



September 6, 2013

VIA EMAIL

Mr. Jean-Francois Baril
Lead Facilitator of the Expert Working Group
c/o ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536

Re: Comments of Microsoft Corporation on Initial Report from the Expert
Working Group on gTLD Directory Services

Dear Mr. Baril:

Microsoft Corporation ("Microsoft") welcomes this opportunity to provide its comments to the Expert Working Group on gTLD Directory Services ("EWG") on the EWG's Initial Report.

Microsoft is a worldwide leader in the IT industry, with a mission to enable people and businesses throughout the world to realize their full potential. Since the company was founded in 1975, it has worked to achieve this mission by creating technology that transforms the way people work, play, and communicate. Microsoft is also an owner and champion of intellectual property rights. It maintains sizable trademark and domain name portfolios and takes pride in the worldwide recognition of multiple of its trademarks. Microsoft's businesses rely heavily on the Internet and the current system of TLDs, and Microsoft is an ICANN-accredited registrar as well as an applicant for 10 new gTLDs.

Microsoft devotes significant resources to combating online fraud and abuse, and threats to online safety. In addition to Microsoft's activities to combat online piracy, counterfeiting, and cybersquatting, Microsoft works to disrupt some of the most difficult cybercrime threats facing society today – including technology-facilitated child sexual exploitation and malicious software crimes, particularly botnet-driven Internet attacks. Microsoft personnel routinely use and rely on WHOIS data in these important efforts.

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Executive Summary. Microsoft agrees with the EWG’s observation that “today’s WHOIS model—giving every user the same anonymous public access to (too often inaccurate) gTLD registration data – should be abandoned.”¹ Further, Microsoft appreciates and recognizes the value of the EWG’s work in developing the recommendations for a next generation gTLD Registration Directory Service (“RDS”) and supports in principle the proposed Aggregated Registration Directory Service (“ARDS”) model as long as it provides an RDS that is more accurate, more usable, and, for accredited requestors, ultimately more accessible than today’s WHOIS model. As the EWG acknowledges in the Initial Report, the recommendations themselves raise many important issues and the EWG has identified at least four key issues that are outstanding. Accordingly, Microsoft defers its final judgment on the ARDS model pending resolution of these important issues and the EWG’s Final Report.

Supported Benefits. Microsoft fully supports many of the potential benefits of the ARDS model set forth in the Initial Report, subject to the Final Report and proposed implementation.

- Data accuracy and validation. Accurate and reliable RDS data would be a meaningful improvement over the status quo. However, new gTLD registries must comply with the GAC Safeguards on Whois. Further, the 2013 RAA requires registrars to *validate* that certain required data is present and in the correct format; that email addresses, telephone numbers, and postal addresses are in a proper format; and in certain circumstances, that all postal address fields are consistent across fields. The 2013 RAA also requires registrars to *verify* the registrant’s email address or telephone number. As a threshold issue, the EWG should clarify in its Final Report on RDS data if it uses “validate” for the same meaning as in the 2013 RAA and, if not, be precise about whether RDS data will be validated, verified, or both. Microsoft recommends that such data be validated and verified. This is particularly important because the EWG’s “gated access” model must provide RDS that is more accurate than it would otherwise be under the 2013 RAA and in new gTLDs.

- Availability of Reverse WHOIS and WhoWas. Microsoft fully supports the idea of centralized Reverse WHOIS and WhoWas services because of their general utility and especially in an ARDS model. While Microsoft does not, in principle, object to making such services available through some type of accreditation, it is important that the accreditation be consistent. In other words, a Requestor who is already accredited for ARDS should be able to rely on that same accreditation for Reverse WHOIS/WhoWas services.

¹ Initial Report from the Expert Working Group on gTLD Directory Services: A Next Generation Registration Directory Service 3 (June 24, 2013), available at <http://www.icann.org/en/groups/other/gtld-directory-services/initial-report-24jun13-en.pdf> (hereinafter “Initial Report”).

- Greater Access for Authenticated Requestors. Microsoft supports the ability of authenticated requestors to obtain access to certain RDS data elements and for such requestors to be held accountable for use of that data. Indeed, the gated access aspect of ARDS has the potential to improve RDS privacy because access to full data will be restricted to accredited requestors. Identified below are several challenges and issues relating to such “gated access.”

