

**Accreditation & Access Model for Non-Public Whois
Community Comments
5 – April – 2018**

Page	Document Section	Issue	Summary of Submitted Comments	Suggested Resolution / Proposed Text for Next Model Draft
1	Introduction	Adding Business Purposes to Introduction	Add business and legal verification to purposes. (Zak Muscovitch, ICA)	As that deadline looms, access to the WHOIS system remains unaddressed. ICANN, the multistakeholder organization charged worldwide with the safe, stable and secure operability of the domain name system (DNS), has proposed a model that minimizes its own costs and liability, but does not address the public interest -- omitting a mechanism for access to WHOIS data for law enforcement, cybersecurity, business and legal verification , and consumer protection needs. This oversight leaves Internet users unprotected and the Internet less stable or secure.
1	Introduction	Adding Business Purposes to Introduction	Further clarify purposes by adding legal verification and contractual compliance (Zak Muscovitch, ICA)	Time is of the essence. Should an accreditation and access model not be agreed upon in the next few weeks, the danger is that WHOIS effectively will "go dark" on May 25. Such a development would disable a critical tool employed for the safe and stable operation of the DNS, the prevention of crime, the conduct of vital cybersecurity operations, the protection of consumers, legal verification and contractual compliance , and the enforcement of intellectual property and other rights (specified in purposes section) . By ICANN's own estimation, a model would not be implemented until at least December 2018 -- causing a prolonged WHOIS access outage.
1	Introduction	Public and non-public Whois	Word the third paragraph so that it's clear some public data is preserved, ensuring the proposed model doesn't become a "solution" to a fully non-public WHOIS. (Bradley Silver, TimeWarner; Dean Marks, COA)	Add to the front of third paragraph: ICANN has proposed a new working model for the WHOIS system, one that preserves access to some data, but significantly over-complies with GDPR. As that the May deadline looms...
1	Introduction	Public and non-public Whois	Be specific that it is the access to the gated non-public Whois data that remains unaddressed. (Tim Chen, DomainTools)	As the May deadline looms, access to non-public WHOIS data remains unaddressed.

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2	Preface and Overview	Describing the harm	Expand the definition of harm. (Tim Chen, DomainTools) Mention that the harm caused is wildly disproportionate to the loss of the ability to tackle it via WHOIS (Brian Beckham, WIPO)	<ul style="list-style-type: none"> The harm inflicted is dangerous, disruptive and expensive, and prevention/remediation windows are often measured in seconds or minutes, and not days or weeks. The consequences of inaction or impaired action can be dire and irreversible for Internet users worldwide and are disproportionate to the loss of the ability to employ WHOIS to address it.
3	Preface and Overview	Detailing potential harms	Further spell out potential harms (Zak Muscovitch, ICA)	<p>Add the following above the section starting with "This model, accordingly...":</p> <p>Moreover, if adopted, an overly-restricted Whois access model will severely impair or prevent crucial legal verification, investigation, compliance, and rights enforcement obligations which are critical to for the protection of the public. For example;</p> <ul style="list-style-type: none"> Companies, and their agents who perform due diligence, compliance, and verification in connection with the acquisition or disposition of assets, bankruptcies and receiverships, and related professional services, will have their ability to comply with obligations impaired or prevented. Consumers will face fraud and domain name theft as a result of the inability of secondary domain name marketplaces and escrow services to verify and investigate domain name transfers and transactions, thereby resulting in greater instances of fraud, theft, and identity theft. Investigators and researchers will be unable to conduct crucial fact checking and investigations thereby impairing the public's ability to receive accurate reporting and information on issues of public importance.
3-4	Eligible Entities	Business Purposes, legal and contractual compliance	Create new category for legal and business (Zak Muscovitch, ICA)	1. Cybersecurity & OpSec, Investigators, Legal Compliance and Verification

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				<p>Eligible Entities include companies, or individuals at companies, who provide cybersecurity, or operational security, investigations, and legal compliance for their company or another corporation, or provide it as a solution and/or service to other individuals, entities or end-users. This category is designed for security companies, organizations that need to protect their own interests and conduct compliance and verifications activities to avoid fraud, and agents/companies that act on their behalf. Agents may include cybersecurity concerns, academic institutions and researchers, OpSec investigators, and cybersecurity data aggregators, legal professionals, accountants, journalists and others.</p> <p>Examples of services covered include:</p> <ul style="list-style-type: none"> • Identity and access management • Application security; • Fraud protection; • Digital forensics and incident response; • Email and data security; • Protection from spear-phishing and malware, botnets, DDOS attacks • Protection for end-users by online platforms, such as browsers, search engines, and social media companies; • Security intelligence and analytics • Validation of domain name, website and asset ownership to ensure accuracy, transparency and accountability for commercial activity; and • Ensuring continuity, integrity and availability of Internet infrastructure.
4	Eligible Entities	Characterizations of eligible entities	Recast data "aggregators" as "threat intelligence providers"	Agents may include cybersecurity concerns, academic institutions and researchers, OpSec investigators, and cybersecurity data aggregators and others IP/consumer protection, security,

