



Etienne Sanz de Acedo
Chief Executive Officer

655 Third Avenue, 10th Floor, New York, NY 10017-5646, USA
t: +1-212-642-1776 | f: +1-212-768-7796
inta.org | esanzdeacedo@inta.org

Submitted to: comments-rds-prelim-issue-13jul15@icann.org

September 7, 2015

Ms. Marika Konings
Senior Director, Policy Development Support
Team Leader for GNSO
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Next-Generation gTLD Registration Directory Services to Replace Whois
Preliminary Issue Report

Dear Ms. Konings:

The International Trademark Association (INTA) is pleased to submit the attached comments regarding the Next-Generation gTLD Registration Directory Services to Replace Whois Preliminary Issue Report.

INTA's comments are predicated on our mission to protect consumers and to promote fair and effective commerce. We strongly support reforms to improve the accuracy of Whois information and an appropriate measure of gated access to strike a balance between privacy concerns and the mitigation of risk to consumers who may be harmed by instances of fraud and confusion including cybersquatting, counterfeiting and other acts of abuse. Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Etienne Sanz de Acedo", is written over a light grey circular watermark that contains the same signature.

Etienne Sanz de Acedo

INTA Comment on the Next-Generation gTLD Registration Directory Services to Replace Whois Preliminary Issue Report.

September 7, 2015

The International Trademark Association (INTA) appreciates this opportunity to comment on the Preliminary Issue Report on a Next-Generation gTLD Registration Directory Service (RDS) to replace WHOIS (the “PIR”) prepared by ICANN staff in response to a request by the Expert Working Group on gTLD Registration Directory Services (EWG).

Introduction

INTA’s views on the issues outlined in the PIR are informed by its mission as an association “dedicated to supporting trademarks in order to protect consumers and to promote fair and effective commerce.”¹ Inherent in this mission is a fundamental conviction that fair access to, and accuracy of domain ownership information fosters accountability and trust among all Internet users.² That accountability supports consumers’ ability to rely on and trust trademarks to make efficient, confident and safe purchasing decisions. Without the responsibility and reputation conferred by trademarks, a seller’s low-quality or harmful products would be untraceable, leaving consumers without any recourse for faulty, deficient or otherwise unsafe goods and harmful practices.

INTA agrees with the unanimous finding of the EWG that, under the current WHOIS structure, data inaccuracy is highly prevalent. Further, experience has shown that existing penalties are insufficient, enforcement is inconsistent, and those with legitimate needs to identify the true owner of a given domain are frequently met with obstacles which are seemingly designed to thwart or at least dissuade the efforts of brand owners, consumer advocates and law enforcement. Accordingly, INTA supports the EWG’s efforts aimed at reformation of the WHOIS system and the implementation of a next-generation RDS with appropriate privacy and other safeguards to protect all stakeholders.

¹ <http://www.inta.org/About/Pages/Overview.aspx>.

² The link between transparency and accountability is a fundamental tenet not just for INTA but also for ICANN, as reiterated in Article III of the ICANN Bylaws and the 2009 Affirmation of Commitments with the United States Department of Commerce. See <https://www.icann.org/resources/pages/governance/bylaws-en/#III> and <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>.

Proposed Issues

The PIR sets out 11 issues, which have been identified as being of greatest concern when considering a next-generation RDS. INTA believes that this list is both appropriate and, at present, complete. Many of these issues impact each other as well as the needs of trademark owners and consumers. Although some of these issues are quite contentious between DNS stakeholders, INTA believes that a balance is possible and that the PIR offers a good foundation for working towards solution acceptable to all.

The first two issues, “who should have access” to data and “what steps should be taken to control data access,” are directly affected by the level of privacy needed by certain domain owners. While INTA strongly supports of the legitimate needs to protect privacy, the current WHOIS and available privacy/proxy services make no distinction between legitimate privacy concerns and abusive use. We believe that the needs of trademark owners and consumers to protect their rights must be given due consideration as this process moves forward. Access to either WHOIS or next generation RDS data, collected from registrants or supplied by registrars or registries, is critical to meaningful enforcement of trademark rights and ultimately to protection of the public at large against fraud and criminal activity. The PDP should thus consider the position of rights owners and consumers when (i) exploring the minimum public data requirements and disclosure of collected and stored information; (ii) evaluating the principles for data access; and (iii) data verification.

Moreover, of primary concern should be the actual use to which a given domain name is being applied and the purpose of the needed access to its related data. Gated access is a part of the answer to the sought-after balance, allowing certain verified users more comprehensive access when the need for data is clear and legitimate.

Of course, provided that the next generation gTLD RDS is gated and access limited to certain purposes, INTA asserts that veracity of the information listed in the RDS must be more accurate and consistent than what can be found in the current WHOIS directory. The need to adhere strictly to whatever standards are agreed upon by the Community in the PDP cannot be stressed enough. As many stakeholders are no doubt aware, WHOIS outputs can vary significantly, not only within registries but even within specific registrars. While each organization may have differing priorities, depending upon its role and respective user base, INTA believes that ensuring predictability and consistency benefits everyone in the long run.

While the specifics remain to be worked out in Phase 2 of this process, INTA supports the complementary PIR recommendations that users be held accountable for

inappropriate use of the data and also that there be clear and consistently enforced penalties for intentionally providing inaccurate data.

Finally, of great concern to all stakeholders is the cost of a next-generation RDS. INTA believes that this is adequately addressed in the PIR but wishes to highlight two components of the issue. First, the visible and tangential costs of the current WHOIS system should be repurposed to any next-generation system. For example, the savings to be gained from a reduction of inaccurate registry data may be used to fund a next-generation data verification or gated access system. Second, as a resource that benefits all stakeholders, the cost of any RDS should not be borne by any one group but by all equally. As protectors of consumers from fraud, poor quality products, and other harms to both domestic and the global economy, trademark owners should not be burdened with paying an outsized share of the costs attendant to building and maintaining the next-generation system.

Procedural Concern

At sec. 4.11, the PIR contemplates that a “full risk assessment” will be done “at the appropriate point in the PDP process” but this is rather vague. The EWG report discussed certain risks that would be attendant to a next generation system but did not provide for a full risk assessment. Our concern is that trying to perform a full risk assessment could unnecessarily stall the entire next-generation process. To avoid such an assessment taking up valuable resources and time, INTA advocates for putting specific parameters around such an assessment as part of Phase 2 of this process.

Conclusion

As recognized in sec. 1.1 of the PIR, there has been more than a decade and a half of discussion and debate on the need for a next-generation RDS. Despite even the EWG’s final report/recommendation, the ICANN community appears to be still trying to determine whether the existing WHOIS registry can be made to work. As important as privacy is to the free functioning of the Internet, for the purposes of trademark and consumer protection, it can be protected through the limited disclosure of identifying registration information to trustworthy parties according to specified business purposes. It is of critical importance that trademark owners and consumer advocates be able to contact the owner of a domain who is making unauthorized use of a trademark or is otherwise conducting improper activities which cause harm to others.

INTA is confident that the ICANN Community is fully capable of achieving a meaningful consensus on even as difficult and potentially divisive an issue as this. Gated access to

registry data, data accuracy and privacy can all be balanced and coexist to achieve these goals if the community recognizes the needs of each stakeholder and seeks a good-faith compromise. INTA believes that the PIR sets out a road map for that destination and looks forward to participating in the process as we move forward in this journey.

About INTA

INTA is a 136 year-old global, not-for-profit association with more than 5,700 member organizations from over 190 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.