



AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

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Comments of the American Intellectual Property Law Association regarding the GNSO Council vote in favor of the Formulation 1 definition of the purpose of the WHOIS service

The American Intellectual Property Law Association (AIPLA) wishes to express its serious concerns regarding the vote of the Generic Names Supporting Organization (GNSO) favoring a narrow definition of the purpose of the WHOIS service in the context of ICANN's mission and core values.

AIPLA's 16,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community comprising a wide and diverse spectrum of individuals involved in the practice of patent, trademark, copyright, trade secret and unfair competition law. AIPLA members represent both owners and users of intellectual property, including many large and small businesses that make commercial use of Internet websites or otherwise provide services over the Internet.

In 2003, ICANN appointed a Taskforce to report on the purpose of WHOIS and WHOIS contacts. When the Taskforce was unable to reach consensus on a single definition of WHOIS, public comments were solicited from stakeholders on two Formulations:

Formulation 1:

"The purpose of the gTLD Whois service is to provide information sufficient to contact a responsible party for a particular gTLD domain name who can resolve, or reliably pass on data to a party who can resolve, issues related to the configuration of the records associated with the domain name within a DNS nameserver."

Formulation 2:

"The purpose of the WHOIS service is to provide information sufficient to contact a responsible party or parties for a particular gTLD domain name who can resolve, or reliably pass on data to a party who can resolve, technical, legal or other issues related to the registration or use of a domain name."

Responses were received from a total of 38 individuals and organizations. Of those respondents, eight individuals favored Formulation 1, whereas 30 companies, organizations, and individuals favored Formulation 2. Those preferring Formulation 2 included organizations such as Sony Pictures Digital, eBay, Mars UK Limited, INTA, AIPLA, and AMMPI, as well as the Dutch, Serbian, and Austrian anti-piracy coalitions.

Notwithstanding the broad support for Formulation 2, on April 12, 2006, the GNSO voted in favor of Formulation 1 which, if ultimately adopted by ICANN, would render it exceedingly difficult for law enforcement, intellectual property owners, and financial institutions to access necessary contact information about domain name holders.

There are many reasons why the broader Formulation 2 definition of WHOIS is preferable:

1. A pattern of behavior that can lead to an inference of bad faith which, under the UDRP, can result in the transfer of a domain name from a bad faith registrant is frequently only provable through WHOIS;
2. Unchecked IP infringement undermines business viability and technical stability and could result in Internet fragmentation;
3. Accurate and available information is essential for law enforcement in crimes including spamming, denial of service attacks, identity theft and account fraud, hate literature, terrorism and child pornography;
4. The requirement to provide accurate contact and identity information acts as a deterrent to trademark infringement, copyright infringement, cybersquatting, phishing, typosquatting and other IP cyber infringements and facilitates enforcement of IP rights.

For these reasons, AIPLA respectfully requests that:

- the GNSO Council members from the Noncommercial Users Constituency, the Registrar Constituency, and the Registry Constituency reconsider their positions favoring a narrow definition of the purpose of WHOIS and adopt a definition meeting the needs of all Internet users;
- the Government Advisory Committee, in recognition of the adverse impact that a narrow definition of the purpose of WHOIS would have on the viability and technical stability of the Internet, urge the GNSO to adopt a definition meeting the needs of all Internet users; and,
- the ICANN Board closely monitor the policy development process and bear in mind the importance of preserving the existing requirements to make up-to-date and accurate WHOIS information available to all who have a legitimate need to obtain such information.