

Mr. Peter Dengate Thrush
Chairman of the Board
ICANN

Paris, 16 April 2008

RE: GAC RECOMMENDATIONS FOR WHOIS STUDIES

In its Communiqué during the 30th ICANN meeting in Los Angeles, California, the GAC issued the following statement:

The GAC reiterates its recommendation outlined in the GAC WHOIS principles that a study on uses and misuses of WHOIS data should be undertaken by ICANN and is prepared to contribute to the elaboration of the terms of reference of such a study.

As a follow-up to the above statement and to the GAC WHOIS Principles, the GAC is pleased to submit its recommendations regarding the terms of reference for WHOIS studies to the ICANN Board. These recommendations will also be shared with the GNSO as a contribution to the GNSO Council's efforts to solicit input from the public regarding WHOIS studies.

First and foremost, the GAC believes that studies of WHOIS gTLD data should be undertaken by neutral third parties and should create a factual record that documents the uses and abuses of WHOIS data recognized by the GAC WHOIS Principles. The goal should be to initially compile data that provides a documented evidence base regarding:

- the amount and source of traffic accessing WHOIS servers and the types and numbers of different groups of users and what those users are using WHOIS data for; and
- the types and extent of misuses of WHOIS data and what harm is caused by each type of misuse, including economic, use of WHOIS data in SPAM generation, abuse of personal data, loss of reputation or identity theft, security costs and loss of data.

Once this basic data has been collected and collated, the GAC recommends that a further study be directed toward answering the following questions:

1. To what extent are the legitimate uses of gTLD WHOIS data curtailed or prevented by use of proxy or privacy registration services?
2. What is the economic impact of restrictions on some or all of the legitimate uses of WHOIS?
3. Are technical measures available that could effectively curtail misuse of data published on WHOIS databases while preserving legitimate use and open access to the databases?

4. Are there methods employed by registrars to detect fraudulent domain name registrations? If so, how successful are they and what do they do with that information?
5. What is the percentage of domain name registrants who are natural persons versus legal persons (or entities)?
6. What is the percentage of domain name registrations that are registered for and/or are used for commercial purposes versus those registered for non-commercial or personal use? If possible, the data should be broken down by geographic (e.g. by continent) locations.
7. What is the historical trend and current percentage of the registrars' and their affiliates' proxy and privacy registrations in relation to the total number of domain name registrations in gTLDs?
8. What is the percentage of registrars and all affiliates that offer proxy or privacy registrations?
9. What are the relative percentages of legal persons and natural persons that are gTLD registrants that also utilize proxy or privacy services?
10. What are the relative percentages of domain names used for commercial versus non-commercial purposes that are registered using proxy or privacy services?
11. What is the percentage of domain names registered using proxy or privacy services that have been associated with fraud or other illegal activity versus the percentage of domain names not using such services that have been associated with fraud or illegal activity?

In view of the recent adoption by ICANN of a procedure for handling conflicts with national privacy laws, the GAC also urges ICANN to address the following questions in the WHOIS study:

12. Since gTLD registries and registrars conduct business globally, which laws in which jurisdiction appropriately apply to their transactions and in particular to their WHOIS contractual obligations?
13. What are the legal jurisdictional issues raised by gTLD registries and registrars that adhere to local law applicable to domain name registrations and WHOIS requirements, but may then be in contravention to other legal jurisdictions where they conduct business?
14. May a gTLD domain name registrant who is a legal resident of one country apply for a domain name in another and claim to be under the legal jurisdiction of the latter and not the former?

**Governmental Advisory Committee
Chairman**



15. How can conflicts of laws be resolved in a global domain name space?

The GAC believes that the compilation and analysis of data in response to the above questions will create the necessary factual foundation for further discussions on the necessity, scope, and impact of potential modifications to policies regarding WHOIS data. The GAC membership also stands ready to facilitate access to national sources of expertise, best practices and other relevant data.

Yours sincerely

-signed-

Janis Karklins
Chairman of the Governmental Advisory Committee,
Ambassador of Latvia to France

CC: GNSO Council