ICANN Organization Report of Public Comment Proceeding Template (v4.0)

TITLE: Revised Proposed Implementation of GNSO Thick Whois Consensus Policy Requiring Consistent Labeling and Display of RDDS (Whois) Output for All gTLDs		
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Public Comment Proceeding		**Important Information Links**
Open Date:	21 October 2016	
Close Date:	12 December 2016	Announcement
Staff Report Due Date:	9 January 2017	Public Comment Proceeding View Comments Submitted

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Section I: General Overview and Next Steps

General Overview

On 21 October 2016, ICANN posted the proposed revised Registry Registration Data Directory Services Consistent Labeling and Display Policy (" Policy") for public comment. The proposed revisions to the Policy address community feedback on the requirement in the Policy for registries to implement a Registration Data Access Protocol (RDAP) service in order to achieve consistent labeling and display of registration data. This requirement has been removed from the version of the proposed Policy that is posted for public comment.

From 21 October 2016 through 12 December 2016, ICANN posted the proposed revised Policy for public comment. At the time this report was drafted, five comments were submitted to the forum.

Next steps

ICANN will review the comments received in collaboration with the Implementation Review Team (IRT) to determine whether any changes need to be made to the revised proposed implementation as a result of the input received.

Section II: Contributors

At the time this report was prepared, a total of five (5) community submissions 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
Internet Architecture Board	Andrew Sullivan	IAB
Registries Stakeholder Group	Stéphane Van Gelder	RySG
Verisign, Inc.	Marc Anderson	VI
Intellectual Property Constituency	Gregory S. Shatan	IPC
Business Constituency	Steve DelBianco	BC

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer 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).

ICANN has received five comments from the community on the proposed revised Registry Registration Data Directory Services Consistent Labeling and Display Policy ("Policy"). The revised draft removes the requirement in the Policy for registries to implement a Registration Data Access Protocol (RDAP) service in order to achieve consistent labeling and display of registration data is proposed to be removed from the Policy. While none of the comments objected to the proposed revised Policy, some comments also expressed their concern over ICANN's approach to policy implementation and treatment of public comments.

Comments on the proposed revised Policy, RDAP, and/or the RDAP Profile

While none of the commenters expressed any objection to the proposed revised Policy, some commenters proposed some changes to the proposed revised Policy.

- "These changes bring the text of the CL&D Policy in line with the consensus policies developed by the Thick Whois PDP and address some of the issues around scope that were raised during the prior comment period." (RySG)
- "Verisign is generally supportive of the proposed revised CL&D Policy; however we do offer the following feedback for consideration by ICANN staff and the IRT. The revised proposed CL&D Policy currently stipulates an effective date of 1 August 2017 and a "not to be deployed before" date of 1 November 2016. As 1 November 2016 has passed, this language is extraneous and can be removed. In addition, the revised proposed CL&D Policy does not provide for any flexibility for ICANN to extend or modify the 1 August 2017 effective date for any reason. It is possible for legitimate issues to arise during the implementation of the CL&D Policy (include security and stability concerns) which may impact the ability of Registry Operators to comply with the 1 August 2017 effective date. Verisign recommends that the revised proposed CL&D Policy include provisions for ICANN staff to provide extensions to the 1 August 2017 date in appropriate circumstances, in particular if legitimate security or stability concerns arise or in cases where a Registry Operator is operating in good faith to meet the 1 August 2017 date but is unable to complete the necessary implementation requirements before that date." (VI)
- "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." (IPC)

Comments regarding RDAP and/or the RDAP Profile:

