

# Report of Public Comments

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|--|--|----------------|------------------------|
| <b>Title:</b>  |  |                |                        |
| <b>Publication Date:</b>   | 21 August 2013   |                |                        |
| <b>Prepared By:</b>  | Marika Konings   |                |                        |
| <b>Comment Period:</b>   | <b>Important Information Links</b><br><a href="#">Announcement</a><br><a href="#">Public Comment Box</a><br><a href="#">View Comments Submitted</a><br>Report of Public Comments |                |                        |
| Comment Open Date:   |  | 21 June 2013   |                        |
| Comment Close Date:  |  | 14 July 2013   |                        |
| Reply Close Date:  |  | 04 August 2013 |                        |
| Time (UTC):  |  | 23:59 UTC      |                        |
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| <b>Section I: General Overview and Next Steps</b>  |  |                |                        |
| <p>The Thick Whois PDP WG was tasked to provide the GNSO Council with 'a policy recommendation regarding the use of thick Whois by all gTLD registries, both existing and future'. Following its analysis of the different issues outlined in its Charter, including: response consistency; stability; access to Whois data; impact on privacy and data protection; cost implications; synchronization / migration; authoritativeness; competition in registry services; existing Whois applications; data escrow, and registrar Port 43 Whois requirements (see section 5 of the Initial Report), on balance the Working Group concluded in its Initial Report that there are more benefits than disadvantages to requiring thick Whois for all gTLD registries. As a result, the Working Group recommended that:</p> <p style="text-align: center;"><i>The provision of thick Whois services should become a requirement for all gTLD registries, both existing and future.</i></p> <p>As outlined in its Initial Report, the WG expects numerous benefits as a result of requiring thick Whois for all gTLD registries. Nevertheless, the WG recognizes that a transition of the current thin gTLD registries would affect over 120 million domain name registrations and as such it should be carefully prepared and implemented. In section 7.2 of the Initial Report, the WG outlined a number of implementation considerations. In section 7.3 of the Initial Report the WG also provided other observations that emerged from this discussion which while not directly related to the question of thin or thick did and should receive due consideration by other bodies.</p> <p>Through the public comment forum, the WG requested all interested parties to submit their comments and suggestions so these could be considered as the WG continues its deliberations in view of finalizing its report and recommendations in the next phase of the policy development process. The WG will now review the comments received, update its report as deemed appropriate and finalize its report for submission to the GNSO Council.</p> |  |                |                        |

## Section II: Contributors

*At the time this report was prepared, a total of eleven (11) 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 |
|-------------------------------------|---------------------------|----------|
| InterContinental Hotel Group        | Carolyn Gorwitz Dinberg   | IHG      |
| ALAC                                | Olivier MJ Crépin-Leblond | ALAC     |
| ISPCP                               | Mikey O'Connor            | ISPCP    |
| Valideus                            | Brian Beckham             | VA       |
| International Trademark Association | Claudio DiGangi           | INTA     |
| Business Community                  | Steve Del Bianco          | BC       |
| Mark Monitor                        | Kiran Malancharuvil       | MM       |
| Intellectual Property Community     | Kristina Rosetta          | IPC      |
| M3AAWG                              | Jerry Upton               | M3AAWG   |

### Individuals:

| Name                       | Affiliation (if provided) | Initials |
|----------------------------|---------------------------|----------|
| Patrick Vande Walle        |                           | PVW      |
| Duane Higgins <sup>1</sup> | Cybrands.com              |          |

## 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).*

**Preliminary Recommendation: The provision of Thick Whois services should become a requirement for all gTLD registries, both existing and future.**

IHG, M3AAWG, ALAC, ISPCP, VA, MM, IPC, INTA and BC all express their support the preliminary recommendation of the Thick Whois PDP Working Group to require Thick Whois for all gTLD Registries. In addition, IHG notes that requiring all gTLD registries to provide Thick Whois services would greatly improve their ability to 'combat cybersquatting by creating a database that is central, universal and, hopefully accurate.' Furthermore, IHG states that this would 'provide greater protections for consumers as well as brand and intellectual property owners, and would help to ensure the continued stability of the internet.' M3AAWG notes that its members 'use Whois as a key tool when analyzing and mitigating online abuse, and Thick Whois provides advantages both in more reliable service and more consistent message formats.' ISPCP points out that

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<sup>1</sup> Comment was not related to Thick Whois Initial Report but intended for EWG and has been forwarded accordingly.

its members rely on Whois data in a variety of ways. VA notes that requiring Thick Whois for all TLD registries 'would provide a range of benefits to Internet users, from law and rights enforcement, to registries and registrars, by facilitating a consistent approach to Whois.'

### **Response Consistency**

IHG believes that a requirement for uniformity in Whois output, such as that contained in the proposed 2013 RAA is also 'essential to provide consistency and assure that this information is easy to parse.'

VA, BC and MM all state that universal Thick Whois will contribute to uniform data output and 'improve response consistency.'

### **Stability**

VA, BC and MM all note that universal Thick Whois 'would improve stability'; Valideus adds that Thick Whois data would be 'stored in redundant, recoverable sources.'

