ICANN

The Internet Corporation for Assigned Names and Numbers

24 February 2009

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

Dear Janis

As requested, during the meeting between the GAC and the ICANN Board in Cairo, I am writing to provide an update on current and proposed work on WHOIS data research and analysis.

As indicated in the Board Chair's letter of 23 May 2008[1], there are two broad sets of activities which give rise to a need for better data on how WHOIS is working in practice in the gTLD space. The first of these is the policy framework, including the public policy considerations identified by the GAC in its Principles for gTLD WHOIS services. The second is ensuring compliance with ICANN contractual requirements, particularly the Registrar Accreditation Agreement. ICANN is actively pursuing both sets of issues.

I have set out below the current situation on both the policy and compliance fronts, which I believe indicates significant progress in addressing concerns raised both by the GAC and by other stakeholders.

Policy Considerations: GNSO

- The possibility of factual studies on WHOIS arose following a GNSO Policy Development Process on WHOIS. The GNSO has been seen as the most appropriate forum to identify and frame studies because only gTLD registries and registrars are contractually obligated to provide WHOIS services. I must emphasise that analytical work in this area, including of the type recommended by the GAC, will require significant involvement and cooperation by those GNSO constituencies to ensure valid and useful data.

- The GNSO Council decided in October 2007 that WHOIS studies would be useful to inform policy making. Proposals were solicited from the public in January-February 2008 and two working groups were subsequently established, the first to determine if there was consensus on the need for studies (the Study Group) and the second to develop consistent hypotheses for testing (the Study Hypothesis Group).

- In order to produce the most useful outcomes, the key criteria applied in the consultation process have been (a) costs and feasibility; and (b) value of studies data and conclusions on future policy development. In other words, studies should be both feasible and informative.

- A range of comments[2] were received from stakeholders, including the GAC's recommendations contained in your letter of 16 April 2008. These suggested a variety of studies dealing with WHOIS misuse; compliance with privacy laws and registrar agreements;

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[1] http://www.icann.org/correspondence/dengate-thrush-to-karklins-23may08.pdf

[2] http://forum.icann.org/lists/whois-comments-2008/msg00027.html

- availability of privacy services; demand/motivation for privacy services; impact on crime and abuse; proxy registrar compliance with law enforcement; and data accuracy.

- The Study Group[3], which reported to the GNSO Council in May 2008, was unable to reach consensus on whether studies should proceed. Those opposed to studies noted "the primary barrier to resolving WHOIS/privacy issues is not lack of data but political will." This was the view of representatives of certain constituencies, including registrars, some registries and non-commercial users. Other constituencies including the IPC, BC and ISPCP supported proceeding with studies.

- A GNSO WHOIS Study Hypothesis Group[4] synthesised suggestions made in the public consultation, including the GAC's recommendations, into a table of hypotheses ie propositions which can be tested empirically.

- As indicated in Cairo, there are concerns that some of the GAC recommendations would prove difficult to execute as proposed and, as a result, the Study Hypotheses Group has worked to recast the GAC recommendations for this exercise. By way of example, "What is the economic impact of restrictions on some or all legitimate uses of WHOIS?" has been recast as "Restrictions on some or all of the legitimate uses of WHOIS have a negative economic impact."

- The report noted that comments were sought from the GAC on the draft hypotheses but were not yet received due to an abbreviated timeframe and the fact that the GAC does not meet inter-sessionally.

- Throughout this process the GNSO constituencies have devoted considerable time and expertise to developing possible study proposals that are practical and useable. The recommendations of the GAC have been given significant weight and consideration, and where possible put in terms which can be tested in studies.

