THE FINANCIAL SERVICES ROUNDTABLE

BITS
FINANCIAL SERVICES
ROUNDTABLE

1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

October 26, 2007

To: Internet Corporation for Assigned Names and Numbers and GNSO Council
        (email: whois-comments-2007@icann.org)

Re: Comment on GNSO Council Motions, WHOIS Task Force Report, WHOIS Outcomes Working
        Group Report, and ICANN Staff Overview of Recent GNSO Activity Concerning WHOIS

Dear Sirs and Madams:

The Financial Services Roundtable, including BITS, ("Roundtable") appreciates the opportunity to
comment on the proposals currently pending before the Internet Corporation for Assigned Names and
Numbers ("ICANN") regarding the WHOIS database and related services ("WHOIS"), and specifically
on the proposals to restrict or eliminate access to the kind of data collected, maintained, and made
publicly available through WHOIS. We believe these proposals would have serious detrimental effects
on financial institutions' abilities to fight fraud and identity theft on behalf of customers and consumers if
such measures are taken. As such, we urge the continued availability of this data to regulated financial
institutions.

Background

Perpetrators frequently target customers of financial institutions. The most common method of
perpetrating fraud against consumers on the Internet is through "phishing" attacks whereby fraudulent
emails are used to lure consumers to counterfeit websites. Once consumers are lured to the counterfeit
website, they are duped into divulging personal information such as credit card numbers, account
usernames, passwords and social security numbers, believing instead that they are dealing with their own
financial institution. The stolen information is used to perpetrate fraud in a variety of ways such as
withdrawing funds from consumers' bank accounts and making online purchases. Also, the stolen
information can be used to perpetrate identity theft by opening new accounts in the name of the consumer
or taking out loans in the victim's name. WHOIS data is vital to the process of taking down these
fraudulent websites.

This is the third comment letter that the Roundtable has submitted to ICANN.[1] Our original position
supported the "Special Circumstances Model" with the understanding that it would provide unrestricted
access to WHOIS information while providing a mechanism to protect the privacy concerns of individual,

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[1]Letters submitted in April 2006
(http://www.bitsinfo.org/downloads/Comment%20letters/WHOISCommentBITSFINALApr06.pdf) and January 2007
http://www.bitsinfo.org/downloads/Comment%20letters/BITSFSRWHOISCommentLetterJan122007.pdf

non-commercial registrants who can demonstrate a need to mask their WHOIS data. We still believe Special Circumstances is the appropriate model that addresses privacy concerns.

This comment letter is divided into three sections. The first section is an overview of our members. The second section explains how financial institutions use WHOIS data to combat fraud and identity theft. The third section is a summary of our concerns with the three proposals before the ICANN Generic Names Supporting Organization ("GNSO").

About The Roundtable

The Roundtable is an association that represents approximately 100 of the largest integrated financial services companies providing banking, insurance, investment products, and other financial services to American consumers. Roundtable member companies provide fuel for the global economy, accounting directly for $65.8 trillion in managed assets, $1 trillion in revenue, and 2.4 million jobs. BITS is a division of the Roundtable, leveraging intellectual capital to address issues at the intersection of financial services, operations and technology. BITS focuses on strategic issues where industry cooperation serves the public good, such as fraud prevention, critical infrastructure protection, and the safety of financial services.

How Financial Institutions Use the WHOIS Data

U.S. financial institutions use the publicly available domain name registration database known as WHOIS as an important tool to respond to fraudulent activity such as identity theft, "phishing" attacks, and domain name infringement. Based on a survey of our members companies in May 2007, Roundtable member companies use WHOIS data to:

- Investigate and take down fraudulent phishing websites by providing key information in approximately half of our industry's website take-down requests.

- Identify repeat offenders so that the seriousness of an attack can be gauged and cease and desist letters can be modified when appropriate.

- Contact owners of hacked or compromised sites, particularly when the attack is timed to coincide with low technical staffing levels at the Internet Service Provider (ISP).

- Perform forensic research in fraud investigations and link analysis for fraud detection purposes.

The use of WHOIS data varies considerably based on the size of the institution and its customer base. The range of use varied from 19 to 235 times per institution during a 90 day period in early 2007. Additionally, WHOIS information is critical to the timely resolution of phishing and other fraudulent events targeted at customers of U.S. financial institutions since such information is not available from any other source.

