

Report of Public Comments

Removal of Searchable Whois Service from .SHARP Registry Agreement

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Prepared By: Krista Papac

Comment Period:

Comment Open Date: 30 July 2015

Comment Close Date: 11 September 2015

Important Information Links

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Staff Contact: Krista Papac

Email: krista.papac@icann.org

Section I: General Overview and Next Steps

General Overview

On 15 May 2015, Sharp Corporation, Registry Operator of .SHARP TLD submitted a [Registry Services Evaluation Policy \(RSEP\)](#) request to remove Searchable Whois service currently available in the Exhibit A (Approved Services) of the .SHARP Registry Agreement.

As required by the RSEP, ICANN made a preliminary determination on whether this RSEP proposal might raise significant competition, security or stability issues. ICANN's preliminary review (based on the information provided) did not identify any such issues.

Following ICANN's preliminary determination that the proposal does not raise significant competition, security or stability issues, ICANN proposed to implement the registry service by amending the respective Registry Agreement.

From 30 July 2015 – 11 September 2015, ICANN posted the proposed RA amendment for public comment, which resulted in four comments.

Next steps

ICANN will consider these comments as it considers whether or not to approve the requested amendment.

Section II: Contributors

At the time this report was prepared, four (4) community submission had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Google Registry	Stephanie Duchesneau	GR
Business Constituency (BC)	Steve DelBianco	BC
Registries Stakeholder Group (RySG)	Paul Diaz	RySG

Individuals:

Name	Submitted by	Initials
NA	Mike McComber	MM

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Three comments submitted support the removal of Searchable Whois from the Exhibit A of the .SHARP Registry Agreement, while one of the comments did not express any view on this specific public comment announcement but their concern in general on the availability of the Whois database publicly. Additionally, one comment received commented on ICANN's posting this RSEP request for public comment.

Regarding the removal of Searchable Whois Service from the Exhibit A of the .SHARP Registry Agreement:

While the points highlighted in the comments supporting the removal of Searchable Whois service from the Exhibit A of the .SHARP Registry Agreement can be summarized as follows, it should be noted that comments submitted by BC focused on .BRAND TLDs in general, whereas there was no such distinction in the comments submitted by GR and RySG.

- Searchable Whois is an optional service (GR, BC, RySG) and it is not a new registry service (GR, RySG)
- Removal of searchable WHOIS provides important protections for registrant privacy without sacrificing the ability to obtain registrant information when appropriate. (GR)
- .SHARP is a brand TLD and that searchability serves little utility in closed and restricted-use TLDs where all registration data pertains solely to the registry operator and its Affiliates and it also adds unnecessary backend costs and reporting requirements for closed and restricted-use registry operators without any commensurate value. (BC)

- It is highly unlikely that the operation of a comparable, non-searchable WHOIS service would raise new technical, competition or intellectual property issues. (GR, RySG)
- During ICANN’s Initial Evaluation of the applications, while proposed inclusion of searchable Whois service gives an extra point to the application, .SHARP application passed the Technical and Operational Evaluation with a score of 27 (whereas only 22 points were necessary as a mandatory minimum). Thus the application did not rely on the inclusion of this service. (GR, BC). Similarly, Japan Registry Services Co., Ltd. (JPRS), .SHARP’s new Backend Technical Services Provider, also scored 27 during the Technical and Operational Evaluation. (GR, BC)

Regarding the concerns on the availability of the Whois database publicly:

- The Whois database should be protected from public view by default for all the reasons listed by register companies using scare tactics to justify charging their customers extra money when registering a domain to keep their information from being exposed on the internet. (MM)

Regarding ICANN’s posting of this RSEP request for public comment:

- The Registry Service Evaluation Policy only describes usage of the public comment period where a request is being subjected to evaluation by a Registry Service Technical Evaluation Panel. Subsequent guidelines established by ICANN state that a public comment period may also be held for an RSEP requiring contractual amendment, where the amendment “sets new precedent or has substantial effect on ICANN, third parties or the Domain Name System.”¹ For the reasons described above, the request by .SHARP to remove searchable WHOIS does not appear to meet any of these criteria.² We ask that ICANN adhere to clear standards when determining whether a request warrants a public comment period. (RySG)

¹ See ICANN, RSEP Guide Version 1.0.