- User, Purpose, and Data Elements. Because the ARDS model matches accessible data elements to “purposes”, it is essential that the “purposes” are clearly defined and comprehensive, that the user categories within the purpose are comprehensive, and that the associated data elements are complete. For example, the most accurate purpose that describes Microsoft personnel’s use of WHOIS data is “abuse mitigation.” Yet, Microsoft is neither a law enforcement agency nor an incident response team. Also, many of the intellectual property-related uses of WHOIS data by Microsoft personnel would seem to fall within the “legal action” purpose. However, some of those uses would also fall within other purposes (e.g., business domain name purchase or sale and abuse mitigation). Moreover, the vast majority of the uses of such data for the “legal action” purpose are not pursuant to and do not lead to a formal legal proceeding. Accordingly, if the EWG keeps the “legal action” name for this purpose, it is essential that there is no requirement that the “legal action” purpose depend on the existence of a lawsuit, arbitration, or other formal proceeding. Finally, Annex C excludes certain data elements from the “legal action” and “abuse mitigation” purposes that are important.²

- Accreditation process (including accreditation denials). The requestor accreditation process must be objective, user-friendly, predictable, and result in an accreditation that is valid for at least one year. Further, there must be a process through which a potential requestor can challenge the denial of an accreditation. Finally, the accreditation process should allow for an entity (such as Microsoft) to hold the accreditation and grant access privileges to its employees.

- Widely available data. At a minimum, RDS users should be able to access the following data without gated access: domain, original registration and creation dates, updated and expiration date, client and server status, DNS servers, registrar (and reseller, if applicable), and Registered Name Holder’s country (from its postal address). All of this information is generally widely available in WHOIS today.

² The following important data elements are excluded from the “legal action” purpose: original registration and creation dates (for determining priority); client and server status (for identifying domain related developments); updated and expiration date (for monitoring changes in activity); DNS servers and registrant IP address (for correlating with other domains); reseller (for compliance and registration agreement); and registration agreement language and registrar jurisdiction (for language and mutual jurisdiction of UDRP proceeding). All of these elements are also important for the “abuse mitigation” purpose for similar reasons.

- Consistency of participation. The consistency of participation across all registrars and gTLD registries that is implicit in ARDS should enhance data accuracy and validation, minimize registrar awareness problems after the initial launch, and decrease Compliance problems (which will, unfortunately, likely be more than offset by the increase in compliance issues due to the massive expansion of the gTLD space).

Outstanding Issues. Notwithstanding the EWG's excellent work in its Initial Report, Microsoft has identified a number of outstanding issues.

- Correcting Inaccurate Data. How does the EWG anticipate that ARDS will "handle data accuracy complaints"? What mechanism will be available to ensure that registrars and registrants, which will not be in contractual privity with the ARDS operator, timely address and resolve data accuracy complaints? Would the ARDS operator's contract make it subject to ICANN Compliance?

- Data Latency. As between ARDS and the registry, the registry should be the authoritative source for RDS data for the particular gTLD. However, how frequently does the EWG anticipate that ARDS would be updated?

- ARDS Database and Operator. In what jurisdiction will the ARDS database be deemed to reside and subject to? Will the Operator be required to comply with orders from all courts of competent jurisdiction? How does the EWG recommend that the risk of insider abuse be reduced or eliminated? One option is to require that the ARDS Database Operator not be (and not be an Affiliate of) any entity that has a contractual relationship of any kind with ICANN.

- Abuse of ARDS. What constitutes an "abusive request" and what are the repercussions of such a request? Will the EWG provide recommendations as to what constitutes abusive use of RDS data?

- Privacy and Proxy Services. If the ARDS Model does not adequately address the issue of privacy and proxy services, it cannot succeed. How will "reveal" requests be handled and by whom? What standards will apply? The RDS data of registrants and licensees of names registered under privacy and proxy services should still be subject to validation and verification.³

³ The statement in 4.4.3 of the Initial Report (page 21) appears to be incorrect. Section 3.7.7.3 of the RAA states that "Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record . . . A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm."

- “Maximum Protected Registration.” The general description set forth in the Initial Report is very broad and many individual registrants could likely successfully argue that it applies to them, thereby creating an exception that swallows the rule. How will the EWG craft a recommendation that addresses the issue? Will the EWG recommend criteria for the Trusted Agent?

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Thank you for your consideration. If you have any questions or wish to discuss any of the points raised herein, please feel free to contact me at russpang@microsoft.com.

Respectfully submitted,

Microsoft Corporation

A handwritten signature in black ink, appearing to read "Russell Pangborn".

Russell Pangborn
Associate General Counsel – Trademarks