GNSO Council motion to pursue study of Whois Misuse -- Proposed amendments are highlighted.

Whereas:

In October 2007, the GNSO Council concluded that a comprehensive and objective understanding of key factual issues regarding the gTLD Whois system would benefit future GNSO policy development efforts (<http://gnso.icann.org/resolutions/>).

Before defining the details of these studies, the Council solicited suggestions from the
community for specific topics of study on WHOIS. Suggestions were submitted
(<http://forum.icann.org/lists/WHOIS-comments-2008/>) and ICANN staff prepared a
'Report on Public Suggestions on Further Studies of WHOIS', dated 25-Feb-2008
(<http://gnso.icann.org/issues/Whois-privacy/Whois-study-suggestion-report-25feb08.pdf>).

On 28-Mar-2008 the GNSO Council resolved to form a WHOIS Study Working Group to develop a proposed list, if any, of recommended studies for which ICANN staff would be asked to provide cost estimates to the Council (<http://gnso.icann.org/meetings/minutes-gnso-27mar08.shtml>).

The WHOIS Study WG did not reach consensus regarding further studies, and on 25-Jun-2008
the GNSO Council resolved to form another group of volunteers (WHOIS Hypotheses WG) to
review the 'Report on Public Suggestions on Further Studies of WHOIS' and the GAC letter
on WHOIS studies. (<http://www.icann.org/correspondence/karlins-to-thrush-16apr08.pdf>).

This WG was tasked to prepare a list of hypotheses to be tested, and reported to the Council on 26-Aug-2008. (<https://st.icann.org/Whois-hypoth-wg/index.cgi?Whois_hypotheses_wg#Whois_study_hypotheses_wg_final_report> ).

On 5-Nov-2008, the Council convened a volunteer group of Councilors and interested constituency members to draft a resolution regarding studies, if any, for which cost estimates should be obtained. The Whois Study Drafting Team further consolidated studies and data requested by the GAC (<http://www.icann.org/correspondence/karlins-to-thrush-16apr08.pdf> ).

For each of the consolidated studies, constituencies were invited to assign priority rank and assess feasibility. 5 constituencies provided the requested rankings, while 2 constituencies (NCUC and Registrars) indicated that no further studies were justified. The GAC was also invited to assign priorities, but no reply was received. The Drafting Team determined that the six studies with the highest average priority scores should be the subject of further research to determine feasibility and obtain cost estimates.

On 04-Mar-2009, Council requested Staff to conduct research on feasibility and cost estimates for selected Whois studies and report its findings to Council. (See Motion 3 at <https://st.icann.org/gnso-council/index.cgi?04_mar_2009_motions>).

On 23-Mar-2010, Staff presented its latest report on feasibility and cost estimates for Whois Studies. ( <http://gnso.icann.org/issues/whois/whois-studies-report-for-gnso-23mar10-en.pdf>) This report included a Staff Analysis and Recommendations for the first study, regarding WHOIS Misuse. The WHOIS Misuse study addressed 3 originally requested studies (1, 14, and 21) and GAC data set 2. The hypothesis of the WHOIS Misuse study is: "Public access to WHOIS data leads to a measurable degree of misuse – that is, to actions that cause actual harm, are illegal or illegitimate, or otherwise contrary to the stated legitimate purpose.”

At ICANN's meeting in Brussels, representatives of the GAC reiterated their interest in ICANN's response to the GAC letter of Apr-2008, which included these requests for further studies of WHOIS (<http://www.icann.org/correspondence/karlins-to-thrush-16apr08.pdf>), stating:

First and foremost, the GAC believes that studies of WHOIS gTLD data should be undertaken by neutral third parties and should create a factual record that documents the uses and abuses of WHOIS data recognized by the GAC WHOIS Principles. The goal should be to initially compile data that provides a documented evidence base regarding:

• the amount and source of traffic accessing WHOIS servers and the types and numbers of different groups of users and what those users are using WHOIS data for; and

• the types and extent of misuses of WHOIS data and what harm is caused by each type of misuse, including economic, use of WHOIS data in SPAM generation, abuse of personal data, loss of reputation or identity theft, security costs and loss of data."

The Affirmation of Commitments requires that ICANN conduct reviews of WHOIS policy and implementation "to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust." The first such review must be organized by 30-Sep-2010. (<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>)

The proposed budget for FY 2011 includes at least $400,000 for WHOIS studies.

Resolved:

Council requests ICANN staff to proceed with the WHOIS Misuse Study, as described in Staff's 23-Mar-2010 Report, using the vendor selection process described in Annex of that same report. ( <http://gnso.icann.org/issues/whois/whois-studies-report-for-gnso-23mar10-en.pdf>).

Further resolved that ICANN staff is requested to ensure the study reaches out to a global set of consumer and dataprotection, regulatory and law enforcement organizations, including the range of government organizations who would have reason to compile and keep records of Whois misuse,

Further resolved that ICANN staff be required to protect theconfidentiality and privacy ofRegistrant Whois datacollected for this study, according to best practices including encryption, and Registrants and all groups contacted be informed of this protection.

Further resolved that ICANN staff be required to includeall individual elements in the Whois data whichsurveyed sources in the descriptive study report have been misused are included in study analysis, and are not discarded or otherwise eliminated if the actual data source is unclear or multiple possible sources are found during online search verification.

Further resolved that ICANN staff will extend the time of the Experimental Study from 90 days to a minimum of 6 months to better track the results of the data harvesting.