

To: usTLD Stakeholder Council
From: Michael D. Palage
Date: 4-April-2021
Subject: Comment on usTLD Recommendation for Privacy Plan

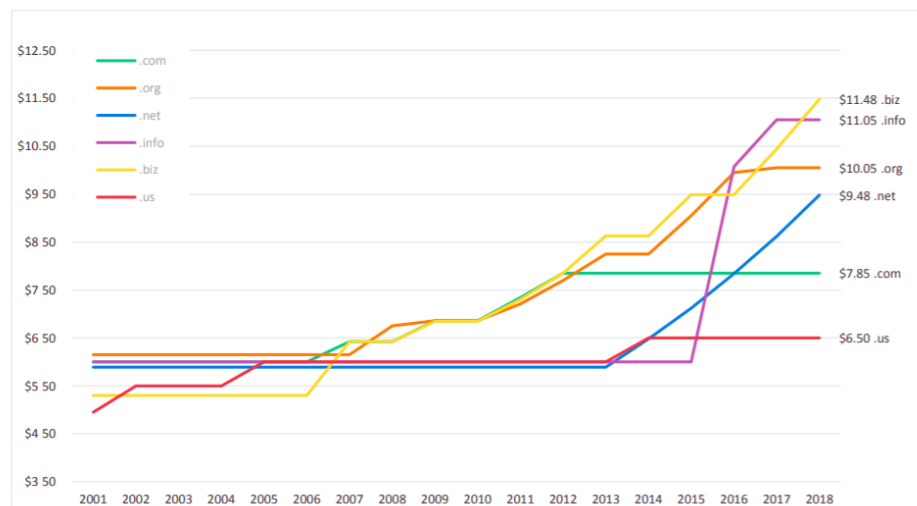
1.0 Introduction

As some may know, I previously served on the inaugural .US Policy Council, and have been actively involved in ccTLD domain name policy and operational matters for the last several years.¹ My perspective may be of value to the .usTLD Stakeholder Council (“Council”) as they contemplate changes to the .US Privacy Plan. As a domain name registrant that has been subjected to spam and unsolicited phone calls from public Whois data, I applaud the Council’s initiative to revise its Privacy Plan. While there are many positive aspects to the current proposal, there are also a number of concerns, identified below, that should be addressed before submitting a final proposal to NTIA for consideration.

2.0 Benefit of Revised Pricing Under the Current Proposal

While price increases or additional fees imposed by a Registry Operator are often met with substantial push back within certain sectors of the domain name community, it was prudent for the Council to recognize that this new registry service will result in additional costs to the Registry Services LLC. Could the Council share the basis for the \$0.50 per domain name year cost associated with this service, and if there has been any update since the 2015/2016 publications to suggest if this cost has either increased or decreased since their initial calculation.

Over the last several years there has been an overall increase in the wholesale cost of domain names across both the gTLD and ccTLDs markers. This overall price increase was reflected in the chart below which was included in the most recent .US contract award.



Source: .US Technical Volume 3 – Section 3.1 (page 7)

https://www.ntia.doc.gov/files/ntia/publications/technical_proposal_volume_3.pdf

Registry Services LLC, and its predecessor in interest Neustar, should be applauded for maintaining the wholesale price of a .US domain name registration over the last nineteen years. The original price of a .US domain name was \$6 per domain name year in 2002 when Neustar was first awarded the right to operate the .US ccTLD. During this almost twenty-year span, there has only been one price increase of \$0.50 per domain name year circa 2013-2014. Verisign was recently granted permission by the US government and ICANN to raise the wholesale price of a .COM from its current \$7.85 price by 7% per year in the last four years of each six-year contract extension.

If Registry Service LLC is to ensure not only the continued security and stability of the .US ccTLD, but also a best-in-class range of services, then there should be no doubt that a fee increase is justified. As noted in the sections below, DK Hostmaster is an excellent data point for a ccTLD Manager that has recently engaged in a wide range of security enhancements, registrant verification, and WHOIS modifications to bring it into compliance with the European GDPR requirements. Earlier this year DK Hostmaster announced a 20% price increase from DKK 50 (\$7.91) to DKK 60 (\$9.50).ⁱⁱ Despite an overall increase in the wholesale prices by Registry Operators over the past several years, the overall number of domain names under management has continued to grow.ⁱⁱⁱ

3.0 Some Key Considerations Not Addressed by the Current Proposal

Registry Services LLC is proposing a “registry-based privacy wholesale solution” that Registrars may offer for resale to their Registrants.^{iv} If a Registrant purchases this service through their Registrar, their personal identifying information will not displayed in the public WHOIS output, and their use of the service will be indicated in the SRS. Registry Services LLC will then provide a “centralized authoritative WHOIS database at the registry level, [and] will be able to provide one-stop access to law enforcement agencies, rights holders, and others with lawful requests in near real time.”^v

While the Council is correct in trying to address important privacy concerns,^{vi} their current proposal fails to address a number of related issues. Some of these are noted below, which the Council should consider before proceeding.

