GNSO gTLD Registries Stakeholder Group Statement

Issue: Whois Clarifications

Date: 26 January, 2015

Ref: 'Advisory: Clarifications to the Registry Agreement and the 2013 Registrar Accreditation Agreement
       (RAA) regarding applicable Registration Data Directory Service (Whois) Specifications', original dated
       September 12, 2014 and redline version sent to Cherie Stubbs by Krista Papac on December 9, 2014 and
       forwarded to the RySG mailing list that same day.

With regard to the above referenced documents, the RySG wants to communicate concerns to the ICANN
Global Domains Division (GDD) about how it has been handling the implementation of Specification 4 of the
New gTLD Registry Agreement. In particular, we think that GDD staff members have been inappropriately
doing the following in the Specification 4 implementation process:

1. Instituting requirements that are not included in Specification 4 of the New gTLD Registration
    Agreement, SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES
2. Including new staff defined requirements into the New gTLD Pre-Delegation Testing (PDT) process, i.e.,
    making changes to the PDT requirements mid-stream after many registries had already prepared for
    the previously defined PDT process
3. Soliciting registry input and then determining in a top-down fashion which input will be accepted while
    seemingly ignoring other input
4. Instituting requirements that are not specified in consensus policy but involve policy issues that should
    be handled in a PDP
5. Instituting requirements that should be developed via Internet standards processes.

The purpose of this document is to explain our concerns in more detail, to request that staff communicate
what process it used to decide on its 'clarifications', and to point out that the RySG does not believe that staff
should be the final arbiter in their implementation plans.

Specification 4 of the Registry Agreement provides some high-level requirements (key / value pairs, minimum
fields, sample responses, values following EPP RFC's) for WHOIS that leave much undefined and up to the
registries to determine. On September 12, 2014 ICANN published the "Advisory: Clarifications to the New
gTLD Registration Agreement, Specification 4; and the 2013 Registrar Accreditation Agreement (RAA),
Registration Data Directory Service (WHOIS) Specification" ("Clarifications") with the goal of providing
clarifications for registries and registrars so they can be in compliance with the New gTLD Registry Agreement
and the Registrar Accreditation Agreement, respectively.

The content of the Clarifications defines requirements that are not defined in Specification 4 of the Registry
Agreement. In August, detailed technical feedback on this was provided by the Registries Stakeholder Group
in "RySG Concerns & Input regarding ICANN's Implementation process related to Whois". On December 9,
2014 ICANN provided a preview of updates to the Clarifications with a new name "Advisory: Clarifications to
the Registry Agreement, and the 2013 Registrar Accreditation Agreement (RAA) regarding applicable
Registration Data Directory Service (Whois) Specifications". This update merged in the Additional Whois
Information Policy (AWIP) requirements, but also added more requirements like the following:

- What to return when an object does not exist;
- Requiring that a registration must have one and only one administrative contact;
- Disallowing an existing useful feature of partial matching.

The RySG contends that Whois requirements, as defined in Specification 4 of the Registry Agreement, should strictly define the behavior and format requirements of WHOIS. Data collection and verification requirements should be defined in Specification 6 of the Registry Agreement, which currently references the EPP RFC's. The sentence "The fields specified below set forth the minimum output requirements" in section 1.4 of Specification 4 of the Registry Agreement should be interpreted as the minimum format requirements utilizing sample data provided in section 1.5, section 1.6, and section 1.7. Format requirements include the possible set of WHOIS field keys used along with the format of the field values for data collected and verified following the SRS requirements. ICANN interprets that sentence in the gtld-tech list posting (http://mm.icann.org/pipermail/gtld-tech/2015-January/000400.html) as follows: "[the sentence] explicitly identifies the set of fields listed as the minimum set to be present in Whois output". This is incorrect because it attempts to infer data collection and verification requirements in the SRS. If ICANN's interpretation held true prior to the Whois Clarification Advisory, all registries would have required that all domains have 2 name servers, 4 statuses, and that all contacts have organization, voice, voice ext, fax, fax ext, and so on. An even more literal interpretation is that the only domain supported is EXAMPLE.TLD, and the only registrant contact is "EXAMPLE REGISTRANT". Based on the use of sample data and the requirements relating to Whois and not the SRS, neither the ICANN staff interpretation nor the more literal interpretation is reasonable. GDD staff should not attempt to impose SRS data collection and verification by using an incorrect interpretation of the WHOIS requirements in Specification 4 of the Registry Agreement.

The Clarifications included a date when registries and registrars must comply by incorporating the clarifications into the PDT Specifications, even though these had previously been finalized and followed by registry operators who had completed PDT. We question the appropriateness of adding new requirements that fundamentally change the behavior of WHOIS according to ICANN's vision with only a review process. We also question the appropriateness of leveraging the PDT specifications and tests without any of the following (as applicable): an Implementation Review Team (IRT), a Policy Development Process (PDP), an impact analysis including a cost-benefit analysis or an applicable technical standard. We believe that the GDD team owes the RySG answers to the following questions:

a. What community process is the GDD using for defining and enforcing new requirements?
b. What is the GDD definition for a "clarification" versus a "requirement"?
c. What is the scope of an ICANN "clarification"?
d. What is the standard community process for defining and enforcing clarifications?

