

May 31, 2023

Ms. Susan Chalmers
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4701
Washington, DC 20230
usTLD@ntia.gov

Re: NTIA Notice and Request for Comments on the Introduction of Accountable Measures Regarding Personal Information of .us Registrants

Dear Ms. Chalmers:

On behalf of the American Bar Association (ABA), I submit the following comments in response to a request from the United States Department of Commerce's National Telecommunications and Information Administration ("NTIA") for input on the introduction of accountability measures regarding access to the personal information of individuals who register domain names using the country code top-level domain (ccTLD) for the United States, ".us" ("usTLD").

The ABA is the largest voluntary association of lawyers and legal professionals in the world. Since 1894, the ABA through its Intellectual Property Section has advanced the development and improvement of intellectual property laws and their fair and just administration. Our views are informed by the recognized expertise and experience of our Section members working within the intellectual property legal profession.

Recent changes in data privacy laws and regulations have significantly impaired the ability to enforce intellectual property rights online. Domain name registration information in the WHOIS database administered by the Internet Corporation for Assigned Names and Numbers ("ICANN"), which has been widely available since before the dawn of the commercial internet, is now mostly inaccessible to the public, including owners of intellectual property rights. Since the May 25, 2018, effective date of the General Data Protection Regulation ("GDPR") in the European Union and the ensuing widespread redaction of WHOIS information, it is much more difficult to enforce intellectual property rights against persons or entities that register domain names confusingly similar to a registered trademark or whose websites offer counterfeit, pirated or otherwise infringing content, products or services.

The ABA believes the availability of WHOIS information is critical to the effective enforcement of intellectual property rights online. Specifically, the ABA adopted policy in 2020 that

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“supports a right that would legally compel the disclosure of internet domain name registrant contact information by any U.S. entity that administers and maintains such contact information, upon receipt of a notice alleging a legitimate interest based on the registrant’s violations of applicable laws relating to intellectual property protections.”

The Accountable WHOIS Gateway System (the “System”) that the NTIA is considering should be an important step toward ensuring a right of access to usTLD registrant data for the legitimate and limited purposes of investigating and taking action against counterfeiting, infringement, cybersquatting, online piracy, and other violations of applicable laws relating to intellectual property protections.

To address concerns about the intersection of intellectual property rights and consumer privacy, the ABA supports the right of the public to access contact information for registrants of usTLD domain names in the WHOIS database, consistent with the rights of intellectual property owners and the needs of law enforcement officials for at least the limited purpose of investigating and enforcing against violations of applicable laws relating to intellectual property protections.

Thank you for considering the ABA’s views on the issues raised by your proposed System. The ABA commends your consideration of these issues and appreciates the opportunity to offer these comments. Should you have any questions or would like to discuss these issues further, please contact Chris Katopis in our Governmental Affairs Office at chris.katopis@americanbar.org.

Sincerely,



Deborah Enix-Ross