

Public Comments-Report Template (v1.2)

Overview:

This template is being provided to assist Staff in the preparation of a report that summarizes and, where appropriate, analyzes community comments. Please save the document in either *.doc or *.pdf format and submit to: web-admin@icann.org. For presentation consistency and to preserve formatting, all Staff Reports will be uploaded to the forum in PDF format; text reports will no longer be supported.

Instructions:

- **Title:** Please enter the exact title that was used in the original Announcement.
- **Comment Period:** Enter the original Open Date and Close Date/Time (*Format: Day Month Year, e.g., 15 June 2011; Time should be expressed in UTC*). Please note if any extensions were approved, e.g., “Extended to Day Month Year [UTC Time]”.
- **Prepared By:** This field will accommodate a situation where a report is developed by an individual or group other than the principal Staff contact, e.g., a Working Group.
- **Important Information Links:** Do not enter any information in this section; Web-Admin will provide the appropriate links.
- **Section I: General Overview and Next Steps**

Please use this area to provide any general summary or highlights of the comments and indicate the next steps following publication of the report. (*Note: this field will auto-text wrap*).
- **Section II: Contributors**

Please use the tables provided to identify those organizations/groups and individuals who provided comments. It is not necessary to identify “spammers” or other commenters who posted off-topic or irrelevant submissions. In addition, if there is a large number of submissions, it is acceptable to characterize the respondent communities rather than attempt to list them individually in tables.
- **Section III: Summary of Comments**

This section should provide an accurate, representative, and thorough review of the comments provided. As the disclaimer explains, this is a summary only of the contributions that the author determines appropriate to the topic’s purpose. Authors are cautioned to be conscious of bias and avoid characterizing or assessing the submissions. If an analysis of the comments is intended, please use Section IV below. (*Note: this field will auto-text wrap*).
- **Section IV: Analysis of Comments**

Please use this section for any assessments, evaluations, and judgments of the comments submitted and provide sufficient rationale for any positions that are advocated. If an analysis

will not be undertaken or, if one will be published subsequently, please add a note to that effect in this section. (Note: this field will auto-text wrap).

Note: You may also utilize, for this section, the Public Comment Issue Tracking Checklist template, which is available at: <https://wiki.icann.org/display/policy/Templates>.

Translations: If translations will be provided please indicate the languages below:											

Report of Public Comments

Title:		.CAT WHOIS Proposed Changes																									
Publication Date:																											
Prepared By:																											
<table border="1"> <tr> <td colspan="2">Comment Period:</td> </tr> <tr> <td>Open Date:</td> <td>20 January 2012</td> </tr> <tr> <td>Close Date:</td> <td>10 February 2012</td> </tr> <tr> <td>Time (UTC):</td> <td></td> </tr> </table>						Comment Period:		Open Date:	20 January 2012	Close Date:	10 February 2012	Time (UTC):		<table border="1"> <tr> <td colspan="2" style="text-align: center;">Important Information Links</td> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Box</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> </table>						Important Information Links		Announcement		Public Comment Box		View Comments Submitted	
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Staff Contact:		Karla Valente				Email:		karla.valente@icann.org																			
Section I: General Overview and Next Steps																											
<p>Fundacio puntCAT’s, the .cat registry, requested changes to their Whois output requirements for individuals in anticipation of better conforming to EU data protection legislation. The request was made in accordance with the Registry Services Evaluation Policy and process set forth at http://www.icann.org/registries/rsep/rsep.html. Based on the information provided, ICANN did not identify any significant competition, security or stability issues.</p> <p>The implementation of this request requires an amendment to the .cat Registry Agreement (signed 23 September 2005).</p> <p>Next Steps: A summary of the public comments were provided to the ICANN Board for consideration when the ICANN Board determined the status of the RSEP request. See http://www.icann.org/en/registries/rsep/</p>																											
Section II: Contributors																											

At the time this report was prepared, a total of one community submission had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Intellectual Property Constituency	Steve Metalitz,	SM
NCSG	Robin Gross	RG
AFNIC	Mathieu Weill	MW

Individuals:

Name	Affiliation (if provided)	Initials
Patrick Vande Walle	n/a	PVW

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Fundacio puntCAT's Proposal received four comments.

