

## IPC Constituency Statement

### Whois Task Force 1

March 26, 2004

This statement responds to the issue identified in the purpose statement of the terms of reference for Task Force 1, see <http://gnso.icann.org/issues/whois-privacy/tor.shtml>

*The purpose of this task force is to determine what contractual changes (if any) are required to allow registrars and registries to protect domain name holder data from data mining for the purposes of marketing. The focus is on the technological means that may be applied to achieve these objectives and whether any contractual changes are needed to accommodate them.*

IPC opposes data mining of Whois for the purpose of marketing, although we believe there is strong evidence that Whois data is not a significant source of addresses for spam. Nevertheless, IPC supports, in principle, the use of query volume limitations on Port 43 access in order to discourage such practices. The uses for which trademark and copyright owners need access to domain name Whois do not ordinarily require the extremely high query volume levels that generally would be needed to mine the database for marketing purposes. Being supportive of the debate, the IPC submits that any changes in practice or regulation have to be designed in a manner that does not inadvertently have detrimental effects on the legitimate use of Whois. Based on the work of Task Force 1, we remain confident that this goal is feasible and can be achieved. To this effect, any effective technical/policy solution in the area of discouraging data mining of the domain name Whois database must take a number of points into account, including the following:

- Any provision should maintain and ensure availability of unhampered access to Port 43 for legitimate applications (such as research services) that require high volume access to domain name Whois for use in creating value-added products and services that are of great value to the intellectual property community and to the business community in general. As long as enforcement of the RAA provisions regarding bulk access to Whois remains almost non-existent, availability of port 43 access is essential in assuring the viability of these services.
- Adequate provision must be made for intermediaries which aggregate low-volume requests from end-users into a relatively high volume of queries through Port 43.
- A solution must identify realistic volume break-points between low-volume queries via Port 43 that should remain unrestricted, and a very high volume of queries that could, in principle, require an efficient and workable form of disclosure to registrars (or registries in the thick registry model) of the uses to which query results would be put.

- The solution should also preserve the unrestricted availability of Whois queries through a web-based interface, and the status of Port 43 as a service available free of charge.
- The solution must be accompanied by proactive enforcement of the obligation to make bulk access available.
- Finally, the solution must also address questions of scalability, particularly in the thin registry environment.

IPC does not currently take a position on whether or not the introduction of a solution as described above would require contractual modifications.

IPC would be interested in participating in an ongoing effort to develop such a solution. We propose that this effort be conducted by a small group representing all directly affected interests, on a realistic timeframe, and in a manner that will encourage candid consideration of the technical issues involved, all subject to final review by ICANN.