

# Report of Public Comments

<b>Title:</b>	<b>Whois Privacy &amp; Proxy Abuse Study Draft Report</b>		
<b>Publication Date:</b>			
<b>Prepared By:</b>	ICANN Staff		
<b>Comment Period:</b>		<b>Important Information Links</b>	
Comment Open Date:	24 September 2013	Announcement	
Comment Close Date:	22 October 2013	Public Comment Box	
Reply Close Date:	13 November 2013	View Comments Submitted	
Time (UTC):	23:59 UTC	Report of Public Comments	
<b>Staff Contact:</b>	Mary Wong	<b>Email:</b>	policy-staff@icann.org
<b>Section I: General Overview and Next Steps</b>			
<p>As part of its efforts to obtain a comprehensive, objective and quantifiable understanding of various aspects of the Whois gTLD registration data system, the GNSO Council commissioned the National Physical Laboratory in the United Kingdom, led by Dr. Richard Clayton of the University of Cambridge, to conduct a study on Whois Privacy &amp; Proxy Service Abuse. Specifically, NPL was tasked to investigate the following hypothesis: "A significant percentage of the domain names used to conduct illegal or harmful Internet activities are registered via privacy or proxy services to obscure the perpetrator's identity."</p> <p>NPL's draft findings and report were published for public comment on 27 September 2013. For more information on NPL's methodology and findings, see the <a href="#">Whois Privacy &amp; Proxy Abuse Study Draft Report</a>.</p> <p>The body of public comment received has been analyzed by ICANN staff and NPL as described below, and the comments and analysis report will be forwarded to the GNSO Council, the GNSO's Working Group on the Privacy &amp; Proxy Services Accreditation Issues PDP and other relevant groups such as the Expert Working Group on gTLD Directory Services for their consideration and review.</p>			
<b>Section II: Contributors</b>			
<p><i>At the time this report was prepared, a total of fifteen (15) 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.</i></p>			

### Organizations and Groups:

Name	Submitted by	Initials
Web IP	Edward Seaford	WIP
General Electric	Sean Merrill	GE
Coalition for Online Accountability	Steve Metalitz	COA
ICANN At Large Advisory Committee	ALAC Staff	ALAC
GNSO Intellectual Property Constituency	Claudio di Gangi	IPC
Intercontinental Hotels Group	Jeanne Morin	IHG
GNSO Registries Stakeholder Group	Paul Diaz	RySG
Office of Australian Information Commissioner	Mark Gallagher	OAIC
Valideus Ltd.	Brian Beckham	VL
International Anti-Counterfeiting Coalition	Travis Johnson	IACC
A group of members from GNSO Non Commercial Stakeholder Group	Amr Elsadr	NCSG
GNSO Business Constituency	Steve DelBianco	BC

### Individuals:

Name	Affiliation (if provided)	Initials
Mary		MA
Robin Gross	NCSG	RG
Anonymous (name withheld on request)		XC
John Hodgson	Hodgson Bilton	JH

### 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).*

### Usefulness of the Study

A number of commentators (ALAC; BC; IACC; OAIC; RySG; VL) welcomed the study as producing statistically reliable empirical data that can be useful in policy work relating to gTLD registration data, including Whois reform (BC; IPC; OAIC) and a more granular examination of proxy and privacy service usage (RySG). More specifically, some commentators considered the study findings useful in assisting with:

- (1) Improvements to Whois accuracy (ALAC; BC; COA; GE);
- (2) Consistency in data collection (IPC);
- (3) Improvements to reliability of Whois data (COA; GE);
- (4) Verification of Whois data (ALAC; IACC);

- (5) Development of an ICANN accreditation program for privacy and proxy services that is restricted (IACC) and does not provide cover to criminals and infringers (GE); limited to use by legitimate, non-commercial, non-abusive websites (BC) or for non-commercial free speech (VL) or the pre-launch development of new products or services (IACC);
- (6) Development of an ICANN accreditation program for privacy and proxy services to the extent they meet all relevant RAA requirements including accuracy and verification requirements (ALAC);
- (7) Development of an ICANN accreditation program for privacy and proxy services that is contractual and standardized (IHG); strong (ALAC); containing improved remedial measures in cases of abuse (IPC); and vigorously implemented by all contracted parties (COA); and
- (8) Development of an ICANN accreditation program for privacy and proxy services that is balanced as between abuse prevention and positive legitimate uses (VL), and that in striking the appropriate balance also contains clear, consistent and enforceable requirements consistent with national laws (IHG).

One commentator (IHG) noted that the study corroborated the need to move quickly to implement requirements for “thick” Whois across all gTLD registries. IHG also considered the need for ICANN oversight and regulation of privacy and proxy service providers to be urgent, and COA believed this should be done expeditiously. IACC and IPC noted the need as pressing, especially given the imminent rollout of the new gTLD program (IPC).