Concerns with the Three Proposals

Several of our member companies, including Regions Financial Corporation, HSBC, and UBS participated in the Working Group ("WG") that recently produced the "WHOIS Outcomes Working Group Report" (or "WG Outcomes Report"). Participants are concerned that new proposals to radically restrict or eliminate access to WHOIS will undermine their essential and legitimate functions in the fight

against online fraud, illegal activities, and infringement, and in support of other legitimate activities. As noted above, financial institutions rely on WHOIS as an essential tool to investigate and take timely measures to protect customers from fraud and identity theft, as well as defend against cybersquatters and third-party infringers.

The Roundtable understands that three motions concerning WHOIS have recently been released for public comment and may be voted on at the ICANN meetings in Los Angeles on October 29, 2007. In brief, these motions call for three very different outcomes with respect to the WHOIS:

(1) Support and implement the Operational Point of Contact ("OPOC") proposal as a replacement for WHOIS, and apply OPOC for all ICANN-accredited registrars and gTLD (Generic Top Level Domain) registries;

(2) Conduct a comprehensive study on the registration characteristics, uses and abuses of WHOIS data and take the results of this study into account before deciding any next steps in WHOIS policy development; or

(3) Phase out current WHOIS contractual obligations for registries, registrars and registrants over the next year.

Of these alternatives, we strongly support the second motion requiring further study of WHOIS before any further decisions on WHOIS policy are made. No comprehensive, objective study has yet been made of these key factual issues. Future ICANN policymaking would greatly benefit from the results of such a study. The Roundtable believes that, in many important respects, those proposing dramatic change to WHOIS are underestimating the impact of that change. Countless individuals, businesses and other organizations rely on WHOIS data to perform legitimate functions, as recognized by the Governmental Advisory Committee ("GAC") in its statement of principles on WHOIS.[2] The existing WHOIS is an international and time-tested resource and service. Changes should not be made before there is a better understanding of any problematic issues with the existing WHOIS database, and a much more informed understanding of the consequences of proposed change including the characteristics of gTLD registrants, the uses and abuses of WHOIS data, and a review and analysis of the different proxy services available today.

We do not support the first motion at this time. The currently envisaged OPOC approach is inadequate for implementation and would create a "weak link" in the domain name system ("DNS"), allowing the OPOC to become an instrument for delay and obstruction, and aiding those who would perpetrate fraud on consumers and infringement of third-party rights. The Roundtable supports the balance that the WG attempted to strike between privacy interests and the legitimate needs of those who rely on WHOIS as a tool to protect consumers and act against fraud and other illegal acts by registered name holders. However, the Roundtable observes that the WG failed to achieve consensus on a number of issues that are essential to a workable, effective and prudent implementation of the OPOC proposal.[3]

The Roundtable ardently opposes the third motion, which calls for the virtual elimination of the WHOIS database. This motion would close down the existing WHOIS system without regard to the countless individuals, businesses and other entities that rely on WHOIS in support of legitimate activities including enforcing laws, safeguarding the public interests, and combating fraud, illegal activity and infringement.
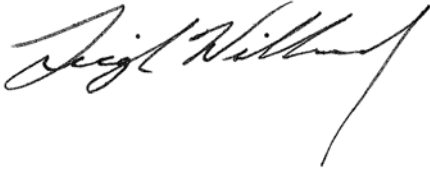
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[2] See GAC Principles Regarding gTLD WHOIS Services, at http://gac.icann.org/web/home/WHOIS_principles.pdf.
[3] Both the second and third motions in their full text also refer to this failure to achieve consensus. See ICANN Staff Overview Report, pp.9-10.
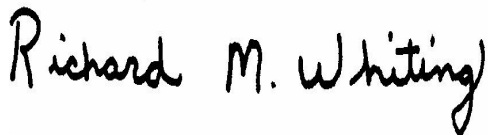
Accurate information in the WHOIS database provides some measure of deterring fraud and identity theft. Removing WHOIS as a key online resource would be irresponsible and could result in grave consequences.

Thank you for your consideration. If you have any further questions or comments on this matter, please do not hesitate to contact us or John Carlson, Senior Vice President for Regulatory Affairs of BITS at john@fsround.org or 202- 289-4322.

Sincerely,

Leigh Williams
President
BITS

Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable

cc: John Kneuer, Assistant Secretary for Communications and Information, US Department of Commerce Department