

**Comments of the Internet Committee
of the International Trademark Association
on the “Initial Report from the Expert Working Group on gTLD Directory
Services: A Next Generation Registration Directory Service”
September 6, 2013**

The Internet Committee of the International Trademark Association (the Committee) appreciates this opportunity to provide comments to the Internet Corporation for Assigned Names and Numbers (ICANN) on the Initial Report from the Expert Working Group on gTLD Directory Services: A Next Generation Registration Directory Service (“Initial Report”).

I. Introduction

The Committee applauds the mandate from ICANN leadership to establish an Expert Working Group (“EWG”) to address the long-standing problems in the current Whois system. Recognizing that this mandate is no small task, the Committee appreciates the EWG’s substantial efforts to explore and outline a new Whois model.

The Initial Report stresses that the goal is to replace the current Whois system and concludes that:

today’s WHOIS model – giving every user the same anonymous public access to (too often inaccurate) gTLD registration data – should be abandoned. Instead, the EWG recommends a paradigm shift whereby gTLDs registration data is collected, validated and disclosed for permissible purposes only, with some data elements being accessible only to authenticated requestors that are then held accountable for appropriate use.

The EWG envisions that the new ARDS¹ or Aggregate Registration Data system, will aggregate Whois data into a centralized source, managed by a third party.

While not necessarily disagreeing with the stated goal of replacing Whois, or the advisability of doing so, the Committee recognizes that the design and implementation of the new model will be a significant and complicated task. A centralized database of carefully verified Whois data has the potential to improve the accessibility and accuracy of information about domain ownership, but the value of such a model can only be measured by the efficiency and cost of accessing that information in real time. Since the details concerning authentication and tiered access for the proposed new model have not yet been determined, and we are of the view that the success of this new model hinges on those details, these comments only focus on a few high level aspects of ARDS and the EWG’s proposal.

¹ Aggregated RDS.

II. Background

In considering any new model, we should be mindful of the historical features of Whois data that people have come to rely upon, namely that data is publically available to everyone free of charge. Likewise, the provision of accurate Whois information has historically been treated as a cost of doing business for registrars and registries, though we speculate that the ARDS model may relieve registrars of some measure of financial burden and resources associated with providing registration data directly to the public. Any proposed changes to the Whois system that contemplates restricting access to or charging for information that is currently publically available should require demonstration of a compelling need. To the extent that the ARDS model supports collection of additional information, restrictions on access and service fees may be reasonable.

III. Authentication, Credentialing and Tiered Access to Whois

The central importance of Whois data and access to it has been the subject of repeated comment and heated debate over the years from various quarters within the ICANN community including, but not limited to, the intellectual property community. The importance of Whois access to various constituencies is demonstrated by comments from the GAC, the law enforcement community, the business constituency, and is not limited to the Intellectual Property Constituency or IP associations such as INTA.

Public access to reliable Whois data was incorporated in early technical requirements for operation of the Internet and endorsed by all interested parties, most recently in the Affirmation of Commitments signed by ICANN in 2009. *See, generally*, IPC Constituency Statement – Background Paper ICANN Task Force Terms of Reference 1 (July 25, 2005). Today, Whois data is routinely utilized by intellectual property owners and law enforcement for admittedly legitimate purposes, many of which are expressly acknowledged in the Initial Report.

Notwithstanding this acknowledgment, however, the Initial Report proposes an unspecified authentication protocol to classify those who would be entitled to access Whois data. Even with authenticated access, not all data fields accessible in the current Whois regime may be accessible to all authenticated users in the proposed ARDS model. Until those critical details have evolved and a clear protocol for authentication emerges, it will be difficult for brand owners to make more informed comments or lend support to the EWG proposal.

In considering the design and implementation of a gateway to Whois data, it is possible to imagine a level of access where some of the non-publicly available “Gated Data Elements” is available to anyone, so long as the requestor is authenticated as having provided real contact information, and the request was logged. However, the gated access proposed by the EWG seems to require not only authentication, but also credentialing certain groups to access all Gated Data Elements. Therefore, in the current model, it appears that all the challenges associated with credentialing various groups applies to all but fully public data. It seems there should be some measure of access to the Gated Data Elements provided to un-credentialed but authenticated requestors.

