From: "Mark Bohannon" <mbohannon@SIIA.net>
Date: 27 October 2007 6:34:12 AM
To: <twomey@icann.org>
Subject: FW: SIIA Submission on Whois

Paul,

Unfortunately, I will not be able to attend the ICANN meeting next week
in Los Angeles.

I wanted to make sure you saw our comments on the proposed changes to
Whois.

All the best for a successful meeting.

Mark

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This is a message from:

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-----Original Message-----
From: Mark Bohannon
Sent: Friday, October 26, 2007 4:32 PM
To: 'whois-comments-2007@icann.org'
Subject: SIIA Submission on Whois

The Software and Information Industry Association (SIIA) submits these
comments in response to the request for comments on changes to Whois
(see http://www.icann.org/public_comment/#whois-comments-2007).

SIIA is the principal trade association of the software and digital
content industry. Our 750 member companies develop and market software
and electronic content for business, education, consumers and the
Internet. Our diverse worldwide membership ranges from some of the
largest and oldest technology enterprises to many smaller and newer
companies. All share in common the need for a secure and stable online
environment, in which consumers, businesses and other institutions have
confidence.   As ICANN is well aware, the staff and members of SIIA have
been deeply involved in its work throughout its history, and appreciate
this opportunity to comment.

Publicly accessible contact data on gTLD domain name registrants - via
Whois - is an important tool for building and maintaining confidence in
the Internet. This data is used for a wide range of legitimate and
beneficial purposes. It helps consumers and businesses learn more about
who they are dealing with online.   It is also a critical tool, as
documented in submissions by the Anti-Phishing Working Group and others,
see http://forum.icann.org/lists/whois-comments/msg00075.html, in
combating online frauds of all kinds.

The OPOC (operational point of contact) proposal would weaken the
beneficial uses of Whois by removing from public access most of the data
that is now available. Instead, the contact information for an
"operational point of contact" would be substituted. The GNSO Council,
after reviewing the OPOC proposal, chartered a Working Group last March
to resolve several identified problems with it. These included defining

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the roles and responsibilities of the OPOC, and developing a practical
alternative mechanism by which parties with a legitimate need for access
to contact details could obtain it.
SIIA has reviewed the output of the Working Group, see
http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf, and it
is clear that it made little if any progress in resolving these
difficult problems.

Indeed, the deliberations of this Working Group underscore how far OPOC
is from being a practical, implementable proposal. On the issue of
roles and responsibilities, the Working Group could not even agree on
the necessity that an OPOC acknowledge its designation as such. In
other words, a registrant could appoint anyone as an OPOC, whether or
not that entity has any relationship with the registrant or could be
expected to carry out whatever responsibilities are assigned to it. On
the issue of an alternative access mechanism, the Working Group could
not even agree that such a mechanism would be available to private
sector entities.

Despite the hard work of many ICANN participants, it is quite clear that
the OPOC proposal is not something that can be implemented currently
while still preserving any of the beneficial qualities of the current
Whois system. SIIA urges the GNSO Council not to endorse it.

We also urge the GNSO Council to reject Motion #3, as listed on page 10
of
http://gnso.icann.org/drafts/icann-staff-overview-of-whois11oct07.pdf),
a proposal that would phase out, over the next year, all the contractual
obligations that accredited registrars and gTLD registries have taken on
with respect to collection and publication of registrant contact data.
The argument that this step is required because there is a lack of
"consensus" regarding Whois policy is at best specious, and clearly
without justification.   Many other provisions of ICANN's registry and
registrar agreements cannot be linked specifically to any consensus
policy adopted by ICANN; but very few of these provisions can claim the
pedigree of Whois as a critical feature of the domain name system that
was front and center to the elements that ICANN was given to manage. On
the contrary, the question must be, "Is there a consensus to remove
them?" The answer is no.

Eliminating Whois obligations would inevitably be viewed by many as a
counterproductive act by ICANN - an act that signals lack of confidence
in the management of the domain name system. GNSO Council adoption of
motion #3, even if it were never implemented by the ICANN Board, would
in itself damage ICANN's credibility in the eyes of many government and
private sector actors.

The most constructive proposal that will be before the GNSO Council on
October 31 is motion #2. This calls for a study on factual issues
regarding the uses and abuses of Whois data, as well as the operation of
proxy registration services. Such a study could provide useful data
that will improve the quality of ICANN's policymaking when it next turns
to Whois issues. SIIA is hopeful that a better option than OPOC will
result.

Thank you for your consideration of the views of SIIA. If further
information is needed, please do not hesitate to contact the
undersigned.

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