

Comments of the International Anti-Counterfeiting Coalition (IACC) on the “WHOIS Policy Review Team Draft Report” (Draft Report)

The IACC welcomes the opportunity to comment on the Draft Report. The IACC is especially pleased to see the recognition given by this cross-constituency review team to many of the concerns previously posted by the IACC. While the IACC makes some specific additional suggestions below, it supports the conclusions and applauds ICANN for taking these (albeit belated) steps to address deficiencies in the WHOIS system.

Despite weaknesses in the accuracy and access to WHOIS data, and failures by ICANN as enumerated in the Draft Report, WHOIS data is routinely relied upon by countless Internet users. Any suggestion that the purposes of the WHOIS database are limited to its initial functions of technical stability and interoperability ignores the much more widespread use of WHOIS by Internet users generally to advance the goals of transparency and accountability in Internet commerce. It is these broader purposes related to consumer trust and confidence which must be borne in mind as ICANN continues its evaluation of WHOIS and of its own compliance efforts in relation to WHOIS.

These uses of WHOIS also underscore the use of WHOIS data for intellectual property enforcement purposes, including: (1) identification of cyber squatters and others who infringe trademarks online; and (2) investigation of those engaged in online fraud including piracy, product counterfeiting and phishing.

To the extent that the WHOIS protocol has, through inadequate compliance, ineffective articulation of policy and insufficient contractual provisions, been undermined by inaccurate, incomplete and outdated registry data, we applaud the efforts of the WHOIS Review Team and, subject to added comments below, broadly endorse the Review Team's conclusions.

No. 1: “The ICANN Board should oversee the creation of a single WHOIS policy document.”

The IACC supports publication of a single WHOIS policy, made clearly visible and accessible, not just to ICANN stakeholders but to the wider Internet community, the IACC applauds this development and looks forward to working with ICANN in the articulation and publication of a meaningful WHOIS policy which will insure the integrity of the DNS and improve the overall online experience of Internet users more generally.

No. 6: “ICANN shall produce and publish an accuracy report focused on measured reduction in “unreachable WHOIS registrations”, on an annual basis.”

The IACC proposes that this annual reporting include specific data identifying accuracy findings by registry and registrar. The IACC believes such transparency in reporting will encourage greater compliance and expedite achievement of the WHOIS Review Team’s goal of an overall reduction in the amount of data inaccuracy.

No. 9: “ICANN should ensure that the requirements for accurate WHOIS data are widely and pro-actively communicated to current and prospective Registrants. As part of this effort, ICANN should ensure that its Registrant Rights and Responsibilities document is pro-actively and prominently circulated to all new and renewing registrants.”

The IACC also proposes that all registrar procedures for domain name registration include a specific, standard disclosure that advises applicants of the need for accurate WHOIS information and the penalties for providing inaccurate or incomplete information.

No. 10: “ICANN should develop and manage a system of clear, consistent and enforceable requirements for all privacy services consistent with national laws. This should strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum this would include privacy, law enforcement and the industry around law enforcement.”

The IACC enthusiastically supports development of a consistent and well-defined policy that sets forth the requirements for privacy and proxy services clearly and concisely. WHOIS data should provide – at the very least – adequate contact information in connection with privacy and proxy services as well as reasonable and consistent “relay and reveal” timelines with adequate means of enforcement for non-compliance.

The IACC believes that these factors are essential to providing brand owners and law enforcement with the tools needed to enforce national and local laws against those abusing privacy and proxy services. In addition, we encourage ICANN to establish a single point of contact (whether one individual or, more appropriately, a small, coordinated group of individuals) to facilitate enforcement and ameliorate the frustrations that brand owners currently experience in their enforcement efforts.

No. 15: “ICANN should encourage and incentivize registrars to interact with the retail service providers that adopt the best practices.”

The IACC supports development, publication and enforcement of best practice guidelines for privacy and proxy services. As the Internet evolves over time and use increases dramatically, it is essential that guidelines for WHOIS data be established so that there is consistency in the information provided by privacy and proxy services, as well as notice of enforcement expectations and penalties, should they fall short of these requirements.

In summary, for all the reasons discussed in this comment, the IACC supports the recommendations of the WHOIS Policy Review Team. We appreciate the efforts of the WHOIS Policy Review Team and ICANN in furtherance of improvements to an evolving WHOIS system. Thank you for considering our views on these important issues.

The IACC is the world’s oldest and largest organization representing exclusively the interests of companies concerned with trademark counterfeiting and copyright piracy. Our members consist of over 200 corporations, trade associations, and professional firms, and represent total annual revenues of approximately \$750 billion. Our brand and copyright owner members represent a broad cross-section of industries, and include many of the world’s best known companies in the apparel, automotive, consumer goods, entertainment, pharmaceutical, and other product sectors. The IACC is committed to working with government and industry partners in the United States and elsewhere, to strengthen IP protection by encouraging improvements in the law and the allocation of greater political priority and resources, as well as by raising awareness regarding the enormous—and growing—harm caused by IP violations.