- Since the Cairo meeting a WHOIS Study Drafting Team of the GNSO Council has been soliciting more detailed constituency views assessing both the priority level and the feasibility of the various studies that have been proposed. Priority rankings were sought from constituencies, GAC and ALAC. On the basis of feedback, a motion has been prepared for GNSO Council which requests ICANN staff to research feasibility and cost estimates for six groups of studies, including a significant number of the GAC recommendations. This motion is provided at Attachment A, and we expect the GNSO Council to act on it when it meets in Mexico City on 4 March 2009. As background I also attach draft working definitions prepared for the Council for key terms referenced in various study suggestions (Attachment B); and, for completeness, a consolidated list, prepared by ICANN staff, of all studies considered by the GNSO Council (Attachment C).

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[3] http://gnso.icann.org/issues/whois/gnso-whois-study-group-report-to-council-22may08.pdf

[4] http://gnso.icann.org/issues/whois/whois-study-hypothesis-group-report-to-council-26aug08.pdf

Policy Considerations: ALAC

As you may be aware, the ALAC has also finalised a statement on studies of WHOIS, recommending several specific areas of further study. These include consideration of moving to an active directory service to replace WHOIS (along the lines of the SSAC recommendation reflected in SAC 033), and specific recommendations with respect to several studies previously suggested. Some of these studies would consider: misuse of WHOIS data, compliance with data protection laws and the RAA, the impact of WHOIS data protection on crime and abuse, and proxy compliance with information requests and data accuracy studies.

Compliance Activities

ICANN has been active in pursuing its WHOIS compliance responsibilities, and it seems clear this work will in due course address several of the GAC's recommendations of 16 April 2008, in particular recommendations 1, 2, 5, 7, 8 and 10. The key initiatives, updated as of 1 December 2008, are:

- **A WHOIS data accuracy study to assess the accuracy of registrant data in the WHOIS database** – An initial phase of the study has just been completed with the National Opinion Research Center (associated with the University of Chicago). NORC produced a representative sample of domain names to test for accuracy and proposed a methodology for verifying the accuracy of WHOIS data in the sample, particularly registrant names and addresses. NORC and ICANN are finalising the verification methodology. An executable study plan will be finalised in the next few months.

- **A registrar privacy/proxy registration services study to assess the extent to which registrants are using such services** - ICANN will

    - Establish the percentage of use of privacy and proxy registration services in a representative sample of registrants; and

    - Identify the types of persons or legal-entities that have registered domain names as agents for others, either keeping some of their information private or serving as their proxy.

To perform this study, ICANN will rely on a random sample of domain names selected by ICANN technical staff and NORC, from the WHOIS data accuracy study. The study will be completed in mid-to-late 2009.

- **Redesign of ICANN's WHOIS Data Problem Report System (WDPRS)** - ICANN receives up to thousands of WHOIS inaccuracy claims through this system per day. The redesigned system will include components that allow for better, hands-on analysis of actual problem reports and processing of bulk WHOIS inaccuracy claims. This work should result in quality improvements for users of the WDPRS; better monitoring by ICANN of WHOIS accuracy compliance; and an understanding of the time it takes to go from an inaccuracy complaint to resolution of that complaint.

- **WHOIS-related enforcement action** – Breach notices were sent recently to four registrars regarding insufficient follow-up on complaints of WHOIS inaccuracy. This resulted in remedial action by the registrars.

- **WHOIS data inaccuracy audit** - ICANN conducted a WHOIS Data Inaccuracy Audit in 2008, and will continue to do so annually. Each of thirty ICANN-accredited registrars was asked to provide specific information on 10 domain names randomly selected from the WDPRS. From the selected sample, 187 domain names were included in the audit. Registrars took action on 89 of them, and as of 12 June 2008, registrars report they are currently investigating an additional 26 domain names. As of 4 December 2008 all but one registrar had taken the necessary steps to comply with the audit.

- **WHOIS data reminder policy audit** – This is another annual activity. In the second half of 2008, reports showed 765 of 940 registrars responded to the audit, and 98% of responders sent an annual reminder notice to registrants instructing them to review their WHOIS data and update it if necessary. (Follow-up action has been taken with non-responsive registrars.) This means that nearly all gTLD registrants are contacted at least annually regarding updating their WHOIS records.

