolves:

1) To acknowledge the completion of the Whois TF work and note we have received and discussed their report, and thank the task force for their work

2) To create a working group of affected stakeholders:

- including GNSO constituency, law enforcement and community participants,

- whose work is to be completed within 120 days

- that will work to examine the issues raised with respect to the policy recommendations of the task force and make recommendations concerning how those policies may be improved to address these issues, namely:

a. define the roles, responsibilities, and requirements of the operational point of contact, and what happens if they are not fulfilled.

b. how legitimate interests will access registration data no longer published via Whois,

c. whether a distinction should be made between the registration contact information published based on the nature of the registered name holder (for example, legal vs. natural persons) or its use of the domain name."

On 28 March, 2007, the Government Advisory Committee to the ICANN Board produced a set of public policy principles regarding Whois[5] in line with the recommendations of the Tunis Agenda of the World Summit on the Information Society. The GAC recognized that the original function of the gTLD WHOIS service is to provide a look up service to Internet users. As the Internet has evolved, WHOIS data is now used in support of a number of other legitimate (subject to applicable national law) activities, including

"1. Supporting the security and stability of the Internet by providing contact points for network operators and administrators, including ISPs, and certified computer incident response teams;

2. Allowing users to determine the availability of domain names;

3. Assisting law enforcement authorities in investigations, in enforcing national and international laws, including, for example, countering terrorism-related criminal offences and in supporting

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[5] http://gac.icann.org/web/communiques/gac27com.pdf

international cooperation procedures. In some countries, specialized non governmental entities may be involved in this work;

4.   Assisting in combating against abusive uses of Information and Communication Technologies (ICTs), such as illegal and other acts motivated by racism, racial discrimination, xenophobia, and related intolerance, hatred, violence, all forms of child abuse, including paedophilia and child pornography, and trafficking in, and exploitation of, human beings.

5.   Facilitating enquiries and subsequent steps to conduct trademark clearances and to help counter intellectual property infringement, misuse and theft in accordance with applicable national laws and international treaties;

6.   Contributing to user confidence in the Internet as a reliable and efficient means of information and communication and as an important tool for promoting digital inclusion, e-commerce and other legitimate uses by helping users identify persons or entities responsible for content and services online; and

7.   Assisting businesses, other organizations and users in combating fraud, complying with relevant laws, and safeguarding the interests of the public."[6]

The GAC principles stated that:

- The definition, purpose, and operation of gTLD WHOIS services should reflect and respect the different interests and concerns outlined above.

- gTLD WHOIS services must comply with applicable national laws and regulations.

- gTLD WHOIS services should provide sufficient and accurate data about domain name registrations and registrants subject to national safeguards for individuals' privacy in a manner that:

   1. Supports the stability, reliability, security, and global interoperability of the Internet, from both a technical and public trust perspective; and

   2.   Facilitates continuous, timely and world-wide access.

- Ongoing collaboration among all relevant stakeholders who are users of, affected by, or responsible for, maintaining WHOIS data and services is essential to the effective implementation of these principles.

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[6] http://gac.icann.org/web/communiques/gac27com.pdf

9   Relevant Documents

Group members should at a minimum familiarize themselves with the **Whois Working Group Backgrounder** distributed to the Working Group on 20 April, 2007.

The following documents are directly relevant to the work of this Working Group and should be read by participants before joining the group:

- Final Task Force Report on Whois Services, including the public comments report on comments received on the policy proposals from November 2006 – January 2007; http://gnso.icann.org/issues/whois-privacy/whois-services-final-tf-report-12mar07.htm .

- Staff notes on Potential Implementation Issues; http://gnso.icann.org/issues/whois/staff-discussion-points-whois-final-15mar2007.htm

- Government Advisory Committee Principles regarding gTLD WHOIS Services http://gac.icann.org/web/communiques/gac27com.pdf

The email archives of this Working Group are published here:

http://forum.icann.org/lists/gnso-whois-wg/

Ongoing information and documentation on Whois is available here:

http://gnso.icann.org/issues/whois-privacy/