

Working Definitions for Key Terms that May be Used in Future WHOIS Studies

Background and purpose: At the GNSO Council meeting held on 2 November in Cairo, the Council decided that it would be helpful to develop “working definitions” of several terms that are being used in the context of Council discussions of possible future studies of WHOIS. At the meeting, Council members identified the following terms and asked staff to develop initial working definitions that the Council could use as a starting point for further discussion and definition. To respond to the Council’s request, staff solicited definitions from GNSO Council members and community stakeholders, reviewed ICANN meeting transcripts, policy and compliance references and constituency position statements, as well as other reference papers, noted below. The Council formed a drafting team that met from December-February 2009 and this draft has been updated to reflect this subsequent GNSO Council and constituency dialogue. *The following does not represent the viewpoints or positions of ICANN or ICANN staff and is for community discussion purposes only.*

1) Illegal or undesirable activities

See Study #s 14, 15 for examples of use in context.

Illegal or undesirable activities are activities that violate the law somewhere or activities that somebody finds harmful or objectionable.

2) Misuse

See study #s 1, 14, GAC 3 for examples of use in context.

Misuse is an action that causes actual harm, is the predicate to such harm, is illegal or illegitimate, or is otherwise considered contrary to intention and design of a stated legitimate purpose, if such purpose is disclosed. When applied to Whois data, such harmful actions may include the generation of spam, the abuse of personal data, intellectual property theft, loss of reputation or identity theft, loss of data, phishing and other cybercrime related exploits, harassment, stalking, or other activity with negative personal or economic consequences. The predicate to harmful action often includes automated email harvesting, domain name registration by proxy/privacy services to aid wrongful activity, and support of false or misleading registrant data. Predicate acts might include the use of Whois data to develop large email lists for commercial purposes.

<http://forum.icann.org/lists/pdp-pcecg-feb06/msg00528.html>

<http://cai.icann.org/files/meetings/cairo2008/Cairo01NOV08GNSOWSpm.txt>

<http://gns0.icann.org/issues/whois/whois-study-hypothesis-group-report-to-council-26aug08.pdf>

<http://forum.icann.org/lists/whois-comments-2008/msg00001.html>

<http://forum.icann.org/lists/whois-comments-2008/msg00026.html>

3) Commercial Purpose

See study #s 1, 18, 19, GAC 9, GAC 10 for examples of use in context.

Related to a bona fide business use. In the Internet context, the bona fide use or bona fide intent to use the domain name or any content, software, materials, graphics or other information thereon, to permit Internet users to access one or more host computers through the DNS: to legally exchange goods, services, or property of any kind in the ordinary course of trade or business; or to facilitate (i) the legal exchange of goods, services, information, or property of any kind; or, (ii) the ordinary course of legal trade or business. <http://www.icann.org/en/tlds/agreements/biz/appendix-11-08dec06.htm>

<http://cyber.law.harvard.edu/tlds/001/>

4) Proxy and Privacy Services

See study #s 2, 3, 5, 13, 17, 18, 19, 20, Metalitz, GAC 1, GAC 7, GAC 8, GAC 9, GAC 10, GAC 11 for examples of use in context.

Proxy and Privacy services provide anonymity and privacy protection for a domain name user. Though the terms are colloquially used interchangeably, there is a difference.

Privacy services hide customer details from going into WHOIS. Privacy service providers, which may include registrars and resellers, may offer alternate contact information and mail forwarding services while not actually shielding the domain name registrant's identity. By shielding the user in these ways, these services are promoted as a means of protecting personal privacy, free speech and human rights and avoiding personal data misuse.

<http://gns0.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf>

<http://gns0.icann.org/mailling-lists/archives/tf2-survey/doc00003.doc>

Proxy services protect users' privacy by having a third-party register the name. The third-party is most often the Proxy service itself. The third-party allows the user to access and use the domain name through a separate agreement or some other arrangement directly with the user. Proxy service providers may include web design, law, and marketing firms; web hosts, registrar subsidiaries, resellers and individuals.

<http://gns0.icann.org/drafts/whois-study-overview-gns0-council-04oct07.pdf>

<http://www.icann.org/en/topics/raa/amendments.html#escrow>

5) Relay Information Requests

See study # 20 for this term's use in context.

Problems arise from time to time in connection with registered names. Allegations of actionable harm require copyright and trademark owners, law enforcement officials and others to be able to operate through a proxy or privacy service provider to contact the domain name user. Potential "harms" could include suspected fraud, intellectual property rights infringement, or the infringement of other civil or criminal laws. To support the relay of information requests, service providers must have reliable and timely means of communicating with their domain licensees. The ICANN Registrar Accreditation Agreement stipulates that the proxy registrant reveal the identity of the domain licensee upon reasonable evidence of actionable harm or risk liability for resulting harm.

<http://forum.icann.org/lists/whois-comments-2008/msg00023.html>

<http://forum.icann.org/lists/gns0-whois-wg/pdfi6hAmW7P6J.pdf>

<http://gns0.icann.org/issues/whois-privacy/whois-wg/whois-working-group-charter-16apr07.pdf>

6) Falsify Whois Data

See study # 12 for this term's use in context.

Falsifying Whois data is an issue that balances the technical and legal requirements of Whois domain name registration records with the right to registrant privacy.

<http://www.icann.org/en/committees/security/sac003.htm> The security and reliability of the Whois data base depends on data accuracy. ICANN therefore expects registries and registrars to collect accurate information and to take required action if false information is discovered or suspected.

<http://www.icann.org/en/committees/security/whois-recommendation-01dec02.htm#1.1>

7) Natural Persons

See study # 19 for this term's use in context.

A real, living individual as opposed to a "legal person" which may be a company, business, partnership, non profit entity or trade association. It is often not clear whether registrants are registering a domain name as a "natural person" or a "legal person" at the time of registration. In the Whois context, personal data refers to any identified or identifiable natural person.

<http://gns0.icann.org/drafts/draft-report-whois-wg-28jun07.pdf>

<http://gns0.icann.org/mailling-lists/archives/council/msg02742.html>