TITLE: Proposed Implementation of GNSO Thick RDDS (Whois) Transition Policy for .COM, .NET and .JOBS

Publication Date:	20 January 2017
Prepared By:	Krista Papac

Public Comment Proceeding		Important Information Links
Open Date:	26 October 2016	**Announcement**
Close Date:	15 December 2016	**Public Comment Proceeding**
Staff Report Due Date:	12 January 2016	**View Comments Submitted**

Staff Contact:	Krista Papac	Email:	krista.papac@icann.org

Section I: General Overview and Next Steps

General Overview

From 26 October 2016 through 15 December 2016, ICANN published for public comment the proposed implementation of the Generic Names Supporting Organization (GNSO) Thick Whois Policy Development Process (PDP) recommendation requiring the provision of thick Whois services for all gTLD.

At the time this report was drafted, four comments were submitted to the forum.

Next steps

ICANN organization will review the comments received in collaboration with the IRT to determine whether any changes need to be made to the proposed implementation as a result of the input received. Subsequently, the current Draft Thick Registration Data Directory Services (Whois) Consensus Policy will be finalized and the implementation effective dates will be announced.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Verisign, Inc.	Marc Anderson	VI
Business Constituency	Steve DelBianco	BC
Intellectual Property Constituency	Greg Shatan	IPC

Individuals:

Name	Affiliation (if provided)	Initials
VW	NA	VW

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN received four comments from the community on the proposed implementation of the Generic Names Supporting Organization (GNSO) Thick Whois Policy Development Process (PDP) recommendation requiring the provision of thick Whois services for all gTLD registries. The comments generally fall into the below categories, each of which are explained in detail below:

- Comments on the proposed policy
- Comments on the handling of Whois conflicts with privacy laws
- Comments on the proposed timeline of the proposed implementation of the policy
- Comments on ICANN organization's approach to policy implementation

Comments on the proposed policy:

While all comments are generally in favor of the proposed policy, some comments suggested changes for the proposed policy.

- "Thick whois for .com .net etc. should have been done long ago. It is nice to see that it is at least in the works" (VW)
- "The Business Constituency supports the proposed policy and urges ICANN staff to ensure that the timeline for implementation stays on track. The community has been expecting this implementation since it became global gTLD policy on 7-Feb- 2014. We would be very concerned to see any additional delay." (BC)
- "IPC has long advocated for a thick Whois architecture across all gTLD registries, has submitted numerous public comments on this topic, and has participated actively in both the Policy Development Process working group that led to adoption of this policy, and in the implementation group that has followed it. We commend the Implementation Review Team and the ICANN staff for producing the transition implementation plan now under consideration. We urge that it be approved and put into effect as soon as possible. Even so, our support is accompanied by frustration, because even as the finish line of this initiative comes into view in the distance, we remain acutely aware of the unacceptably slow pace that ICANN has set." (IPC)

- "Verisign is generally supportive of the proposed Thick Whois Transition Policy; however we do offer the following feedback for consideration by ICANN staff and the IRT." (VI)

Accordingly, Verisign recommends:

- "that instead of unnecessarily referencing requirements found in the RDAP Operational Profile, the necessary requirements be explicitly stated in the Thick Whois Transition Policy."
- "that section 2.4 be updated to state that Registry Operators must support the contact commands as described in the provision "by" 1 August 2017" in order to clarify the requirements associated with EPP implementation
- 'Section 2.4 of the Thick Whois Transition Policy limits the EPP contact fields that the Registry Operator must require to <contact:id>, <contact:postalInfo> and <contact:authInfo>. The EPP contact field <contact:postalInfo> has a number of sub-elements, but the only element the IRT discussed requiring is "type". For clarification, Verisign recommends replacing <contact:postalInfo> with <contact:postalInfo type>'
- "that ICANN staff and the IRT revisit sections 2.8, 2.9 and 2.10 to ensure the CL&D implementation requirements contained within the Thick Whois Transition Policy are consistent and clear."

