

**COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION (CIX)
IN THE
SECOND WIPO INTERNET DOMAIN NAME PROCESS
(WIPO2 RFC-2)**

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I. Introduction

The Commercial Internet eXchange Association (CIX) is pleased to submit the following comments in the Second WIPO Internet Domain Name Process (WIPO2 RFC-2). CIX is the oldest Internet trade association in the world, and represents a wide range of service providers ranging from global backbones to local providers inside and outside the United States.¹

RFC-2 lists many questions beyond the scope of CIX's competence. Instead, CIX emphasizes in its comments below three general points. First, any recommended changes to the DNS should not undermine overall systemic network stability or operational efficiency. Second, the DNS, with its underlying architecture, was established to address a particular set of issues. DNS technology establishes limits that must be reflected in any Internet naming policies, even those intended to deal with intellectual property rights (IPR). The DNS also comes with an established infrastructure, conventions, and policies that have nothing to do with intellectual property rights. Third, Internet service providers (ISPs) provide a critical service by providing basic connectivity between the consumer and the Internet and must not be exposed to legal liability for providing basic connectivity. Nor should they bear the burden of monitoring third party use. CIX strongly supports the basic integrity of the original WHOIS lookup service, which provides essential contact information to ISPs. CIX is concerned about efforts to limit the collection and availability of WHOIS information for reasons unrelated to its original purposes.

CIX urges the WIPO to move deliberately in proposing changes to DNS administration to ensure that its recommendations are consistent with the

underlying architecture and purposes of the DNS and to preserve its continued ability to facilitate communications on the Internet.

II. Preserving Internet Stability

The Domain name system (DNS) is a hierarchical, distributed method of organizing the Internet's name space. Since its creation in 1984, it has facilitated communications on the Internet by enabling users to use a more-easily remembered alphanumeric string rather than the IP address of another user or server. DNS is supported by its own infrastructure, technology, and conventions.

Increasingly the DNS is being called upon to support activities other than its original purpose of mapping names to IP addresses. The most prominent of these has been to support Internet commerce. Furthermore, the role played by the DNS is being rendered more complex as more generic top level domains (g-TLDs) are added and as it is changed to accommodate non-Western languages. RFC-2 raises the possibility that additional complexities will be introduced into the name space with the addition of personal names, INNs for pharmaceutical substances, trade names, international intergovernmental organizations' names, and geographical names and terms, new dispute resolution procedures, and protections against "abusive or unfair use" – whatever these terms may come to mean.

Each of these areas is probably worthy of action to protect rights holders and consumers, but taken together the addition of a large number of protected domain names could effect changes to DNS administration and could lead to delays in registration and use of names. Moreover, it is unclear what the terms "bad faith, abusive, misleading or unfair use", would mean in the context of personal names, trade names or geographical terms. The dispute resolution process successfully addressed disputes over celebrities' names and global

¹ In addition to its current membership, CIX is in the process of merging with another ISP trade association that will increase its membership by approximately 450 more ISPs. Most, but not all, of its current and prospective members are US-headquartered firms.

brands and trademarks. Disagreements over the proposed additions are likely to be less clear-cut.

It is particularly worthwhile to emphasize that IPR should not drive the DNS system. Trademark is undoubtedly a vital element of Internet commerce, but there are other factors that must be taken into consideration such as criminal law, cultural values and practices, and civil liberties. Most important the basic enabling DNS technologies must be respected even as the system evolves.

III. Essential DNS Tools and Technologies

As noted above, the DNS was created with a supporting infrastructure, technologies, and conventions. An essential tool over the years has been the WHOIS database lookup service. It is used by the general public to determine the identity of a domain name registrant, but ISPs also use WHOIS to locate contact information for other service providers and carriers, which is particularly important whenever issues about network traffic arise. Paragraph 25 of RFC-2 inquires about the use of technical solutions to control domain name collision.

ISPs have noted with concern recently that the WHOIS database is fracturing and becoming less useful. This deterioration is due in part to commercial factors and to privacy concerns. While such considerations may be genuinely motivated, the overall effects have been negative from the service providers' perspective. Indeed, the fracturing of the WHOIS database may impair the ability of ISPs to assist rights holders in locating alleged trademark or copyright infringers and to cooperate with law enforcement officials on other, non-IPR matters.

At the present time, CIX sees little prospect for enhanced technical solutions to avoid further DNS collisions and, indeed, is deeply concerned about a decline in cooperation and the quality of information provided via the WHOIS lookup services. Priority attention must be given to preserving the integrity of WHOIS.

IV. Legal Exposure of ISPs

The World Intellectual Property Organization's RFC-2 requests comments on additional domain issues, including, among others, the "bad faith, abusive, misleading or unfair use of" personal names, INNs, international intergovernmental organizations, geographical terms or indications, and trade names. It clearly envisions that the number of protected names would grow and that a determination of "abusive" or "unfair" practices would be reached by the end of the process.

ISPs provide basic connectivity to Internet users and are rarely in the best position to determine whether a registrant has engaged in a practice that shows bad faith, abuse or misleading or unfair use of a particular name. Indeed, the registrant may be able to demonstrate a colorable claim to a domain name such as a trade name that has specific regional connotations. Therefore, in most cases it would be inappropriate for an ISP, even one that hosts a name for the end user customer, to be drawn into a commercial dispute. Nor should ISPs be held liable for providing basic Internet connectivity unless the ISP knows that the individuals were intentionally and indisputably violating international law and norms.

V. Conclusion

While the issues identified by RFC-2 are worthy of attention, CIX urges WIPO to proceed deliberately to avoid inadvertently undermining the DNS -- possibly by introducing unanticipated complications into DNS administration. In particular CIX is concerned that any policies adopted as a result of this inquiry be consistent with the technology, infrastructure, and policies that characterize current the current DNS.

There is, indeed, the distinct possibility that there exist vast differences globally in the interpretation of what types of behavior might breach the standards proposed in RFC-2, i.e., "bad faith, abuse, or misleading or unfair use".

CIX urges that particular attention be given to the fissures that have appeared in WHOIS database lookup services and that priority be given to restoring their integrity.