“IPC urges that this request be denied, mainly for the following reasons:

(1) There is no conflict between the registry's contractual obligations to ICANN and its legal obligations under national law. The registry sought and received an opinion from the Spanish Data Protection Agency, which states unequivocally that the registry's current policy of unrestricted public access to Whois data, as required by its registry agreement with ICANN, “is not contrary” to Spain's data protection law and “does not violate” that law or its implementing regulations. (2) Approval of the proposal would raise serious questions about ICANN's compliance with the Affirmation of Commitments, and would reflect unsound policy.” “Since there is nothing in “applicable law” to require any change in .cat's current Whois practices, granting the registry's request would seem to flagrantly violate the commitments ICANN made three years ago in the Affirmation of Commitments. On this ground as well the request should be denied.” **IPC (10 Feb 2012)**

“The NCSG wishes to express its support for punctCAT's proposed amendment to allow natural persons an opt-out measure by which some WHOIS data would be withheld from public view. The NCSG believes there are several types of institution that require similar opportunities to opt out from public display of their identity and address details. The NCSG further expresses concern that law enforcement and third party access to the data should be consistent with due process protections. We urge development of these disclosure procedures in conjunction with the Community.” **RG (17 Feb 2012)**

“AFNIC fully supports these proposed changes, which would demonstrate ICANN’s commitment to taking into account local laws, and represent a significant step forward in the directions set by the Affirmation of Commitments. The proposed changes should have a positive impact on data accuracy. It should be stressed that the .CAT registry also commits to providing full access to registrant data to Law Enforcement Agencies. Therefore, data protection does not create opportunities for misusing the domain names in any way.

We believe this system to be a significant improvement. It has the potential to fulfill two key objectives of the Affirmation of Commitments (and the Whois Review): improving data accuracy and facilitating queries from Law Enforcement Agencies.” *MW (20 Feb 2012)*

“I support the .cat WHOIS changes as proposed. Like mentioned by AFNIC, this will reinforce the confidence of private persons in the WHOIS system, knowing their personal data will be protected from scammers, spammers, as well as other parties who wish to bypass due legal processes and harass registrants directly.

It would be most welcome if ICANN could set up in future gTLD registry agreements provisions that would deal with such matters, without having to go through comments and approvals.” *PVW (27 Feb 2012)*

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

There were three comments in favor of the proposal and a single comment in opposition to the .cat proposal.

The Fundacio puntCAT’s, the .cat registry, requested Whois changes according to EU data protection legislation. The request was done in accordance with the Registry Services Evaluation Policy and process set forth at <http://www.icann.org/registries/rsep/rsep.html>. Based on the information provided, ICANN’s did not identify any significant competition, security or stability issues.

The implementation of this request requires an amendment to the .cat Registry Agreement signed 23 September 2005, which can be found here: <http://www.icann.org/en/about/agreements/registries/cat>.

Extensive consultations were conducted with data protection agencies representatives from Catalonia, Spain and the EU as well as ICANN community. The Fundació puntCAT reported to have consulted with the relevant authorities on the impact of the Spanish and EU legislation on data protection. Several informal consultations with experts were also carried. The relevant authorities are the Art. 29 Working Group, the independent EU Advisory Body on Data Protection and Privacy, and both the Spanish and Catalan Data Protection Authority.

Per Fundació puntCAT, this request is the direct consequence of an increase in data protection concerns in the .cat community. The concerns have been directly addressed to Fundació puntCAT throughout many registrants' petitions to allow private whois, as well as a general trend in the data protection fora that have specifically dealt with the subject.

Registrars were consulted and informed in a meeting held on April 14th, 2011, between puntCAT and its registrars. The meeting had the whois system change proposal as one of its main topics, and none of the registrars attending the meeting had any objections to the proposal.

In the past, ICANN received similar request from Telnic Ltd, the .tel registry. See: <http://www.icann.org/en/registries/rsep/index.html#2007004>.

The Board approved the request. (<http://www.icann.org/en/groups/board/documents/resolutions-06may12-en.htm#1.2>).