

Report of Public Comments

Removal of Searchable WHOIS Service from .MEET Registry Agreement

Publication Date: 23 December 2015

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Comment Period:

Comment Open Date: 22 October 2015

Comment Close Date: 4 December 2015

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Section I: General Overview and Next Steps

General Overview

On 3 September 2015, Charleston Road Registry Inc. d/b/a Google Registry, Registry Operator of .MEET TLD submitted a [Registry Services Evaluation Policy \(RSEP\)](#) request to remove Searchable WHOIS service currently required in the Exhibit A (Approved Services) of the .MEET Registry Agreement.

As required by the RSEP, ICANN has undertaken a preliminary determination on whether this RSEP proposal might raise significant competition, security or stability issues. ICANN's preliminary review (based on the information provided) did not identify any such issues.

Following ICANN's preliminary determination that the proposal does not raise significant competition, security or stability issues, it was further determined that the change would require a material change to the respective Registry Agreement and that an amendment is needed in order to effect the change.

From 22 October 2015 – 4 December 2015, ICANN posted the proposed RA amendment for public comment, which resulted in eight comments.

Next Steps

ICANN will consider these comments as it considers whether or not to approve the requested amendment.

Section II: Contributors

At the time this report was prepared, eight (8) 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
Donuts Inc.	Crystal Ondo	DO
Minds + Machines	Reg Levy	MM
The Centre for Communication Governance (CCG) at National Law University, Delhi	Aarti Bhavana	CCG
Business Constituency (BC)	Steve DelBianco	BC
Intellectual Property Constituency (IPC)	Steve Metalitz	IPC

Individuals:

Name	Submitted by	Initials
Lutz Donnerhacke	Lutz Donnerhacke	LD
Ron Baione	Ron Baione	RB
Tom Lowenhaupt	Tom Lowenhaupt	TL

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).

Six comments submitted support the removal of Searchable WHOIS from the Exhibit A of the .MEET Registry Agreement, while some of them also referred to some factors that need to be taken into account while considering removal of this service. One of the comments did not express any view on this specific public comment announcement but they seeked clarification on the term "legitimate users" mentioned in the definition of "Searchable WHOIS" service as indicated in [the New gTLD Program Applicant Guidebook](#). One comment expressed their objection to the removal of Searchable WHOIS service from the Exhibit A of the .MEET Registry Agreement. Additionally, one comment received expressed their concerns on the existing existing WHOIS protocol and Searchable WHOIS in general and two comments received commented on ICANN's public comment process.

While the points highlighted in the comments supporting the removal of Searchable WHOIS service from the Exhibit A of the .MEET Registry Agreement can be summarized as follows, it should also be noted that some of the comments indicated that some factors should also be considered while approving similar amendments:

- Searchable WHOIS is an optional service (DO,MM,CCG, BC, IPC) and it is not a new registry service (DO, MM)

- A searchable WHOIS service should always provide adequate safeguards in order to ensure that the information gained from such service is only narrowly used for appropriate purposes. Many registry operators operate non-searchable WHOIS services without creating safety or security concerns for registrars, registrants or consumers. A non-searchable WHOIS service can in many instances strike the right balance. (BC)
- It is highly unlikely that the operation of a comparable, non-searchable WHOIS service would raise new technical, competition or intellectual property issues. (DO, BC)
- Removal of Searchable WHOIS will be economically useful in the long term since maintaining privacy will create awareness of “domain privacy tools” in the internet users. (RB)
- During ICANN’s Initial Evaluation of the applications, while proposed inclusion of searchable WHOIS service gives an extra point to the application, .MEET application passed the Technical and Operational Evaluation with a score of 28 (whereas only 22 points were necessary as a mandatory minimum). Thus, it is important to know if the application did rely on the inclusion of this service or not. (CCG, IPC)
- Whether the applicant is a .BRAND TLD or not should also be considered since the impact of the removal of service for a .BRAND TLD versus an open TLD would be different (LD, CCG, IPC) and related with this, IPC also emphasized that they reserve the right to re-evaluate this position should it appear that this modification leads to unacceptably reduced availability of searchable WHOIS service for this registry from third-party (non-registry) sources and also expressed their view that Searchable WHOIS should have been required for all new non-.BRAND gTLDs.
- The proposed amendment does not have any adverse impact on the offering of publicly accessible WHOIS service as required by Specification 4 of the Registry Agreement by the registry operator (DO, CCG, IPC)
- While removing searchable WHOIS, alternative means of serving the legitimate needs for this service must also be considered. (CCG)

One comment opposed to removal of Searchable WHOIS service from the Exhibit A of the .MEET Registry Agreement pointing out to the various usage areas of public WHOIS data. The commenter expressed their support of keeping the public WHOIS as long as the data collected will be used by law enforcement agencies. (LD)

Another commenter expressed their concerns on the existing WHOIS protocol and Searchable WHOIS in general citing accuracy and privacy concerns and also referring to the requirement of implementing anti-abuse measures for the latter service. (CCG)

One comment suggested that ICANN should not post “optional services” for public comment, including this RSEP request and also referring to future requests, claiming that posting “optional services” for public comment is not compliant with Registry Services Workflow, adding that the amendment does not set precedent and it does not have substantial effect on ICANN, DNS or other party. (MM)

One comment recommended that ICANN mentions the evaluation score of the applicant and also whether any additional points were awarded to the applicant as a result of proposing to offer

searchable WHOIS service in the public comment announcements for the similar requests in the future (IPC)

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.

