

THE ACCURACY AND INTEGRITY OF THE WHOIS DATABASE

HEARING BEFORE THE SUBCOMMITTEE ON COURTS, THE
INTERNET,
AND INTELLECTUAL PROPERTY

OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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Thursday, May 16, 2002

I. Introduction

Thank you, Mr. Chairman and members of the subcommittee for this opportunity to offer my industry perspective on the accuracy and access to Whois data and its impact on those parties that rely upon it.

My name is Michael D. Palage, and I am actively involved in domain name policy issues based upon the following roles in which I currently serve:

- chair of the ICANN Registrar Constituency;
- trademark and policy consultant to Afilias, the registry operator for the .info top-level domain;
- World Intellectual Property Organization (WIPO) Uniform Dispute Resolution Policy (UDRP) panelist; and
- founding member of the .us Policy Council.

I believe these multiple perspectives allow me to give an objective view regarding problems with the accuracy and access of Whois data and a meaningful framework toward improvement and reform.

II. Summary

Whois is an important resource; it is relied on by individuals, trademark attorneys, copyright owners, law enforcement, and other governmental agencies, such as the FTC and their global counterparts. It is a critical resource. However, as important as the Whois is, the present approach to ensuring accuracy and access to the Whois databases has proven ineffective.

In my written testimony I will describe to you the following:

- problems associated with false and inaccurate Whois data;
- the cause of false and inaccurate data, including both willful and unintentional acts of registrants;
- difficulties in correcting false and inaccurate data once it is identified;
- an overview of the structural differences between registries, and how this impacts the accuracy of Whois data; and
- registration authority issues regarding Whois data initiatives.

III. Symptoms of False and Inaccurate Whois Data.

The effects of false and inaccurate Whois data have been well documented, but it is important to reiterate and highlight these effects so that they provide a framework for discussion. The following is not intended to be an exhaustive list:

- the inability of law enforcement to timely investigate and prosecute illegal activity;

- the ability of cybersquatters to frustrate intellectual property owners in their efforts to police and enforce their intellectual property rights online;
- domain name owners that are unable to timely and properly renew their existing domain name registrations because of outdated and inaccurate information thus resulting in the unintended deletion of their domain names; and
- interfering with competitive transfers of domain name between registrars.

IV. Identifying the Cause of False and Inaccurate Whois Data

False and inaccurate Whois data falls into one of either two categories: (A) willful or (B) unintentional.

A. Willful Submission of Inaccurate Whois Data

The first and most egregious category is domain name registrants that knowingly and willfully provide inaccurate Whois data. This conduct is most often associated with individuals, businesses or organizations involved in illegal activities such as cybersquatting and piracy.

This category of offenders is most problematic because the willful submission of Whois data prevents law enforcement and intellectual property owners from taking appropriate and timely action against domain name registrants engaged in illegal activity.

Included as attachment #1 is some research that is currently being conducted by Mr. Ben Edleman, a senior at Harvard University where he studies economics and statistics. Mr. Edleman is also a technology analyst for the Berkman Center for Internet & Society at Harvard Law School. The topic of his research paper is Large Scale Intentional Invalid Whois Data. In his paper, Mr. Edleman focuses on the various techniques used by one specific domain name registrant to keep its identity secret. The domain name registrant that is the subject of Mr. Edleman's case study is operating under the aliases of NICGod Productions and Domains for Sale.

This particular registrant has been the subject of numerous UDRP proceedings and was the individual involved in the domain name dispute with the Organization for Economic Co-operation and Development (OECD).

B. Unintentional/Unavoidable Inaccurate or Outdated Whois Data

The second category of domain name registrants associated with inaccurate Whois data is registrants that initially provided accurate data that over time has become inaccurate. These domain name registrants can usually be tracked down with minimal effort, thus not possessing a significant threat to anyone but himself or herself. The greater harm arises when this inaccurate Whois data prevents competitive transfers of domain names and threatens the accidental deletion of a domain name with potential drastic economic effects to the registrant.

