



**Comments by InterContinental Hotels Group  
on the  
ICANN WHOIS Review Team Discussion Paper  
July 22, 2011**

InterContinental Hotels Group (IHG) gratefully welcomes the opportunity to submit its comments to ICANN's WHOIS Review Team (WHOIS RT) IHG represents 4,150 hotels across nearly 100 countries, which operate under seven hotel brand names. Our group's members account for over 160 million hotel stays in over 620,000 rooms annually. Internet commerce is a vital part of nearly every industry today, we believe it is critical to maintain an active role in policy dialogue going forward that affects our brands as well as the business community as a whole.

The WHOIS database is an important tool that helps to combat exploitation by malicious registrants who seek to capitalize on trademarks of well-known and trusted organizations. For years, individuals and others have intentionally registered domain names that are confusingly similar to those of well-known brands to ensnare Internet consumers in illegitimate operations, including those related to pornography, deception and spam. This issue of cybersquatting has been persistent and continues to evolve in complexity and sophistication, while the means to combat it has remained relatively static. It is imperative that open access to accurate WHOIS data is maintained and reinforced – if not increased -- to develop additional brand protection measures as well as promote trust and accountability on the Internet.

The overarching implications of inaccuracies within WHOIS data are relative to the dispute resolution process, which becomes challenged by any inability to reach parties with complaints of potential contractual breaches and illegal activity. This compromises the integrity of the entire contemporary registration infrastructure as well as trust in the Internet itself. It is imperative going forward that measures be taken to ensure the legitimate access to accurate and reliable WHOIS data so that the Internet will remain a stable and reliable portal for both businesses and consumers.

Please find below responses to those questions put forth by the WHOIS RT that impact IHG most directly, respectfully submitted for your consideration.

## 1. What measures should ICANN take to clarify its existing WHOIS policy?

- ICANN should carry through on its commitment to provide open access to reliably accurate registrant information, as this information is essential to maintain the integrity of the Internet itself. The proliferation of false WHOIS data undermines ICANN's legitimacy and allows cybersquatters and others to increase their misleading and damaging activities online. In particular, ICANN should require that registrars actually confirm the WHOIS data provided by registrants and not merely allow registrars to blindly accept any data provided by registrants with a meaningless and unenforceable reminder to registrants that accuracy is required.

## 2. How should ICANN clarify the status of the high level principles set out in the Affirmation of Commitments and the GAC Principles on WHOIS?

- IHG appreciates ICANN's commitment to a policy process developed from the bottom up. In this instance, brand holders have led the community in interactions with WHOIS data for its intended purpose. WHOIS policy is the embodiment of ICANN's commitment to accountability and should be strengthened and enforced going forward. In particular, ICANN should ensure that registrars, who accept WHOIS data from registrants, accept liability for false WHOIS data.

## 4. How can ICANN balance the privacy concerns of some registrants with its commitment to having accurate and complete WHOIS data publicly accessible without restriction?

- It is imperative to the Internet community that there is reliable access route to domain registrants for a number of reasons (not limited to those below):

- Individual consumers, interacting with any domain, with apprehensions about the safety and privacy of their own information have a right to contact domain name administrators with questions and concerns.
- Complete and accurate WHOIS data also provides a level of consumer confidence when conducting business online. Having a failsafe avenue to contact administrators should all other extensions fail, could increase individual propensity to partake in online activity and transactions.
- Trademark owners with legitimate claims of infringing registrations have a right to contact the accused registrant directly. This could help reduce the time consuming, and costly dispute resolution process via direct negotiation.
- Open and immediate access to information has been a welcomed asset for law enforcement officials – particularly in pursuit of online fraud activities. Any barriers to open information would trigger timely due-process requirements before officials could obtain information and stall fraud prevention measures. This could decrease overall user confidence in the safety of the internet.

Current restrictions on bulk queries of WHOIS data reasonably protects registrants from massive spamming activities, and helps ensure that the data will be used for legitimate purposes.

5. How should ICANN address concerns about the use of privacy/proxy services and their impact on the accuracy and availability of the WHOIS data?

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- In IHG's experience, privacy services have frequently frustrated our ability to protect our hotel brands online, which, unfortunately, often leads to confusion and other problems among consumers. See, e.g., *Six Continents Hotels Inc. v. Registrant [721393]: St Kitts Registry*, WIPO Case No. D2007-0758 (identifying the original registrant as "Registrant [6999]: Whois Data Shield").

