

26 January 2016

Summary and Analysis of comments for:

Notice of Preliminary Determination To Grant Registrar Data Retention Waiver Request for Ascio Technologies, Inc. Danmark - filial af Ascio Technologies, Inc. USA

The comment period ran from 9 December 2015 to 11 January 2016. Three (3) public comment submissions were received, only two of which were bona fide comments. The public comment submissions may be viewed in their entirety at:

<http://forum.icann.org/lists/comments-ascio-technologies-09dec15/>

Disclaimer: The summary is not a full and complete recitation of the comments received. It is an attempt to capture in broad terms the nature and scope of the comments. The summary has been prepared in an effort to highlight key elements of the submissions in an abbreviated format, not to replace the comments. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional.

SUMMARY OF COMMENTS

One comment was submitted by Rieke Poppe, Domain Operations Manager, One.com, which stated:

We had discussed applying for a similar waiver request, as we operate under same Danish laws as Ascio Technologies. So comment from our side would be supportive as to approving the waiver request.

Another comment was submitted by the GNSO Intellectual Property Constituency (the “IPC”) and said in part:

“IPC would not object in principle to the specific waiver requested, so long as it is adequately demonstrated that without a waiver the Registrar will face an irreconcilable conflict between its contractual obligations under the RAA and its legal duties under applicable national law.”

The IPC noted that in some previous announcements granting data retention waiver requests, ICANN has not clearly specified the law which it deemed applicable as the basis for the waiver and maintained that if ICANN ultimately decides to grant the waivers sought, it should clearly state that it is doing so on the basis of a specific cited provision of Danish law, and that the “applicable jurisdiction,” for purposes of future waiver requests, is Denmark.

IPC also noted that the legal opinion submitted in support of the waiver request contains several statements on a separate topic – contractual requirements to make Whois data publicly available.

The IPC maintains that the legal opinion’s analysis on this topic is fundamentally flawed and requested that ICANN make clear that the waiver applies only to the post-sponsorship period of retention of data listed in cited provisions of the Data Retention Specification and that it does not impact other obligations of registrars under the 2013 RAA or ICANN policies, including all obligations with respect to the collection or maintenance of such data, as well as the obligation to make such data available to the public, through Whois or otherwise, during the term of the sponsorship.

The IPC also notes that the Notice of Preliminary Determination omitted important limiting language appearing in most other notices previously posted, and urged ICANN to include in any waiver that might be granted language that confines the waiver to the reduction of the specified post-sponsorship time period during which the registrar must retain the data listed in sections 1.1.1 through 1.1.8 of the Data Retention Specification and that states that “[i]n all other respects the terms of the Specification would remain AS-IS.”

ANAYLSIS OF COMMENTS

ICANN appreciates the time spent by community members to provide their input on the potential grant of a data retention waiver to this Registrar.

Scope of Waiver If Granted

ICANN appreciates the comments regarding the appropriate scope of any waiver that may be granted and will take these comments into consideration. With respect to the IPC comments requesting that if ICANN ultimately decides to grant the waivers sought, it should clearly state that it is doing so on the basis of a specific cited provision of Danish law, and that the “applicable jurisdiction,” for purposes of future waiver requests, is Denmark, ICANN notes that the Notice of Preliminary Determination does so state. With respect to the IPC comments noting that the Notice of Preliminary Determination omitted important limiting language appearing in most other notices previously posted, and urged ICANN to include in any waiver that might be granted language that confines the waiver to the reduction of the specified post-sponsorship time period during which the registrar must retain the data listed in sections 1.1.1 through 1.1.8 of the Data Retention Specification and that states that “[i]n all other respects the terms of the Specification would remain AS-IS,” ICANN notes that the Notice of Preliminary Determination in fact does include this limiting language.

Conclusion

ICANN is committed to working with registrars and the ICANN community to balance and reconcile the data retention requirements of the 2013 RAA with local, regional and national laws and regulations.

Commentators:

Name:

On Behalf of:

Rieke Poppe

One.com

Steve Metalitz

GNSO Intellectual Property Constituency