Jurisdictional and Conflict of Laws Issues

Recommendations 12-15 of the GAC Recommendations of 16 April 2008 seek data from WHOIS studies on a range of legal issues, including resolution of conflicts of laws in a global domain name space. It may be that some of these questions are not suitable for simple factual analysis, but need to be considered on the basis of practical and legal aspects of ICANN policies such as the Policy for Handling WHOIS Conflicts With Privacy Law. As indicated in my letter[5] to you of 19 May 2008, implementation of that policy has had to take account of wide differences across national governments and therefore requires some degree of flexibility.

Way Forward

As you can see, the issue of properly functioning WHOIS remains a high priority within ICANN. Consideration of further analytical work is being pursued, mindful of the need to apply appropriate research standards so that outcomes are meaningful; take into account relevant costs; and ensure that any studies will be of practical use in ICANN policy development processes.

I trust this information has been helpful.

Yours sincerely

Paul Twomey
President and CEO
Internet Corporation for Assigned Names and Numbers

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[5] http://www.icann.org/correspondence/twomey-to-karlin-19may08.pdf

GNSO COUNCIL MOTION TO PURSUE COST ESTIMATES OF SELECTED WHOIS STUDIES

Whereas:

In Oct-2007, the Generic Names Supporting Organization (GNSO) Council concluded that a comprehensive, objective and quantifiable understanding of key factual issues regarding the gTLD Whois system would benefit future GNSO policy development efforts (http://gnso.icann.org/resolutions/)

Before defining the details of these studies, the Council solicited suggestions from the community for specific topics of study on WHOIS. Suggestions were submitted (http://forum.icann.org/lists/WHOIS-comments-2008/) and ICANN staff prepared a 'Report on Public Suggestions on Further Studies of WHOIS', dated 25-Feb-2008 (http://gnso.icann.org/issues/Whois-privacy/Whois-study-suggestion-report-25feb08.pdf)

On 28-Mar-2008 the GNSO Council resolved to form a WHOIS Study Working Group to develop a proposed list, if any, of recommended studies for which ICANN staff will be asked to provide cost estimates to the Council (http://gnso.icann.org/meetings/minutes-gnso-27mar08.shtml)

The WHOIS Study WG did not reach consensus regarding further studies, and on 25-Jun-2008 the GNSO Council resolved to form another group of volunteers (WHOIS Hypotheses WG) to review the 'Report on Public Suggestions on Further Studies of WHOIS' and the GAC letter on WHOIS studies. (http://www.icann.org/correspondence/karlins-to-thrush-16apr08.pdf)

This WG was tasked to prepare a list of hypotheses to be tested, and to deliver a report to the Council. The Whois Hypotheses WG delivered its report to the Council on 26-Aug-2008. (https://st.icann.org/Whois-hypoth-wg/index.cgi?Whois_hypotheses_wg#Whois_study_hypotheses_wg_final_report).
On 29-Oct-2008 the Registry constituency circulated its recommendations for consolidating and considering further Whois studies. http://gnso.icann.org/drafts/gnso-whois-study-recommendations-ryc-29oct08.pdf

On 5 November 2008 the GNSO Council decided to convene a series of special meetings on Whois studies, and to solicit further constituency views assessing both the priority level and the feasibility of the various Whois studies that have been proposed, with the goal of deciding which studies, if any, should be assessed for cost and feasibility. The Council would then ask staff to perform that assessment, and, following that assessment, the Council would decide which studies should be conducted. Council Chair Avri Doria convened a volunteer group of

Councilors and interested constituency members to draft a resolution regarding studies, if any, for which cost estimates should be obtained. This 'Whois Study Drafting Team' is tracked on a wiki page at https://st.icann.org/gnso-council/index.cgi?whois_discussion.

The Whois Study Drafting Team further consolidated studies and data requested by the GAC. For each of the consolidated studies, constituencies were invited to assign priority rank and assess feasibility. 5 constituencies provided the requested rankings, while 2 constituencies (NCUC and Registrars) indicated that no further studies were justified. The GAC was also invited to assign priorities, but no reply was received as of 22-Jan-2009.