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			(Tim Chen, DomainTools)	risk and threat intelligence providers who aggregate data for correlation.
4	Eligible Entities	Further business / legal / contractual compliance	Add legal compliance to list and expand list of example organizations (Zak Muscovitch, ICA)	<ul style="list-style-type: none"> • Provide: <ul style="list-style-type: none"> ○ verifiable credentials; and ○ letters of authority/endorsement from governments, companies, and/or individuals on whose behalf they are authorized to act (e.g., hired to protect from security threats including but not limited to spam, malware, malicious apps, denial of service, ex-filtration of content, persistent threats, fraud and other harms, or to enable legal compliance, verification, and fraud prevention). <p>Examples of security related entities in this category include: Akamai, BAE Systems, Cloudflare, IBM Security, Sophos, Symantec and security organizations within companies like Salesforce, Facebook, Microsoft.</p> <p>Examples of legal compliance related entities in this category include Escrow.com and Payoneer (Escrow service providers), Sedo.com and Godaddy's Afternic (Secondary Marketplaces), Heritage Auctions Snapnames, and Namejet (Auctioneers), Lazard, Morgan Stanley, Goldman Sachs, Barclays (M&A advisors); Hilco Streambank, Berggren, Media Options, BrandIT (IP and Business Brokers); EY, PWC, Deloitte, KPMG (Accounting / Trustees and Receivers), Dentons, Norton Rose (law firms and paralegals). Examples of investigation related entities include DomainIncite, DomainNameWire, NYT, Washington Post. Examples of research related entities include Carnegie Mellon University, Berkman Centre for Internet & Society at Harvard University and Oxford Internet Institute.</p>

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5	Eligible Entities		Expand to include IP-related abuse (Zak Muscovitch, ICA)	<p>2. Intellectual Property and IP-Related Online Abuse</p> <p>This category is designed for intellectual property rights holders, including trademark, patent or copyright owners as well as victims of online abuse or their attorneys or agents (agents may include legal representatives, trade associations, data aggregators and brand protection companies) who need to investigate and enforce their intellectual property and/or other rights. Applicants in this category may also include members in good standing of a national or state/provincial licensing organization (such as a bar association, or a patent and trademark office), or of a related trade association.</p> <p>Examples of investigation and enforcement activity include but are not limited to:</p> <ul style="list-style-type: none"> • Prevention of consumer confusion through infringement of trademarks • Abating consumer fraud • Combating counterfeits • Preventing the unauthorized distribution of copyrighted material • Responding to trademark related claims • Trademark clearance • IP evaluation and investigation
5	Eligible Entities	“Illegitimate” use of data by IP concerns	Rephrase footnote 10, which refers negatively to “illegitimate use by IP concerns”. (Bradley Silver, TimeWarner; Dean Marks, COA)	<p>Proposed footnote 10:</p> <p>ICANN’s IPC has been asked for additional detail regarding eligibility in this category.</p>
6	Eligible Entities	Public Safety/Health access and	Reintroduce Public safety and health orgs (Bradley Silver, TimeWarner; Dean	reintroduce (use language from annotated version) Non-governmental Public Safety and Health Organizations language, and remove LEA references

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		addition of LEA section	Marks, COA; Chris Oldknow)	<p>Eligible entities include not-for-profit organizations that seek to protect public safety and health. Their legitimate and legal purposes include:</p> <ul style="list-style-type: none"> • Academic and other non-profits with a legitimate or legal purpose • Child protection and child anti-abuse organizations • Combating human trafficking • Combating counterfeit pharmaceuticals • Combating dangerous counterfeit products • Combating hate, racism and discrimination <p>The application template for applicants in this category includes:</p> <ul style="list-style-type: none"> • Identity of the applicant • Contact information • Standing for application (organizational mission) • Evidence of organizational formation or incorporation • Statement regarding intended use of data <p>This category of user must also:</p> <ol style="list-style-type: none"> 1. Agree to use the data for legitimate and lawful purposes 2. Further agree to: <ul style="list-style-type: none"> a. the terms of service b. prevent abuse of data accessed c. be subject to de-accreditation if they are found to abuse use of data d. be subject to penalties <p><i>Examples include The Internet Watch Foundation, NCMEC, LegitScript, The Southern Poverty Law Center, and the Anti-Defamation League.</i></p>
6	Legitimate and Lawful Purposes	Standalone category	Expand “legal actions” (Zak Muscovitch, ICA)	<p>Legal Matters and Actions</p> <ul style="list-style-type: none"> • Investigate fraudulent use of registrant’s name in any other domain names

