



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

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implementation.”¹ We look forward to working with ICANN as it honors these commitments to ensure that the new gTLD program benefits both consumers and businesses alike.

1. Federal Trade Commission

The FTC is an independent agency of the United States government that enforces competition and consumer protection laws.

2. Federal Trade Commission Investigations

Our ability to protect consumers in cases involving unfair or deceptive practices online often depends on navigating an environment in which scam artists easily manipulate the domain name system to evade detection. We routinely consult Whois services in Internet investigations to identify website operators. However, the Whois information often contains incomplete or inaccurate data or, increasingly, proxy registrations, which shield the contact information for the underlying domain name registrant. To give just one example, in a case against illegal spammers promoting pornography websites, false Whois data slowed down our ability to identify and locate the individuals behind the operation,⁶ requiring the FTC investigators to spend additional time consulting multiple other sources. In other instances, we have encountered Whois information with facially false address and contact information, including websites registered to “God,” “Bill Clinton,” and “Mickey Mouse.”⁷ In Internet investigations, identifying domain name registrants immediately is especially important, as fraudsters often change sites frequently to evade detection.

The FTC has highlighted these concerns about Whois with ICANN and other stakeholders for more than a decade.⁸ In particular, we have testified before Congress on Whois

⁵ See, e.g., *In the Matter of Facebook, Inc.*, FTC File No. 092-3184 (proposed settlement posted for public comment on Nov. 29, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>; *In the Matter of ScanScout, Inc.*, FTC File No. 102-3185 (proposed settlement posted for public comment on Nov. 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/scanscout.shtm>; *In the Matter of Google, Inc.*, FTC Docket No. C-4336 (Oct. 13, 2011), *press release available at* <http://www.ftc.gov/opa/2011/10/buzz.shtm>; *U.S. v. W3 Innovations, LLC*, No. CV-11-03958-PSG (N.D. Cal., filed Aug. 12, 2011), *press release available at* <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>; *U.S. v. Teletrack, Inc.*, No. 1:11-CV-2060 (filed June 24, 2011), *press release available at* <http://www.ftc.gov/opa/2011/06/teletrack.shtm>; *In the Matter of Lookout Servs., Inc.*, FTC Docket NO. C-4326 (June 15, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Ceridian Corp.*, FTC Docket No. C-4325 (June 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Twitter, Inc.*, FTC Docket NO. C-4316 (Mar. 2, 2011), *press release available at* <http://www.ftc.gov/opa/2011/03/twitter.shtm>.

⁶ See *FTC v. Global Net Solutions, Inc.*, No. CV-S-05-0002-PMP (LRL) (D. Nev., filed Jan. 3, 2005), *press release available at* <http://www.ftc.gov/opa/2005/11/globalnet.shtm>.

⁷ See *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales).

⁸ See Letter from Comm’r Jon Leibowitz to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors, Dr. Paul Twomey, (former) President and CEO, ICANN, and Jonathan Nevett, (former) Chair, Registrar Constituency (Feb. 8, 2008) [hereinafter “Whois and RAA Letter”]; *Hearing on Internet Governance: The Future of ICANN Before the Subcomm. on Trade, Tourism, and Econ. Dev. of the Senate Committee on Commerce, Science, and Transp.*, 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Comm’r Leibowitz), *available at* <http://www.ftc.gov/os/testimony/P035302igovernancefutureicanncommissiontestsenate09202006.pdf>;

information several times, issued a Commission statement on Whois services, delivered presentations to the GAC, participated as a panelist in joint sessions organized by the GAC and the Generic Names Supporting Organization (GNSO), provided briefings to the ICANN Board, and worked directly with a wide range of stakeholders to develop pragmatic solutions to this difficult problem.

