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Comments of Intellectual Property Constituency

January 31, 2016

The Intellectual Property Constituency (IPC) of the GNSO appreciates this opportunity to comment on the draft RDAP Operational Profile for gTLD Registries and Registrars. See https://whois.icann.org/sites/default/files/files/gtld-rdap-operational-profile-draft-03dec15-en.pdf . IPC has a long-standing interest in improving the accuracy and accessibility of domain name registration data, and therefore has followed with interest the development of RDAP (the Registration Data Access Protocol) as an intended replacement for the port 43 Whois protocol.

1. Section II of the public comment notice (see https://www.icann.org/public-comments/rdap-profile-2015-12-03-en) notes that one ICANN advisory committee has insisted that the RDAP profile "must include the feature set that will support differentiated access" to domain name registration data. IPC supports ICANN's response to this, that including such a requirement in the RDAP profile is premature, "[g]iven the ongoing discussions and work in the community on differentiated access."   While it is correct that RDAP "does allow for differentiated access for those that have contracts that permit such a service, or in the event a consensus policy on differentiated access is completed," the development of such a policy is still at an early phase. The PDP working group on Registry Directory Services is still in the process of formation, and it will be some time before there is any consensus policy on whether differentiated access will be a required feature of any new Registration Data Directory Service (RDDS) for gTLDs, and if so the particulars of such a requirement.

Throughout the development of RDAP, there has been a clear distinction made between the development of a replacement technical protocol that could enable differentiated access, and the policy decision as to whether and if so under what circumstances that technical capability would be deployed. IPC commends ICANN for maintaining that vital distinction in this draft proposal. As the public comment notice states, "once/if there is a consensus policy or some contractual provision allowing for differentiated access in RDP, the profile could be updated as needed." Indeed, the draft RDAP profile specifically refers to the capability to redact some data "[I]f permitted or required by an ICANN agreement provision ,waiver, or Consensus Policy." Section 1.4.11.

2.   IPC finds the wording of section 1.2 confusing. Why define RDDS fields as OPTIONAL, and then state that they are REQUIRED to be included in a response? In addition, several of the fields listed as OPTIONAL are in fact required to be displayed under current RDDS contractual provisions (compare, e.g., section 1.5.11, labeling as OPTIONAL such fields as postal code and organization of the registrant or the technical or administrative contacts, with sections 1.4 and 1.5, Specification 4 of the Base Registry Agreement for new gTLD registries, http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf, including all these fields in the "minimum output requirements" for display). Since these fields are required to be displayed, it is extremely confusing to label them as OPTIONAL in the RDAP

profile. The fact that in a particular record some of these fields may not contain any data (i.e. they are blank) does not mean that they are Optional. (Of course, this is without prejudice to some future differentiated access requirement that could render some of these required fields inaccessible to some requesters.)

3. Appendix A to the Profile identifies "open issues" that apparently must be resolved in order for RDAP to be implemented and remain consistent with "current RDDS requirements." While "possible solutions" to each of these issues is briefly stated, it is noted that future RFCs could require different solutions from those proposed here. In short, it appears from this Appendix that the RDAP RFC's as they currently stand are not sufficient to support the RDDS policy requirements as currently defined. New RFCs (or amendments to existing ones) would need to work their way through the IETF process in order to resolve these open issues. What is the timeframe for agreeing to solutions to each of the four open issues listed in Appendix A? Would an updated RFC be required before ICANN contracted parties can be expected to implement the new protocol? What impact do these open issues have on the implementation of ICANN consensus policy? Is it premature to promulgate an RDAP operational profile before these issues are resolved? The ICANN community deserves answers to these questions before RDAP moves further ahead as a requirement for all gTLDs.

Thank you for considering these comments.