

COALITION FOR ONLINE ACCOUNTABILITY

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Cherine Chalaby
Chair, ICANN Board of Directors

Manal Ismail
Chair, Governmental Advisory Committee

Dear Manal and Cherine:

We are writing with the goal of assisting with the ongoing discussions between the GAC and the Board on the proposed interim WHOIS model.

Please find attached a legal memorandum from the UK law firm Bristows. This memorandum sets forth in detail why the publication of the registrant's e-mail address, as verified by the registrar, in publicly accessible WHOIS complies with the GDPR. This analysis applies to the e-mail addresses of natural person registrants who are residents of Europe.

Also attached is the letter previously submitted to ICANN by COA in February that explains in detail the critical importance of the public availability of the registrant's e-mail address to the secure and stable functioning of the DNS, public welfare and safety, legitimate interests of third parties, including intellectual property rights owners, and for the protection of the registrants themselves. That letter also explains why an anonymized e-mail address or web contact form does not serve as an adequate substitute.

In addition to all the reasons articulated in the Bristows' memo and the COA letter, it is difficult to see how the UDRP and URS will continue to function absent the availability of the registrant's e-mail address. Without this information, vital evidence that would otherwise be available would be missing from UDRP complaints, with the result that registrations made in bad faith would escape adjudication and continue to attract unwitting online users. Even if somehow UDRP and URS providers could obtain access to registrant e-mail addresses for the purpose of serving complaints, the unavailability of this data by trademark owners would make it impossible for them to conduct even the most rudimentary

Broadcast Music Inc. (BMI)

NBCUniversal

Entertainment Software Association (ESA)

Recording Industry Association of America (RIAA)

The Walt Disney Company

Motion Picture Association of America (MPAA)

Time Warner Inc.

due diligence before filing a UDRP or URS complaint, thus ensuring that the system would become flooded with marginal cases and needlessly driving up costs for all concerned.

Furthermore, it is clear that a uniform accreditation and access process will not be implemented by May 25. As a result, there will be no uniform or stable system of tiered/layered access in place. This only increases the urgency for the requirement of maintaining the public availability of the registrant's e-mail address in any interim model or Temporary Policy. Goran Marby appropriately warned of the very real threats of a "fragmented WHOIS" in his letter of April 12 to the WP29 and wrote of the imperative of striking an appropriate balance between "the important right of privacy and the need of information."

Maintaining public access to the registrant's e-mail address in the interim WHOIS model (whether via a Temporary Policy or any other means by which ICANN will set the requirements for interim WHOIS) is one of the most important steps ICANN can take towards preserving the stability and security of the DNS and the internet itself, while complying with the GDPR and seeking to mitigate against the gravely detrimental consequences of a fragmented WHOIS.

Thank you for your consideration of this material.

cc: ICANN Board of Directors
Goran Marby
John Jeffrey