



**Comments of the Intellectual Property Constituency on the
Revised Proposed Implementation of GNSO Thick Whois Consensus Policy Requiring
Consistent Labeling and Display of RDDS (Whois) Output for All gTLDs**

The GNSO Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the Revised Proposed Implementation of GNSO Thick Whois Consensus Policy Requiring Consistent Labeling and Display of RDDS (Whois) Output for All gTLDs (see <https://www.icann.org/public-comments/rdds-labeling-display-2016-10-21-en>). For convenience we refer to this document as the consistent labeling and display (CLD) implementation plan.

IPC has no substantive objections to the content of the CLD implementation plan. We know that this document has been exhaustively reviewed, over a period of many months, by the Implementation Review Team (IRT) to which this topic was assigned, and by ICANN staff. We submit these comments solely to put the issuance of this document in context.

When the GNSO Policy Development Process Working Group on Thick Whois issued its Final Report in October 2013 – thirty-eight months ago – it observed, “the implementation of one part of the recommendation (for example, transition of existing thin gTLD registries to thick model) should not unnecessarily delay the implementation of another part of the recommendation (for example, the consistent labeling and display of such data).”¹ In fact, exactly the opposite has occurred. The consistent labeling and display issues were accorded priority, and the simple goal of requiring the one remaining operator of thin Whois gTLD registries to bring its practices into line with those of every other gTLD registry was substantially and needlessly delayed. This outcome is particularly disturbing because the labeling/display recommendation was not even part of the initial report of the working group; it was added to the recommendation in the Final Report at the eleventh hour.

This unnecessary delay is now irreversible. At this point, the boulder labeled “CLD” in the path toward the realization of thick Whois simply cannot be removed. So IPC’s objective has been to have it roll forward with the greatest velocity achievable under the circumstances.

For this reason, IPC does not object to the revised CLD implementation plan, even though it represents a 180 degree reversal by ICANN on an important issue: whether registries would be required to implement the RDAP Operational Profile in order to achieve the goal of consistent labeling and display. While this requirement has been a consistent feature of the CLD implementation plan throughout the drafting process, ICANN staff completely reversed its position on it within days after the Registry Stakeholder Group (RySG) filed a formal Reconsideration Request against the previous version of the CLD implementation plan.

In the Reconsideration Request, which ICANN has included in the document package now up for public comment, the RySG adduced several reasons for its opposition to the RDAP Operational Profile requirement, and also laid out the history of its efforts (and those of some of its members) to

¹ <https://gns0.icann.org/en/issues/whois/thick-final-21oct13-en.pdf>, at p. 46.

persuade ICANN staff to reverse its course on this issue. These efforts apparently fell on deaf ears until a Reconsideration Request was filed, at which point staff almost immediately agreed to delete from the document the provision that RySG found objectionable. Wholly apart from the merits of the RySG objections, IPC empathizes with its frustrations regarding staff unresponsiveness. IPC will certainly bear this precedent in mind the next time the ICANN staff fails to heed IPC's well-considered and repeatedly-voiced objections to a proposed course of action.

As IPC observed in the comments it filed ten months ago on Thick Whois, "Accurate data, consistent labeling, and centralized access are three keys to the continued usefulness of gTLD registration data systems. ICANN is making progress on the first. It has devoted considerable time and effort to the second. The third has been allowed to languish."² The CLD implementation plan is the product of yet more months of time and effort devoted to the CLD issue. Even though the IRT did belatedly acknowledge that it needed to give greater priority to the transition to thick Whois, IPC's conclusion remains valid: achieving that transition has been allowed to languish far too long. The separate document posted for public comment on the transition proposes that the remaining thin gTLD registries will not be required to become "thick" until February 2019: a full five years after the consensus policy requiring thick Whois was unanimously approved by the ICANN Board. This chronology does no credit to ICANN, and indeed undermines the credibility of its assertion to be a well-functioning multi-stakeholder steward of important Internet resources.

Respectfully Submitted,

Intellectual Property Constituency

² https://ipc.memberclicks.net/assets/ipc-position-papers/2016/2016_01januar_31_ipcommentsthickwhoisforsubmission.pdf