June 1, 2020

Congressman Bob Latta  
House Committee on Energy & Commerce  
2467 Rayburn House Office Building  
Washington, DC 20515

Re: House Resolution 875 and the Importance of Access to Domain Name Registrant Information in the WHOIS Database for Intellectual Property Rights Enforcement

Dear Congressman Latta:

As Chair of the American Bar Association Section of Intellectual Property Law (“ABA-IPL Section” or “Section”), I write on behalf of the Section to provide comments on H. Res. 875, which you introduced on February 27, 2020 (the “House Resolution”). The views expressed herein are presented on behalf of the Section and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the ABA.

Since 1894, the ABA-IPL Section has advanced the development and improvement of intellectual property laws and their fair and just administration. As the forum for rich perspectives and balanced insight on the full spectrum of intellectual property law, the Section serves within the ABA as a highly respected voice within the intellectual property profession, before policy makers, and with the public.

Recent changes in data privacy laws and regulations have significantly impaired the ability to enforce intellectual property rights online. As your House Resolution acknowledges, 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. In particular, since the May 25, 2018 effective date of the General Data Protection Regulation (“GDPR”) 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 offers counterfeit, pirated or otherwise infringing content, products or services.
The ABA-IPL Section supports the House Resolution and agrees that the availability of WHOIS information is critical to the effective enforcement of intellectual property rights online. The Section’s view is consistent with the broader policy position adopted by the ABA earlier this year. In February 2020, the ABA House of Delegates approved a resolution that states:

RESOLVED, That the American Bar Association 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.

Adoption of the House Resolution would be an important first step toward restoring a right of access to such information in the U.S. 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-IPL Section supports the right of the public, consistent with the rights of intellectual property owners and the needs of law enforcement officials, to access contact information for registrants of domain names in the WHOIS database, 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-IPL Section’s position on the issues raised by your proposed House Resolution. The ABA-IPL Section 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 do not hesitate to contact me.

Sincerely,

George W. Jordan III
Chair, ABA Section of Intellectual Property Law