Pursuant to requirements of the GSNO policy development process, the Registry Constituency (RyC) submits these comments on the draft Preliminary Task Force Report on Whois Services (the "Report")[1]:

I.   Constituency position

<u>INTRODUCTION</u>

The Report opens with a summary of "the key findings that have emerged during the work of the Whois Task Force since it was convened in February 2005…." According to the Report:

"The task force has reached agreement on the following issues:

- *Many registrants do not understand the meaning or purpose of the different Whois contacts (billing contact, administrative contact, technical contact).*

- *If changes are made to the Whois service, awareness-raising for registrants will be needed.*

- *New mechanisms to restrict some contact data from publication should be adopted to address privacy concerns*

The task force has been unable to reach agreement on the following issues:

- *The purpose of the Whois contacts*

- *Whether different data should be published in Whois."*

The RyC concurs with this summary, and these comments will deal primarily with the need (a) to move forward on the areas where there is agreement and (b) to recognize a breakdown in the consensus building process with respect to issues where the task force has been unable to reach agreement.

First, however, some general comments are needed to set the stage for the more specific comments on the open issues.

Although this task force was convened in February 2005, it is the outgrowth of proceedings that began in 2001, nearly six years ago. It is a sad commentary on the processes of the GNSO and its task forces that it has taken over six years to arrive at what are essentially two simple conclusions: 1) Most Internet users don't understand the WHOIS service, and something should be done about it; and 2) Users want to protect their personal privacy, but there is no agreement at all on how to achieve this. These blindingly obvious propositions should have been the beginning of the task force's work six years ago, not its present conclusions.

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[1] http://gnso.icann.org/issues/whois-privacy/prelim-tf-rpt-22nov06.htm#_Toc151981327

The RyC believes that, if and when this Report reaches ICANN's Board of Directors, the Board should accept the Report with the understanding that the issues involved are not so complex that six years were needed to address them.

The lofty goal of policy making by consensus has been subverted by constituencies that have a vested interested in preservation of the status quo in the WHOIS. The proceedings of this task force and its predecessors have dragged on over the years mainly because of procedural maneuvering with little or no connection to the substantive issues. These tactics were designed to avoid recognition of the simple fact that there is no consensus on the fundamental question of how to reconcile the WHOIS function with protection of personal privacy.

The London School of Economics Study of the GNSO[2] commissioned by ICANN has discussed this breakdown of GNSO procedures and has made a number of recommendations for restructuring the GNSO and its Council to enhance the consensus building process. RyC hopes that ICANN's pending proceeding to improve GNSO structures and processes will result in policy development processes that move far more swiftly than the six year odyssey of the WHOIS task forces.

THE AGREED UPON ISSUES

The RyC believes that the first two agreed issues are connected and require little comment. "Awareness raising" is hardly an issue. The arcane processes of the technical administration of the Internet are understood only by a tiny minority of Internet users. Does anyone support the position that the rest of the world should be burdened with more confusion and befuddlement on WHOIS issues?

The third agreed issue is stated in a way that masks the most serious underlying problem of the WHOIS function – reconciling individual registrants' legitimate interests in protection of personal privacy with various parties' needs for access to the data. It is a major step in the right direction for the Report to acknowledge that there are indeed privacy concerns (even though this was transparently obvious six years ago). In the tortuous proceedings over the past six years some constituencies have taken the position that registration of a domain name demands a surrender of all expectations of personal privacy, reminiscent of Scott McNealy's infamous dictum, "You have no privacy. Get over it."

At the other extreme, there is a respectable position that anonymity should be an option for domain name registrants, although this is not a position supported by RyC. The increasing international popularity of proxy registrations shows that significant numbers of Internet users want at least partial anonymity that is offered by proxy registration. The RyC does not take a position on the availability of proxy registrations, and believes that this is an issue that is best left to the

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[2] http://www.icann.org/announcements/gnso-review-report-sep06.pdf

registrars as a matter of business policy and the requirements of law in their respective jurisdictions.

RyC believes that complete anonymity, even if it were possible to achieve, is not a viable option as a mechanism for privacy protection. In comments filed in the earlier proceeding on the purpose of WHOIS, RyC said:

> "[The] explosive growth [of the Internet] has unfortunately attracted a minority of users who do not share the high-minded idealism of the Internet's founders. The spammers, cybersquatters, phishers and other abusers of the functions of the Internet, together with users whose intent is criminal (terrorists, *et al.*) have made it necessary to recognize that the WHOIS function has purposes beyond its original purpose." [3]

Recognizing this unfortunate reality, RyC believes that some mechanism should be developed that allows the WHOIS data gathered by registrars to be available to authorized law enforcement agencies and other interests with a legitimate need for access while limiting general publication of personal data. Proposals for "tiered access" are examples of mechanisms for this purpose. These appear to offer significant improvements in the protection of personal privacy, as compared to the situation today. RyC recommends that the task force direct its future efforts to finding a workable form of tiered access that might be acceptable to most, if not all, interested parties. (RyC's comments on a proposal for another mechanism, the "Special Circumstances Proposal" are set forth below.)

THE ISSUES NOT AGREED

The two issues not agreed, *i.e.,* the purpose of WHOIS contacts, and the question whether there should be a change in data from that now published, are unlikely ever to be the subject even of rough consensus among the interested parties.

The GNSO resolution on the subject of the purpose, adopted on April 12, 2006, reads as follows:

> *"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 name server."[4]*

This resolution is supported by RyC with the qualification that it does not preclude access to data by law enforcement and other parties having legitimate needs for access.

