

30 October 2007

Our Ref: KAH

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Dear Sir/Madam

GNSO Meeting 30 October 2007 – Submission to ICANN

We refer to the meeting of the Generic Names Supporting Organisation (“GNSO”) to be held on 31 October 2007.

In particular, we note that the following motions are before GNSO on 31 October 2007 in relation to a future restructure of the Domain Name and Whois System, which the GNSO will vote on:

- **Motion 1** – for the implementation of a new 'Operational Point of Contact' (“OPOC”) to replace the current domain registration contacts.
- **Motion 2** – for ICANN to conduct a comprehensive, objective study on the legitimate abuses and uses of Whois data prior to making policy changes.
- **Motion 3** – for the elimination of contractual obligations which requiring registrars to display domain name ownership and contact details.

We make the following submissions to ICANN in relation to the three motions.

Use of Whois data

The ability to obtain comprehensive information such as a registrant’s name and contact details, form the basis for third parties whose rights are being infringed to determine their course of action to protect those rights as efficiently as possible.

Simply by conducting a Whois search for a contentious domain name, a party is often able to determine the jurisdiction of the registrant, and whether the registrant may have another infringing presence – such as a business name or company name, and thus the extent to which the party’s rights are being infringed.

We submit that by removing the ability to obtain contact details of a registrant (which the passing of Motion 3 would result in), a third party who is seeking to ascertain their position in

relation to a domain name dispute would be left with a great deal of uncertainty and difficulty in making further enquiries to properly assess their position.

For example, if an infringing domain name is registered in circumstances where:

- no contact details are publicly ascertainable; and
- the associated website has no information as to the identity of the registrant (which is often the case particularly in relation to cyber-squatters and fraudulent online ventures),

a third party who is only aware of the domain name through online searches, would have no means of assessing whether the registrant is in the same jurisdiction, whether the registrant has any other presence such as an infringing business or company, or how the registrant may be contacted for further information in respect of a dispute.

By allowing contact information for a registrant of a domain name to be displayed, a third party is able to make their own further investigation in relation to their standing, as efficiently as their circumstances require.

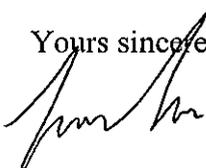
In situations where the true registrant's name and contact details are masked, a third party whose rights are being infringed, encounters difficulties to put forth an allegation and pursue a response. We note that Motion 1 suggests an OPOC implementation to act as the contact in relation to any requests, however, we submit that this potentially adds unnecessary overhead.

Also, in our experience, we have encountered situations where the identity of a registrant has been concealed and has instead been replaced with the contact information for a registrar. In these circumstances, we have encountered difficulties obtaining further contact information or details as to the activities of the registrant, despite numerous requests to the registrar. If the contractual obligation on registrars to disclose contact details in Whois data is removed as per Motion 3 or restricted as per Motion 1, there is a risk that difficulties in obtaining any information at all in relation to a domain name would be the norm rather than the exception.

Therefore, we strongly believe that the requirement that a registrant's name and contact details (in some form) be displayed on a Whois extract, should not be eradicated in the manner Motion 3 would, or restricted in the manner Motion 1 would, without ICANN conducting an objective and comprehensive study into the legitimate abuses and uses of Whois data prior to making policy changes in accordance with Motion 2.

Accordingly, we support the passing of Motion 2 by the GNSO.

Yours sincerely



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