Proxy services have become a widely used tool for registrants hoping to avoid making sensitive information available to the public. It is not the position of IHG to halt these services in their entirety; so long as proxy administrators maintain *accurate* information of the individuals who contract their services. In the case of a legitimate concern/dispute there need be an appropriate, workable and timely process to obtain access to this information for reasons including those mentioned above.

IHG looks forward to the findings of the recently appropriated studies by ICANN with regard to WHOIS data. Particularly the examination of proxy services and how/often they are used by "bad actors" will be telling and influential in moving forward on this issue.

6. How effective are ICANN's current WHOIS related compliance activities?

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- It is the concern of IHG that particular registrars intentionally disregard, and/or make little effort to comply with, WHOIS requirements. For example, in one UDRP complaint, IHG named as the Respondent an entity identified in the WHOIS database as "Sdf fdgg" – an obviously fictitious (and fraudulent) name that was fabricated merely to frustrate IHG's ability to enforce its rights. *Six Continents Hotels, Inc. v. Sdf fdgg*, WIPO Case No. D2004-0384.

This both attracts and further encourages malicious registrants to engage in infringement, much to the benefit of those particular registrars. This also sharply undermines the efforts of ICANN to maintain open access to information on the internet. Without stringent consequences relative to WHOIS non-compliance for registries and registrants alike, inaccuracy and unreliability will continue to pervade the WHOIS database.

8. What should ICANN do to ensure its WHOIS commitments are effectively enforced?

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- Compliance with WHOIS data reporting should continue to be compulsory and included in the Registrar Accreditation Agreement (RAA). Noncompliance should be met with a stern enforcement mechanism, including severe monetary fines. Additionally, registrants who

intentionally submit false, faulty or no information should have all registrations associated with their account suspended until WHOIS data meets the full reporting requirements. The most severe repercussions should be reserved for those registrar organizations who intentionally disregard WHOIS policy, and profit as a result of consistent illegal and unethical registrations of individuals registering with them.

Currently, with no disincentive to non-compliance with WHOIS registration requirements, registry services have little motivation to publish registrant information that could be accessed by competing registry services. This could potentially lead to the hoarding of mass amounts of registrant information by registrars to prevent rivals from obtaining a competitive advantage. If WHOIS reporting requirements are fully enforced, some mechanism would have to be implemented in order to prevent this scenario, and quell registry aversion to publishing their client information.

9. Does ICANN need any additional power and/or resources to effectively enforce its existing WHOIS commitments?

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- This compliance task is monumental, it is easily recognizable that additional compliance staff and budget will be needed should ICANN seriously re-commit to its goal of having complete and accurate WHOIS data. IHG agrees with the Intellectual Property Constituency that ICANN should devote one-third of the surplus generated by revenue from new gTLD applications (the increase in ICANN assets, in budgetary terms) to contract compliance activities.

10. How can ICANN improve the accuracy of WHOIS data?

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- Potentially shifting some or all of the responsibility of maintaining up-to-date and accurate data onto the individual registrant could make WHOIS data more dependable. Registrars have little ability to confirm that information provided by registrants is reliable, resultantly it is problematic to charge those groups with ensuring data completion and accuracy.

The implementation of a compulsory method of data authentication in the RAA would provide registries with the ability to comply with WHOIS reporting requirements.

13. What are the consequences or impacts of non-compliance with WHOIS policy?

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- Continued non-compliance with WHOIS policy will further detract from the reliability of data, more greatly encumber brand holders with protectionist activities, and detract from overall user confidence in ICANN as well as the Internet itself.

Further, in light of ICANN's commitment to proceed with a vast expansion of the gTLD system, IHG agrees with the Intellectual Property Constituency that WHOIS compliance should be made a top priority and that policies should be developed to include accountability and concrete enforcement measures prior to the award of any new gTLD contracts.

14. Are there any other relevant issues that the review team should be aware of? Please provide details.

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- The natural reflex of the business community to shield their brands and prospective customers from cybersquatters' underhanded operations has resulted in businesses individually engaging in defensive registrations numbering in the thousands. During times of capital constriction these portfolios are becoming increasingly cumbersome and are further detracting from funds to engage cybersquatters via the dispute resolution process. Additionally, attempts to scale back defensive registrations is met by increased instances of cybersquatting. Accordingly, the numerous problems associated with inaccurate WHOIS data – which have been well-known for many years (and subject to unhelpful studies by ICANN and others) – is a greater problem today than at any time in the past.

Respectfully Submitted,

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