

From: "Brownlee, Michelle"

Date: Tuesday, January 30, 2018 at 05:11

To: "'gdpr@icann.org'"

Subject: [Ext] GDPR and the Whois database

Dear Sirs or Madams:

I am in-house trademark counsel at Bose Corporation in the United States. Last week I learned about ICANN's plans to make changes to the management of the Whois databases in response to the GDPR. I was informed that you are requiring that comments be made by today, January 29, 2018.

First, I would like to ask that you consider extending the period for comments. I just learned about this issue, and would like to take more time to study it and think through what proposals might be made that will strike an appropriate balance between compliance with the GDPR and the need for brand owners and consumers to be able to hold online businesses accountable for fraudulent and illegal activity. This is a complex issue, and it does not seem wise to rush to implement a solution without fully vetting the possibilities and getting input from all the relevant stakeholders. I believe that many other brand owners have been in the dark about this issue until recently (or are still unaware of the issue), and it would make sense to allow us more time to inform our colleagues and solicit their input.

Second, I want to emphasize the importance of the Whois database information to Bose and other brand owners in our investigation of illegal activity impacting our brands, such as counterfeiting and phishing. The availability of email, telephone and mailing address information is essential for investigation of this activity. Without Whois data, we would have no means to identify and hold accountable the perpetrators of this fraudulent activity. It is extremely important to have access to registrant and admin contact email addresses, at a minimum, as they are an important tool for identifying linked activity that is conducted by the same or related parties. For example, Bose customers were recently the targets of attempted phishing attacks during the Black Friday weekend in November in which numerous web sites purported to offer highly discounted Bose products, but were only collecting customers' credit card information – products were never delivered. Thanks to having access to Whois records with email addresses, we were able to find other web sites hosted on domain names operated by the criminals using the same or similar email addresses, and were able to proactively disable them before receiving customer reports about them. Further, we discovered that other brand owners had been targeted by the same criminals,

and were able to collaborate with the other brand owners to approach law enforcement officials to take action. Without access to reverse Whois lookups, none of that would have been possible. Finally, it is essential to have email addresses for sending cease and desist letters and serving process in lawsuits.

I understand that ICANN has proposed three different models to comply with the GDPR. Of the three models, the one that is most palatable is Model 1, which would apply only to natural persons. Of the three models, only the first would leave in place robust Whois data for companies. The first model would provide the most robust information for natural persons as well, including phone numbers in addition to email addresses. That information can be useful in investigations as well. With respect to the access to non-public Whois data, the self-certification is a better solution than the formal accreditation or legal due process, which would make it time consuming and cost prohibitive to request the information.

While Model 1 is the best of the three that have been proposed, I believe that there is still room for improvement. I would ask whether it would be possible for this Model 1 proposal to only apply where the registrant is located within the E.U. Model 1, as currently proposed, is over-inclusive in that it is protecting the data of natural persons located outside the E.U. As I understand it, the GDPR only requires protection of the data of individual persons located within the E.U. For individuals located outside the E.U., the most robust information can and should be provided.

In short, we believe that ICANN should implement the least restrictive policy that allows brand owners and their agents the most access to Whois data while complying with the GDPR. We hope that ICANN will extend the comment period to allow other brands to express their concerns and help develop a solution that will strike the right balance.

Regards,

Michelle Brownlee
Trademark Counsel

BOSE
Legal Department