



AUG 1 - 2008

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Chairman  Dengate-Thrush:

On June 18, 2008, the Internet Corporation for Assigned Names and Numbers (ICANN) posted for public comment proposed amendments to the Registrar Accreditation Agreement (RAA). ICANN has stated that the RegisterFly collapse in 2007 necessitated its review of the RAA provisions and the establishment of an escrow program. In particular, ICANN's President noted that the RegisterFly situation revealed that registrant data was not protected in the case of a registrar collapse especially when that registrant data was cloaked using a proxy service. As such, ICANN announced it was undertaking an RAA review and established the escrow programs ostensibly to strengthen the RAA to benefit and protect registrants. The Department of Commerce (Department) believes that ICANN found itself in this position because it has failed to actively enforce existing RAA provisions.

ICANN has now proffered several proposed amendments to remedy perceived weaknesses in the RAA. Instead of remedying the situation, however, ICANN's proposed changes have the strong potential of exacerbating the very problem ICANN had announced that it would fix – protecting the registrant. The Department is concerned about these proposed amendments for a variety of reasons. First, these changes to the registrar WHOIS obligations are in direct contravention to recommendations received from the Governmental Advisory Committee (GAC). The U.S. Government has supported the March 28, 2007 GAC Principles Regarding gTLD WHOIS Services that outlined a variety of legitimate uses of WHOIS data. It is clear that the unrestrained provision of proxy services can undermine all of these legitimate uses of WHOIS data. The GAC Principles also called on ICANN to study the uses and misuses of WHOIS data. In subsequent Communiqués, the GAC has repeated its call for these studies (October 2007, February and June 2008). The GAC also submitted a detailed list of subjects it recommended that ICANN study in depth – including the impact of proxy services on legitimate uses of WHOIS data. ICANN has continued to ignore this recommendation and has delayed the commencement of these studies. Without the valuable data that could be gleaned from these studies, a complete understanding of the impact of proxy services on registrants, consumers, other legitimate users of WHOIS data, and the security and stability of the DNS is unknown. Therefore, moving forward with an endorsement of proxy services, as proposed in paragraphs 3.4.1 and 3.12.4, is untimely, is not supported by study data, and appears inconsistent with the GAC's Principles.

Were ICANN to allow these provisions to proceed as proposed, it would also be in direct contradiction to the Affirmation of Responsibilities approved by the ICANN Board of Directors on September 25, 2006, found in Annex A to the Joint Project Agreement (JPA) that ICANN has with the Department. This document states that "ICANN shall continue to enforce existing policy relating to WHOIS, such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information." The Department has not wavered in its strong support for continued, timely access to accurate and publicly available WHOIS data, which could easily be undermined by the anonymity offered by proxy services.

Additionally, ICANN has proposed to allow registrars to post a conspicuous notice for those that purchase proxy services notifying them that the registrar will not escrow registrant data. The end result of this provision is that ICANN and the registrar are absolved of any responsibility if the data is lost due to registrar collapse, termination, or misuse. Simply, the registrant, which has paid extra to the registrar for these proxy services, loses its domain name registration without recourse. This will cause disruptions to DNS and those systems that depend upon the DNS's continued uninterrupted operation associated with those domains.

Sincerely,



Meredith A. Baker
Acting Assistant Secretary
for Communications and Information

cc: Dr. Paul Twomey, President and CEO, ICANN