BC also mentioned:

- "The Business Constituency is pleased that ICANN has taken our comments in to consideration along with the Registry's reconsideration request and removed implementation of RDAP as an obstacle to swift implementation of Thick Whois. We are very pleased that ICANN has agreed to not delay the Thick Whois implementation and will move forward using the EPP protocol. This will provide internet users with the benefits of availability of Thick Whois in .com, .net and .jobs within a reasonable timeline. In previous comments the Business Constituency has advocated for authenticated access, data accuracy, and improved centralized access through Thick Whois."
- "The BC proposes that the most efficient and effective way to develop an approach on authenticated access, data accuracy, and improved centralized access through Thick Whois is by pursuing a phased, synchronized approach to implementing Whois-related initiatives. These initiatives include Thick Whois, RDAP Implementation, and the new GNSO RDS PDP that has been convened to establish a Policy Framework for a Registry Directory Services to replace the Whois."
- "...it is preferable to have a Thick Whois system that includes a real-time query system that provides an accurate Whois response from a single query vs. a true Thick Whois implementation that results in many registrars simply turning on privacy and proxy services to mitigate potential liability under their own national data protection laws. In the latter case, potentially tens of millions of Whois records would be obscured, preventing legitimate uses of Whois data."

Comments on the handling of Whois conflicts with privacy laws

Some comments addressed whether the policy implementation language should be revised to include specific provisions to address cases where a registry operator or registrar needs ICANN to waive Thick Whois requirements in the event the registry operator or registrar has a conflict with privacy laws. One view expressed that such a new, specific provision is needed in the policy implementation, while the other view expressed that ICANN's existing Procedure for Handling Whois Conflicts with Privacy Laws is sufficient and specific additional requirements are not needed in this policy implementation.

- "Given the recognized need for Registry Operators and Registrars to ensure they do not violate principles of local laws when implementing the Thick Whois Transition Policy, Verisign recommends that the Thick Whois Transition Policy expressly include specific provisions that define the

requirements and procedures for Registry Operators and Registrars to seek a waiver of the requirements of the Thick Whois Transition Policy in the event of a conflict with local laws, and that such provisions include one or more "Alternative Triggers" similar to those contained in the Data Retention Specification of the 2013 Registrar Accreditation Agreement." (VI)
- "While we recognize the potential challenges of transferring registrant data across multiple jurisdictions, we also note that ICANN has an existing procedure for handling Whois conflicts with privacy laws. Thus, it is imperative for ICANN staff to remember that Thick Whois for all gTLDs has been adopted by the ICANN Board as a consensus policy. ICANN should resist attempts from stakeholders who wish re-litigate privacy and jurisdictional issues as part of the Thick Whois implementation. We do not want to diminish these concerns, but ICANN must move forward with the important work of moving to Thick Whois functionality for all gTLDs." (BC)

Comments on the proposed timeline of the proposed implementation of the policy:

Two of the comments expressed their concern over the proposed timeline:

- "The proposed timeline of February 1, 2019 is disappointing, considering that registry operators have the technical capabilities to support Thick Whois and have had almost three years to contemplate the legal and privacy issues surrounding a migration to Thick Whois.The BC looks forward to the migration to Thick Whois, which will improve stability, provide a more level playing field for competition among Registrars, and enhance consumer and user protection." (BC)
- "IPC acknowledges that the transition to thick Whois, especially in the case of very large registries such as .com and .net, involves some complex issues and should be approached with care. But for the process to stretch over three-quarters of a decade, and for implementation of the policy with respect to only three registries to take twice as long as the entire process of developing and approving the policy, is indefensible. This is especially true since one company, which already has considerable experience in running thick Whois registries, operates all three remaining thin registry gTLDs." (IPC)

Comments on ICANN organization's approach to policy implementation:

One comment expressed their concern over ICANN's approach on policy implementation:

- "Once the transition plan has been fully implemented, IPC would advocate for an independent review of why the entire process took so long and what can be learned from this saga. Such a review is necessary if ICANN is to retain any credibility as a forum in which the multi-stakeholder community not only can develop policy, but can also see it implemented, within time frames suitable for the important tasks that have been assigned to the organization. In the meantime, if ICANN is serious about outreach efforts to involve new participants into the organization – including participants from the business and professional sectors – it should recognize that the glacial pace of policy implementation is a huge deterrent to its efforts. If we are honest enough to tell people that it will take many years or even decades in order to achieve an important but specific improvement such as thick Whois, then it is entirely rational for many potential participants simply to decline, and to spend their finite time and energies elsewhere. ICANN needs to face up to this problem." (IPC)

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN organization appreciates all the comments and suggestions added to the public forum for the proposed implementation of the Generic Names Supporting Organization (GNSO) Thick Whois Policy Development Process (PDP) recommendation requiring the provision of thick Whois services for all gTLD registries.

Comments on the proposed policy

ICANN organization acknowledges comments regarding the length of time it has taken to publish the proposed policy and notes suggestions commenters provided regarding the proposed policy.

Regarding the suggestion "instead of unnecessarily referencing requirements found in the RDAP Operational Profile, the necessary requirements be explicitly stated in the Thick Whois Transition Policy.", it should be noted that the policy language limits use of the RDAP Operational Profile to gTLD Registries and Registrars who are implementing RDAP." The commenter points out the reference is unnecessary and therefore will be discussed with the IRT.

One suggestion proposes to change "Starting 1 August 2017" to "by 1 August 2017" in Section 2.4 "…section 2.4 be updated to state that Registry Operators must support the contact commands as described in the provision "by 1 August 2017" in order to clarify the requirements associated with EPP implementation." Incorporating this suggested change would enable the Registry Operator to support the contact commands before the 1 August 2017 implementation date, but would still require it after 1 August 2017. ICANN organization will discuss this change with IRT.

Regarding the comment suggesting "…replacing <contact:postalInfo> with <contact:postalInfo type> in Section 2.4.", the suggested change would make the intent of the language to not require the provision of thick whois on 1 August 2017, but still allow for it. ICANN organization will review the suggestion with the IRT.

One comment suggested "that ICANN staff and the IRT revisit sections 2.8, 2.9 and 2.10 to ensure the CL&D implementation requirements contained within the Thick Whois Transition Policy are consistent and clear." ICANN organization and the IRT will review these sections as suggested.

One comment suggested that "the most efficient and effective way to develop an approach on authenticated access, data accuracy, and improved centralized access through Thick Whois is by pursuing a phased, synchronized approach to implementing Whois-related initiatives. These initiatives include Thick Whois, RDAP Implementation, and the new GNSO RDS PDP that has been convened to establish a Policy Framework for a Registry Directory Services to replace the Whois." ICANN organization appreciates this proposal and acknowledge that there are many WHOIS-Related Initiatives. There are on-going efforts to coordinate the Whois-related activities, inclusive of the suggested phased approach and bundling related implementations where it makes sense. For more information regarding the various Whoise-related activities view the Update on WHOIS-Related Inititives session held in ICANN 57 in Hyderabad. Session material is available on the ICANN website: http://sched.co/8cyZ.

Comments on the handling of Whois conflicts with privacy laws

ICANN organization notes that two commenters expressed their views regarding Whois conflicts with privacy laws.

Regarding the comment "…the Thick Whois Transition Policy expressly include specific provisions that define the requirements and procedures for Registry Operators and Registrars to seek a waiver of the requirements of the Thick Whois Transition Policy in the event of a conflict with local laws, and that such provisions include one or more "Alternative Triggers" similar to those contained in the Data Retention Specification of the 2013