The Drafting Team determined that the six studies with the highest average priority scores should be the subject of further research to determine feasibility and obtain cost estimates. The selection of these initial studies does not foreclose further consideration of the remaining studies.

Resolved:

Council requests Staff to conduct research on feasibility and cost estimates for the Whois studies listed below, and report its findings to Council by [date].

1) Group A (Studies 1, 14, 21 and GAC data set 2):

   Study 1 hypothesis: Public access to WHOIS data is responsible for a material number of cases of misuse that have caused harm to natural persons whose registrations do not have a commercial purpose. http://forum.icann.org/lists/whois-comments-2008/msg00001.html

   Study 14 hypothesis: The Whois database is used only to a minor extent to generate spam and other such illegal or undesirable activities. http://forum.icann.org/lists/whois-comments-2008/msg00017.html

   Study 21 and GAC data set 2 hypothesis: There are significant abuses caused by public display of Whois. Significant abuses would include use of WHOIS data in spam generation, abuse of personal data, loss of reputation or identity theft, security costs and loss of data. http://forum.icann.org/lists/whois-comments-2008/msg00026.html

2) Study 11.

   Study 11 hypothesis: The use of non-ASCII character sets in Whois records will detract from data accuracy and readability. http://forum.icann.org/lists/whois-comments-2008/msg00014.html

3) Group B (Studies 13, 17, GAC 1 & GAC 11)

   Study 13 hypotheses: a) The number of proxy registrations is increasing when compared with the total number of registrations; b) Proxy and private WHOIS records complicate the investigation and disabling of phishing sites, sites that host malware, and other sites perpetrating electronic crime as compared with non-proxy registrations and non-private registrations; c) Domain names registered using proxy or privacy

services are disproportionately associated with phishing, malware, and other electronic crime as compared with non-proxy registrations or non-private registrations. http://forum.icann.org/lists/whois-comments-2008/msg00016.html

Study 17 hypothesis: The majority of domain names registered by proxy/privacy services are used for abusive and/or illegal purposes.

http://forum.icann.org/lists/whois-comments-2008/msg00020.html

GAC Study 1 hypothesis: The legitimate use of gTLD WHOIS data is curtailed or

prevented by the use of proxy and privacy registration services.

GAC Study 11 hypothesis: Domain names registered using proxy or privacy services are disproportionately associated with fraud and other illegal activities as compared with non-proxy registrations.

4) Group E (Studies 3 & 20)

Study 3 hypothesis: Some proxy and privacy services are not revealing registrant/licensee data when presented with requests that provide reasonable evidence of actionable harm, as required to avoid liability under registration agreement provisions that reflect the requirements of RAA 3.7.7.3.

http://forum.icann.org/lists/whois-comments-2008/msg00003.html

Study 20 hypothesis: Some proxy and privacy services do not promptly and reliably relay information requests to and from registrants/licensees.

http://forum.icann.org/lists/whois-comments-2008/msg00023.html

5) Group C (GAC Studies 5 & 6)

GAC Study 5 hypothesis: A significant percentage of registrants who are legal entities are providing inaccurate Whois data that implies they are natural persons. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration.

GAC Study 6 hypothesis: A significant percentage of registrants who are operating domains with a commercial purpose are providing inaccurate Whois data that implies they are acting without commercial purposes. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration.

6) Group D (Studies 18, 19, GAC 9 & GAC 10)

Study 18 hypothesis: The majority of domain names registered by proxy/privacy services are used for commercial purposes and not for use by natural persons. http://forum.icann.org/lists/whois-comments-2008/msg00021.html

Study 19 hypothesis: A disproportionate share of requests to reveal the identity of registrants who use proxy services is directed toward registrations made by natural persons. http://forum.icann.org/lists/whois-comments-2008/msg00022.html

GAC Study 9 hypothesis: A growing and significant share of proxy/privacy service users are legal persons.