Overall, the commenters support removal of Searchable WHOIS from the .MEET Registry Agreement. Comments supporting the removal of searchable WHOIS service from the .MEET Registry Agreement indicated that offering a searchable WHOIS service is an optional service and it is not a new registry service. Because of this, the comments suggest that it would be inconsistent for ICANN to bar the removal of this service by way of the RSEP process. ICANN acknowledges these comments, and notes that Searchable WHOIS is not an optional service. Section 3 of Exhibit A of the .MEET Registry Agreement states “...Registry Operator must offer a searchable WHOIS service...”.

Some commenters who support the removal of Searchable WHOIS from the .MEET Registry Agreement also noted that some factors should be taken into consideration when considering these types of requests in general:

- Whether the applicant relied on the extra point in initial evaluation (CCG, IPC): In the case of .MEET, as pointed out by the public comments, the .MEET application did not rely on the inclusion of this service since the application passed the Technical and Operational Evaluation with a score of 28, whereas only a score of 22 was necessary as a mandatory minimum to pass the evaluation. Overall, the commenters noted that .MEET’s Initial Evaluation score should not weigh on the decision about whether or not to approve the removal of searchable WHOIS since .MEET would have received a passing score even if it did not provide searchable WHOIS. The commenters note that this fact supports the idea that removing searchable WHOIS would not materially effect the technical soundness of the .MEET application.
- Whether the TLD is a .BRAND (LD, CCG, BC): While some of the commenters pointed out that removing searchable WHOIS service from .BRAND and “open” TLD would have different consequences since the non-BRAND ones are open to public, whereas .BRAND TLDs are being registered by the Registry Operator itself. Thus, they claimed that greater caution must be exercised while removing searchable WHOIS from an “open” TLD since searchability is a useful feature for law enforcement agencies (LD, CCG) while it creates privacy concerns. (LD, CCG). In the scope of removing searchable WHOIS from “open” TLDs, IPC reiterated their view that this service should have been mandated for all new non-BRAND TLDs.
- Registry Operator should continue to offer public WHOIS as required by Specification 4 of the Registry Agreement: Removing searchable WHOIS service should not have any adverse effect on offering of publicly accessible WHOIS service as required by Specification 4 of the Registry Agreement (DO, IPC) and that alternative means of serving the legitimate needs for searchable WHOIS must be considered while removing this service from an open TLD. (CCG)

One of the commenter (TL) sought clarification on the term “legitimate users” as indicated in the definition of Searchable WHOIS service in the New gTLD Applicant Guidebook. While ICANN is not in

a position to dictate who the “legitimate users” are, it should be noted that one of the requirements of offering a searchable WHOIS service is to offer anti-abuse measures in order to avoid misuse of this service.

On the other hand, one comment expressed their concerns on the existing WHOIS protocol and Searchable WHOIS service in general, referring to privacy concerns and lack of accuracy. ICANN acknowledges these comments and would like to encourage community to leave their comments on the recently published blog on this topic: “[Paving the Way for a Next-Generation gTLD Registration Directory Service](#)”. Alternatively, the commenters may review the recently opened public comment announcements on [RDDS](#) and [RDAP](#) with a public comment close date of 18 January 2016.

Another commenter advised ICANN to not bar RSEP requests that refer to optional registry services. The comment further requested ICANN reconsider whether similarly situated RSEP Amendments warrant a public comment period. The comment also mentioned that the Registry Service Workflow states that ICANN will implement an amendment if ICANN does not find any security, stability, or competition issues. Moreover, the amendment neither sets precedent nor has substantial effect on ICANN, DNS and any other party. While ICANN acknowledges these comments on the RSEP process, section 2.4.d of the [RSEP Policy](#) states that if the implementation of a proposed service requires a material change to a Registry Agreement, the preliminary determination will be referred to the ICANN Board. ICANN has stated amendments to a gTLD Registry Agreement that set a new precedent, or have a substantial effect on ICANN, third parties or the Domain Name System could be subject to public comment. In the case of Searchable WHOIS, it is a required service in the .MEET Registry Agreement, and Searchable WHOIS is a service that many in the community expressed strong sentiment over during the development of the Applicant Guidebook, hence the need for public comment.

With respect to similar future requests, another commenter recommended that ICANN disclose in the public comment announcement the evaluation score and whether any additional points were awarded due to the proposal to offer the service. ICANN acknowledges this comment and notes that initial evaluation reports of all applicants are already publicly published at: <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>

ICANN will consider all comments in the context they have been provided as it considers whether or not to approve the requested amendment for the .MEET Registry Agreement. ICANN will also take into account the comments submitted regarding the necessity of the RSEP for removal of Searchable WHOIS.