



Comments of GNSO Intellectual Property Constituency

March 16, 2016

The Intellectual Property Constituency (IPC) of the GNSO appreciates this opportunity to offer its support to the GNSO Council Recommendations Report (Recommendations Report) to the Board regarding Adoption of the final Recommendations from the Policy Development Process Working Group on Privacy and Proxy Services Accreditation Issues. See <https://www.icann.org/public-comments/ppsai-recommendations-2016-02-05-en>.

IPC has long believed that the status quo of a privacy and proxy service marketplace lacking even basic standards requires substantial reform. While IPC agrees there are valid reasons for the use of privacy and proxy registration services in some circumstances, the current chaotic situation is unsustainable. When the registrant contact data for nearly one-quarter of all gTLD domain name registrations is systematically concealed, even in cases in which the corresponding domain name is clearly being used for abusive and illegal behavior, the accountability and transparency functions historically fulfilled by the gTLD Whois system are substantially frustrated. ICANN has chosen to address this problem through establishment of an accreditation system for privacy/proxy services, and IPC members participated actively in the policy development process working group that reached consensus on the recommendations set forth in the Recommendations Report.

Although the recommendations fall short in a number of respects from what IPC would consider optimal, on the whole they represent a major step forward toward a clear, balanced and enforceable set of standards for proxy and privacy registrations. When fully implemented, they could provide a system that is much more predictable and fair than the status quo for third parties seeking information about domain name registrants who are using domain names to carry out infringements of copyright, trademarks, and other intellectual property rights. At the same time, the recommendations contain numerous strong protections for the legitimate interests of registrants (i.e., customers of privacy/proxy services), and they preserve for the providers of such services reasonable levels of discretion and flexibility.

IPC commends its colleagues from other constituencies, stakeholder groups and advisory committees for their willingness to work hard and to show sufficient flexibility to enable a positive outcome for the working group. Because the recommendations ultimately commanded a full consensus of a diverse and numerous set of working group members, and were unanimously endorsed by the GNSO Council, IPC hopes they will be approved by the ICANN Board as promptly as possible.

The implementation of these recommendations, once they are embodied in consensus policy, will not be simple; but IPC stresses that the need for them is urgent. As noted in the Recommendations Report, the Interim Specification found in the current Registrar Accreditation Agreement expires by its own terms at the end of 2016. IPC urges that any extension of that

Interim Specification be for the shortest practical time period that would enable a smooth transition to the accreditation environment.

IPC regrets to note that ICANN's recent track record in achieving prompt implementation of important consensus policies is discouraging. It has now been more than 25 months since February 7, 2014, when the Board approved a consensus policy for all gTLD registries to implement a thick Whois architecture; but this has not yet been achieved, and the single gTLD registry operator that still provided a thin Whois environment at the time the consensus policy was adopted continues to do so. Under ICANN's current projected timeline, this single outlier registry operator would not achieve a transition to thick Whois until the end of 2017. A implementation path of nearly four years for bringing to reality this clear consensus policy is unacceptable, and could significantly undermine ICANN's claim to be an organization of operational excellence to which further authority over the domain name system should be transitioned. It would be devastating were this history to repeat itself in the field of privacy and proxy service accreditation. IPC urges ICANN to announce, within ten days after the Board approves these recommendations, a firm target date for implementation of the new consensus policy, and to devote the resources needed to meet or exceed that target. IPC stands ready to assist in the implementation phase of these critical recommendations.

Finally, IPC is disappointed that the Governmental Advisory Committee has chosen, in its Marrakech communique, to advise the ICANN board to delay taking action on the PPSAI recommendations until at least after the ICANN 56 meeting in June. This decision inevitably exacerbates the concerns about the need for timely implementation of the accreditation program spelled out above.

Respectfully submitted,

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