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Via E-mail - input-to-ewg@icann.org

Dear Mr. Baril and the Members of the Expert Working Group on gTLD Directory Services:

The undersigned, representing an informal group of organizations with interests in Internet security, compliance, and brand protection, appreciate this opportunity to comment on the Initial Report of the Expert Working Group on gTLD Directory Services (EWG).

We agree with EWG that it is important to improve the accuracy of and access to WHOIS data. However, the Initial Report's recommendations, if adopted as drafted, would fundamentally alter the control and use of WHOIS data. As discussed below, the implications of the Initial Report raise serious concerns that we urge the EWG to address in future proposals. Accordingly, we urge the ICANN community to develop a system that adheres to the following three core principles and stand ready to assist the EWG in accomplishing this goal.

- 1. Retain an "Open By Default" WHOIS System:** The current "open by default" WHOIS system should be repaired – not replaced with a "closed by default" WHOIS system.

Access to WHOIS records is currently "open by default" in that Internet users have the right to know who is operating a website they are visiting (or, the fact that it is registered anonymously). The Initial Report reverses the current system and implements a "closed by default" system, under which very limited fields would be publicly accessible, and only some Internet users would be granted access to WHOIS data. Unrestricted access would become the exception, not the rule.

- Internet users (individuals, businesses, law enforcement, governments, journalists and others) should not be subject to barriers – including prior authorization, disclosure obligations, payment of fees, etc. – in order to gain access to information about who operates a website, with the exception of legitimate privacy protection services in accordance with the new RAA.
- A closed by default system has the effect of curbing existing legitimate use of WHOIS data by average Internet users, many of whom play an important role in helping organizations like ours by using full WHOIS records to report spam, phishing, and other illicit behavior on the Internet. *See Annex C*, which recommends that "individual Internet users" be denied access to at least half a dozen data elements that they can readily access today via WHOIS records.

Today, individuals review full WHOIS records and, based on any one of the fields, identify and report fraud and other abusive behaviors; journalists and academics use WHOIS data to conduct research and expose miscreant behavior; and parents use WHOIS data to better understand who they (or their children) are dealing with online. These and other uses improve the security and stability of the Internet and should be encouraged not burdened by barriers of a closed by default system.

- 2. Distribute Power to Ensure Access to WHOIS Data:** No one organization should be able to exercise a complete power over WHOIS data or access to it.

The Initial Report grants complete authority – in effect, monopoly power – over all WHOIS data to the ARDS, including the attendant power to set prices; determine legitimate and non-legitimate use of WHOIS data;

and track, monitor and audit requests for such data. The real world implications of creating a WHOIS data monopoly are profound: for example ARDS would be able to grant or deny law enforcement and anti-abuse entities access to WHOIS data and monitor how they utilize the data, potentially compromising investigations; set prices and levy fines; and limit or exclude competition for value-added services.

Even if ARDS is measured in the use of its power, the mere fact that one entity would be bestowed such far-reaching power is troubling. Market competition creates accountability, and accountability is necessary to prevent the abuse of power. The undersigned thus urge the EWG to consider alternatives that balance the interests and need for improved data accuracy and access, and measured, checked power.

3. Foster, Not Chill, Future Innovation: The Internet is an amazing driver of innovation, some of which has been – and may continue to be – derived from access to WHOIS records.

By restricting data access to authorized users for defined legitimate uses, the Initial Report could chill potential future innovative uses of WHOIS data that are currently unknown and undefined but lawful. While the Initial Report rightly recognizes certain categories of existing legitimate use, no one can contemplate all potential future use cases in which an entrepreneur might seek to use WHOIS data as part of a new, valuable product or service on the Internet but that might fall into a category of use that the ARDS would not immediately recognize as pre-approved. Pre-determined categories and uses, while well intended, by definition cannot identify the unknown.

Since its inception the Internet has been a powerful force of innovation and creativity primarily for the reason that there are relatively few barriers to entry. The default-closed system in which WHOIS data is available only to pre-approved users stifles future innovation, thereby undermining the ability of individuals to change and expand the Internet as a public good.

Moreover, granting ARDS a monopoly over WHOIS data could further impede creativity in the commercial market and innovation in Internet security. It is, for example, known that many engaged in law enforcement, anti-abuse and other security activities rely upon domain name related information obtained from third party commercial enterprises. It is these third parties who collect, collate, and enhance WHOIS information by, for example combining it with other data (which is publicly or privately available) and legitimately disseminating the resulting information to the public, including law enforcement and security analysts. Indeed, innovation and value-added services, in the direction of network security and brand protection, have been accelerating in the DNS arena during the last 12-18 months. It is exactly the wrong time to be building walls around WHOIS data.

The undersigned recognize the EWG for starting this important conversation, and commend the EWG for its efforts to grapple with the complex and long-standing problems associated with the WHOIS system. We welcome further dialogue with the EWG as you consider all comments and craft a revised proposal reflective of the community's input. At present, however, we believe that the proposal would harm legitimate compliance and anti-abuse efforts, impede legitimate use by lay Internet users, and chill innovation in a variety of areas. We support the twin goals of improving access to and accuracy of WHOIS data and look forward to being constructive participants in the ongoing process to repair the WHOIS system consistent with these twin goals and the three principles shared herein.

Respectfully submitted,

DomainTools (www.domaintools.com)

G2 Web Services (www.g2webservices.com)

LegitScript (www.legitscript.com)

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