The FTC has not been alone in highlighting the importance of this issue or in its effort to urge ICANN to develop effective solutions to Whois problems. In 2003, the Organization for Economic Co-operation and Development's Committee on Consumer Policy issued a policy paper unequivocally stating that for commercial registrants, all contact data "should be accurate and publicly available via Whois."⁹ In 2007, the GAC issued policy principles urging ICANN stakeholders to "improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data."¹⁰ In 2009, global law enforcement agencies, led by the U.S. Federal Bureau of Investigation and the UK Serious Organized Crime Agency, issued a set of law enforcement recommendations to improve a wide range of ICANN policies, including the accuracy of Whois data. In October 2011, the GAC reiterated its previous requests for the Board to address the law enforcement recommendations.¹¹ Last week, ICANN's own Whois Review Team issued its draft report, acknowledging the "very real truth that the current system is broken

Before the Subcomm. on Fin. Institutions and Consumer Credit of the House Comm. on Fin. Servs., 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Eileen Harrington), available at <http://www.ftc.gov/os/2006/07/P035302PublicAccessstoWHOISDatabasesTestimonyHouse.pdf>; FTC, Prepared Statement of the Federal Trade Commission before the ICANN Meeting Concerning Whois Databases (June 2006); Letter from Comm'r Jon Leibowitz to Dr. Paul Twomey, (former) President and CEO, ICANN (Feb. 9, 2005); *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales); and Comment of the Staff of the FTC Bureau of Consumer Protection before the ICANN Public Comment Forum, In the Matter of Tentative Agreements among ICANN, U.S. Dep't of Commerce, and Network Solutions, Inc. (Oct. 29, 1999).

⁹ OECD, *Consumer Policy Considerations on the Importance of Accurate and Available Whois Data*, at 8 (June 2, 2003), available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp\(2003\)1/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp(2003)1/final&doclanguage=en).

¹⁰ Governmental Advisory Committee, GAC Principles Regarding gTLD Whois Services, at 4.1 (Mar. 28, 2007), available at https://gacweb.icann.org/download/attachments/1540132/WHOIS_principles.pdf?version=1&modificationDate=1312460331000.

and needs to be repaired.”¹² ICANN has failed to adequately address this problem for over a decade.

A rapid, exponential expansion of gTLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet fraudsters. In particular, the proliferation of existing scams, such as phishing, is likely to become a serious challenge given the infinite opportunities that scam artists will now have at their fingertips. Fraudsters will be able to register misspellings of businesses, including financial institutions, in each of the new gTLDs, create copycat websites, and obtain sensitive consumer data with relative ease before shutting down the site and launching a new one. The potential for consumer confusion in other variations of these types of scams is significant. As an example, “ABC bank” could be registered in .com, but another entity could register “ABC” in a new .bank gTLD, and a different entity could register “ABC” in a new .finance gTLD. Scam artists could easily take advantage of this potential for confusion to defraud consumers.

In addition, the number of individuals with access to the Internet infrastructure will substantially increase. This creates an increased possibility that malefactors, or others who lack the interest or capacity to comply with contractual obligations, will operate registries. It is inevitable that malefactors may still pass a background screening due to inadequate or incomplete records. Or, malefactors could use straw men to assist them and be the party “on record” with ICANN. Either way, a registry operated by a bad actor would be a haven for malicious conduct. As discussed below, ICANN’s contractual compliance office has encountered tremendous challenges trying to secure compliance under the current framework, and the unprecedented increase in domain registries only increases the risk of a lawless frontier in which bad actors violate contractual provisions with impunity, resulting in practices that ultimately harm consumers. The gTLD expansion will also increase the number of entities in foreign jurisdictions with relevant data on registrants. This will likely cause further delays in obtaining registrant data in investigations of global fraud schemes. In short, the potential for consumer harm is great, and ICANN has the responsibility both to assess and mitigate these risks.¹³

¹² See Whois Review Team, Final Report (Draft), at 5 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

¹³ As the U.S. government, the GAC, and several other stakeholders have urged, ICANN should conduct a more thorough economic study to assess the costs and benefits of introducing a significant number of new gTLDs. See Letter from Assistant Secretary Strickling to Rod Beckstrom, President and CEO, ICANN (Dec. 2, 2010), *available at* <http://forum.icann.org/lists/5gtld-guide/pdf3Ep9MhQVGO.pdf>; Governmental Advisory Committee, GAC Communiqué—Cartagena, at 5 (Dec. 9, 2010), *available at* https://gacweb.icann.org/download/attachments/1540144/GAC_39_Cartagena_Communique.pdf?version=1&modificationDate=1312225168000; Letter from Janis Karklins, (former) Chairman, Governmental Advisory Committee to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors (Aug. 18, 2009), *available at* <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf> (“The GAC remains concerned that the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms.”).

