

USG Comments on the “Initial Report from the Expert Working Group on gTLD Directory Services: A Next Generation Registration Directory Service”

The United States Government (USG) appreciates the efforts of the Expert Working Group (EWG) to address the goal of the ICANN Board, and recognizes that the EWG has agreed that a shift away from today’s WHOIS system to an entirely new system is necessary to respond to concerns prevalent in the current system.¹ As a matter of policy, the USG is not convinced of that approach, at this time. However, given the importance of this issue and in the spirit of being a constructive participant in the multistakeholder process we offer initial comments on the Expert Working Group’s (EWG) June 2013 report. From our perspective, the EWG’s proposal to create an “Aggregated Registration Data Service (ARDS)” raises several, crucial questions, as noted below. Most significantly, the report does not fully explain why or how a single, gated system that will require the use of new authentication and/or credentialing mechanisms, under the management of an unidentified third party, would in fact overcome any existing concerns. Below is a summary of specific concerns with the current proposal:

1. Centralized/Closed System: A closed ARDS could present a single point of failure, thereby raising significant concerns regarding physical and network security, as well as the need for audits to ensure that security is effectively maintained. Such a system also represents a shift to a centralized, top-down management of access to registrant data, having the effect of diminishing transparency and reducing the availability of information to the public. This in turn will make it more challenging for private citizens around the world to know with whom they are doing business, further jeopardizing cybersecurity and trust in the online environment.
2. Authentication of Users: The ARDS requires the credentialing of all users as a prerequisite for access to registrant data. It is unclear how such a system would be established and maintained or would accredit individual users for commercial, law enforcement, consumer protection, or free expression purposes. For example, the U.S. alone has approximately 20,000 Law Enforcement Agencies (LEAs), making it difficult, if not impossible, to determine who qualifies as an LEA in the U.S. In addition, the identification and credentialing of so-called “at risk” users raises serious questions about what criteria would be used by an as-yet-unidentified “Trusted Agent,” to screen these users. Finally, requiring a stated purpose could create an undue burden on data users. In addition to forcing the revelation of commercial and other proprietary information (e.g. related to investigations, intellectual property and court or administrative proceedings), such a requirement may deter private individuals who simply want to learn more about the online services they access.
3. Costs associated with Gated Access: The initial report suggests that the costs of providing access to registrant data, currently shouldered by Registries and Registrars, could be reduced through the ARDS. However, the report does not indicate how the costs associated with the shift, and the maintenance of the new ARDS system, would be covered. Nor is it clear whether access to “live data” and other “additional services” would incur an additional fee

¹ ICANN Board Resolution 2012.11.08.01, to “launch a new effort to redefine the purpose of collecting, maintaining and providing access to gTLD registration data, and consider safeguards for protecting data, as a foundation for new gTLD policy and contractual negotiations.”

(and/or require an additional form of accreditation). Users of registrant data would likely consider either requirement unacceptable and burdensome, as there are currently no fees or costs to users for accessing WHOIS data. This would likely discourage legitimate use and therefore diminish the overall value and utility of the ARDS.

4. Validation of Data: Per the new Registrar Accreditation Agreement (RAA) and Registry Agreement (RA), Registrars and Registries are required to validate their own WHOIS data. However, the Report does not provide the necessary full and detailed explanation of how ARDS will validate the data they obtain from the gTLD registries, raising questions as to whether ARDS will overtake or supersede the recently agreed provisions in the RAA and RA. Rather than starting over, at a minimum ARDS should use the current RAA and RA requirements as a baseline and build on the work and agreement already achieved.
5. Notification of WHOIS search to the registrant: Many uses of WHOIS data are sensitive and should not be disclosed, ranging from law enforcement investigations to research conducted by private individuals and groups. Permitting all registrants to be notified of all WHOIS data searches would prove to be very damaging and potentially forestall these legitimate uses, and could possibly lead to harassment of individuals who seek information about sites that they (or possibly their children) seek to visit.
6. Role of ICANN's Contract Compliance Responsibilities: The initial report indicates that ICANN would enter into a contractual relationship with the third-party operator of the proposed ARDS. This approach dilutes ICANN's contract compliance responsibilities and weakens ICANN's role in ensuring contract compliance, which is inconsistent with the repeated calls from the ICANN community for ICANN to prioritize its role in ensuring contract compliance.

In closing, the USG appreciates the EWG's efforts to re-examine the process of collecting, maintaining, and providing access to gTLD registrant data. In light of our long-standing interest in maintaining public access to accurate WHOIS data, the USG will continue to contribute to discussions within ICANN on this important issue, including within the Governmental Advisory Committee (GAC). As such, we would urge that any policy discussions on this important issue, whether based on the EWG's effort or something else, be the subject of cross community deliberations, including the GAC, rather than a policy development process managed solely by the GNSO. It is critical that the policy for a new registrant data system provide a meaningful opportunity for the views of all stakeholders to be considered.