

WHOIS Review Team Discussion Paper

Questions to the Community, June 2011

Comment Period

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WHOIS Review

Questions

1. What measures should ICANN take to clarify its existing WHOIS policy?

WHOIS predated ICANN and there was not found a written policy. There is the RFC 3912 (2004) WHOIS Protocol. But in ICANN there is limited consensus on WHOIS databases: WHOIS Data Reminder Policy (2003), Restored Names Accuracy Policy (2004), WHOIS Marketing Restrictions Policy (2004), prohibiting resale or redistribution of bulk WHOIS data by data users (2004).

It is necessary to elaborate a unify-written Uniform ICANN Policy about WHOIS database, accessible for everybody that will allow users to have a clear understanding and knowledge of the WHOIS POLICY in a clear way.

2. How should ICANN clarify the status of the high level principles set out in the Affirmation of Commitments and the GAC Principles on WHOIS?

Preparing a Beginners Guide on WHOIS Policy.

- **Applicable Laws, Privacy issues and Proxy/Privacy**

4. How can ICANN balance the privacy concerns of some registrants with its commitment to having accurate and complete WHOIS data publicly accessible without restriction?

Balancing privacy, security and right to know is the question. Minimal data requirements that allow a quick identification would be ideal, like Registered Name Holder, State/City/Country, email and telephone. The rest data gathered should be managed by every ccTLD according to their national legislation on privacy and data protection.

But here we have the issue that not every country has regulated privacy and data protection or it is not adequate. For this, there should be a global study on privacy law to find a model that suits everybody (if that is possible!), taking into account the international guides such as OECD and UN, trying to find a Tailor-made policy.

5. How should ICANN address concerns about the use of privacy/proxy services and their impact on the accuracy and availability of the WHOIS data?

This is a very important matter since proxy services can keep machine anonymous and help criminal going unmasked and delay criminal investigations. A quick and simple procedures should be find to avoid this. It can be analyzed the Budapest Cibercrime Convention to see what solutions they have found. There is also the 24/7 OAS CSIRT (Computer Security Incident Response Team) which can be of help to look at.

On the other hand proxy services could be useful for registrants for not to make available their personal data for privacy or security reasons. But for developing country this will mean an extra cost if the services offered are paid. There has to be a clear policy since in some countries like the US it is a public resource.

For those whith legitimates reasons for anonymous speech, could be a way of justification for their anonymity.

- **ICANN's compliance and enforcement activities**

Questions

6. How effective are ICANN's current WHOIS related compliance activities?

There should be find a way for third actors that are not on direct contractual relationship with ICANN to be liable for the misuse of WHOIS. There should be a RAA revision trying to solve this and other related problems.

8. What should ICANN do to ensure its WHOIS commitments are effectively enforced?

Warnings and then economical punishment, such as fines.

In civil law it is commonly used when gathering personal data to assure that they are correct to sing affidavits and giving incorrect information is a felony.

10. How can ICANN improve the accuracy of WHOIS data?

First of all it has to take into account the purpose and quantity limitation when gathering data. Then find a way to prove that the information is accurate by asking for proof of the information given such as phone bill or others.

12. Are there barriers, cost or otherwise, to compliance with WHOIS policy?

Full and deep understanding of WHOIS Policy might be one.

13. What are the consequences or impacts of non-compliance with WHOIS policy?

Consumer trust decrease either in ICANN or the Internet. ICANN credibility has a negative impact and loose strenght as a organization.