

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

This is a message from:

Mark Bohannon
General Counsel & SVP Public Policy
Software & Information Industry Association (SIIA)
1090 Vermont Avenue, NW 6th Floor
Washington, DC 20005
Direct Line: 202-789-4471
Main Switchboard: 202-289-7442
Fax: 202-289-7097
Email: Mbohannon@siaa.net

-----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

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.

This is a message from:

Mark Bohannon
General Counsel & SVP Public Policy
Software & Information Industry Association (SIIA) 1090 Vermont Avenue,
NW 6th Floor
Washington, DC 20005

Direct Line: 202-789-4471
Main Switchboard: 202-289-7442
Fax: 202-289-7097
Email: Mbohannon@siaa.net
