

Summary of Public Comments received from 13 September through 30 October on
Recent GNSO WHOIS Activities

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The public comment period on Recent GNSO WHOIS Activities ran from 13 September through 30 October, 2007. 245 comments were received. Of these, 238 were on-topic and not duplicates. Public comments were particularly invited on:

- The WHOIS Task Force Report of 12 March, 2007
- The WHOIS Working Group Report of 20 August, 2007
- The Final Staff Overview of Recent WHOIS Activities of 11 October (and the earlier Draft Staff Overview of 13 September). In particular, comments were sought on the three proposed motions offered to-date and referenced on pages 9 and 10 of the October Staff Overview report (see summary below).
- The 11 October Staff Implementation Notes on the 20 August WHOIS Working Group Report.

The public comments are archived at: http://www.icann.org/public_comment/#whois-comments-2007

As noted above, comments were sought on three proposed motions, which can be summarized as follows:

1. Asks staff to propose an implementation of OPOC that takes into account the work done in the TF, the WG and the comments received in response to that work
2. Postpones further decisions on OPOC until after the studies being investigated by staff are completed
3. Recommends that Board consider “sunsetting” the Whois requirements in the Registrar contract due to the lack of consensus if motion #1 does not pass.

1. High-level summary of comments received:

238 comments were received, representing interested views from individuals, consumer groups, and a broad cross section of corporations, industry trade associations and law firms. Comments were received from more than 16 countries including Argentina, Brazil, Canada, Columbia, Denmark, Finland, France, Germany, Hong Kong, Italy, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States.

The vast majority of comments (approx. 223) support Motion #2 and oppose adoption of an Operational Point of Contact at this time. These comments are described further in section 2 below. 13 comments support Motion #1 (and Motion #3 in the absence of Council support for Motion #1). These comments are described further in section 3 below. Two comments voiced alternative views about the process by which the WHOIS Working Group developed its report, but did not comment on the substance of the proposals. These are not addressed further in this summary. A listing of all individuals who submitted comments, along with affiliations if provided, is attached for easy reference.

2. Summary of comments in support of Motion #2:

Comments supporting Motion #2 were made by a broad cross section of corporations, industry trade associations and law firms from around the world. Comments from companies included many large businesses in a variety of industries including financial services, pharmaceuticals, manufacturing, automotive, retail, high technology and many others. Trade association comments included the software industry, entertainment industry, financial services industry and other commercial interests. Law firms representing a broad array of commercial, consumer and brand interests also submitted comments supporting motion #2 and rejecting the OPOC proposal.

Key points made in these comments include the following:

- Real-time, publicly accessible Whois data is an essential tool for protecting consumers from online fraud, facilitating essential commercial transactions such as mergers and acquisitions, licenses and secured transactions, and the management of large domain name portfolios.
- Changes to Whois must be based on empirical, not anecdotal, data obtained via an objective and comprehensive ICANN study on the legitimate uses and abuses of the Whois system, and the nature of registrants. The results of the study called for by Motion 2 are likely to suggest practical solutions around which consensus on the need for change can be based.
- The GNSO Council should not proceed with OPOC given the numerous outstanding issues that have not been resolved. The Whois Working Group did not reach consensus on a critical aspects of the OPOC policy such as standards for the timely transmission of requests, mechanisms for enforcing OPOC compliance with its obligations, and the mechanisms for providing legitimate third parties with access to unpublished data.
- Two comments emphasized that in the event that OPOC is implemented, a specific and expeditious means of access would need to be provided for entities such as representatives of the financial services sector in order to deter identity theft or consumer fraud.
- Although many comments in support of Motion 2 came from large brand owners, comments also reflected representation from companies from all sectors of the economy (entertainment, consumer products, computer game development, financial services, manufacturing, consumer retail, broadcasters, and real estate franchisers to name a few), and related extensive descriptions of their enforcement efforts and the harm to their customers that they combat using Whois information.

3. Summary of comments in support of motions #1 and #3

13 comments supported Motions #1 and #3. Several comments were submitted by individuals who are domain name registrants and individual users of the Internet. Comments were also received from groups representing the interests of individual users.

Key points made in these comments include the following:

- Individuals should not be required to sacrifice the privacy of their personal information in order to register a domain name. Individuals who are operating in a non-commercial context have the right to restrict or prevent the public display of their personal contact information.
- ICANN has mandated collection and display of Whois data as a legacy of old practices, not because there has been any agreement that it should be so.
- Data protection laws exist in many countries that apply to Whois data and to registries, registrars and domain name registrants around the globe. Whois policy must be changed to reflect these data protection laws and privacy rights.
- OPOC will enhance the accuracy of information provided in Whois because registrants will be more likely to provide accurate information if they have assurance that the information will not be accessible publicly. This will also reduce the likelihood that contact data would be harvested and used for illegitimate purposes such as spam, distributing malware and a variety of online criminal acts including consumer fraud.
- There is a shared concern about reducing illegal and other illegitimate activities online. Several comments noted that if OPOC is implemented, it will be important to provide an effective means of access to unpublished contact information when required for law enforcement purposes or when otherwise needed to investigate and deter unlawful online activities.
- One detailed comment supported OPOC and also considered several issues related to implementation of OPOC. First, the comment questioned the likelihood that implementation of OPOC would have substantial cost implications for service providers. This comment also raised significant objection over a proposal suggested in the WHOIS Working Group Report that the OPOC might reveal data to a requester of unpublished contact information. The comment supported auto-verification of OPOCs by email at the time of registration, putting the name on hold until verification was received. This same comment also supported the need for further study of WHOIS.
- If OPOC is not implemented, all non-consensus Whois provisions in registry and registrar agreements should sunset.
- One comment proposed an alternative to OPOC, referred to as the “natural persons proposal”. The proposal envisions that during the registration process, every registrant would declare that they are: 1) either a natural person who will use the domain exclusively for non-commercial activity; or 2) another type of registrant. The contact information for natural persons would not be publicly accessible in Whois. A mechanism would be implemented that would allow a requester access to the unpublished data if the reason the information was removed was no longer valid, or if the domain was being used illegally or to harm the security and stability of other Internet resources. A third party would evaluate the request and allow release of data if the requester proved that one of these conditions had been met.