3.1 The Relying Documentation is Significantly Outdated

The *Privacy/Proxy Services Review for the usTLD Report* and *The .US Privacy Service Plan* were originally published in 2015 and 2016 respectively. However, there has been a fundamental shift in data privacy regulations since that time, both globally and in the U.S. The Council should update their documentation to demonstrate its consideration of these new regulations, and related issues that they raise, and should detail how they impact the current proposal.

3.2 The Need to Address Data Accuracy and Uniform Access to Registration Data

To illustrate the outdated nature of the proposal, the Council does not consider the need to improve the accuracy of, and uniform access to, non-public registration information as part of such a privacy service – which is indicated in the Consolidated Appropriations Act of 2021.^{vii}

Domain Name Registration - NTIA is directed, through its position within the Governmental Advisory Committee to work with ICANN to expedite the establishment of a global access model that provides law enforcement, intellectual property rights holders, and third parties with timely access to accurate domain name registration information for legitimate purposes. NTIA is encouraged, as appropriate, to

require registrars and registries based in the United States to collect and make public accurate domain name registration information.

This request does not seem unreasonable, given the NTIA's unique role in approving any changes to the operation of the .US ccTLD. While the Council should be applauded for its effort to address Registrant data privacy, the **Council and Registry Services LLC are missing a unique opportunity to also address data accuracy and uniformity of access.**

A growing number of ccTLD Managers and some gTLD Registry Operators have begun to incorporate registrant validation into the business operations to combat fake websites. One such example that the Council should research and evaluate is the work of DK Hostmaster, the ccTLD Manager of the .DK ccTLD. Additionally, EURid has implemented a registrant verification process for those registrations that trigger a number certain predefined red flags. Finally, the Council may also find value in an article that I wrote as part of CENTR's 20th Anniversary Paper Series entitled *The Role of ccTLD Managers in the Evolving Digital Identity Ecosystem*.^{viii}

3.3 Additional Details are Needed Regarding Third Party Access to Registrant Data

While *The US Privacy Service Plan* states that non-public Registrant data will be available "to law enforcement agencies, rights holders, and others with lawful requests" the plan only appears to address requests by law enforcement and is largely silent on "rights holders" and "others." The recent work by ICANN in connection with its EPDP work (Phase 1, Phase 2, and Phase 2A) has shown that intellectual property rights holders and cybersecurity researchers, among others, have a legitimate interest in accessing domain name registration data. **The proposal put forward to the NTIA for consideration should include specific details on how rights holders and others with lawful requests will be able to timely obtain domain name registrant registration.**

3.4 The Need for Data Supporting Claims Made in the Proposal

There was an overall lack of objective data to support some of the claims made by the Council in the report for the proposal. By way of example, there are claims that the prohibition on privacy and proxy services has negatively impacted the overall numbers of .US registrations. It would be helpful to look at trends of .US compared to other similarly situated ccTLDs over the last five years to see if these claims are accurate. Registry Services LLC should also provide its data regarding the "random spot checks on .US registrations to affirm that WHOIS information is accurate." Specifically, a comparison of the data points gathered in 2015 and 2016 to data collected and analyzed in 2020 and 2021. This data could also help drive the broader data accuracy issue raised above.

3.5 The Benefit of Considering Best Practices of Other Registry Operators (ccTLD & gTLD)

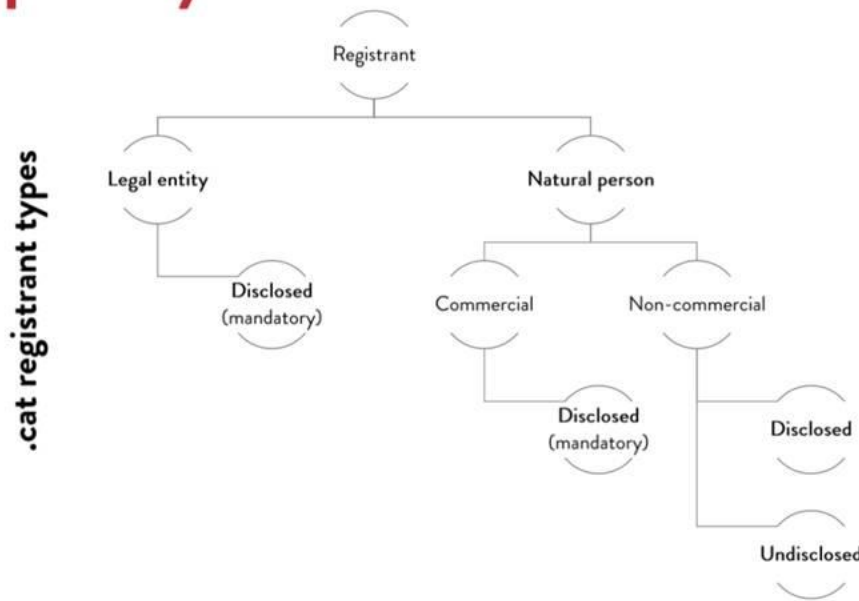
To ensure that the Council and Registry Services LLC achieve their goal to provide a best-in-class solution, best practices adopted by other Registry Operators, both gTLD and ccTLD should be considered. By way of example, there is a growing trend within ccTLD Managers to distinguish domain registrations that are registered to natural persons and those registered to legal persons. In fact, a survey of European ccTLD Managers Whois output in 2019 indicted that approximately 70% of them made a distinction between registrations to natural and legal persons. Despite this clear trend for ccTLD Manager, the Council dismissed the benefits of making this distinction, stating in relevant part:

[T]o reduce confusion in the application and enforcement of the policy, to protect legitimate concerns of home-based businesses, and to maintain a low cost of administration, the privacy service should be made available to all domain holders regardless of commercial status.

Currently, Registry Services LLC already provides a similar feature in their administration of the .NYC gTLD. Each domain name registration is delineated as being associated with an individual (INDIV) or an organization (ORG). An additional point worth noting is that back in 2019 approximately 50% of all .NYC registrations were associated with an organization (i.e., a legal person) that is generally not afforded data privacy protection of itself.

If the Council is concerned as to the potential impact on non-incorporated business entities (such as sole proprietors), it would be helpful to consider steps taken by PuntCAT the Registry Operator of the .CAT gTLD. This EU-based registry implemented a system that not only distinguished between natural persons and legal entities but also further delineated between natural persons engaged in commercial activity (solo proprietorship) as illustrated in the graphic below.

.cat privacy model



Source: PuntCAT

This framework not only received permission from ICANN to deviate from then standard Whois publication requirements, but also received the approval of the Spanish DPA under Europe's heightened data privacy requirements.

4.0 Recommended Actions

4.1 The Council should conduct a Request for Information

As part of addressing the issues outlined above, the **Council should coordinate with Registry Services LLC to conduct a Request for Information to obtain input on solutions that better leverage improved technologies,**

consider the current regulatory landscape, and is aligned with current market forces – all of which have changed significantly since 2015. This will help ensure that the Council adopts a best-in-class solution for the future.

Given the impact of the current proposal on Registrants and third-party Requestors of registration data, the Council and Registry Services LLC need to better understand and consider the significant evolution in these areas since the proposal was originally prepared. Aside from the posting the proposal on the Council’s website, there does not appear to have been visible coverage of the proposal in any of the major domain name industry news feeds or blogs, nor any meaningful solicitation of input.

4.2 The Council should host a panel discussion at IGF

Not only has .US been a previous sponsor of the US IGF, but representatives from NTIA have historically been active in the planning and coordination of the sessions. This topic neatly fits within several of the nine high level topics that were recently released by US IGF.

5.0 Conclusion

By taking the steps noted above, the Council and Registry Services LLC will be much better positioned to provide a best-in-class solution, and to provide NTIA with a proposal that has not only adequately considered relevant concerns but also has provided sufficient documentation for the NTIA to respond to inquiries from interested parties.

ⁱ I have been active participant in the Council of European National Top-Level Domain Registries (CENTR) for the past several years, and I have served as an expert for the International Telecommunication Union (ITU) in connection with ccTLD related matters. In the interest of full disclosure, as many also know, I have been the owner of Pharos Global Inc. for many years, which is a consultancy that provides professional services to domain name registration authorities. For the past several years, I have also been a co-owner of InfoNetworks LLC, which provides digital rights management services to the domain name industry and various other sectors.

ⁱⁱ <https://www.dk-hostmaster.dk/en/news/dk-hostmaster-changes-price-dk-domain-name-0>

ⁱⁱⁱ <https://www.verisign.com/assets/domain-name-report-Q42020.pdf>

^{iv} Registrars must enter into an amended Registry Registrar Agreement with Registry Services to offer the service. <https://www.about.us/assets/us-privacy-services-plan-PUBLIC-COMMENT-2016-Dec-14.pdf> (Page 7)

^v IBID (page 8)

^{vi} As evidenced by the rapidly evolving regulatory landscape within the US, such as the California Consumer Privacy Act (CCPA), Virginia Consumer Data Protection Act (“VCDPA”), and numerous similar state and federal bills.

^{vii} <https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-B.pdf>

^{viii} <https://centr.org/library/educational-promotional-material/20th-anniversary-paper-the-role-of-ccTld-managers-in-the-evolving-digital-identity-ecosystem.html>