It is important that this second category of domain name registrants not be made criminals for actions (or inactions) beyond their control. Included in attachments #2 thru #9 is a chronology of my personal efforts to correct outdated Whois data, which took over two months. During this time, I was prevented from timely transferring my domain name to another registrar of my choice, and my domain name expired, although I was able to renew my domain name prior to its cancellation.

V. Difficulties in Correcting Potentially False and Inaccurate Whois Data

One of the problems with the current system is that there is no uniform procedures or mechanisms for third parties to follow when they have an inquiry regarding the accuracy of Whois data. Instead, intellectual property owners and law enforcement personnel are required to identify and comply with individual mechanisms for over one hundred and fifty ICANN accredited registrars.

On May 10, 2002, ICANN released a Registrar Advisory Concerning Whois Data Accuracy, see attachment # 10. This advisory was intended to assist ICANN accredited registrars in understanding their obligations under the ICANN Registrar Accreditation Agreement.

In summary these obligations include:

- require each registrant to submit (and keep updated) accurate contact details (Section 3.7.7.1);
- provide both a web-based and Port 43 Whois service providing access to complete contact information for all TLDs covered under the RAA (Section 3.3.1);
- require registrants to agree that willfully submitting inaccurate contact details (or failing to respond within 15 days to an inquiry regarding accuracy) shall be a basis for cancellation of the registration (Section 3.7.7.2); and,
- take reasonable steps to investigate and correct the contact details in response to any reported inaccuracy (Section 3.7.8).

It is important to note that the ICANN advisory has attempted to provide uniform guidance on the appropriate course of action registrars are to take when a domain name registrant is found to have committed a material breach of their contract by failing to respond for over fifteen calendar days to a registrar inquiry regarding the accuracy of Whois data. The ICANN advisory states clearly that absent “extenuating circumstances the registrar should cancel the domain name registration.” This interpretation is similar to the guidelines incorporated by NeuStar into their registry registrar agreement for .us. See attachment #11 for this provision in NeuStar’s original proposal to the Department of Commerce.

Notwithstanding these positive steps, there are still other mechanisms that should be explored to provide a more uniform process for third parties to report false or inaccurate registration data. Some of these mechanisms could include:

- a standard email address for each registrar to maintain for third parties to report false or inaccurate Whois data, i.e. (Whois@ICANN-REGISTRAR.TLD);
- a central repository to track Whois verification requests to registrars, however, questions of who would run this repository and how it would be funded are tough questions that will not easily be answered.

Because of the contractual relationship between the parties, the ultimate responsibility to inquiry and substantiate the accuracy of the Whois data must reside between the registrar of record and the domain name registrant.

VI. An Overview of the Differences Between Registry Operations

It is vital to understand the various differences and nuisances between registry operators to design and implement a universal solution to Whois data accuracy, failure to understand the big picture will perpetuate the patchwork solutions that have failed to date.

A. Generic top-level domains versus Country Code top-level domains

Generic top-level domains (gTLDs) are those administered by ICANN through a contractual agreement with the registry administrator. Examples of gTLDs include .com, .org, .net, .info, .biz, .museum, .coop, .name., .aero and .pro. Additional qualifiers sometimes used to distinguish gTLDs are: sponsored versus unsponsored and open versus restricted.

Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process. A sponsored TLD, however, is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD, and to which ICANN has delegated certain policy considerations.

An open gTLD is one in which there are no registration restrictions aside from those imposed by ICANN, i.e. UDRP, data accuracy, etc. Examples of open gTLDs include .com, .net, .org and .info. Restrictive gTLDs, however, may include a wide range of additional registration restrictions which are generally included in Appendix L of the standard ICANN Unsponsored Registry Agreement. For example, NeuLevel, the registry operator for .biz, has an anti-speculation provision and a requirement that the domain name registered must be used or intended to be used primarily for bona fide business or commercial purposes. RegistryPro, the recently accredited registry operator for .pro is exclusively available to only licensed professionals.