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[3] http://gnso.icann.org/issues/whois-privacy/tf-report-15mar06.htm#0.4e
[4] http://gnso.icann.org/meetings/minutes-gnso-12apr06.shtml, item 3

RyC believes that a decent respect for registrants' interests in protection of personal privacy demands a change in the type of data published in the WHOIS service. There is, of course, a difference between the types of data collected by registrars, and the types of data published in the WHOIS service. RyC generally supports the concepts underlying the Registrar Constituency's OPoC proposal (although there are some practical concerns addressed below). Registrars have their own business needs for collection of registrant data, and should be able to make decisions primarily based on these needs and on the legal requirements of the jurisdictions where they operate.

RyC strongly believes that there is no acceptable reason for publication of an individual's personal data such as home address, phone number or email address, whether by a registry or registrar. To the extent that such data is needed for law enforcement purposes or for the resolution of conflicts such as intellectual property, the appropriate means to meet these needs should be a tiered access process. RyC acknowledges that a tiered access model presents some policy implementation challenges but believes that it would be very worthwhile to confront those challenges in a constructive and diligent manner.

COMMENTS ON SPECIFIC PROPOSALS

The Report requests comments on three specific subjects:

- The Operational Point of Contact (OPoC) proposal

- The Special Circumstances proposal

- The five proposals in the discussion on access to data

The OPoC Proposal

As stated above, RyC generally supports the underlying concepts of the OPoC proposal. There are, however, special needs of some registries that are not addressed by OPoC. Sponsored registries, including .aero, .cat, .coop, .jobs, .museum and .travel must be able to determine the eligibility of registration applicants. The OPoC proposal does not adequately deal with these needs, but this can be remedied without sacrifice of the general concept that the collection of data should be based primarily on business needs, local law, and the need to escrow data, while the publication of data should be consistent with protection of personal privacy and local law.

With respect to publication of data by registrars, RyC supports that portion of the current OPoC proposal, as follows:

> *Accredited registrars will publish three types of data:*
> *1) Registered Name Holder*
> *2) Country and state/province of the registered nameholder*
> *3) Contact information of the OPoC, including name, address, telephone number, email.*
> *Also published by the registrar:*

- *date of initial registration of the domain name (creation date)*
- *expiry date,*
- *registry level data as follows: registered name, sponsoring registrar, URI of the authoritative Whois server, authoritative names associated with the registration, and status of the registered name (e.g. lock, hold, expired).*

With respect to publication of data by the <u>unsponsored</u> registries, RyC also supports the OPoC position, as follows:

Registry data published is limited to:
- *registered name*
- *identity of sponsoring registrar (i.e. registrar name, registrar IANA identification number, URL of authoritative Whois server)*
- *nameserver hostnames and corresponding IP addresses associated with the name*
- *status of the registered name (e.g. lock, etc.)*
- *and – possibly – the creation and expiry dates of the name*.

RyC believes that the sponsored registries should be free to determine what data should be collected for their specific needs and also to determine whether any data, beyond that listed above should be published.

RyC also believes that the OPoC proposal has a major hole that needs to be filled: what happens when the non-published Whois data is requested of the OPoC? This question must be answered in sufficient detail to provide policy direction regarding what, when, how and to whom non-published Whois data must be released by the OPoC. Until that is done, the OPoC proposal provides a solution for accommodating privacy concerns, but does nothing to deal with the legitimate needs of access for non-published Whois data.

<u>The Special Circumstances Proposal</u>

This proposal could easily be interpreted to be another instance of the delaying tactics that have marred the WHOIS task force proceedings from their inception. It is ludicrous to believe that any registrant concerned with his or her personal privacy would jump through the hoops of this proposal.

<u>Access to Data</u>

The questions of access to data discussed in the Report are generally disposed of in the discussion above. So long as the issue of publication is resolved with adequate protection of personal privacy, the question of access can be dealt with separately and most appropriately by a tiered access mechanism to be developed.

II. Method for Reaching Agreement on RyC Position

RyC drafted and circulated via email a constituency statement, soliciting input from its members. RyC members suggested edits and additions to the draft

which were subsequently incorporated into the final constituency statement. The statement was adopted by affirmative vote of six of the seven unsponsored registries and six of the seven sponsored registries (one sponsored and one unsponsored registry did not vote.)] vote.

III. Impact on Constituency

Adoption of the positions advocated by RyC would assist the members of the RyC in fulfilling their legal obligations in their respective jurisdictions, and would be of significant benefit through lifting burdensome contractual requirements. The impact of WHOIS changes is larger for thick registries than it is for thin, and the impact on sponsored registries can be more significant than on unsponsored registries. Any major changes would likely have considerable impact on registries and especially on registrars, in time, money and resources.

IV. Time Period Necessary to Complete Implementation

Completion of the OPoC proposal to deal with policy and procedures to support access to non-published WHOIS data could involve considerable effort because questions must be answered prior to implementation such as the following: Who decides who gets access? How are requests for access authenticated? To whom should access be given? Who provides access? How would access be given?

In addition, implementing a tiered access system would probably involve all registries and registrars migrating from the current WHOIS protocol to the IRIS protocol, a process that would undoubtedly take considerable time.

RyC suggests that the time spent in addressing the above and finding a workable tiered access solution is a step in the right direction and such activity presents a far better investment of time and resources of the Internet community.