

**Comments of Electronic Arts Inc. on GNSO Council Motions
And Related ICANN Whois Reports**

October 29, 2007

Thank you for this opportunity to provide the views of Electronic Arts Inc. ("EA") on recent developments in Whois policy within ICANN.

EA is the world's leading independent developer and publisher of interactive entertainment software for advanced console systems, including those from Sony, Microsoft and Nintendo, as well as software games for the PC, casual web-based games and games for mobile phone devices.

EA operates its global headquarters in Redwood Shores, California and has operations in more than 30 countries. Since the company was founded in 1982, EA has been a creative leader and today, the company continues to innovate and evolve the interactive entertainment medium. EA has garnered more than 700 awards for outstanding software in the United States and Europe and has over 31 product franchises that have reached more than a million unit sales worldwide, including *The Sims*, *Harry Potter*, *Need for Speed*, and *Madden NFL*.

The interactive entertainment software industry estimates it has lost well over two billion dollars a year to piracy in recent years. We estimate that as much as 10 percent of that loss (\$200 million per year) relates to the piracy of EA products specifically. The Internet is one of the key channels of distribution of pirated entertainment software.

EA regularly pursues investigations into matters involving copyright infringement and piracy of EA products carried out via the Internet. In order to properly conduct these investigations, the Whois databases are used as the primary resource to determine the identity of those engaged in piracy or other infringement of our intellectual property over the Internet. Without reliable public access to Whois information, there would be no reasonably accessible starting point from which to identify the source of infringing materials and our efforts to protect our intellectual property assets on the Internet would be greatly impaired.

Motion #1

EA strongly urges the Council not to adopt Motion #1, which would simply move forward with implementation of the OPoC proposal, as it was presented in a Task Force report earlier this year.

In our January 15 comments (which is attached for your reference), we expressed our concern that OPoC would insert another layer of delay and frustration in efforts to identify infringers. In particular, we pointed out the lack of clear procedures on how and when information could be obtained and who could obtain it.

The Whois Working Group ("WWG") report answered none of these key questions to any satisfying degree:

1. How: no agreement on mechanism for third party access; no agreement on mechanism for verifying OPoC's contact information. (WWG could not even agree that an OPoC must expressly consent to being an OPoC. Given that so much hinges upon the OPoC's actions, this omission is deeply troubling.)
2. When: no agreement on any process for the OPOC to reveal to the requester the full registrant contact information; though agreement that requestors could escalate such a request to registrar if OPoC fails to respond within a specific time frame, no agreement was reached on a specific time frame in which the registrar must act upon that appeal nor upon what criteria the registrar should apply in making that decision.
3. Who: no agreement on which legitimate third parties can access full Whois records (nor even that anyone in private sector could qualify).

In short, while some consensus was achieved on a few modest issues (such as limiting OPoC to registrants who are natural persons), there was a remarkable lack of consensus on the fundamental mechanics of OPoC.

EA is concerned that OPoC has developed an unjustified momentum within the ICANN bureaucracy. Merely because many people have spent untold hours discussing, commenting, and writing reports about it is no reason to push forward and ignore the many identified and documented flaws. A bad idea does not get better no matter how many working groups you throw at it. ICANN owes stakeholders a better alternative. We believe that better alternative is studying Whois in a more focused way.

Motion #2

Motion #2 provides a much better path for ICANN to follow. ICANN's efforts to change Whois policy have been undermined by a serious lack of concrete, factual data about how Whois information is used, and how it may also be abused. The right course now is

to pause, and gather the factual information needed for sound policymaking. EA urges the Council to adopt Motion #2.

Motion #3

Motion #3 should be summarily rejected. The current system of ready public access to Whois is a creature of contract – the contracts between ICANN and the registries and registrars in the generic Top Level Domain space. This system has been remarkably successful over the many years that it has been in place. Publicly accessible Whois has helped to promote confidence in the Internet and in e-commerce, and has facilitated efforts by the private sector and by law enforcement agencies to combat online fraud and other illegal behavior. Motion #3 calls for ICANN to jettison all Whois-related obligations from its contracts, and let each gTLD registry and registrar set its own policy – or no policy – about what domain name registrant information it collects, uses, or makes available to third parties.

Removing Whois contractual obligations could put consumers at greater risk. Whois access rules that vary from registrar to registrar would complicate anti-fraud enforcement efforts by both law enforcement and private industry. Just as significantly, Motion #3 tells the world that ICANN is abandoning the very contracts that are its best tool for the management of the domain name system. This would be fundamentally inconsistent with the reasons why ICANN was created in the first place, and certainly with the reasons why it has been delegated such important responsibilities.

Finally, EA urges the Council to consider the impact of its decisions on the broadest possible Internet community. All Internet users benefit from publicly accessible Whois data. Some of the most pernicious abuses of the Internet, which target vulnerable and unsophisticated users, would no doubt flourish if public access to Whois were sharply cut back (as the OPoC proposal would do) or were eliminated altogether (a likely consequence of Motion #3). Phishing is an excellent example. Consortia such as the Anti-Phishing Working Group, and a number of law enforcement agencies, including the U.S. Federal Trade Commission, have clearly told ICANN that they depend upon public access to Whois in order to respond swiftly and effectively to these abuses. It would be irresponsible to do away with this critical tool.

Respectfully submitted,

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Electronic Arts Inc.