Dear Commissioners:

The International Trademark Association (INTA) appreciates this opportunity to comment on the .nz WHOIS review. We thank the Commission for opening a fourth round of consultation on this important issue. INTA supports open, contactable, and accurate WHOIS data in order to access information vital to combating counterfeiting and fraud within the domain name system. INTA is especially concerned with WHOIS data as it relates to websites used for commercial purposes whether they are owned by corporate entities or individuals. The WHOIS directory is the primary method to identify individuals who may be behind any alleged infringement of intellectual property rights which ultimately cause harm to consumers.

INTA recognizes the countervailing concern for personal privacy and supports disclosure only when websites are engaged in commercial activity. INTA has carefully considered the Commission’s questions posed in “DNC Public Consultation: Options proposal for withholding registrant contact information in the .nz WHOIS”. Our responses are below.

1. Which of the two options proposed for withholding WHOIS information do you prefer and why?

INTA does not support either option as they only provide partial information to the public. Option 1 is limited to displaying the individual’s name and email address. Option 2 is limited to only displaying individual registrants’ name, email and geography e.g. city/region/country or just country. Neither is adequate to address the concerns of intellectual property owners who are fighting fraud and abuse against consumers.

2. If you prefer neither option, what other solution do you think would balance individual registrants’ WHOIS privacy with their accountabilities as .nz domain name holders?

INTA considers that it is very important that, for at least commercially-used domain names, all information currently required to be displayed (namely the registrant contact name,
registrant contact address, registrant city, registrant phone number and registrant contact email) should be accurately collected and continued to be displayed regardless of whether or not the registrant is an individual. This is because often a registrant will be an individual operating business, for example as a “sole trader” or through a commercial partnership, or for example where the domain is registered by an individual employee of a company in that employee’s name, rather than in the company name (this is very common in New Zealand).

Misuse of domain names and unauthorised use of trade marks on a web site continues to be a serious legal and commercial issue. Accordingly, the WHOIS system must provide sufficient information to enable rights owners to enforce their legal rights. Trademarks are often incorporated by rights owners into their domain names. However, infringing activities often involve the incorporation of a rights owners’ trade mark into a third party domain name. Accordingly, it is very important for rights owners to have a means to identify and locate infringers.

We note the DNC’s comment at page 7 of the fourth review consultation options proposal document that:

*Our challenge is to achieve a process that makes it easy for individuals to have their information withheld if they’re concerned about their online privacy, but which also preserves the integrity of the register and ensures, for example, that WHOIS data can be used to discover the operators behind domains behaving badly. (emphasis added)*

Automatically withholding certain information about registrants who declare themselves to be individuals is weighted too strongly in favour of gaming “privacy” and does not take into account commercial and legal issues including a rights owner’s ability to prevent trade mark infringement. Any process which prevents or delays the ability to obtain the full contact details of the registrant for a domain name will delay the ability of a rights owner to enforce their rights and/or seek a remedy, and will prolong the harm being caused by the infringement.

Accordingly, INTA considers that it is very important at least for commercially-used domain names, that all information currently required to be displayed should be accurately collected and continue to be displayed regardless of whether or not the registrant is an individual.

3. Under what circumstances, and to whom do you think it would be appropriate to release withheld WHOIS information?

We consider that withheld WHOIS information should be made available for the purpose of enforcing legal rights, including any infringement of intellectual property rights.

INTA considers that where an individual is not engaged in commercial activities via the domain, including, the advertisement, offering or provision of goods or services, the individual’s full information may not need to be disclosed. Accordingly, the registration regime ought to have a regime for the registrant to declare if they are, or intend, to use the domain for commercial or business purposes (i.e. the advertisement, offering or provision of goods or services), for example a declaration could be given by the registrant on initial registration of the domain and on each renewal along with an obligation to update if the position changes.
4. What process do you think would work best in releasing withheld WHOIS information?

A written request should be made outlining how the domain is attributed to infringement of the requester’s rights or otherwise causing harm to consumers. In the case of an unauthorised request of a registered trade mark as a domain, the domain registrant’s contact details should promptly be made available to allow the rights holder to enforce their rights without notice to the domain registrant.

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5. If an individual registrant has an issue with the release of their withheld WHOIS information, or does not respond to a notification, what should happen?

A registrant should provide a written explanation of why the release of their withheld WHOIS information would be detrimental to their safety, and ideally provide evidence of this (for example a protection order against the requester).

If a registrant does not respond within a reasonable time period, the information should be released.

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About INTA

INTA is a 137 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.
Thank you for considering our views on these important issues. 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,

Etienne Sanz de Acedo
Chief Executive Officer