



MPA Response to ICANN's Public Consultation on the Purpose of WHOIS Databases

The Motion Picture Association (MPA) is a trade association that represents seven international producers and distributors of films, home entertainment and television programmes¹. We welcome the opportunity to submit our comments on ICANN's "Preliminary task force report on the purpose of Whois and of the Whois contacts (18 January, 2006)" and understand that public feedback is, at this stage, mainly sought on the respective merits of two distinct formulations of the purpose of Whois. These two definitions have been discussed in the framework of the Generic Names Supporting Organization's Whois Task Force.

On behalf of its Member Companies, the MPA conducts anti-piracy investigations, notably in cases of copyright infringement carried out over the Internet. We also assist with the criminal and civil litigation generated by such cases, and conduct education outreach programs to inform movie fans around the world about the harmful effects of copyright theft. In its daily work, the MPA has regular recourse to Whois databases and we very much value the fact that, ever since the inception of the domain names system (DNS), Whois data has been available freely, publicly and in real time throughout the gTLD name space. Clearly, our main use of Whois databases relates to the need to determine the identity of those conducting piracy or product counterfeiting over the Internet, but we are also very much aware of the crucial role played by Whois in identifying cyber-squatters and other trademark infringers, as well as in the wider context of investigating online frauds (e.g., phishing schemes) and assisting law enforcement and consumer protection agencies in combating them.

Out of the alternative formulations of the purpose of Whois, the MPA strongly supports "Formulation 2" (i.e. *"The purpose of the gTLD Whois service is to provide information sufficient to contact a responsible party or parties for a particular gTLD domain name who can resolve, or reliably pass on data to a party who can resolve, technical, legal or other issues related to the registration or use of a domain name."*). Not only do we consider that "Formulation 2" is the most consistent with the fact that Whois data has always been collected for the purpose of public access and display, we would also argue that – unlike the over-restrictive "Formulation 1" – it appropriately reflects the fact that Whois databases are instrumental in ensuring stability, security and accountability in the on-line world. As a central tool, Whois has contributed in many different ways to the tremendous development of the DNS and thus of the Internet. Seeking to restrict the purpose of Whois would therefore amount to an unwelcome step backward.

Finally, we would also like to draw ICANN's attention to the fact that historical evidence traced back to as early as 1982 (i.e., at the time of the ARPANET, the precursor to today's Internet) suggest that Whois databases have always served a wider purpose than a strictly technical one.

¹ The MPA's members comprise: Buena Vista International, Inc., Metro-Goldwyn-Mayer Studios, Inc., Paramount Pictures Corporation, Sony Pictures Releasing International Corporation, Twentieth Century Fox International Corporation, Universal International Films, Inc., Warner Bros. Pictures International, a division of Warner Bros. Pictures Inc.

Suffice to mention a series of documents from the Internet Engineering Task Force (IETF), such as RFC 812, RFC 954, RFC 1834 and RFC 2167, which support this assertion in no uncertain terms (for further discussion of these RFC, see notably pp 7-10 of the Background Paper submitted to ICANN by the Intellectual Property Constituency on 25 July 2005 at <http://forum.icann.org/lists/gnso-dow123/doch5iGc24iPG.doc>).

We would be happy to provide further details on the above-mentioned issues upon request. We thank you for your attention and consideration.

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