The Clarifications appear to be an attempt to set new precedent for ICANN to push down registry and registrar requirements that could apply to almost any registry and registrar function. The PDT Specification includes tests for EPP, DNS, Whois, Data Escrow, and DNSSEC. By labeling requirement changes as "clarifications", ICANN staff bypasses established GNSO policy development processes as well as IETF standards development processes that are designed to protect all parties.

Based on the timeline unilaterally defined by staff, registries and registrars must start implementation of the 'clarifications' before the process of providing feedback regarding proposed changes to the requirements is

finished. A legitimate bottom up community approach would provide time not only for impacted stakeholders to provide input but also for staff to respond to that input and reasonably resolve differences before developing and finalizing an implementation plan. We strongly request that the use of a "clarifications" process with the PDT Specifications as the enforcement tool be stopped until an agreed upon process is defined that leverages a bottom up community approach. We also object to using the PDT as a de facto enforcement tool for new requirements - thereby putting registry operators in a position where they will fail pre-delegation testing on elements that are not clearly defined in consensus policy, in registry agreements or in applicable technical standards.

The RySG classifies the clarifications proposed by GDD Staff into four categories:

1. **Actual clarifications**
2. **Optional enhancements:** format changes that are optional in nature, i.e., they don't require effort from registries that do not want to make them, while at the same time allowing the ones who do to implement them.
3. **WHOIS format changes**: changes to output, format or semantics. These are changes that we believe are permissible under the Registry Agreement, but we do not think they should be called clarifications; they should be called format changes in order to account for their real impact and ample time should be provided for registries to implement them. We recognize that these changes do not come from consensus policies, but we note that they may be regulated by individual Registry Registrar Agreements (RRAs). Reasonable time to implement them should be provided to allow registry operators to fit them into their development schedule and to properly coordinate with registrars. 180 days is a time period that is common in many RRAs; it would be a reasonable place to start.
4. **Registry change**: changes that imply registry system data model or behaviour changes. For those changes that are related to policy or technical standards, they should be dealt with through the processes designed for them unless they are explicitly allowed in Specification 4.

A spreadsheet with such classification, based on December 12 Clarifications text, accompanies this document.

The RySG understands that specific procedures for implementation of policies do not exist; it is understandable that there is confusion regarding how staff and impacted parties should work together in implementing policies. We are also aware that the GNSO Policy & Implementation WG is currently developing recommendations in that regard; unfortunately actual approval of recommendations that may come out of that WG are likely many months away. The RySG encourages the GDD staff working on this issue to review the Policy & Implementation WG Initial Report published for public comment on 19 January 2015; in particular we call attention to the following sections that we believe are especially relevant:

- Section 4, Policy and Implementation Principles
- Annex F, Global Domains Division – Consensus Policy Implementation Framework (Draft).

Note that Annex F is the result of a joint effort by GDD & WG personnel.

We understand that the Policy & Implementation Principles and Recommendations are in the early stages of the review and approval process. The RySG believes that they reflect the values of the multi-stakeholder process that is fundamental to ICANN. In the meantime, the RySG also believes it is essential to ensure that

policies are implemented in a way that maximizes benefits and minimizes negative consequences. That is our goal and we believe it is staff's goal as well.

In conclusion:

- To operate highly reliable, high performing, globally distributed platforms such as Whois or DNS in a uniform and responsible manner requires time, money, talent and steadfast technical specifications.
- New requirements for technical changes require technical community input, preferably in a revised technical specification. All parties would then be working from an approved and updated technical specification. If the intent is to operate WHOIS in a uniform and responsible manner, then work towards an agreed upon specification is important.
- New requirements being proposed should include a cost/benefit analysis.
- Defining a technical specification should be separate and apart from implementation: Agreement on the technical changes (or new requirements) should be one phase. Implementation should be a separate topic and phase that includes input from the affected parties, along with input on the timeframe.
- Iterative clarifications and updates lead to unnecessary expense and rework to implement the changes.
- Existing processes and procedures should not be changed midstream and should not be used as a way to enforce ad-hoc changes or new requirements.
- A fundamental issue with regard to the clarifications relates to the process or lack of process that is being followed. Leveraging vague and incomplete requirements to drive new top down requirements and restrictions, without a true technical specification in the registry agreement, is not in the public interest; further, it has the potential of setting bad precedents for the future.
- Lack of specificity in registry agreements should not be an excuse for introducing new requirements without appropriate policy development or collaborative implementation work.
- There has been a large amount of effort spent on these issues by both GDD staff and registry operators over the past few months but progress has been slow. That may be attributable to the lack of clearly defined procedures. In any event, we should work together to get past that. We should work together in a fully cooperative way to jointly execute in a manner that maximizes benefits for all.

As a final recommendation, the RySG suggests the following: Regarding specific clarifications, if there is any doubt by directly impacted parties or GDD staff regarding whether certain clarifications are not clearly included in contracts or in consensus policies or in approved technical standards, such clarifications should not be included as requirements until there is mutual agreement of the parties or until they are included in approved consensus policies or adopted Internet standards.

Attachment