² Other recent RSEP requests such as requests to support internationalized domain names at the second level have similarly appeared to not meet these criteria, but have still been subject to public comment periods.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Three comments submitted support the removal of Searchable Whois from the Exhibit A of the .SHARP Registry Agreement, while one of the comments expressed their concern in general on the availability of the Whois database publicly. Additionally, one comment received commented on ICANN’s posting this RSEP request for public comment.

In sum, comments supporting the removal of searchable Whois service from the .SHARP Registry Agreement indicated that offering a searchable Whois service is an optional service and it is not a new registry service. Because of this, the comments suggest that it would be inconsistent for ICANN to bar

the removal of this service by way of the RSEP process. ICANN acknowledges these comments, and notes that Searchable Whois is not an optional service. Section 3 of Exhibit A, states “...Registry Operator must offer a searchable Whois service...”. ICANN further notes that one point to consider on balance (and as highlighted in the public comment announcement) is whether allowing the removal of searchable Whois would be consistent with commitments made by applicants as part of Initial Evaluation. Pursuant to the New gTLD Program Applicant Guidebook, the provision of Searchable Whois capabilities was the basis for earning a score of two points (i.e. exceeding the requirement) for question 26, which was part of the assessment of an applicant’s demonstration of technical and operational capability. In the case of .SHARP, as pointed out by the public comments, the .SHARP application did not rely on the inclusion of this service since the application passed the Technical and Operational Evaluation with a score of 27, whereas only a score of 22 was necessary as a mandatory minimum to pass the evaluation. Overall, the commenters noted that .SHARP’s Initial Evaluation score should not weigh on the decision about whether or not to approve the removal of searchable Whois since .SHARP would have received a passing score even if it did not provide searchable Whois. The commenters note that this fact supports the idea that removing searchable Whois would not materially effect the technical soundness of the .SHARP application.

Another point highlighted by the public comments is the idea that searchable Whois may serve little utility in closed and restricted-use TLDs where all registration data pertains solely to the registry operator and its Affiliates. ICANN notes that the intended purpose of searchable Whois is to ensure ease and open accessibility of Whois data for the public in order to help protect consumers from fraud and other abuses, and acknowledges the comments about the utility in the context of .SHARP as a .BRAND TLD.

On the other hand, one comment expressed their concerns on the availability of searchable whois database in general, without making any distinction between open or closed TLDs, claiming that the service is open to manipulation by registrars.

Another comment advised ICANN to not bar RSEP requests that refer to optional registry services. The comment further requested ICANN reconsider whether similarly situated RSEP Amendments warrant a public comment period. The comment also mentioned that the Registry Service Evaluation Policy states that public comment will only be needed when an RSEP request is referred to evaluation of the Registry Services Technical Evaluation Panel (RSTEP), and that ICANN has further stated that public comment may be required if an RSEP requiring contractual amendment sets new precedent or has substantial effect on ICANN, third parties or the Domain Name System. While ICANN acknowledges these comments on the RSEP process, section 2.4.d of the [RSEP Policy](#) states that if the implementation of a proposed service requires a material change to a Registry Agreement, the preliminary determination will be referred to the ICANN Board. ICANN has stated amendments to a gTLD Registry Agreement that set a new precedent, or have a substantial effect on ICANN, third parties or the Domain Name System could be subject to public comment. In the case of Searchable Whois, it is a required service in the .SHARP Registry Agreement, and Searchable Whois is a service that many in the community expressed strong sentiment over during the development of the Applicant Guidebook, hence the need for public comment.

ICANN will consider all comments in the context they have been provided as it considers whether or not to approve the requested amendment for the .SHARP Registry Agreement as well as future

requests to remove Searchable Whois. ICANN will also take into account the comments submitted regarding the necessity of the RSEP for removal of Searchable Whois.