- "RDAP was developed within the IETF, by technical contributors whose affiliations include registries, registrars, and other WHOIS users and providers, to resolve the technical shortcomings of WHOIS. Given the well known issues with WHOIS, the IAB strongly encourages ICANN, Registrars, and Registries to begin experimenting with RDAP as soon as possible. In particular, the IAB recommends the removal of all barriers to the deployment and use of RDAP. WHOIS lacks support for authenticated access and differentiated responses. Since RDAP can make use of HTTP authentication, the IAB believes that authenticated access should be one of the features Registrars and Registries investigate through experimentation. We do not believe that authenticated access will necessarily incur more costs for any users, and we hope that experimentation will demonstrate that to be the case. The IAB understands that ICANN policy development is needed to determine which registration data ought to be available to the public and which registration data deserves additional protection. We hope experimentation with RDAP can provide insight to that policy development work. Finally, the IAB strongly encourages the use of RDAP only over TLS in order to offer server authentication as well as protection for registration data." (IAB)
- "Therefore, we strongly support the retraction of the the prior implementation notice that conflated these two issues by the removal of the RDAP reference from this version of the proposed CL&D Policy." (RySG)
- We acknowledge the requirements to implement RDAP provided that it is commercially reasonable to do so and that ICANN provides the requisite notice to registries. We are prepared to implement RDAP downstream in accordance with these conditions." (RySG)
- "The Business Constituency urges registries and registrars to continue to work on issues surrounding RDAP, as we identified in our March comments below, so that it can be implemented in the near future.
- "The current RDAP protocol does not address two significant issues with Whois data privacy and internalization. Instead of creating functionality to resolve two well known issues that have been debated in the community for many years by adopting and incomplete RDAP, we are pushing these issues into the future and we will eventually have to resolve them. The BC supports a fully functional RDAP that addresses all the known issues." (BC)

One commenter also expressed their views on both the proposed revised Policy and also for the other public comment announcement regarding proposed implementation of GNSO Thick RDDS (Whois) Transition Policy for .COM, .NET and .JOBS:

- "The Business Constituency is pleased that ICANN has taken our comments in to consideration along with the Registry's reconsideration request and removed implementation of RDAP as an obstacle to swift implementation of Thick Whois. We are very pleased that ICANN has agreed to not delay the Thick Whois implementation and will move forward using the EPP protocol. This will provide internet users with the benefits of availability of Thick Whois in .com, .net and .jobs within a reasonable timeline. In previous comments the Business Constituency has advocated for authenticated access, data accuracy, and improved centralized access through Thick Whois." (BC)

Comments on ICANN organization's approach to policy implementation and treatment of public comments

Some commenters also expressed their concerns over ICANN's approach to policy implementation and also ICANN's treatment of public comments.

- "...we believe that the implementation course for the CL&D policy exemplifies serious issues with the public comment process and ICANN staff's approach to policy implementation. These include

maximalist approaches by staff to policy implementation, and cursory treatment of issues raised during the prior public comment process. We are not requesting further changes to be made to the current iteration of the policy, but we believe that it is important to go on record with these concerns so that they can guide further policy implementation. They represent recurrent issues in ICANN staff's handling of the bottom-up, multi-stakeholder policy development process." (RySG)

- "…RDAP is outside the scope of the Thick Whois PDP recommendations. The RySG's concerns with the inclusion of RDAP were compounded by the introduction of a requirement to implement the RDAP in accordance with an Operational Profile that was introduced unilaterally by ICANN staff via the CL&D Policy. The RA text regarding RDAP implementation only requires implementation of the IETF standard itself. It does not allow ICANN to overlay additional requirements and policies in lieu of actual policy development." (RySG)

- "…where there is ambiguity in how a particular policy should be implemented, ICANN staff should endeavor to take the narrowest approach that minimizes impact and implementation burden. (RySG)

- "While the proposed implementation has gradually narrowed, it has been in spite of and not because of the effort of ICANN staff. The issues encountered in CL&D implementation process do not exist in isolation. The past years have seen repeated effort by ICANN staff to expand requirements for registries and registrars through clarifications and advisories that circumvent the established community processes. Where possible, staff has attempted to harden these requirements by incorporating them into implementation guidelines for loosely related community policies." (RySG)

- "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." (IPC)

- "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." 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." (IPC)

- "Public comment periods provide for transparency and public dialog, both of which are integral to the multi-stakeholder model. However, these benefits only exist where public comment periods are meaningful and feedback is duly considered and addressed, either through changes to the policy or through meaningful analysis and response through the staff reports. We do not believe that these criteria were met in the prior public comment periods on CL&D and RDAP implementation…. Had comments from the previous round been duly considered, it is unlikely that a retraction of the implementation notice for the CL&D Policy would have been required, or that a second public comment period would be necessary." (RySG)

Section IV: Analysis of Comments

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

ICANN organization appreciates all the comments and suggestions added to the public forum for the proposed revised Registry Registration Data Directory Services Consistent Labeling and Display Policy ("Policy").