GAC Study 10 hypothesis: A growing and significant share of domains that are registered using proxy/privacy services are used for commercial purposes.

Council further requests that Staff refer to original study submissions (posted at http://forum.icann.org/lists/whois-comments-2008/), for statements of how study results could lead to an improvement in Whois policy. Many submitters also described the type of survey/study needed, including data elements, data sources, population to be surveyed, and sample size.

Staff is invited to pursue creative ways to develop cost estimates for these studies, including re-formulations of the suggested hypotheses. At any time, Staff may come back to Council with questions regarding study hypotheses.

Council further requests that Staff communicate the resolution to GAC representatives once it has been approved.

Working Definitions for Key Terms that May be Used in Future WHOIS Studies

Prepared by GNSO drafting team

Background and purpose: At the GNSO Council meeting held on 2 November in Cairo, the Council decided that it would be helpful to develop "working definitions" of several terms that are being used in the context of Council discussions of possible future studies of WHOIS. At the meeting, Council members identified the following terms and asked staff to develop initial working definitions that the Council could use as a starting point for further discussion and definition. To respond to the Council's request, staff solicited definitions from GNSO Council members and community stakeholders, reviewed ICANN meeting transcripts, policy and compliance references and constituency position statements, as well as other reference papers, noted below. The Council formed a drafting team that met from December-February 2009 and this draft has been updated to reflect this subsequent GNSO Council and constituency dialogue. *The following does not represent the viewpoints or positions of ICANN or ICANN staff and is for community discussion purposes only.*

1) Illegal or undesirable activities
See Study #s 14, 15 for examples of use in context.

Illegal or undesirable activities are activities that violate the law somewhere or activities that somebody finds harmful or objectionable.

2) Misuse
See study #s 1, 14, GAC 3 for examples of use in context.

Misuse is an action that causes actual harm, is the predicate to such harm, is illegal or illegitimate, or is otherwise considered contrary to intention and design of a stated legitimate purpose, if such purpose is disclosed. When applied to Whois data, such harmful actions may include the generation of spam, the abuse of personal data, intellectual property theft, loss of reputation or identity theft, loss of data, phishing and other cybercrime related exploits, harassment, stalking, or other activity with negative personal or economic consequences. The predicate to harmful action often includes automated email harvesting, domain name registration by proxy/privacy services to aid wrongful activity, and support of false or misleading registrant data. Predicate acts might include the use of Whois data to develop large email lists for commercial purposes.

http://forum.icann.org/lists/pdp-pcceg-feb06/msg00528.html

http://cai.icann.org/files/meetings/cairo2008/Cairo01NOV08GNSOWSpm.txt

http://gnso.icann.org/issues/whois/whois-study-hypothesis-group-report-to-council-26aug08.pdf

http://forum.icann.org/lists/whois-comments-2008/msg00001.html

http://forum.icann.org/lists/whois-comments-2008/msg00026.html

3) Commercial Purpose
See study #s 1, 18, 19, GAC 9, GAC 10 for examples of use in context.

Related to a bona fide business use. In the Internet context, the bona fide use or bona fide intent to use the domain name or any content, software, materials, graphics or other information thereon, to permit Internet users to access one or more host computers through the DNS: to legally exchange goods, services, or property of any kind in the ordinary course of trade or business; or to facilitate (i) the legal exchange of goods, services, information, or property of any kind; or, (ii) the ordinary course of legal trade or business.
http://www.icann.org/en/tlds/agreements/biz/appendix-11-08dec06.htm

http://cyber.law.harvard.edu/tlds/001/

4) Proxy and Privacy Services
See study #s 2, 3, 5, 13, 17, 18, 19, 20, Metalitz, GAC 1, GAC 7, GAC 8, GAC 9, GAC 10, GAC 11 for examples of use in context.

Proxy and Privacy services provide anonymity and privacy protection for a domain name user. Though the terms are colloquially used interchangeably, there is a difference.

