

IPC Constituency Statement

Whois Task Force 2

April 13, 2004

This statement responds to the issue identified in the purpose statement of the terms of reference for Task Force 2, see <http://gnso.icann.org/issues/whois-privacy/tor2.shtml>

The purpose of this task force is to determine:

a) What is the best way to inform registrants of what information about themselves is made publicly available when they register a domain name and what options they have to restrict access to that data and receive notification of its use?

Based on the limited data which has been collected so far, IPC believes that the effectiveness of notification to domain name registrants, and the obtaining of their consent as required by the RAA Secs. 3.7.7.4, 3.7.7.5, generally need improvement.

For example, obtaining specific consent on this issue from the registrant during the registration process, separate from obtaining agreement to extensive terms and conditions for the registration in general, should be encouraged. Similarly, some registrars should be more specific and forthright in communicating to registrants about the circumstances under which Whois data is available to third parties.

ICANN should:

- incorporate compliance with the notification and consent requirement as part of its overall plan to improve registrar compliance with the RAA. (See MOU Amendment II.C.14.d).
- issue an advisory reminding registrars of the importance of compliance with this contractual requirement, even registrars operating primarily in countries in which local law apparently does not require registrant consent to be obtained.

IPC believes that registrars should take the lead in developing best practices, with input from other interested constituencies, that will improve the effectiveness of giving notice to, and obtaining consent from, domain name registrants with regard to uses of registrant contact data. IPC would be glad to participate in such an effort.

b) What changes, if any, should be made in the data elements about registrants that must be collected at the time of registration to achieve an acceptable balance between the interests of those seeking contact-ability, and those seeking privacy protection?

Based on the data collected so far, IPC does not think that any data element currently collected by registrars about registrants should be eliminated. IPC has identified certain data elements that may not be currently collected (or at least are not currently displayed in response to Whois queries) but whose inclusion would improve the usefulness of Whois data. These include:

- chain of title information
- date of initial registration
- notice of encumbrances
- date and method of last verification of registrant contact information*

*Although these additional desired data elements were identified in response to the questionnaire sent by TF 2, IPC recognizes that action on them may fall within the purview of TF 3.

c) Should domain name holders be allowed to remove certain parts of the required contact information from anonymous (public) access, and if so, what data elements can be withdrawn from public access, by which registrants, and what contractual changes (if any) are required to enable this? Should registrars be required to notify domain name holders when the withheld data is released to third parties?

As a general matter, IPC does not support the suppression of public access to any element of Whois data that is currently made public. All such data elements make a contribution to the promotion of transparency and accountability in the domain name system. To the contrary, ICANN should consider requiring additional data elements already collected by registrars (such as contact data for billing contacts) to be made available through Whois. It should also consider requiring the collection, and the public availability, of certain data elements that may not be currently collected, as outlined in response to the previous question. Finally, it should make the set of data elements that are made publicly available more uniform across gTLDs.

Based on the limited data compiled so far, IPC supports further consideration of two exceptions to the general principle stated above.

First, further research should be conducted on the use of “proxy registration services” within the framework of Sec. 3.7.7.3 of the RAA, including but not limited to the following issues:

- the rate of uptake of such services, and consumer response to them;
- what steps are taken to ensure that the registrar collects (or has immediate access to) accurate, complete and current contact information on all registrants taking advantage of such services;
- the circumstances under which contact information of the actual registrant is disclosed pursuant to the RAA provision (i.e., the “evidence of actionable harm” scenario);
- how registrants are notified when the withheld data is released to third parties;
- scalability of such services.

Second, further research should be conducted into the operation by certain ccTLDs (e.g., .nl) of case-by-case mechanisms for the withholding of Whois data on individual

registrants who demonstrate special circumstances, and on the feasibility of adapting such mechanisms to the gTLD environment.