Listed below is a chart that provides a list of the current gTLDs and their relevant characteristics.

	Open/Restrictive	Sponsored/Un-Sponsored
.com	Open	Unsponsored

.org	Open	Un-sponsored
.net	Open	Un-sponsored
.info *	Open	Un-sponsored
.biz *	Restricted	Un-sponsored
.pro *	Restricted	Un-sponsored
.name *	Restricted	Un-sponsored
.aero *	Restricted	Sponsored
.coop *	Restricted	Sponsored
.museum *	Restricted	Sponsored

* - ICANN Proof of Concept TLD

Although restricted and sponsored gTLDs such as .museum, .aero or .coop have only been in operation less than a year as part of ICANN's proof of concept, most experts agree that the verification processes used in these gTLDs minimizes the incidence of false and inaccurate Whois data. The biggest problem regarding false and inaccurate Whois data generally involves unsponsored gTLDs. One exception may be .pro that has proposed a professional verification into their registration process. However, the .pro registry is not yet scheduled to be operational until the end of 2002 or early next year.

Unlike gTLDs that have a formal contractual agreement with ICANN, almost all ccTLDs such as .uk (United Kingdom), .de (Germany) and .ca (Canada) have no formal agreement with ICANN. It is important to note that there are significant differences and diversity between ccTLDs and gTLDs. ICANN is currently working with the 240 plus ccTLD administrators to enter into more formal agreements. Specifically, ICANN has proposed a model agreement based on a tripartite agreement between ICANN, the national government and the registry administrator. To date, only two ccTLDs have entered into this proposed model agreement, Japan and Australia. This monumental task confronted by ICANN has been further complicated by the fact that previous delegations of the ccTLDs were to administrators with no formal ties to the national governments.

Although the tripartite agreements are designed to recognize and preserve the sovereignty of the national government, ICANN has incorporated a provision in this model agreement that would require the sponsoring organization to conform to ICANN policies in limited circumstances.

B. Thick Registries versus Thin Registries

Although gTLDs and ccTLDs function the same in how they provide DNS resolution, there are significant differences in the underlying technologies. One of the most important distinctions between registries in connection with Whois accuracy is the distinction between "thick" and "thin" registries.

A thick registry is one in which all of the Whois data is stored within a central registry repository. In contrast, a thin registry only stores limited technical information such as the domain name, name servers, registrar of record, expiration dates etc. The registrant, administrative, technical and billing contacts are all stored in a distributed manner among

the registrars of records. As a result, each of these registrars must provide access to this information through their own Whois server.

Listed below is a chart summarizing the protocol and Whois data distribution of the current gTLD registries:

	Protocol	Thick v. Thin
.com	RRP	Thin
.org	RRP	Thin
.net	RRP	Thin
.info *	EPP	Thick
.biz *	EPP	Thick
.pro *	N/A	Thick
.name *	EPP	Thick
.aero *	SRSIO	Thick
.coop *	N/A	Thick
.museum *	N/A	Thick

* - ICANN Proof of Concept TLD

VII. Registration Authorities Issues Regarding Whois Data Initiatives

Domain name registration authorities, including both registrars and registries, have a vested interest to work with all parties involved in this debate to provide full and open access to accurate Whois data for those parties that need it. However, it is equally important that other parties appreciate the following issues that are important to registration authorities:

A. Continued Open Communication Between IP Owners and Registration Authorities

As chair of the ICANN Registrar Constituency, I strive to maintain an open line of communication between the intellectual property community and the ICANN Registrar Constituency. Over the last six months, the ICANN Registrar Constituency has had two presentations from the intellectual property regarding the accuracy of the Whois data. The first was from a representative from the Motion Picture Association during ICANN's annual meeting in Marina del Rey, California last November. The second was from Joe Keeley from the BSA during a registrar constituency meeting in Dulles, Virginia this past February. Maintaining an active ongoing dialogue allows for the exchange of ideas and continued progress toward a mutually acceptable solution.