Another commentator (OAIC) stated that the use of privacy and proxy services for illegal or harmful activities should not invalidate their use by registrants with legitimate concerns about making their personal information available online. Two individual commentators (MA; XC) believed that domain name registrants should have the ability to hide their identity from the general public and that it is unnecessary and disproportionate to give up personal privacy in order to prevent fraudulent or unlawful online activity.

Several commentators (COA; GE; IHG; IPC; WIP) highlighted brand owners’ difficulties in combating cyber-squatting and other unlawful online activities (e.g. phishing, sale of counterfeit goods) and considered the study findings as corroborative of their or their clients’ experiences. One commentator (JH) believed that proxy services are being abused by registrants engaged in cyber-squatting, and noted that a privacy registration service may consider itself not bound by the Uniform Dispute Resolution Policy on the basis that it is not a registrar.

### **Methodology and Scope of the Study**

A small number of commentators questioned the methodology adopted by the research team. NCSG believed that NPL went beyond the original Terms of Reference for the study in choosing also to compare privacy and proxy registration usage for selected lawful activities that nonetheless did not reflect more generalizable results from excluded organizations such as human rights organizations and political activist groups. NCSG also cautioned against interpreting the “significant percentage” found by NPL as meaning that a majority of the users of privacy and proxy services are doing so to engage in illegal or harmful activities.

Two commentators questioned the research team's use of telephone numbers provided in Whois to attempt to contact registrants (NCSG; XC<sub>1</sub>) due either to its invasive nature (NCSG) or likelihood of failure (SC).

RySG commended NPL for expanding the study to provide a more thorough look at both the balance of privacy and proxy registrations by "bad actors" as opposed to legal and harmless uses, and at other ways used by registrants to hide their identities online. RySG also noted that while the research team attempted telephone contact with registrants in the course of its work, the scope of the study did not extend to attempts to contact registrants through the privacy or proxy services that were used.

In addition, RySG pointed out that the study did not fully define the percentages of domain names used for lawful activities that used privacy or proxy services, and noted that it might have been useful if attempts had been made to contact registrants through the privacy and proxy services used.

### **Other Limitations of the Study**

A group of commentators thought the research team's rationale for limiting or excluding certain study categories could have been more detailed (RySG). Several commentators (COA; GE; IACC; IPC) believed that the study was too limited in examining instances of intellectual property infringement, as it did not consider actions such as cyber-squatting or media and software piracy. A number (COA; GE) expressly questioned the research team's stated rationale for their exclusion and considered that the study methodology downplayed the nature, extent and severity of intellectual property infringement (GE).

Several commentators (BC; IHG; VL) noted that privacy and proxy registration services are used by both commercial and non-commercial actors for legitimate purposes, including the maintenance of business confidentiality and the protection of free speech. However, one commentator (WIP) questioned the rationale of permitting hidden details in the Whois system in the face of its demonstrated abuse.

### **Other Comments and Suggestions**

Some of the specific suggestions for further or additional work include:

- BC recommended that the .com registry implement privacy and proxy service guidelines as an interim measure, since .com names dominated the dataset used by NPL;
- GE called for a full study of privacy and proxy usage by cyber squatters, media and software pirates and other trademark infringers;
- RySG suggested further analysis about registrants' unwillingness or inability to comply with Whois data collection requirements;
- NCSG requested further and more generalized studies into Whois privacy and proxy abuse; and

- MA suggested a report on whether legitimate political activists use privacy services more than the general public.

Several commentators mentioned the usefulness of the study and its findings in light of other ICANN activities relating to Whois, e.g. development of the new Aggregated Registration Directory Service (BC); the 2013 RAA (ALAC; COA; IHG); the new gTLD Registry Agreement (COA); the Expert Working Group on gTLD Directory Services (VL); the Whois Review Team report (ALAC); and ICANN's obligations under its Affirmation of Commitments (IPC; VL).

#### **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.*

In sum, a number of commentators support the creation of an accreditation program for privacy and proxy service providers by ICANN. Although commentators generally welcomed the study and its usefulness in assisting with further policy work on gTLD directory services, there were a few questions raised about the methodology employed by the research team and the rationales given for excluding certain previously identified categories from the study. ICANN and NPL will consider all public comments received in preparing a final report for publication. The final report will be forwarded to the GNSO Council for further review and action. It will also be shared with the GNSO's Privacy & Proxy Services Accreditation Issues PDP Working Group, which has just started its work on policy issues relating to the accreditation of privacy and proxy service providers, and with other ICANN groups and staff working on other aspects of Whois and gTLD directory services, including the Expert Working Group on gTLD Directory Services.