Summary: Thick Whois PDP WG Final Report (2013)

The Working Group convened by ICANN which developed the proposed consensus policy requiring thick Whois architecture for all gTLD registries established a subgroup on the impact on privacy and data protection. The WG’s final report stated that the “fundamental question before the thick Whois PDP WG is whether thin and thick registry models present different risks with respect to data protection and privacy.” After reviewing the risks and benefits both for data at rest and data in motion, the WG concluded (see p. 30 of the final report):

*“Data Protection: The WG finds that requiring thick Whois for all gTLD registries does not raise data protection issues that are specific to thin vs. thick Whois, as those that have been identified already exist in the current environment and should be considered as part of the broader Whois debate.*

*“Privacy: There are currently issues with respect to privacy related to Whois, and these will only grow in the future. Those issues apply to other gTLDs as well, and thus will need to be addressed by ICANN. Existing registry policy and practice allows flexibility when needed, and the new draft RAA provides similar options for registrars. None of these issues seem to be related to whether a thick or thin Whois model is being used. The support of the Registrar Stakeholder Group related to a thin-to-thick transition implies that they perceive no immediate issue. There are still WG participants who feel uneasy with the vast amounts of data that will need to be transferred across jurisdictional boundaries, but those have not translated into concrete concerns. So although privacy issues may become a substantive issue in the future, and should certainly be part of the investigation of a replacement for Whois, it is not a reason to not proceed with this PDP WG recommending thick Whois for all.”*

The WG included as one of its additional recommendations the following: *“As part of the implementation process [of a thick Whois consensus policy] a legal review of law applicable to the transition of data from a thin to thick model that has not already been considered in the EWG memo is undertaken and due consideration is given to potential privacy issues that may arise from the discussions on the transition from thin to thick Whois, including, for example, guidance on how the long-standing contractual requirement that registrars give notice to, and obtain consent, from each registrant for uses of any personally identifiable data submitted by the registrant should apply to registrations involved in the transition****.”*** (See separate summary re this legal review.)

Finally, pp. 47-48 of the WG report include some privacy-related “observations” (not consensus recommendations), including that “as part of the development of the registration data directory system model currently in process, ICANN ensure that the ramifications of data protection and privacy laws and regulations with respect to Whois requirements be examined thoroughly.” Specific suggestions include:

* “Examinations must include data collection, data disclosure, and data retention laws, as well as data quality requirements under data protection principles .
* “Given the dynamic nature of laws and contracts that may address what data protections should be in place, as well as increasing complexities, the examinations must be limited to: provisions that have the force of law at any given time, authoritative statements from relevant governments about those provisions, or contract provisions that are final.”
* “Some level of real world review of the efficacy of data protection provisions must occur as part of any reviews.”