### **Accessibility**

VA, BC and MM all point out that universal Thick Whois would 'improve access to Whois data'; Valeus adds that this is because 'Thick Whois data is centrally accessible.'

### **Competition**

VA, BC and MM are all of the view that universal Thick Whois would lead to a 'more level playing field' across all gTLD registries.

### **Data Escrow**

VA and MM both state that universal Thick Whois would 'improve access to escrowed data' in the event of failure.

### **Cost Implication**

VA states that 'the benefits [of switching to universal Thick Whois] outweigh any cost impact' because 'existing TLD registries who are providing back-end services for new gTLD applicants should be familiar with Thick Whois configurations.'

MM and BC notes that requiring a 'thick' Whois 'will not impose overly burdensome cost impacts' on providers of Whois data, and will in fact 'reduce costs to consumers' of Whois data.

### **Authoritativeness**

BC is of the view that requiring a 'thick' Whois 'would not have detrimental effects on authoritativeness (and would lend more authoritativeness to Registries [...]).'

### **Privacy and Data Protection**

VA, MM and BC express the view that there would be no data protection/privacy questions arising from requiring universal Thick Whois.

IHG and PVW recommend that ICANN should 'thoroughly examine the ramifications of data protection and privacy laws and regulations with respect to Whois requirements'. Furthermore, IHG is of the view that 'it [ought to] develop procedures for handling conflicts with local rules'. Furthermore, IHG thus urges that 'ICANN must initiate processes to oversee and regulate privacy and proxy service providers. In IHG's view, this oversight must be standardized and requirements for registrars to meet accreditation standards must be contractual. It is their desire that such oversight would result in 'clear, consistent and enforceable requirements for the operation of privacy and proxy services that are consistent with national laws and that strike an appropriate balance between stakeholders with competing, but legitimate, interests.'

PVW points out that further consideration should be given to 'the legal issues that may arise from this transfer [of data] to a third country, both for registrars and registries. For example, none of the major gTLD operators located in the United States seem to be listed in the US-EU safe harbour list for their gTLD-related activities, which may be problematic for registrars that need to seek prior authorization from the national data protection authority'. He furthermore points to the work that is currently going on in the European Union in relation to 'drafting a revised privacy framework which could have a considerable impact on directory services like the Whois'.

#### **Other**

VA, BC and MM point out that universal Thick Whois 'will not have any detrimental effect on data synchronization, authoritativeness, or existing third-party service providers.'

BC states that Thick Whois would 'enhance consumer/user protection'.

INTA points to a number of advantages related to a universal Thick Whois requirement in its comments such as facilitating 'the resolution of disputes related to the registration and use of domain names [...], help prevent abuses of intellectual property and will protect the public in many ways, including by reducing the level of consumer confusion and consumer fraud in the Internet marketplace.' Similarly, a Thick Whois would enable 'quicker response and resolution when domain names are used for illegal, fraudulent or malicious purposes, by both law enforcement and other stakeholders.' INTA continues to point out that 'in contrast to a Thick Whois, a Thin Whois means all contact data associated with a particular domain name registration is decentralized and held by the registrar sponsoring that registration. This leaves public access to this data vulnerable to registrar technical failure, insolvency, or simply non-compliance with its contractual obligations regarding Whois data.' Finally, requiring Thick Whois would lead to 'more user-friendly consumer and public access to registration information' as it stops the need to 'find and search Whois databases across hundreds of registrars.'

#### **Implementation Considerations**

IHG urges that 'the transition [from thin to Thick Whois] occur sooner, rather than later; pointing out that the transition-related costs 'will be minimal and [...] outweighed by the numerous benefits of requiring Thick Whois for all gTLD registries.' In this context IHG point out that 'the transition of .org from think to thick could serve as a model for implementation.' IHG would support 'the formation of a team of experts for the parties that will be most affected by the transition to work with ICANN staff on the transition process'.

M3AAWG and IPC are aware that notwithstanding any other on-going changes to Thick Whois, the move to

Thick Whois 'is an important step that ICANN can take now with real benefits and without interfering with those other changes.'

BC and MM encourage Thin Whois registries to migrate to a Thick Whois as a matter of urgency. VA, BC, MM and IPC state that they believe that migrating all TLDs to a Thick Whois model as soon as practicable will lay the groundwork for 'an easier transition process' if a common Thick Whois model would be replaced by the Aggregated Registration Data Service, currently proposed by ICANN's Expert Working Group.

PVW finds it 'questionable to still invest time and resources in trying to fix the protocol and the model, both of which will go through substantial changes in the near future'. PVW suggests that 'it would seem reasonable to freeze all changes to the Whois services until both the technical and legal landscapes clear up'.

#### **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.*

Following the complete review of the public comments received, the Working Group will continue its deliberations and finalize its report for submission to the GNSO Council. The review and evaluation of the comments received will continue over the course of the next weeks. These will be available in due time on the Working Group's workspace and incorporated in the Final Report as may be appropriate (see <https://community.icann.org/x/whgQAg>).