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				<ul style="list-style-type: none"> Asset investigation and recovery Locate a person for service of process Identify parties and non-parties Contact a registrant's legal representative Take legal action or respond to action (e.g., court, administrative or arbitration proceedings) 	
7	Legitimate and Lawful Purposes		Broaden purposes to include contracting elements (Zak Muscovitch, ICA)	Contracting and Contractual Enforcement <ul style="list-style-type: none"> Carry-out contractual compliance and due diligence investigations Conduct registration data escrow audits, and other regulatory and contractual audits Validate site ownership and eligibility to conduct commercial activity Proof of ownership in domain name purchase/sales transactions, brokering, and escrow 	
7-8	Purpose and Entity Mapping		Broaden purposes and reasons to include business purposes (Zak Muscovitch, ICA)	Purpose	Reason
				Compliance and Legal Verification	<ul style="list-style-type: none"> conduct due diligence and verify registrant identification and site ownership
				Research and Investigation	<ul style="list-style-type: none"> Fraud, Theft, Abuse, Malicious Online Activities, Asset Recovery, Skip Tracing; for investigation of civil wrongdoing Academic research using

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					Whois registration details
				Practice of Law	<ul style="list-style-type: none"> • Assist with transactions, investigations, due diligence, litigation, and party identification
				Journalism	<ul style="list-style-type: none"> • Identify registrants in connection with news reporting, investigative journalism, and fact checking
				Consumers	<ul style="list-style-type: none"> • Verifying registrant details to instill consumer trust, make complaints, or contacting businesses
8	Process for Vetting and Accreditation	Language clarification	Clarify language and eliminate redundancy in discussing accreditation. (Bradley Silver, TimeWarner; Dean Marks, COA)	<ul style="list-style-type: none"> • Undergo validation by an ICANN-approved agent (similar to the services offered by certificate authorities or those offered by Deloitte for the trademark clearinghouse) <p>Once the Eligible Entity successfully completes steps 1 and 2 the above steps, the ICANN-approved agent issues one of two decisions:</p> <ul style="list-style-type: none"> ○ The applicant is issued user credentials or a certificate* - Or - ○ Rejection of the application <p>Eligible Entities will be presumed to be qualified for accreditation. However, accreditation can be denied for various reasons, including documentation that</p>	

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				is out of order, previous violations of terms of use, or other reasons.
9	Proposed Operating Model	Workability of federated model	Not a way at present to present credentials to the WHOIS system (John Levine)	Temporary access protocol
9	Proposed Operating Model	Workability of implementation tactic	RDAP is the only way to handle presentation of credentials via online WHOIS web page. (John Levine)	TBD
9-10	Accredited Users	Eligibility for access	Accreditation should presume eligibility for access, unless the contracted party deems it necessary to deny, for a specific reason, which must be justified in writing. (Bradley Silver, TimeWarner; Dean Marks, COA)	Add as second paragraph: Accreditation presumes eligibility for access, unless the contracted party deems it necessary to deny access for a specific reason. Such reason must be given in writing with appropriate rationale or justification.
10	Logging	Accuracy	Auditing accredited parties won't ensure accuracy of WHOIS records. (Tim Chen, DomainTools)	...auditing will drive accountability around things like accuracy and reliability of registration information and use of gated data for designated purposes only.
10	Abuse Reporting	Referring to DPAs	The accrediting party is not in a position to determine whether someone who has violated the terms of service for accreditation is in fact breaking any laws. (Bradley Silver, TimeWarner)	The system will be suitably transparent to allow appropriate access to third party examination of query rate and volume. A mechanism will be provided for reporting over-extensive use, mirroring or other abuses to the accreditation authority, who will retain the right to investigate and, if necessary, revoke accreditation. The accreditation authority also may refer the offending party to data protection authorities.
N/A		Query rate, rate limiting, robustness of underlying system	Proposal doesn't address the scale of WHOIS queries. Even assuming that accredited users only would make a few percent of current queries, that is a huge amount of traffic. (John Levine)	TBD

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12-13	Penalties	Financial penalties	We should be raising the possibility of financial penalties for violation of terms. (Bradley Silver, TimeWarner; Dean Marks, COA)	<p>Different terms and conditions could be applied to different purposes. Violation of terms and conditions may result in graduating penalties, including but not limited to:</p> <ul style="list-style-type: none"> • Restricted or throttled access • Denial of further access • Subject to enforcement by international, national or local law enforcement authorities • Financial penalties
13	Data Access	Proportionality	Does the suggestion that any accredited user may have access to all WHOIS records from any contracted party meet the proportionality test? (Brian Beckham, WIPO)	<i>They have access, but only for the purposes identified</i>
13	Data Misuse	Data reveal as a result of breach and failure to protect the data	Amend second bullet - Data revealed as a result of security breach arising from failure to take reasonable steps to protect such data. (Bradley Silver, TimeWarner)	<ul style="list-style-type: none"> • Data revealed as a result of a security breach arising from failure to take reasonable steps to protect such data.
N/A	Audits/Abuse	Policing	Policing accredited users' use of WHOIS be done by the WHOIS source (and not the accrediting authority, who is merely "validating" user provided data. (Brian Beckham, WIPO)	<i>Individual DB providers could flag a complaint but don't have global access to other queries.</i>