

Intellectual Property Constituency (IPC) Statement on Whois Task Force Terms of Reference Item 1: Purpose of Whois and Item 2: Purpose of Whois Contacts

July 25, 2005

This statement responds to the request for constituency input on the Whois Task Force Terms of Reference Items 1 (purpose of Whois) and 2 (purpose of Whois contacts). See Call for constituency statements on Tasks 1&2 of Whois Task Force Terms of Reference, at <http://forum.icann.org/lists/gnso-dow123/msg00416.html>. The Terms of Reference may be found at <http://gnso.icann.org/policies/terms-of-reference.html>. Pursuant to requirements of the GSNO policy development process, outlined by the ICANN bylaws, see Annex A, Sec. 7(d), available at <http://www.icann.org/general/archive-bylaws/bylaws-19apr04.htm>, the IPC came to the following conclusion.

I. Purpose of the Whois Database

Term of Reference #1 is to define the purpose of the Whois database in the context of (1) ICANN's mission and relevant core values, (2) international and national laws protecting privacy of natural persons, (3) international and national laws that relate specifically to Whois services, and (4) the changing nature of Registered Name Holders.

In IPC's view, it is clear that the purpose of the Whois database – from its inception, through the commercialization of the Internet, and continuing today – has always included to provide the public with ready access to the identity and contact information for domain name registrants. That purpose has never changed, and registrants have always been on notice of this purpose, regardless of when they registered their domains. This purpose is also fully consistent with the contextual factors listed in TOR #1. Please see attached background paper for further documentation of this conclusion.

i) If a Supermajority Vote was reached, a clear statement of the constituency's position on the issue;
See above.

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by constituency members;
N/A

(iii) A clear statement of how the constituency arrived at its position(s). Specifically, the statement should detail specific constituency meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

The IPC membership was notified of the request for a constituency statement on June 22. A draft constituency statement was circulated on July 8. The statement and the issue were discussed at the IPC meeting in Luxembourg on July 11. A revised statement was circulated to the IPC membership on July 20, and was discussed at an IPC teleconference meeting on July 22.

At that meeting, on a motion, which was seconded, it was agreed without objection to approve the constituency statement, subject to minor drafting changes in the background paper.

(iv) An analysis of how the issue would affect the constituency, including any financial impact on the constituency;

This issue will have a positive impact on IPC by maintaining and potentially enhancing the utility of the Whois database, a vital tool for protecting intellectual property rights in the online environment. IPC does not anticipate any financial impact on the constituency as a result of this policy, nor do we perceive any new costs associated with this particular policy that would need to be borne by another constituency.

(v) An analysis of the period of time that would likely be necessary to implement the policy.

None.

II. Purpose of the Registered Name Holder, Technical, and Administrative Contacts

Term of Reference #2 is to define the purpose of (1) the Registered Name Holder,¹ (2) the technical contact, and (3) the administrative contact, in the context of the purpose of the Whois database. IPC supports the effort to define these terms. We note that, today, there is absolutely no consistency in how registrants populate these databases. The fact that these terms (or their cognates) are defined in a Transfers Policy of ICANN is completely unknown to all but a handful of domain name registrants, and thus these definitions have no correlation to the reality of how these categories are defined in practice. However, providing information in the Whois database about each of these points of contact fulfills a useful role.

A. Registered Name Holder

As discussed in response to Terms of Reference #1 above, the purpose of the Whois database, in terms of ICANN's mission and core values, is primarily to promote the reliability and security of the Internet. Making Whois data publicly available regarding the Registered Name Holder is critical to accomplishing this purpose. The Registered Name Holder is ultimately responsible for the use of the domain name and the operation of the corresponding website or other Internet resource, and is also the entity with authority to transfer the domain name registration to another party. Making information on the Registered Name Holder available thus directly promotes accountability and transparency, which in turn increases the overall reliability and security of the Internet.

B. Technical Contact

¹ The source of the definitions of these terms does not define "Registered Name Holder," but rather "Domain Holder" (see <http://www.icann.org/gns0/transfers-tf/report-exhc-12feb03.htm>). The IPC presumes the two terms are being used interchangeably.

The purpose of the Technical Contact is to help ensure the operational stability, security, and global interoperability of the Internet, pursuant to ICANN's core value (1).

C. Administrative Contact

The purposes of identifying the Administrative Contact in the Whois database are (1) to give registrars a clearly identified authorized voice of the Registered Name Holder for purposes of managing the domain name, and (2) to give other members of the public a clearly identified point of contact for issues regarding the content of the corresponding website or other Internet resource. For instance, the Administrative Contact should have the authority to modify content on the site or to accept legal process or similar notifications concerning that content.

The IPC notes, however, that the definition provided by the Transfers Task Force Report as referenced in ICANN's June 2 Terms of Reference is somewhat confusing. Namely, the Transfers Report defines the administrative contact as:

an individual, role [?], or organization authorized to interact with the Registry or Registrar on behalf of the Domain Holder [note reference is not to the "Registered Name Holder"]. The administrative contact should be able to answer non-technical questions about the domain name's registration and the Domain Holder. In all cases, the Administrative Contact [sic – note inconsistent capitalization within the definition] is viewed as *the authoritative point of contact* for the domain name, second only to the Domain Holder.

Final Report and Recommendations of the GNSO Council's Transfers Task Force, Exhibit C: Standardized Definitions, at <http://www.icann.org/gns0/transfers-tf/report-exhc-12feb03.htm> (emphasis added).

The definition thus states that the Administrative Contact is "the" authoritative point of contact, but in the next breath demotes that authority to being secondary to the Domain Holder. The IPC agrees that the Domain Holder should have ultimate authority over the domain name, and suggests that the definition of Administrative Contact more clearly reflect that it is not "the" authoritative point of contact, but rather that it is the Domain Holder's authorized point of contact for managing the domain name.

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(iv) An analysis of how the issue would affect the constituency, including any financial impact on the constituency;

This policy will have a positive impact on IPC by potentially enhancing the utility of the Whois database, a vital tool for protecting intellectual property rights in the online environment. IPC does not anticipate any financial impact on the constituency as a result of this policy, nor do we perceive any costs associated with this particular policy that would need to be borne by another constituency. However, this could change depending upon implementation of the policy (see below).

(v) An analysis of the period of time that would likely be necessary to implement the policy.

It is not clear that this particular Term of Reference contemplates any implementation activity. Assuming that agreement is reached upon the purpose of the various contact categories, IPC believes the Task Force should consider what steps should be taken to (1) inform current and future registrants of these conclusions; (2) encourage or require registrars and registries to provide guidance to registrants in populating these data fields; and (3) facilitate registrants making changes to Whois entries in order to bring them into greater compliance with the agreed-upon purposes. The period of time for implementation would of course be one topic for consideration.