Privacy services hide customer details from going into WHOIS. Privacy service providers, which may include registrars and resellers, may offer alternate contact information and mail forwarding services while not actually shielding the domain name registrant's identity. By shielding the user in these ways, these services are promoted as a means of protecting personal privacy, free speech and human rights and avoiding personal data misuse.

http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf

http://gnso.icann.org/mailing-lists/archives/tf2-survey/doc00003.doc

Proxy services protect users' privacy by having a third-party register the name. The third-party is most often the Proxy service itself. The third-party allows the user to access and use the domain name through a separate agreement or some other arrangement directly with the user. Proxy service providers may include web design, law, and marketing firms; web hosts, registrar subsidiaries, resellers and individuals.

http://gnso.icann.org/drafts/whois-study-overview-gnso-council-04oct07.pdf.
http://www.icann.org/en/topics/raa/amendments.html#escrow

5) Relay Information Requests

See study # 20 for this term's use in context.

Problems arise from time to time in connection with registered names. Allegations of actionable harm require copyright and trademark owners, law enforcement officials and others to be able to operate through a proxy or privacy service provider to contact the domain name user. Potential "harms" could include suspected fraud, intellectual property rights infringement, or the infringement of other civil or criminal laws. To support the relay of information requests, service providers must have reliable and timely means of communicating with their domain licensees. The ICANN Registrar Accreditation Agreement stipulates that the

proxy registrant reveal the identity of the domain licensee upon reasonable evidence of actionable harm or risk liability for resulting harm.

http://forum.icann.org/lists/whois-comments-2008/msg00023.html

http://forum.icann.org/lists/gnso-whois-wg/pdfi6hAmW7P6J.pdf

http://gnso.icann.org/issues/whois-privacy/whois-wg/whois-working-group-charter-16apr07.pdf

6) Falsify Whois Data

See study # 12 for this term's use in context.

Falsifying Whois data is an issue that balances the technical and legal requirements of Whois domain name registration records with the right to registrant privacy. http://www.icann.org/en/committees/security/sac003.htm The security and reliability of the Whois data base depends on data accuracy. ICANN therefore expects registries and registrars to collect accurate information and to take required action if false information is discovered or suspected.

http://www.icann.org/en/committees/security/whois-recommendation-01dec02.htm#1.1

7) Natural Persons
See study # 19 for this term's use in context.

A real, living individual as opposed to a "legal person" which may be a company, business, partnership, non profit entity or trade association. It is often not clear whether registrants are registering a domain name as a "natural person" or a "legal person" at the time of registration. In the Whois context, personal data refers to any identified or identifiable natural person.

http://gnso.icann.org/drafts/draft-report-whois-wg-28jun07.pdf

http://gnso.icann.org/mailing-lists/archives/council/msg02742.html

Whois Study Table – Updated 18 February 2009

This table, prepared by ICANN staff, is based on the chart included in the WHOIS Hypothesis Report of 26 August 2008, and is amended to show related or overlapping studies clustered into "letter groupings". This lettering and numbering scheme corresponds to the study numbers referenced in the motion currently being considered by the GNSO Council.

Study	Hypotheses
Area 1	**WHOIS misuse studies**
15	Those using Whois data to facilitate illegal or undesirable activities (such as spam) depend on port 43 access to Whois to obtain Whois data. http://forum.icann.org/lists/whois-comments-2008/msg00018.html
A (includes studies 1, 14, 21 & GAC data set 2)	Study 1 hypothesis: Public access to WHOIS data is responsible for a material number of cases of misuse that have caused harm to natural persons whose registrations do not have a commercial purpose. http://forum.icann.org/lists/whois-comments-2008/msg00001.html Study 14 hypothesis: The Whois database is used only to a minor extent to generate spam and other such illegal or undesirable activities. http://forum.icann.org/lists/whois-comments-2008/msg00017.html Study 21 and GAC data set 2 hypothesis: There are significant abuses caused by public display of Whois. Significant abuses would include use of WHOIS data in spam generation, abuse of personal data, loss of reputation or identity theft, security costs and loss of data. http://forum.icann.org/lists/whois-comments-2008/msg00026.html
GAC 3	There are technical measures available that would effectively curtail misuse of data published on WHOIS databases while preserving legitimate use and open access to the databases.
Area 2	**Compliance with data protection laws and the Registrar Accreditation Agreement**
16	Two hypotheses: 1. Registrars do not have a uniform method of disclosing or obtaining consent for collection of data for WHOIS purposes. 2. The methods employed by registrars to disclose and obtain consent have not been adjudicated with regard to consistency with national law. http://forum.icann.org/lists/whois-comments-2008/msg00019.html Because there may be significant variations in consent among jurisdictions, the analysis should be segmented by common legal consent regimes.

