
GAC submission to Public Comment Process on the Preliminary Issues Report on Next Generation gTLD Registration Directory Services to Replace WHOIS

The GAC welcomes the adoption of the Preliminary Issue Report (PIR), which is designed to serve as the basis for a policy development process (PDP) to evaluate the current WHOIS and – if it is found to be inadequate – to create a framework for a new Registration Directory Service (RDS). The PIR provides a very helpful concise overview of the difficult history of the discussion on WHOIS, and sets out a comprehensive and logical structure for the PDP.

As for the substance of the PDP, the PIR proposes to take the **2014 Final Report from the Expert Working Group on RDS** (the EWG Report) as a basis for the design of a possible next-generation RDS. This report outlines a scenario for a possible replacement of the WHOIS system and represents a commendable effort to tackle a complex issue while accommodating legitimate concerns. It should be considered as **a good starting point** for the detailed discussions on WHOIS and a possible new RDS.

Changes to WHOIS and the design of a future RDS have a **significant impact on different policies of public interest**. The attribution of domain names and the use of them by registrants to interact with the public on the Internet is a matter that goes beyond a purely private contract between parties, and **needs to serve broader public interests involved in creating a safe and reliable environment**, including securing the protection of personal data of Internet users, preventing and fighting crimes on the internet, or ensuring respect and enforcement of consumer rights. In this context, the GAC welcomes the inclusion of the **seven Communiqués** issued thus far by the **GAC** regarding WHOIS, which reflect the central importance of the functioning of the system and summarize the concerns of governments.

The RDS proposal as set out in the EWG Report could have **wide reaching and in some instances even potentially unforeseen consequences** that all need to be appropriately weighed before deciding to replace the current system. Selected points that merit further, detailed consideration during the PDP include the following:

- The GAC welcomes the options listed in the EWG Final Report for designing a **new WHOIS system in compliance with privacy and data protection laws, in particular by using standard contractual clauses throughout the RDS ecosystem that would ensure effective protection of the data subjects**. For what concerns data collection and processing, the GAC welcomes the commitment to **clearly define the purposes for which data is collected** by each and every data controller at the moment when the collection occurs. This might imply a need to complement the current RAA and RA. In that regard, the effort by the EWG to conduct an extensive assessment of permissible purposes for access to domain name registrant data is very helpful. The purposes identified by the EWG report should be seen as a useful reference for the definition of data collection and processing purposes.
- As regards **conditions for access to gated data considered in the EWG report**, the GAC welcomes the principle that access to sensitive data should be granted only to certain categories of accredited users and only for defined permissible purposes. On

accreditation, further reflections are needed on workable solutions for the accreditation of legitimate requestors. The identification of **clear and effective criteria and mechanisms for the accreditation** is a pre-condition to any further consideration of a tiered model.

- The GAC welcomes the initial considerations set out in the EWG report on **improving accuracy of data and accountability**. In line with the general principles set forth by the **GAC in its 2007 advice on WHOIS**, the gTLD Directory Services 'should provide sufficient and accurate data about domain name registrations and registrants, subject to national safeguard for individual privacy.' As pointed out in the PIR, only 23% of gTLD WHOIS records were fully accurate in 2010. There is **a patent need to improve the accuracy** and robustness of the data. While the measures proposed in the EWG Report, including a more sophisticated validation process, would certainly lead to clear improvements compared to the current situation, more consideration is required in particular as far as the implementation and enforcement is concerned.

While the new system proposed by the EWG offers a number of concrete and immediate improvements, a complete redesign naturally raises many questions and challenges, as highlighted by the PIR. As part of the PDP, ICANN should initiate specific **consultation processes with public stakeholders** such as law enforcement, consumer protection and data protection authorities to shed further light and develop a number of key points in the EWG Report, notably:

- 1) Effectiveness and practicability of the proposed accreditation model/system;**
- 2) Definition and enforcement of admissible purposes;**
- 3) Impact of the various privacy options presented in the report and their compliance with existing privacy laws;**
- 4) Risks of the system being technically compromised;**
- 5) Expected business model of the new RDS;**
- 6) Ways the RDS data will be protected against misuse;**
- 7) Actual benefits expected in terms of increased accuracy of the data;**
- 8) Proportionality of conditions and modalities imposed on legitimate requestors.**

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