

Report of Public Comments

Title:	Next-Generation gTLD Registration Directory Services to Replace WHOIS Preliminary Issue Report																
Publication Date:	7 October 2015																
Prepared By:	Marika Konings																
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Section I: General Overview and Next Steps																	
<p>In accordance with Policy Development Process (PDP) rules, a new Preliminary Issue Report concerning Next-Generation gTLD Registration Directory Services (RDS) to Replace WHOIS [PDF, 1.37 MB] was posted for public comment and submitted to the GNSO Council on 13 July, 2015.</p> <p>This Board-initiated Policy Development Process (PDP) will define the purpose of collecting, maintaining and providing access to gTLD registration data and consider safeguards for protecting that data, determining if and why a next-generation Registration Directory Service (RDS) is needed to replace WHOIS, and creating policies and coexistence and implementation guidance to meet those requirements.</p> <p>This PDP was originally initiated by the ICANN Board in November 2012 as part of a two-prong approach to address recommendations made by the WHOIS Policy Review Team Final Report. As directed by the Board, this issue was researched by the Expert Working Group on gTLD Registration Directory Services (EWG). Upon publication of the EWG’s Final Report in June 2014, an informal group of GNSO Councilors and ICANN Board members collaborated to propose a Process Framework for structuring a successful PDP on this Issue. Pursuant to a Resolution during a meeting of the ICANN Board on 26 April, 2015, Staff responded to the Board’s request by publishing a new Preliminary Issue Report for public comment on 13 July, 2015.</p> <p>Following the close of the public comment period and the publication of this Report of Public Comments, a Final Issue Report will be prepared for the GNSO Council, which will then consider a Charter for a PDP Working Group on this issue. The Final Issue Report will reflect consideration of all feedback received through the public comment forum which identified specific clarifications, corrections, or enhancements to the Preliminary Issue Report.</p> <p>In addition, feedback received through the public comment forum regarding the PDP work plan and/or substantive input to be considered by the PDP Working Group will be relayed to the GNSO Council and the Board Working Group on Registration Data Directory Services (BWG-RDS) for evaluation at the appropriate points throughout this PDP.</p>																	

Section II: Contributors

At the time this report was prepared, a total of twelve (12) 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
Coalition for Online Accountability	S. Metalitz	COA
Google, Inc.	S. Duchensneau	GG
Electronic Frontier Foundation	M. Stoltz	EFF
At-Large Advisory Committee	At-Large Staff	ALAC
Registrar Stakeholder Group	M. Neylon	RrSG
Business Constituency	S. DelBianco	BC
Non-Commercial Stakeholder Group	R. Dammak	NCSG
Intellectual Property Constituency	G. Shatan	IPC
Registries Stakeholder Group	P. Diaz	RySG
International Trademark Association	L. Schulman	INTA
Governmental Advisory Committee	T. Dale	GAC

Individuals:

Name	Affiliation (if provided)	Initials
Garth Bruen	Knujon	KJ

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff 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).

As noted in Section I, preparatory work to inform and help structure a PDP Working Group to address this Issue has been underway since 2012 when the ICANN Board initiated this PDP. The Preliminary Issue Report summarized those and other relevant efforts and available inputs to this PDP, stated the Issue raised for consideration, and described the Board-GNSO-recommended 3-phase Process Framework that might be used to address a minimum set of complex and inter-related questions. The Preliminary Issue Report also included a draft PDP WG Charter for broad community consideration.

Comments received on this Preliminary Issue Report fell broadly into three categories:

- Comments suggesting clarifications, corrections, or enhancements to the Preliminary Issue Report. These are further summarized below and will be reflected in the Final Issue Report.
- Comments on the recommended Process Framework, reflected in the PDP Charter. These are briefly summarized below but best addressed by the GNSO Council and the Board Working Group on Registration Data Directory Services ([BWG-RDS](#)) during adoption of the PDP Charter

and Workplan.

- Inputs on potential recommendations and implementation guidance to be generated by the PDP Working Group. These community inputs are briefly outlined below but will be relayed in full to the GNSO Council and BWG-RDS for future consideration at the appropriate points throughout the PDP.