22	(a) More restrictive Whois policies than the general ICANN Whois requirements have been adopted by some of the 30 top ccTLDs. (b) ccTLD operators report that Whois policies have been adopted in order to become compliant with the data protection laws of the territory. (c) ccTLDs are moving towards more restrictive WHOIS policies motivated by national data protection laws. http://forum.icann.org/lists/whois-comments-2008/msg00024.html
23	Some national data protection laws explicitly apply, or have been adjudicated to apply, to information submitted by gTLD registrants and made available via Whois. http://forum.icann.org/lists/whois-comments-2008/msg00025.html
24	Some Registrars are not obtaining agreement to terms required under section 3.7.7 of the RAA. http://forum.icann.org/lists/whois-comments-2008/msg00013.html
GAC 12, GAC 13, GAC 14 & GAC 15	GAC 12 - As reported by gTLD registries or registrars, as reflected in their contractual documents, or as adjudicated in relevant fora, the WHOIS contractual obligations of gTLD registries and registrars are governed by: • the laws of their local jurisdiction, or • the laws of the jurisdictions of their Registrants, or • the laws of ICANN (California, U.S.), or • some other jurisdiction. GAC 13 - Those gTLD registries or registrars that are governed by a local jurisdiction provide a contractual mechanism (or have had a mechanism imposed upon them by law or binding decision) to resolve any conflicts between the law applicable to their WHOIS requirements and the law of any other jurisdiction. GAC 14 - Incorporated into GAC 12. GAC 15 - Out of scope for proposed studies of "key factual issues"
Area 3	**Availability of privacy services**
2	The cost of proxy services precludes some registrants from using them. http://forum.icann.org/lists/whois-comments-2008/msg00002.html
5	Whois at present allows resellers and registrars to offer privacy services to differentiate themselves on value. http://forum.icann.org/lists/whois-comments-2008/msg00005.html
GAC 7	A growing share of registrants is protecting the privacy of their Whois data by using proxy registrations and/or privacy services.
GAC 8	A growing share of registrars and affiliates are offering proxy registration and/or privacy services.

Area 4	Demand and motivation for use of privacy services
D (includes studies 18, 19, GAC 9, GAC 10)	Study 18 hypothesis: The majority of domain names registered by proxy/privacy services are used for commercial purposes and not for use by natural persons. http://forum.icann.org/lists/whois-comments-2008/msg00021.html
	Study 19 hypothesis: A disproportionate share of requests to reveal the identity of registrants who use proxy services is directed toward registrations made by natural persons. http://forum.icann.org/lists/whois-comments-2008/msg00022.html
	GAC Study 9 hypothesis: A growing and significant share of proxy/privacy service users are legal persons.
	GAC Study 10 hypothesis: A growing and significant share of domains that are registered using proxy/privacy services are used for commercial purposes.
Area 5	Impact of WHOIS data protection on crime and abuse
6	There is a statistically significant correlation between more restrictive ccTLD Whois policies and levels of cybercrime in a domain.http://forum.icann.org/lists/whois-comments-2008/msg00006.html
GAC 2	Restrictions on some or all of the legitimate uses of WHOIS have a negative economic impact.
Area 6	Proxy registrar compliance with law enforcement and dispute resolution requests
12	Registrants would be less likely to falsify their Whois data if the sensitive information of private persons can be secured while giving law enforcement access. http://forum.icann.org/lists/whois-comments-2008/msg00015.html