Registrar Accreditation Agreement.", it should be pointed out that a waiver requirement was not included in the approved policy recommendations. Specifically, Section 7.2 of the [Final Report] discusses Implementation Considerations the Working Group was charged with per its Charter. One question that was posed was: "Are special provisions and/or exemptions needed for gTLD registries which operate a thick Whois but provide tiered access, for example?" In response to this question, the Final Report states that, "The WG notes that ICANN already has a Procedure for Handling Whois Conflicts with Privacy Law in place. Furthermore, the WG notes that the proposed 2013 RAA also includes a proposed mechanism for a registrar to request a waiver if the collection and/or retention of any data element violate applicable local law. The WG does not intend or expect that any of these exemptions or special provisions granted under these procedures are affected by a requirement for thick Whois for all gTLD registries." In other words, the Working Group discussed this issue but did not add anything to the policy recommendations. Creation of a new policy specific waiver process appears to be beyond the scope of this ICANN organization policy implementation but could be a consideration for the ICANN Community to consider under a separate policy development process initiative.

The matter of handling Whois conflicts with privacy laws was addressed by the IRT in the early phase of this implementation project. The approved Thick Whois policy recommendations directed ICANN organization to conduct a legal review of privacy laws that may be applicable to transitioning from a thin Whois model to a thick Whois model building off the previous legal analysis undertaken as part of the [work of the Whois Expert Working Group]. The [Legal Review Memorandom] was submitted to the IRT on 8 June 2015. As discussed in the memo, to the extent that a contracted party finds that it is unable to comply with the Thick Whois policy requirements due to a conflict with its obligations under local privacy laws, such conflicts may be dealt with by exception through use of the Whois Conflicts Procedure, or requests to ICANN for an amendment to or waiver of certain provisions in the Registry Agreement or Registrar Accreditation Agreement. Furthermore, the IRT has submitted a letter to the GNSO Council, as described in the policy recommendations, regarding emerging privacy issue on 15 December 2016 for the GNSO Council to consider. Additionally, there are discussions regarding the Whois Conflict with local law procedure with the GNSO Council that includes the "Alternative Trigger." This comment will be discussed with the IRT along with other comments.

Comments on proposed timeline of the proposed implementation of the policy

ICANN organization notes that some comments expressed their concern over the proposed timeline of 1 February 2019 for the effective date of the implementation of the proposed policy by all gTLDs. It should be noted that this timeline was developed in discussions within the IRT. Based on their calculation of the speed of transfer of that data, the sender and receiver of the data agreed that this timeline is required to accommodate the volume of the data to be transferred.

Comments on ICANN organization's approach to policy implementation

ICANN organization notes that one commenter expressed their concern over ICANN organization's approach to policy implementation.

Implementation projects are complex and multi-faceted. They involve managing many different factors inherent to ICANN's multi-stakeholder governance model, including balancing opposing community interests and feedback, accounting for stakeholders' technical and operational considerations, and drafting precise requirements for contracted parties to implement from the general policy recommendations that emerge from PDP processes. ICANN organization takes these concerns seriously and points out the work done, thus far, to improve the implementation process as well as ongoing efforts to continue its evolution. For example, ICANN organization worked with the GNSO's [Policy and Implementation Working Group] to develop the [Consensus Policy Implementation Framework], which provides a step-by-step guide to carry out implementation projects. ICANN organization has used this framework for each implementation project emerging from the GNSO since

its publication in May 2015, and is currently working to improve it based on early experience and feedback from implementation project leaders. However, as the framework is relatively new, there have been a limited number of cases in which to apply the principles therein. In addition, the Policy and Implementation Working Group's Final Report provides guidelines for more effective ICANN organization-IRT interaction as well as streamlined mechanisms to solicit the GNSO's input should issues arise during implementation. ICANN organization is actively working to develop a guide for implementation project leaders that applies the principles and recommendations of the report to its implementation projects. In sum, ICANN organization is committed to continuous process improvement in its implementation projects and appreciates the communities input and support.

Next Steps: Following the completion of the public comment process, ICANN organization will revise the policy language per the analysis above and conduct a final review with IRT for alignment with the policy recommendation. Subsequently, the current Draft Thick Registration Data Directory Services (Whois) Consensus Policy will be finalized and the implementation effective date will be announced. In addition, education and outreach materials will be prepared to accompany the implementation.