3. Recommended Changes to the New gTLD Program

In light of the dramatically increased opportunity for consumer fraud, distribution of

ICANN failed to respond effectively to all of the concerns that were raised, did not implement some of its commitments to improve the new gTLD program, and did not provide adequate solutions to widely documented problems in the existing gTLD marketplace. Indeed, despite offering some protections, the safeguards now in place do not provide comprehensive solutions to the problems likely to arise as a result of the introduction of new gTLDs. For example, while registries will be required to maintain “thick” Whois services, the lack of meaningful obligations to ensure Whois accuracy, such as registrant verification, still hampers the ability of law enforcement agencies to track down Internet fraudsters quickly. We recognize that ICANN has taken some of the GAC’s concerns into account, but we urge ICANN to do more to protect consumers and adequately address law enforcement concerns.

A. Implement New gTLDs as a Pilot Program

Despite the modest improvements to the new gTLD program, overarching consumer protection concerns persist. As an initial matter, the potential number of expected new gTLDs is itself a serious challenge. The initial estimate for expected applications was 500, but recent estimates have suggested that there could be more than 1500 applications. If the number of approved new gTLDs reaches even the minimum estimate, the Internet landscape will change dramatically. Indeed, an increase from 22 existing gTLDs to 500 gTLDs would be an unprecedented expansion of the domain name system. Among other things, the number of registered websites is likely to increase exponentially, the number of registry operators and other actors with an operational role in the Internet ecosystem will expand, and the ability to locate and identify bad actors will be frustrated significantly due to a likely increase in the number of registries located in different countries and limited ability to obtain relevant data maintained abroad.

We understand that ICANN is currently considering batching applications in the event that the number of new gTLD applications exceeds initial expectations, and that it has set a maximum of 1,000 gTLDs to be introduced per year. We strongly believe that ICANN should substantially reduce the maximum number of new gTLDs that could be introduced in the initial round to a much smaller number. Indeed, doubling the number of existing gTLDs in one year would be an aggressive increase. The imposition of a more reasonable limit is necessary to curb

to the background screening process; publicly disclosing the names of the principal officers associated with the new gTLD application; and adding an extra point in the scoring criteria for applicants that include measures to promote Whois accuracy.

The U.S. Department of Commerce’s National Telecommunications and Information Administration, which serves as the U.S. representative to the GAC, contributed significantly to the GAC’s efforts to enhance protections for consumers and implement recommendations from law enforcement agencies. FTC staff provided input on these issues both as part of the U.S. delegation to the GAC and directly to ICANN. The Department of Commerce has worked extensively to enhance ICANN’s accountability and ensure that ICANN develops consensus-based policies in a fair, open, and transparent manner. We believe that ICANN represents an important multi-stakeholder model for Internet governance, which has been critical to keeping the Internet open and innovative, and we encourage ICANN to enhance its efficacy by implementing comprehensive solutions to these consumer protection issues.

the risks inherent in expanding the number of gTLDs, including the proliferation of malicious conduct. We recommend that ICANN use this round as a limited pilot program, as it has done in previous rounds, assess the organization's ability to evaluate, introduce, and manage additional gTLDs, conduct an assessment of the increased risks posed by the program, and then consider whether a more significant expansion would be appropriate.

B. Strengthen ICANN's Contractual Compliance Program

Currently, ICANN is ill-equipped to handle the contract enforcement for the 22 existing gTLDs and several hundred accredited registrars. In particular, ICANN lacks an adequate number of compliance staff, has failed to close contractual loopholes that limit the existing compliance staff's ability to take action against registrars and registries, and needs to implement a more rigorous enforcement program.

need to hire enough staff to address contractual compliance issues for hundreds of new registry contracts. However, contrary to the Board's commitment, ICANN has not yet hired additional

As the GAC and other stakeholders have emphasized, ICANN must adequately strengthen its contractual compliance program before it approves any new gTLD applications to ensure that consumers' interests are protected and the commitments made by gTLD registries are enforced.