Comments suggesting Issue Report clarifications, corrections, or enhancements

Within the 12 sets of comments received, approximately 24 specific comments responded directly to the public comment forum's call for community input on information that might be missing from the Preliminary Issue Report, necessary corrections or updates to information in the Preliminary Issue Report, or whether there are any questions that should be explored in this PDP in addition to those already described in the Preliminary Issue Report.

- There were no comments suggesting additional questions that should be explored in this PDP.
- Several commenters (COA, IPC, NCSG, Google, RySG) suggested PDP scope or framing clarifications. For example:
 - COA stated "The report subtly places a thumb on the scale in favor of dramatic change and against status quo."
 - IPC stated "The framing of these issues and scope of the WG Chart must ensure scope of questions and inquiry are adequate to task ... and allow for inclusion of any issues that have not yet been contemplated."
 - NCSG, Google, and RySG all suggested the PDP WG not be limited to focusing on the EWG's Final Report.
- Several commenters suggested clarifications or enhancements to questions already included in the Preliminary Issue Report:
 - Four commenters (RrSG, BC, COA, IPC) noted the need to assess and balance costs and benefits. For example, RrSG noted that "Cost must be analyzed at each step" while BC stated "It will be important for the PDP to consider the benefits of transparency ... as well as registrant's interest in privacy and the risk of misuse."
 - Three commenters (RrSG, BC, RySG) suggested privacy-related enhancements. For example, RrSG and RySG both noted that jurisdictional issues must be addressed, while BC expressed concern that consumer protection requirements be considered.
 - Three commenters (RrSG, BC, IPC) addressed the needs for coexistence. For example, IPC stated "To the extent that existing gTLDs may continue to utilize WHOIS, consideration needs to be given to how the different systems can operate effectively."
 - Two commenters (RrSG, BC) addressed aspects of system modeling. BC questioned whether "how data is secured" had been adequately addressed, while RrSG cited jurisdictional issues "including location, who will manage, centralization, and data breach results."
 - One commenter (IPC) addressed compliance, suggesting "The PDP should ensure that the views of the community inform compliance expectations and that these expectations are clearly and unambiguously communicated."
- Finally, several commenters (COA, EFF, BC, NCSG) flagged potential inaccuracies or statements that might require update to the Preliminary Issue Report. For example:
 - COA commented "To state that data is accessible for any purpose is not accurate."

- EFF stated “ICANN has the power to exempt registries and registrars from the requirements to provide WHOIS.”
- BC observed that access and disclosure policies are addressed under two questions.
- NCSG noted that the IWGDPT common position on privacy and data protection had not been included, questioned whether the EWG started with a clean slate, and suggested that the report be updated to reflect the CCWG-Accountability group’s work.

Concerns regarding the process to be used by the PDP

Within the 12 sets of comments received, approximately 36 specific comments pertained to the process that may be used by the PDP Working Group to address this Issue, including both the Board/GNSO-recommended Process Framework and the draft PDP WG Charter included as Annex C.

- Two commenters (COA, RrSG) made recommendations regarding the finality of Phase 1 decisions. COA recommended “At each step in the process, the WG will need to make a choice between incremental change and starting over,” while RrSG recommended that several questions and issues “be firmly decided prior to completion of Phase 1.”
- Two commenters (COA, IPC) suggested that the sequence of topics in the Process Framework and Charter be considered “a guideline not fixed” (COA).
- Similarly, RySG recommended that the GNSO “treat this as an opportunity to develop a more comprehensive approach” to develop “policies from the ground up that best fit RDS purpose.”
- Several comments suggested potential (sometimes conflicting) topic reordering. For example:
 - COA commented that “compliance is cross-cutting and should not be deferred” and “Postponing until the very end any consideration of risks and benefits may be imprudent and inefficient.”
 - Google commented that “proposed cost/benefit analyses should be carried out in each of the identified phases.
 - BC stated that “Privacy issues should be the first focus of policy development” and “Phase 2 should not be considered complete until a satisfactory overarching data protection policy is developed.” However, IPC stated “PPSAI may render [privacy] discussion in the context of the PDP WG redundant and unnecessary ... Consideration should be given to analyzing privacy policies separately.”
 - IPC also stated that consideration of system model is premature: “It should wait for the PDP process to decide if there should be a next-generation RDS.”
 - NCSG recommended “At the conclusion of each phase, a separate rights impact assessment should be performed,” while INTA advocated waiting for Phase 2 to put “specific parameters around impact assessment.”
- Several comments addressed when the “if and why” decision would be made to pursue a next-generation RDS to replace WHOIS, and the implications of that decision. For example:
 - IPC stated “Many of the observations and proposed procedures for the PDP WG may embody conclusions reached by the EWG on issues that should be reserved for the WG itself, including the notion that the current model must be abandoned.”
 - Google, RySG, RrSG, BC, and IPC all raised questions regarding impact on existing WHOIS policy and implementation and continued pursuit of parallel paths. Google stated “If the community decides to undertake a next-generation RDS, parallel efforts to update WHOIS requirements should be limited to the extent possible.” RrSG asked

