



**International Trademark Association**  
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*Via Electronic Mail*

June 27, 2007

**Comments of the Whois Subcommittee  
of the International Trademark Association  
on  
Telnic Ltd.'s Proposal to Amend the Terms in the .TEL Registry Agreement  
Concerning the Public Display of Whois Information**

**About INTA and the Whois Subcommittee**

The International Trademark Association (INTA) is a 129-year-old global organization with members in 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 also served as the leading voice of trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency. INTA's Whois Subcommittee is a group of over twenty trademark attorneys and professionals charged with monitoring adoption or modification of Whois policies in new and existing TLDs and advocating for adequate access to domain ownership information.

INTA has a particular interest in policy relating to the Whois database, because the information contained in the Whois database assists trademark owners and authorities in policing abuses of intellectual property and preventing consumer confusion and consumer fraud. Moreover, the information in Whois also allows Internet users and consumers from all walks of life to identify the owners of web sites selling goods or disseminating information over the World Wide Web.

**Consumer and brand protection**

The expansion of the Internet has created a single global community in which users operate in a largely anonymous commercial market. The protection afforded to all legitimate users, including consumers, through the Whois system is critical in promoting the reliability, stability and security of the Internet. By collecting data into an open, transparent and accessible database, Whois promotes accountability in Internet-based transactions. Furthermore, it also allows law enforcement agencies and intellectual property right owners to respond to criminal activity such as 'phishing', child pornography, counterfeiting, cybersquatting and identity theft.

The Whois system balances the competing needs of a publicly accessible database with the individuals' right of privacy. Moves to restrict the accessibility of the information ought to be limited and used sparingly. Public availability of domain ownership information can deter bad faith, illegal or criminal activity. Unfortunately, inaccessibility of domain ownership information can impede access to legal redress through national law or ICANN's Uniform Domain Name Dispute Resolution Policy (the "UDRP") for those who have been wronged,

and shield illegal activity and consumer fraud. The data obtainable from Whois is instrumental in allowing such challenges and ensuring that the Internet is free from deceptive practices that may undermine its reputation.

### **Resolution of conflicts with national law**

In the event that the policy of publishing the personal details of domain name holders under the Whois system comes into conflict with national privacy laws, ICANN has adopted a procedure for resolving such conflicts.<sup>1</sup> ICANN's procedure exists to ensure uniformity throughout the Whois regime by addressing any such conflicts on a consistent basis. The procedure involves a six-step consultation process, with the aim of resolving the conflict whilst still allowing the registry/registrar to comply with its contractual Whois obligations. The proposed .TEL regime completely avoids this procedure, providing minimal data disclosure requirements. If ICANN were to endorse this regime it would not only undermine its procedure on conflict, but also the very uniformity the procedure seeks to create.

Furthermore, in side-stepping its conflict procedure ICANN would create a precedent for future avoidance of data disclosure and blanket waiver from its Whois regime. The .Tel regime is not sufficiently different from the existing TLD's to justify such special treatment by ICANN. A more prudent course of action, particularly in this period of consultation over the future of the Whois regime, would be to review each conflict with national law as it arises, in the context of ICANN's adopted procedure, granting waivers only where absolutely necessary. In most cases conflicts with national law can be avoided by obtaining the registrant's consent to the disclosure of personal data in its contract with the registrar.

### **Problems with restrictive disclosure regimes**

Law enforcement agencies and trademark owners already face an uphill struggle in protecting consumers and their trademark rights online. Registries operating a 'thin' Whois database and the registration of incomplete or inaccurate details shroud many illegitimate Internet uses in anonymity. This delays the redress of illegal activity or intellectual property infringement, creating a need for costly and time-consuming litigation in the national courts. (For example, in the UK, under section 35 Data Protection Act 1998, an Internet service provider can be compelled to disclose a registrant's personal data if it is necessary to legal proceedings.) Such forced litigation is an expensive means of enforcing the legitimate commercial interests of Internet users and will only serve to devalue such intellectual property rights and, by delaying the resolution of conflicts, detrimentally expose consumers to brand confusion and illegal activities.

### **Conclusion**

In short, the Subcommittee urges ICANN to reject Telnic Ltd.'s proposal to amend the terms in the .tel registry agreement concerning the public display of Whois information. Telnic should be required to proceed pursuant to ICANN's adopted procedure for resolving such conflicts, *if* the kind of "investigation, litigation, regulatory proceeding or other government or civil action" arises that would properly implicate that procedure.

Thank you for the opportunity to provide these comments. If there are any questions concerning this submission, please contact Claudio DiGangi at [cdigangi@inta.org](mailto:cdigangi@inta.org).

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<sup>1</sup> <http://www.icann.org/minutes/minutes-10may06.htm>