Comments on the proposed revised Policy

ICANN organization acknowledges the suggestion stating "The revised proposed CL&D Policy currently stipulates an effective date of 1 August 2017 and a "not to be deployed before" date of 1 November 2016. As 1 November 2016 has passed, this language is extraneous and can be removed." ICANN organization notes that the "not to be deployed before" date was included in the initial version of the Policy posted for public comment to allow sufficient lead time to adjust the Pre-delegation Testing (PDT) platform to accommodate the CL&D format. As of now, that development has been completed and the "not to be deployed before" date is no longer needed. ICANN organization will discuss the suggestion to delete this date with the Implementation Review Team.

Regarding the recommendation to include provisions for extension to the 1 August 2017 policy effective date, ICANN organization notes that the policy effective date included in the draft Policy aims to afford contracted parties a reasonable period of time, following notice of the establishment of a new consensus policy, to comply with the policy. Consistent with the Consensus Policy Implementation Framework ICANN organization aims to provide contracted parties at least six months lead time to implement new policies. In some cases, in consultation with the Implementation Review Team, additional time for implementation may be warranted if there is a phased implementation. The implementation date included in the current draft Policy has been carefully considered and evaluated with the IRT for more than one year. However, it's recognized that unforeseen circumstances may arise during the implementation period. In the past, such requests for extension have been handled on an individual basis with consultation between the contracted party and ICANN organization. ICANN organization will discuss this suggestion with the Implementation Review Team.

ICANN organization also appreciates the comments regarding RDAP and the RDAP Profile. There is an active dialogue occurring regarding RDAP and the RDAP Profile. The topic of RDAP will be addressed outside of the Consensus Policy Requiring Consistent Labeling and Display of RDDS (Whois) Output for All gTLDs.

Comments on ICANN organization's approach to policy implementation and treatment of public comments

ICANN organization notes that some commenters expressed concern over ICANN organization's approach to policy implementation and public comments.

Implementation projects are complex and multi-faceted. They involve managing many different factors inherent to ICANN's multi-stakeholder governance model, including balancing opposing community interests and feedback, accounting for stakeholders' technical and operational considerations, and drafting precise requirements for contracted parties to implement from the general policy recommendations that emerge from PDP processes. ICANN organization takes these concerns seriously and points out the work done, thus far, to improve the implementation process as well as ongoing efforts to continue its evolution. For example, ICANN organization worked with the GNSO's Policy and Implementation Working Group to develop the Consensus Policy Implementation Framework, which provides a step-by-step guide to carry out implementation projects. ICANN organization has used this framework for each implementation project emerging from the GNSO since its publication in May 2015, and is currently working to improve it based on early experience and feedback from implementation project leaders. However, as the framework is relatively new, there have been a limited

number of cases in which to apply the principles therein. In addition, the Policy and Implementation Working Group's Final Report provides guidelines for more effective ICANN organization-IRT interaction as well as streamlined mechanisms to solicit the GNSO's input should issues arise during implementation. ICANN organization is actively working to develop a guide for implementation project leaders that applies the principles and recommendations of the report to its implementation projects. In sum, ICANN organization is committed to continuous process improvement in its implementation projects and appreciates the communities input and support.

Insofar as public comments are concerned, ICANN organization works to ensure that all comments are properly analyzed and summarized through a rigorous internal evaluation and discussion process. The organization can receive a high volume of comments, and those comments often detail highly complex or controversial recommendations. Not all recommendations can be implemented and/or integrated into an implementation project. It's important to note that if a matter brought up in public comments is not addressed, there are a number of mechanisms available to commenters to follow up, including the Staff Summary Report Inquiry process and a transparent means to contact implementation project leaders. Nonetheless, ICANN organization is committed to continuous process improvement and will continue to evaluate and improve current procedures.

Next Steps: Following the completion of the public comment process, ICANN will consider the public comments provided and assess whether the policy language requires any changes. ICANN will consult with the IRT regarding the final policy language and, assuming alignment, will publish and announce the Consensus Policy on ICANN's website.