C. Develop Program to Monitor Consumer Issues During New gTLD Implementation

Further, in light of the substantial impact the introduction of new gTLDs will likely have on consumers, the investment of additional resources into the contractual compliance program is really just the first step in developing an overall more effective approach. To address the issue in a comprehensive manner, we recommend that ICANN create a new program under its compliance framework that monitors consumer issues arising during the implementation of the new gTLD program, reviews the feasibility of existing mechanisms for addressing consumer issues, applies current contractual enforcement tools to resolve these issues, identifies areas where new policies may be needed, and outlines a plan for working with ICANN's supporting organizations on policy development processes that address these issues. We are aware that the compliance office has operated a C-Ticket System that captures and tracks complaints, many of which relate to consumer issues, and that ICANN follows up on complaints that fall within its purview. However, we believe that ICANN should supplement this work, and that the Board should provide more direction by approaching consumer issues more systematically and developing a dedicated program that is well resourced and that proactively addresses these issues.

ICANN should act now to ensure that consumer interests are protected in the gTLD implementation process. We understand that, pursuant to the Affirmation of Commitments, ICANN will conduct a review of the new gTLD program one year after it has been in operation, followed by subsequent reviews, and that the issue of consumer trust and consumer choice will be a key focus of that review.²³

However, in advance of the competition, consumer trust, and consumer choice review, ICANN should create a program that monitors and addresses consumer issues on an ongoing basis to ensure that the potential for consumer harm resulting from the introduction of new gTLDs is addressed effectively and timely.

D. Evaluate Proposed gTLDs' Potential Harm to Consumers

Attention to consumer issues should not be relegated to an external review process but rather function as an integral part of the new gTLD evaluation process. During the GAC-Board new gTLD consultations, the GAC recommended that proposed gTLDs implicating regulated industries or gTLDs that were otherwise particularly susceptible to abuse (e.g., .kids, .bank) should receive additional vetting and scrutiny. The Board rejected this proposal and did not provide an alternative that adequately addresses this concern.²⁵ ICANN should conduct its own evaluation of the potential consumer risks associated with each proposed new gTLD, especially those that will inherently raise heightened concern among stakeholders. Accordingly, we urge ICANN to reconsider its decision not to apply additional vetting or scrutiny to proposed gTLDs associated with regulated industries or gTLDs that are particularly susceptible to abuse and pose an increased risk of consumer fraud, or to otherwise incorporate the risk of consumer harm into

Whois principles, that “stakeholders should work to improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data.”²⁷

The violations of Whois data accuracy requirements are pervasive, and ICANN’s response to this persistent problem has been woefully inadequate. As ICANN’s own Whois Review Team recognized,

Cyber security and cybercrime experts make extensive use of WHOIS to thwart and respond to a varied set of threats. Information contained within WHOIS is invaluable in these efforts and practitioners have conveyed to us their frustration at the continuing high levels of inaccuracy of WHOIS data. **We find that ICANN has neglected to respond to the needs of this community both in the accuracy of WHOIS data and in response times for access and action.**²⁸

We believe, as law enforcement agencies from around the world have advocated, that registrars should be required to implement verification procedures when registering domain names. Such efforts could significantly reduce the incidence of completely inaccurate data. In addition to imposing verification requirements, ICANN should adopt any other appropriate measures to reduce the amount of inaccurate Whois data.²⁹ We urge ICANN to develop and to implement a plan to address the problem of Whois inaccuracy before new gTLDs are introduced, which will likely exacerbate these problems.

In sum, the dramatic introduction of new gTLDs poses significant risks to consumers, and ICANN should take the steps described above to reduce the potential for consumer injury before approving any new gTLD applications. We look forward to working with ICANN to ensure that adequate consumer protection safeguards are implemented in the new—and existing—gTLD marketplace.

²⁷ *See*

Sincerely,

*John D. R...
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and transportation.

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Charles E. Grassley
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Committee on Judiciary
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The Honorable Lamar Smith
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