

**Comments of the INTA Internet Committee
on the Proposed .Com Registry Agreement Renewal
April 26, 2012**

I. Introduction

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 March 27, 2012, Discussion Draft of the .Com Registry Agreement Renewal (.Com Registry Renewal).¹

We appreciate the work accomplished on the .Com Registry Renewal contract. The Committee recognizes that the issues concerning the .Com Registry Renewal are quite complex and involve balancing the interests of many different groups, including those of registrars, the .Com Registry, domain name registrants, intellectual property owners, law enforcement and other consumers of the domain name system.

In reviewing the proposed .Com Registry Renewal in its current form, we urge ICANN to revise the contract to require compliance with the main trademark and consumer protection mechanisms ICANN has designated as sufficient and essential for implementation across all new gTLDs. Including these new protections will further the goal of protecting users and registrants, and will bring the largest gTLD registry into alignment with the important obligations of the new gTLD registry operators.

The Committee also proposes a revision of the .Com Registry Renewal to provide for a firm commitment to, and timeline for, a measured transition of the .Com Registry to a Thick Whois data model. The need for a Thick Whois model across all registries has long been identified as a critical issue and is recognized as such by the recent approval of a Policy Development Process (PDP) on this topic. Attacking any technical obstacles to a transition to Thick Whois may take some time, but should not be the basis for refusing to commit to implement Thick Whois in a timely manner.

¹ <http://www.icann.org/en/news/announcements/announcement-27mar12-en.htm>

Finally, the adoption of a replacement Whois protocol upon approval by ICANN should be required in the .Com Registry Renewal. The Internet Committee generally supports the proposed roadmap recently published by ICANN and available at: <http://www.icann.org/en/news/public-comment/sac-051-draft-roadmap/18feb12.en.htm>), and reserves the right to comment on proposals for modifying the Whois protocol as these proposals evolve.

II. Background

ICANN and VeriSign contend that their proposed amendments to the .Com Registry Agreement (from 2006) further the following goals:

- To assure consistency across registries with respect to certain standard terms and provisions (e.g., clarifications to the assignment and subcontracting provision and the introduction of indemnification obligations);
- To update the agreement to reflect changes that have occurred since the current .com Registry Agreement was signed (e.g., updating references to RFCs, and other technical changes);
- To allow the registry operator to better serve the Internet community and protect consumers (e.g., more quickly address certain imminent threats to the security and stability of the TLD or the Internet, and implement two new provisions regarding abusive behavior: (i) an abuse point of contact, and (ii) a requirement to remove orphan glue records); and
- To align the .com registry agreement with the recently executed .net registry agreement (e.g., adopt the same service levels that are currently contained in the .net registry agreement).

For the reasons discussed below, while we support the overall goals of harmonization with current practices and other registry agreements that these aims suggest, we believe that ICANN can, and should, go further in requiring that the .Com registry harmonize its contract, and its rights protection mechanisms with those of other existing and new gTLDs.

III. Discussion

Rights Protection Mechanisms (RPMs)

The .Com Registry Renewal should require the registry operator to implement the applicable Rights Protection Mechanisms (RPMs) developed for new gTLDs, especially the Uniform Rapid Suspension (URS) system. The URS has been proposed as an efficient mechanism for expediting resolution of clear-cut cases of abusive registrations that is necessary to protect intellectual property and users, and its inclusion would bring the practices of the .Com Registry into alignment with those identified as necessary for new gTLD operators. The .Com Registry Renewal should specify a deadline by which these obligations are required to be implemented for the .Com Registry by matching the effective date of the URS in other gTLD registries so as to make the policies governing the .Com Registry consistent with those of the new gTLDs. This date should provide a sufficient transition period for the registry operator to put the necessary procedures into place yet keep pace with the URS implementation in the new gTLDs. This will serve to level the field among the legacy .Com Registry and the new gTLD registries and offer the same consumer and IP protections required in the new registries.

The current draft of the .Com Registry Renewal omits the RPMs, claiming a need to be cautious on the basis that these mechanisms are untested and there is uncertainty surrounding their implementation in the existing .Com registry. This reasoning is inconsistent with ICANN's repeated assertion that the RPMs do not require "testing" prior to implementation across potentially hundreds or thousands of new registries, and that the RPMs are adequately designed and essential to protecting trademarks and consumers to allow for the broadest proposed expansion of the Domain Name System (DNS) in the Internet's history. If the URS has been designed to protect consumers across *all* new gTLDs, ICANN should have enough confidence to implement the mechanism in an existing gTLD.² Moreover, the newly-proposed RPMs are far more likely to succeed with consistent implementation across all registries. Bringing the largest registry squarely into the fold of the RPMs will help to ensure their smooth development and consistent application. This seems to be a far more desirable approach than allowing the procedures to be applied unevenly across the DNS and developed and executed on the fringes.

