

COALITION FOR ONLINE ACCOUNTABILITY

WWW.ONLINEACCOUNTABILITY.NET

C/O MITCHELL SILBERBERG & KNUPP LLP • 1818 N STREET N.W., 8TH FLOOR • WASHINGTON, D.C. 20036-2406
TEL: (202) 355-7900 • FAX: (202) 355-7899 • E-MAIL: INFO@ONLINEACCOUNTABILITY.NET

Comments of Coalition for Online Accountability

April 21, 2014

The Coalition for Online Accountability (COA) offers this brief comment on one aspect of the issue of “legitimate purposes for collection and retention” of data elements listed in the 2013 RAA Data Retention Specification (Specification). See <http://www.icann.org/en/news/announcements/announcement-3-21mar14-en.htm>.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners (listed below). COA and its participants have engaged actively in many aspects of ICANN’s work since the inception of the organization, including through the Intellectual Property Constituency. For further information, see www.onlineaccountability.net.

Item 1.1.6 in the Specification is “WHOIS information, as set forth in the WHOIS Specification” to the 2013 RAA. ICANN’s “Description” document, see <http://www.icann.org/en/resources/registrars/raa/draft-data-retention-spec-elements-21mar14-en.pdf>, notes some “potentially legitimate purposes for collection/retention” of this data, including “to populate and make available to the public community the WHOIS register both during and for some period of time after the registration (to address hijacking, theft, slamming, and to facilitate resolution of transfer disputes in accordance with the TDRP); abuse mitigation; facilitating domain name purchases and sales.”

COA agrees that these are legitimate purposes for collecting WHOIS data, and for making it available to the public. We would also note that many other legitimate purposes (beyond those listed) have been identified during the 15 years that WHOIS issues have been under discussion within ICANN. Indeed, a decade or so ago, the GNSO devoted considerable time and attention in an unsuccessful attempt to reach a consensus statement on “the purpose of collecting Whois data.” In that process, literally dozens of legitimate purposes were identified and described. These include, of course, the purposes of identifying and enabling contact with the party or entity responsible for an Internet resource to which the domain name resolves (often a website). This is perhaps the core purpose that unites consumers, intellectual property owners, law enforcement agencies, parents, and a wide range of other users of Whois. Finally, we note that in November 2012, the ICANN board adopted an Action Plan that includes as its first element a number of steps intended to lead to “Board-initiated, expedited GNSO policy work that is expected to result in consensus policy that, at a minimum, addresses the purpose of

6041629.2AMERICAN SOCIETY OF
COMPOSERS
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

Counsel: Steven J. Metalitz (met@msk.com)

collecting, maintaining and making available gTLD registration data.” See <http://www.icann.org/en/about/aoc-review/whois/implementation-action-05sep13-en.pdf>.

We don’t believe that ICANN, by posting this “description” paper for public comment, intended to re-open, short-circuit, or redirect the long-running discussion within ICANN about the legitimate purposes for collecting Whois data. We understand, in contrast, that the key question on which it is seeking (in the words of the notice) to “provide guidance for Registrars” is the legitimate purpose(s) for requiring registrars to retain Whois data (as well as the other data elements listed in the Specification) for two years following the expiration of the domain name registration contract in connection with which this data was collected. On that topic, as the ICANN “description” document correctly notes, retention of such data can “help copyright owners locate and pursue copyright infringers, either through civil or criminal enforcement.” Failure to retain such data can in some cases hamper the ability of rightholders to identify and locate persons who infringe copyright on a massive scale.

However, we also submit this comment to seek confirmation that the purpose of collecting Whois data is not actually at issue in this public comment exercise. Our understanding is that nothing in either the Data Retention Specification; the process for waiving the Specification’s obligations; or the development of a common understanding of the purposes for collecting or retaining the data covered by the Specification, is intended to undercut or otherwise to affect the obligation of registrars to collect Whois data and to make it available to the public. We look forward to seeing such a confirmation in ICANN’s response to this public comment forum.

Respectfully submitted,

Steve Metalitz, counsel to COA

Mitchell Silberberg & Knupp LLP