B. Pre-Screening

The pre-screening of Whois data at the current time remains neither a technically or economically viable solution for registration authorities. This fact was recently reaffirmed in the recent launch of the ICANN proof of concept TLDs and the .us TLD. Instead, the focus must concentrate on standardizing the processing for identifying and

correcting false or inaccurate data that is brought to the attention of ICANN registrars through third parties.

C. ICANN Board Resolution 02.45

An important step to mitigate some of the effects of false and inaccurate Whois data was taken with ICANN Board resolution 02.45. This resolution provided for the convening of a technical steering group to "to develop a concrete proposal implementing the Redemption Grace Period Proposal." This redemption grace period is designed to provide domain name registrants with a safety net against accidentally deleted names, such as in the OECD case. A technical steering group of registrar and registry representatives has been convened and has already undertake progress toward producing a much needed safety net for domain name registrants, see <http://www.icann.org/announcements/announcement-04apr02.htm>.

D. Bulk Access to Whois

In accordance with Section 3.3.6 of the ICANN Registrar Accreditation Agreement, all ICANN accredited registrars are required to provide bulk-access to their Whois data for an annual fee not to exceed \$10,000. Intellectual property owners and law enforcement may view this provision as a mechanism to integrate Whois data into a valuable investigative tool. However, there are others that view this contractual requirement with less altruistic motives.

I remain a staunch advocate of Whois data being viewed as an open public resource. However the following factors give me cause for concern:

- the initial competitive advantage that NSI/VeriSign registrar had from the legacy Whois data is not as compelling;
- Whois data represents one of the registrar's most valuable assets which it contractually must make available to any third party, including a competitor, for a fixed fee;
- certain registrars attempts to circumvent these contractual requirements and limit access to their Whois data has frustrated legitimate uses of the Whois data;
- the Internet is a global communication medium and the privacy laws of other countries need to be taken into account, particularly when the contractual terms of the ICANN accreditation agreement might subject a registrar in another country to penalties.

Notwithstanding these factors, I remain steadfastly committed to intellectual property owners, law enforcement and other necessary parties, including consumers, having a right to access accurate Whois data to meet their individual needs.

E. Spam/Slamming

Unfettered access to Whois data has resulted in a proliferation of questionable marketing practices by third parties that threatens to undermine legitimate users from maintaining accurate Whois data. Included as attachment # 12 is a series of direct mail solicitations that my wife received in connection with a domain name that she initially registered with another registrar. The hostilities surround these questionable marketing practices continues to escalate and erode user confidence, and has resulted in one of the top-five registrars filing suit to stop the direct-marketing campaign of another top-five registrar.

F. Registrar Whois Data Verification

Despite the controversies, ICANN accredited registrars remain committed toward ensuring the accuracy of Whois data. Included as attachment #13 is an email notification that I recently received from my registrar of record seeking to verify the accuracy of my Whois data. I welcomed this procedure and would encourage other registrars to employ identical or similar mechanism.

VIII. Conclusion

There has been a series of positive steps taken to date to address some of the immediate problems associated with false and inaccurate Whois data, these include:

- ICANN's Registrar Advisory;
- ICANN Board resolution 02.45;
- continued communication between the intellectual property community and registration authorities;
- efforts by ICANN registrars to periodically re-verify Whois data; and
- a trend among ICANN proof of concept gTLD registries toward thick registries with centralized Whois data.

These positive steps do not indicate the end of a journey, merely its beginning. Issues that loom on the horizon and which will directly impact a permanent solution to Whois data accuracy include the following:

- successful restructuring of ICANN;
- design and adoption of uniform mechanisms for third parties to report claims of false or inaccurate Whois data;
- viability of a central repository to track Whois verification requests to registrars;
- usefulness of standard email address for each registrar to maintain for third parties to report false or inaccurate Whois data; and
- outreach to all Internet users and interested parties effected by Whois data issues but which are not presently included in the current debate;