E (studies 3 and 20)	Study 3 hypothesis: Some proxy and privacy services are not revealing registrant/licensee data when presented with requests that provide reasonable evidence of actionable harm, as required to avoid liability under registration agreement provisions that reflect the requirements of RAA 3.7.7.3. http://forum.icann.org/lists/whois-comments-2008/msg00003.html Study 20 hypothesis: Some proxy and privacy services do not promptly and reliably relay information requests to and from registrants/licensees. http://forum.icann.org/lists/whois-comments-2008/msg00023.html Note: this language has been changed from the original text reflected in the 26 August GNSO Hypothesis Group Report by agreement of the GNSO drafting team (and in consultation with ICANN staff) on 18 February 2009.
Metalitz b.	b. A party's use of a proxy/privacy registration service reduces the party's ability to respond to a UDRP proceeding. http://forum.icann.org/lists/whois-comments-2008/msg00012.html
Area 7	**WHOIS data accuracy**
8	Some Registrars knowingly tolerate inaccurate or falsified Whois data so as to attract and retain registrations by spammers and other bad actors, and do not face deterrent consequences for doing so. http://forum.icann.org/lists/whois-comments-2008/msg00008.html
11	The use of non-ASCII character sets in Whois records will detract from data accuracy and readability. Note: This is a proposed technical analysis and not a study, that is, a technical analysis of how the use of non-ASCII characters in Whois data elements might increase risks of inaccurate data, particularly through use of client-side software that fails to properly check the syntax of fields that contain both ASCII and non-ASCII strings. This analysis should examine and recommend methods for web display and Port 43 retrieval of non-ASCII Whois data, such that those accessing Whois can effectively read, recognize, and reliably use the information to reach registrant contacts and name server resources. http://forum.icann.org/lists/whois-comments-2008/msg00014.html

C (GAC studies 5 and 6)	GAC Study 5 hypothesis: A significant percentage of registrants who are legal entities are providing inaccurate Whois data that implies they are natural persons. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration. GAC Study 6 hypothesis: A significant percentage of registrants who are operating domains with a commercial purpose are providing inaccurate Whois data that implies they are acting without commercial purposes. Furthermore the percentage of registrants with such inaccuracies will vary significantly depending upon the nation or continent of registration.
GAC 4	A significant number of Registrars do not apply effective methods to detect fraudulent domain name registrations, and do not take adequate corrective measures when fraudulent information is detected.
(Areas 4 & 5) B (includes 13, 17, GAC 1, GAC 11)	Study 13 hypotheses: a) The number of proxy registrations is increasing when compared with the total number of registrations; b) Proxy and private WHOIS records complicate the investigation and disabling of phishing sites, sites that host malware, and other sites perpetrating electronic crime as compared with non-proxy registrations and non-private registrations; c) Domain names registered using proxy or privacy services are disproportionately associated with phishing, malware, and other electronic crime as compared with non-proxy registrations or non-private registrations. http://forum.icann.org/lists/whois-comments-2008/msg00016.html Study 17 hypothesis: The majority of domain names registered by proxy/privacy services are used for abusive and/or illegal purposes. http://forum.icann.org/lists/whois-comments-2008/msg00020.html GAC Study 1 hypothesis: The legitimate use of gTLD WHOIS data is curtailed or prevented by the use of proxy and privacy registration services. GAC Study 11 hypothesis: Domain names registered using proxy or privacy services are disproportionately associated with fraud and other illegal activities as compared with non-proxy registrations.

(Area 6) Metalitz a.	Some registrars operating proxy/privacy services are not revealing registrant data when requested in a UDRP proceeding. http://forum.icann.org/lists/whois-comments-2008/msg00012.html