Other concerns about the tiered access model are likely under discussion within the EWG, but worth mentioning here. For instance, it seems necessary for the EWG to identify the decision-maker who would grant authentication requests, how disputes concerning such requests are to be resolved, who is responsible in the event of such disputes and whether unresolved claims for authentication are subject to any curial scrutiny (in the way in which UDRP proceedings can be addressed *de novo* by courts of competent jurisdiction).

The proposed ARDS model, with layers of access and authentication also appears unduly complex. For example, while a brand owner's efforts to enforce its intellectual property rights may indicate one level of authentication, such efforts may also implicate abuse mitigation and other malicious internet activities which support a different level of access (phishing is but one frequently encountered example). This raises the issue of which level of access governs and who makes the determination?

Finally, even assuming these issues can be resolved adequately, there remains the challenge of identifying appropriate fields that can be accessed for specific purposes. The Initial Report proposes to limit access to certain fields which do not, on their face, appear to implicate any privacy concerns purportedly advanced to justify restricted access. For example, while a domain name expiration date can be an important consideration in prioritizing online enforcement efforts, it is difficult to see how such data implicates privacy concerns. Similarly, server information can be crucially important in online investigations and the Initial Report appears to support limited access to this data, though it is again difficult to see how registrant privacy is implicated.

In its currently undeveloped state, ARDS therefore suffers from a defect which offsets the many features which would yield a significant improvement over the existing Whois protocol. Without specifications for the implementation, the Committee is concerned that effective restricted or "gated" access to Whois data may not be workable.

IV. Data Verification

If the challenges presented by tiered data access are adequately met, the next most critical question is whether the data that is accessed will be accurate and, therefore, useful. After all, the current system provides for full and anonymous access to all registration details – but makes virtually no effort to ensure that those details are accurate. If the new system is to be an improvement, the higher bar to access information must yield more accurate data.

The users of the current Whois protocol, including intellectual property owners, have an interest in accessing accurate data – both for technical and legal reasons. It stands to reason that any new Whois model should support a system in which the accuracy of the data can be validated, and the Affirmation of Commitments between ICANN and the U.S. Department of Commerce requires ICANN to enforce its existing policy relating to Whois, including maintaining access to accurate and complete Whois data.

The report of the ICANN Security and Stability Advisory Committee on Domain Name Registration Data Validation (SSAC 058), focused on the validation of registration data. ARDS

incorporates the recommendations in SSAC 058 that to improve data quality, registrant data should be validated syntactically (i.e. for correct format) and operationally (i.e. checked for reachability). The Committee supports the elements of ARDS regarding data validation as outlined in SSAC 058 with respect to syntactic and operational validation. However, we note that while ARDS discusses “data elements” it lacks a detailed definition. The Committee generally supports the SSAC 051 regarding a common taxonomy for data elements, but more information is needed regarding the particulars in order to provide meaningful feedback.

Of central importance to the success of the proposal, ARDS recommends that validated data elements should be periodically re-validated. There is no indication as to the time period for these periodic updates. In the view of the Committee, regular validation and verification is required to ensure the quality of the data protected by this system.

Under the current Whois system, registrars are obligated, at minimum, to annually present to the registrant the current Whois information, and remind registrants that domain name registrations can be cancelled in circumstances where false Whois information is provided. An annual ‘reminder’ such as this does not seem to be sufficient and the Committee supports frequent and interactive updates.

Finally, we note that there is no information provided in the Initial Report as to who will bear the costs for a third party to provide validation services.

Further information regarding the proposed validation under the ARDS will need to be developed before the Committee can advocate a position regarding the validation aspect of the ARDS.

V. Conclusion

If the EWG is able to resolve the challenges surrounding the implementation of a tiered access structure that allows for timely access to accurate data, the benefits of a centralized Whois database are attractive. The Committee supports the continued efforts of the EWG to explore this model, and looks forward to reviewing a more fully developed version of the Initial Report as the EWG synthesizes public comments and as the proposed model evolves further.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Manager, Claudio DiGangi at: cdigangi@inta.org.

About INTA & the Internet Committee

The International Trademark Association (INTA) is a more than 135-year-old global organization with members in over 190 countries. One of INTA’s key 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 served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN’s Intellectual Property Constituency.

INTA's Internet Committee is a group of over two hundred 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.