



**INTA Internet Committee Comments on:
Draft Report Concerning the Study of the Accuracy of
Whois Registrant Contact Information
April 15, 2010**

The Internet Committee of the International Trademark Association (“INTA”), through its Domain Disputes and Whois Subcommittee, has reviewed the Draft Report (the “Report”) Concerning the Study of the Accuracy of Whois Registrant Contract Information conducted by NORC (the “Study”) and is pleased to provide the following comments.

Overall, we enthusiastically endorse the Study and its conclusions. The unavailability of reliable Whois data causes significant concerns for brand owners who need reliable and accurate domain name ownership and contact information to enforce their rights. The Report is an important step in identifying the shortcomings of the current regime for obtaining and maintaining accurate registrant contact information.

Given the significant and beneficial implications of the Report on Whois policy, we would like to offer a few suggestions to: (1) strengthen the report’s conclusions, and (2) provide follow up actions that can expand upon the beneficial data already presented in the Study.

Scope of the Study – Exclusive Focus on Postal Addresses to the Exclusion of E-mail and Phone Information

In order to get a baseline measurement of the proportion of Whois records that contain accurate information, the Study focused on three criteria: (1) whether the listed postal address is a valid mailing address; (2) whether the registrant is associated with that address; and (3) whether the registrant, when contacted, would confirm that he/she is the actual registrant and that all the details given are correct and current.

It is important to recognize that the Study only examined the validity of the registrant’s address but did not examine the accuracy of other contact information, such as telephone and email address. We commend NORC on a credible and useful examination of postal information, which, to our knowledge, has not heretofore been conducted. However, when attempting to contact a domain owner about infringing content, most trademark owners first attempt to initiate contact via email. If this fails, the trademark owner resorts to the physical address. If neither of these approaches is successful, trademark owners may employ the listed telephone number as a means of contacting the registrant. Thus, the accuracy of Whois data other than the mailing address is critical to the issues being studied as well. We presume that NORC may have felt that the cost or mechanics of verifying these other forms of contact information was too burdensome, although it would seem that an examination of e-mail address accuracy could be conducted cost-efficiently. Or perhaps this is simply the ramification of the decision to limit the scope of the study “to the quality of the information provided about the registrant (as opposed to the administrative or technical contact), since it is the registrant who has entered into a legal arrangement with the registrar for the domain name,” and given that the phone number and e-mail address are not mandatory fields for the registrant contact. In order to avoid speculation

and questions regarding the Study's scope, we suggest that ICANN include in the Report its reasoning for limiting the Study to physical addresses.

Survey Sample Design – Geographic Limitations and Correlation between Whois Inaccuracy and Questionable Conduct

The Study employed a representative sample of 1,419 records from the .com, .net, .org, .info and .biz gTLDs. The countries of the sampled registrants were limited to 16 countries for cost control purposes.

Although we understand the cost rationale for limiting the countries involved in the Study, we wonder whether the exclusion of certain countries might have affected the results. Further, while we recognize the value of data obtained from a random sample, it also would be interesting to compare this baseline data against the Whois accuracy rate for sites known to contain infringing or illegal conduct (which we suspect is significantly lower). As a future action, ICANN may wish to examine the websites of the registrants it identified as substantial failures or full failures, and compare the instances of questionable conduct to those websites where registrant information contained no or limited failures. ICANN may also wish to: (i) investigate the percentage of domain names in UDRP or ACPA proceedings that involve false Whois information; and (ii) examine the names of registrants with substantial or full failure to determine if any have been determined through adjudication to have engaged in cybersquatting.

Conduct of the Study – Use of Telephone Information

To verify each registrant's address, NORC employed postal records, phone listings and other records and attempted contact using phone numbers obtained during the process.

While the Report clearly states that phone numbers provided in the Whois listing were not used for contact purposes, as noted above, there is no rationale provided for this approach. In addition, while the Report provides some insight into the number of calls made, it would be useful to include information on how often calls were made to a single registrant (once a day, twice a day, and so forth), whether calls were consistently made at the same time(s) each day, whether calls were made on weekdays, on weekends or both, and how long efforts continued to reach a registrant (one day, two consecutive days, only within a particular week, over a two week period, and so forth).

Coding of Results – Distinguish between Proxy and Other “No Failure” Listings

Where the registrant's name was believed to be a privacy or proxy service, NORC attempted to contact the service provider. If the service provider confirmed that it offers a privacy/proxy service, the address was considered valid.

Although the Study confirmed the use of a privacy or proxy service, such services, depending on their policies and compliance with registration agreement provisions imposed under RAA 3.7.7.3, may hinder the ability to reach a registrant just as much as a false address. Therefore, the Study should have broken out the number of such Whois listings, rather than including them in the “no failure” category.

Other Barriers to Accuracy

The Study found that the following factors, other than intentional concealment, might be

contributing to the lack of accuracy in registrant information:

- Privacy concerns
- Confusion about required information
- Carelessness
- No adverse consequences for noncompliance
- No requirement for proof of identity or address

We suggest that the Report also note that, even though registrants may not intentionally be abusing the process, inaccuracies in Whois information caused by other factors can still result in frustration for those who are unable to locate the individuals behind the websites that are infringing their rights.

Costs of Ensuring Accuracy

The Report concludes that although many registrants are not disclosing their full or real identity, there is a cost to obtaining accuracy, which would be passed through to all registrants.

We suggest that a more detailed analysis of the perceived costs could be beneficial. For example, what are the anticipated costs? How much would each registrant incur? Are there any solutions that would be cost-free after the initial investment? It may be the case that, if examined, the cost to each individual registrant would not be great, which would lend greater force to the Report's conclusion. For example, the Report notes, "The process of combining WHOIS information from many different registrars and servers for the current process highlighted the near impossibility of a cost efficient centralized checking process, since different registrars used different fields in different ways, and mapping everyone successfully into a consistent set of fields ultimately required a large degree of manual work. A centralized database would, by virtue of being a larger data repository, make pattern based checking... more powerful." This observation suggests that requiring a "thick" Whois system, through the mere fact of standardizing data fields and labels across registrars, could greatly facilitate data verification, with (judging by the price of domains in registries currently using thick Whois) very little additional cost.

Further, registrars should bear more accountability for the inaccurate data of their registrants. The registrars that enter into agreements with registrants are in a unique position to enforce their agreements. If registrars recognize the need for accurate Whois information, they should be proactive in ensuring that they are collecting and maintaining it.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA External Relations Manager, Claudio Digangi at: cdigangi@inta.org

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.