² To the extent ICANN is concerned with the scale of implementing the URS in the .Com registry as compared with new gTLDs, ICANN's statements and projections about the purportedly robust demand for new gTLDs belie that implicit assertion.

B. Thick Whois Model. As a guiding principal, INTA supports open access to accurate and complete ownership information for every domain name in every top-level domain registry. Therefore, the Committee believes the .Com Registry Renewal should, simply stated, include a requirement for transition of the .Com Registry to a Thick Whois model. There are many reasons for supporting a transition to a Thick Whois, such as:

- i. A Thick Whois facilitates the resolution of disputes related to the registration and use of domain names.
- ii. Simplifying access to domain name registration data through a Thick Whois will help prevent abuses of intellectual property, and will protect the public in many ways, including by reducing the level of consumer confusion and consumer fraud in the Internet marketplace.
- iii. A Thick Whois enables quicker response and resolution when domain names are used for illegal, fraudulent or malicious purposes, by both law enforcement and other stakeholders.
- iv. In contrast to a Thick Whois, a Thin Whois means all contact data associated with a particular domain name registration is decentralized and held by the registrar sponsoring that registration. This leaves public access to this data vulnerable to registrar technical failure, insolvency, or simply non-compliance with its contractual obligations regarding Whois data.
- v. The increasing internationalization of the gTLD registrant pool (through IDNs) places difficult challenges on the Whois system about how registration data should be collected and displayed, especially when data is provided by registrants whose primary languages use a script that does not employ Latin characters. Those challenges are currently under study; but however they are resolved, the outcome will almost certainly be better if Whois data is in a Thick Whois format that is centralized at the registry level, rather than being held by hundreds or thousands of registrars, who may apply data collection or display standards inconsistently, and who will face little if any realistic prospect of enforcement of requirements on them to follow a uniform approach.

- vi. More user-friendly consumer and public access to registration information by avoiding the need to find and search Whois databases across hundreds of registries.

As of the date of this Comment, the initiation of the policy development work on a Thick Whois model has been postponed. The Committee urges that, as part of the .Com Registry Renewal process, a clear and definite commitment for transition to a Thick Whois model be determined and established as a high priority, so this registry is brought into alignment with the Whois data model provided by nearly every other gTLD registry.

The Committee recommends that the .Com Registry Renewal include a specific requirement for adoption of a Thick Whois model within a specified period of time following its approval by ICANN. A delay of no more than six months from execution of the renewal would serve as a reasonable target time frame. By including a firm commitment and time line for implementing a Thick Whois data model in the .Com Registry Renewal, a transition to Thick Whois need not wait until the next renewal of the .Com registry agreement in November 2018. The Committee does not believe the .Com registry should be exempt from maintaining a full range of Whois data and making that data available to the public, especially since the more robust Whois format is widely used by virtually all existing and new gTLD registries.

C. Replacement Whois Protocol. The .Com Registry Renewal includes a provision for replacement of the Whois protocol. As mentioned above, the Committee generally supports the proposed road map recently published by ICANN. The .Com Registry Renewal should require the adoption of a new Whois protocol by the .Com registry within a specified time (e.g. 135 days as now found in Appendix 5 to the .Com Registry Renewal) following any approval thereof by ICANN. The specified time should provide the .Com Registry with sufficient time to implement a new Whois protocol. There should be no further exceptions to this requirement. Therefore, the Committee recommends that the phrase “and 2) its implementation is commercially reasonable in the context of the overall operation of the registry” be deleted from Appendix 5 of the .Com Registry Renewal.

IV. Conclusion

The INTA Internet Committee supports the effort to improve the .Com Registry Agreement between ICANN and Verisign. We strongly support: (i) inclusion of a provision for compliance with the heavily negotiated Rights Protection Mechanisms (RPMs) developed for new gTLDs, and in particular the Uniform Rapid Suspension (URS) System; (ii) a specific path and timeline for the .Com Registry to adopt and transition to Thick Whois, without a need to wait for the next renewal of the .Com Registry Agreement; and (iii) a specific pathway for the .Com Registry to adopt a replacement Whois protocol that meets the needs of the public, including trademark owners, if and when approved by ICANN.

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

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About INTA & the Internet Committee

The International Trademark Association (INTA) is a more than 131-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 (IPC).

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.