“Given parallel initiatives, how will redundancy be eliminated and other WG outputs incorporated?” BC stated that, while the PDP is underway, “parallel ad hoc efforts to modify WHOIS requirements should be limited.”

- Three commenters (Google, ALAC, NCSG) expressed concern over resourcing.
 - Google asked whether “allocation of community resources to WHOIS reform would detract from other efforts where consensus is more likely.”
 - ALAC and NCSG both suggested that steps be taken to ensure equitable and representative participation from all stakeholders.
- Finally, GAC recommended that “ICANN should initiate specific consultation processes with public stakeholders such as law enforcement, consumer protection, and data protection authorities” and others.

Inputs to recommendations that will be generated by the PDP Working Group

Approximately 29 inputs were received within public comments that did not address the Preliminary Issue Report or PDP Charter/Work plan, but rather voiced stakeholder views on potential recommendations to be generated by the PDP WG. These include:

- EFF and INTA inputs on each question enumerated for GNSO consideration during this PDP.
- RrSG suggestion to learn from ccTLD implementations of WHOIS.
- BC inputs on use cases, accuracy, data elements, system model, and cost/benefit/risk.
- NCSG position that WHOIS “is no longer fit for purpose in a modern privacy conscious world.”
- Knujon position that the intent of WHOIS and kind of information to be published in WHOIS is “quite clear” and stated in RFC 882 and RFC 3912.
- IPC suggestion that data elements might be “clarified or improved.”
- GAC positions on privacy, purpose, access, and accuracy questions.

Section IV: Analysis of Comments

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

With relatively few exceptions, commenters either confirmed or did not challenge the substantive research and background information provided in the Preliminary Issue Report. Comments suggesting clarifications, corrections, or enhancements to the Issue Report have all been reviewed by the Staff Manager to ensure that requested additions were either already present or added to the Final Issue Report, and that requested corrections have either been incorporated or addressed through clarifications in the Final Issue Report.

In particular, Staff analysis of comments regarding PDP scope or framing is that they can all be addressed through greater emphasis on relevant sections of the Final Issue Report, including this PDP’s focus on one prong of the Board-directed two-phase approach, the intent to consider all available inputs, and the opportunity for the GNSO to add questions and adjust the suggested Process Framework when adopting a PDP Charter and developing a PDP Workplan.

With regard to the process to be used by this PDP, commenters largely suggested alternatives already

considered by the EP-WG when formulating its Process Framework. After analysis, Staff does not believe that these comments shed new light on the most effective PDP process, but nonetheless recommends that these comments be considered by the GNSO Council and the Board Working Group on Registration Data Directory Services ([BWG-RDS](#)) during adoption of the PDP Charter and Workplan. In some cases, these comments may help the GNSO focus on the community's greatest concerns, including the continuation of parallel paths and resourcing.

Finally, it is Staff's recommendation that all comments which did not directly address the Issue Report but rather were intended as substantive input for the deliberations be considered by the PDP WG at the appropriate points during the PDP process. The comments underscore the diverse concerns of various stakeholders and will serve to inform the PDP, along with other available inputs summarized in the Final Issue Report.

The Final Issue Report will include this Report and analysis of public comments received, to enable the GNSO Council to fully consider all the issues and concerns expressed by the community in order to move forward on this Board-initiated PDP by adopting a PDP WG Charter and PDP Work plan.