

## **Introduction**

MarkMonitor applauds the work of ICANN's Expert Working Group on gTLD Directory Services (EWG) outlined in the recently issued Initial Report,<sup>1</sup> which presents the EWG's review, analysis and recommendations for the Next Generation Registry Directory Service.

As the WHOIS Review Team noted, and the ICANN Board acknowledged, the current distributed system of Registration Directory Services is "broken and needs to be repaired."<sup>2</sup> The EWG states in the Initial Report that the current WHOIS model should be abandoned, due in part, to problems related to accuracy.<sup>3</sup> Mindful that accurate data is of prime importance to rights holders and intellectual property enforcement, MarkMonitor agrees with this analysis and notes that the introduction of several hundred new gTLD Registries will likely aggravate the problem.

We support the concept of an Aggregated Registration Directory Service (ARDS) model, as taking an important step toward ensuring that WHOIS information is accurate, and appropriately accessible to both the public and to organizations with a legitimate interest in data elements and analytics.

MarkMonitor offers the following comments and suggestions to the EWG and the ICANN Community to inform the further development of a community-based solution.

## **Preliminary Comments**

Before considering the substance of the Initial Report, and the questions posed by the EWG, MarkMonitor would like to encourage the EWG to develop a bright-line test to distinguish between commercial and non-commercial websites/domain names. Doing so will help to resolve questions and concerns surrounding the use of privacy and proxy services to restrict access to registration data.

MarkMonitor believes that any website which derives economic benefit on behalf of an individual or entity is a commercial website and therefore should not be allowed to hide identifying information from the consumers of registrant data. We believe that any website that accepts advertising, sells goods or services, and/or accepts donation is a commercial site for this purpose. Consumers, especially individual users with anonymous public access to the ARDS, should know the identity of those that are doing business on the Internet. MarkMonitor recognizes the need for privacy in legitimate

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<sup>1</sup> Initial Report from the Expert Working Group on gTLD Directory Services: A Next Generation Registration Directory Service, June 24, 2013, at <https://community.icann.org/display/WG/Explore+the+Draft+Next+Generation+gTLD+Directory+Services+Model>.

<sup>2</sup> ICANN Board Resolutions 2012.11.08.01-2012.11.08.02, November 8, 2012, at <http://www.icann.org/en/groups/board/documents/resolutions-08nov12-en.htm>.

<sup>3</sup> Initial Report at 3.

circumstances which protects non-commercial, free-speech, and believes that privacy and proxy services should remain available for those uses identified by the EWG.

MarkMonitor appreciates that, while the distinction may be clear, the implementation details will need full consultation with the ICANN Community to develop. MarkMonitor encourages the use of a self-designation method along with a system of audits in place to ensure compliance.

## **Comments**

Overall, the ARDS model, as outlined in the Initial Report promises to provide registration data to individuals and organizations in a consistent, normalized, centralized and predictable format. In addition to streamlining the process for consumers of registration data, a centralized system is beneficial from a compliance perspective as well. Auditing a single system is likely much easier than attempting to enforce verification and other requirements on many hundreds of gTLD Registries. Identifying and preventing abuse of an aggregated system is also likely to be less cumbersome than in the current distributed system.

MarkMonitor is encouraged by the work of the EWG, which begins to define different purposes for accessing registration data. MarkMonitor encourages the EWG to work in consultation with the ICANN Community (in preparation for the full Policy Development Process) to identify purposes and corresponding data elements which are adequate to address the needs of ***all potential users***, including anonymous public users of the ARDS. It is important to ensure that the gated access system does not stifle the ability of individuals to consume registration data for lawful purposes.

Accuracy and access are MarkMonitor's primary concerns. ICANN must ensure that registration data is accurate and the entities entrusted with its care are held accountable for data accuracy including Registrants, Registrars and Registries. Furthermore this data must be easily accessible by individuals, entities and law enforcement. Also of prime importance, because much of the work to safeguard the public and business is conducted by private enterprise, MarkMonitor insists, as a condition for implementation, that any new system must ensure lawful bulk access for legitimate enterprise to analyze data to identify individual and serial perpetrators of abuse across gTLDs.

We believe that the EWG has presented a good framework that will inform the ICANN Community's engagement with the monumental task of developing the new registration directory services model, and we look forward to working with the community to implement these ideas.

## **About MarkMonitor**

MarkMonitor, the world leader in enterprise brand protection and a Thomson Reuters Intellectual Property

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Respectfully Submitted,

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