

January 12, 2006

To: ICANN WHOIS Task Force (whois-comments@icann.org)

Re: Comments to the Preliminary Task Force Report on WHOIS Services (the "Report")

Dear Task Force Members:

The organizations identified below join MarkMonitor in submitting comments to the two new WHOIS proposals described in the Report.

#### Introduction

Billions of Internet users benefit from the protection enabled by current WHOIS policy, which requires free, unrestricted and immediate access. If ICANN policy creates new obstacles or delays for those seeking to protect consumers from illegal activity involving domain names, Internet users will suffer. Thwarting the current and successful process will profoundly increase the number innocent consumers made victims by Internet criminals.

The undersigned ask the WHOIS Task Force to recognize that brand owners are most often first to respond to online illegal activity and that they rely almost exclusively on WHOIS to identify and stop the persons behind such illegal conduct. Identification is critical—it helps parties communicate and speed dispute resolution without legal action, and when such action is necessary, enables service of process, without which the legitimate rule of law cannot provide a safe environment for consumers and businesses on the Internet.

While many legitimate and important privacy concerns exist over access to WHOIS data (for example, registration data of a battered women's shelter site) many others seek anonymity as a cover for nefarious intent like cyber squatting, phishing and other for profit illegitimate behavior. While those with ill-intent profit from anonymity, consumers and legitimate online commerce suffer, often unknowingly. We request that ICANN evaluate models that offer protection from those who seek to abuse the system while making decisions related to blocking access to WHOIS data.

We therefore ask that ICANN and the WHOIS Task Force act on the behalf of Internet users and consumers to preserve the collective trust instilled in the Internet. We request that any new policies be examined by the WHOIS Task

Force in light of their impact on consumers and those seeking to maintain and protect the safety and reliability of electronic commerce.

To preserve order and maintain a sense of security and accountability for Internet users, we recommend the adoption of the Special Circumstances proposal.

## Evaluation of Proposals

### I. The Operational Point of Contact (OPOC) Proposal

The OPOC proposal is troubling for a number of reasons. First, it reduces the amount of information available in investigating instances of online abuse. Brand owners often rely on the various fields in WHOIS to track down cybersquatters and fraudsters. Reducing the amount of such information will likely cause delays for brand owners in identifying and commencing action against registrants who engage in illegal conduct.

The OPOC proposal does not specify the qualifications, responsibilities, and standards to be applicable to the OPOC. For example, it is unclear whether the OPOC would be able to accept service of process for legal actions involving domain names, such as the UDRP. Under the proposal, the OPOC could be a party with no relationship to the actual registrant. Since the OPOC can be a third party (such as a proxy service or even a registrar), there is no assurance that important communications will be promptly forwarded to the registrant. Thus, cease & desist letters, domain transfer approvals, notices of inaccurate WHOIS information, phishing take-down notices, UDRP complaints and other similar communications may not be received and processed in a prompt manner.

In addition, the OPOC proposal does not address the privacy concerns that have been raised as the primary reason for changing WHOIS policy. Without such improvements in privacy, it is difficult to justify the adoption of OPOC over the status quo.

### II. Special Circumstances Proposal

The Special Circumstances proposal is preferable to the OPOC proposal because it provides a workable solution to the privacy concerns without significantly changing WHOIS for the vast majority of Internet users.

The impact to brand owners should be minimal under the Special Circumstances proposal because registrants who misuse domain names to conduct illegal online activities should not qualify for the "special circumstances designation" and therefore would continue to have their contact information displayed in the same manner as currently available today. The Special Circumstance proposal includes a practical mechanism that allows the WHOIS information to be revealed in the event the privacy designation is abused, or the domain name is used for commercial purposes.

Thus, under the Special Circumstances proposal, brand owners would not need to significantly alter their current processes and procedures for monitoring, tracking and taking action against those illegally targeting their businesses and consumers.

Respectfully submitted,



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Co-signed by:

**Abbott Laboratories**  
Abbott Park, IL USA

**Bell Canada International**  
Montreal, PQ CANADA

**Caterpillar Inc.**  
Peoria, IL USA

**Activision Inc.**  
Santa Monica, CA USA

**Booz Allen Hamilton**  
McLean, VA USA

**Cingular Wireless**  
Atlanta, GA USA

**Acushnet Company**  
Fairhaven, MA USA

**Bose Corporation**  
Framingham, MA USA

**CIT**  
New York, NY USA

**Advanced Micro Devices**  
Sunnyvale, CA USA

**British Sky Broadcasting**  
London, ENGLAND

**CMS Energy**  
Jackson, MI USA

**Alliance Data**  
Dallas, TX USA

**Boy Scouts of America**  
Newark, NJ USA

**Coldwater Creek**  
Sandpoint, ID USA

**ALLTEL Communications Corp.**  
Sandusky, OH USA

**Canadian Broadcasting Corp.**  
Ottawa ON CANADA

**Comerica**  
Detroit, MI USA

**Anti-Phishing Working Group**  
San Francisco, CA USA

**Capmark Financial Group Inc.**  
Harsham, PA USA

**Conair Corp.**  
East Windsor, NJ USA

**Apple Computer**  
Cupertino, CA USA

**Carfax Inc.**  
Fairfax, VA USA

**Consumers Energy**  
Jackson, MI USA

**Avaya Inc.**  
Basking Ridge, NJ USA

**CarMax Business Services**  
Richmond, VA USA

**Coors Global Properties, Inc.**  
Golden, CO USA

**Bank of America**  
Charlotte, NC USA

**Carnival Corporation**  
Miami, FL USA

**Dell, Inc.**  
Round Rock, TX USA

**BBC**  
London, ENGLAND

**Delta Airlines**  
Atlanta, GA USA

<b>Doctor's Associates Inc.</b> Milford, CT USA	<b>Integis</b> Charlotte, NC USA	<b>Novell Inc.</b> Waltham, MA USA
<b>Dole Food Companies Inc.</b> Westlake Village, CA USA	<b>InterContinental Hotels Group</b> Windsor, ENGLAND	<b>Optimo.com</b> San Leandro, CA USA
<b>dotBERLIN GmbH &amp; Co. KG</b> Berlin, GERMANY	<b>International Data Group</b> Boston, MA USA	<b>Overstock.com Inc.</b> Salt Lake City, UT USA
<b>eBay Inc.</b> San Jose, CA USA	<b>Kelly Services</b> Troy, MI USA	<b>PACCAR Inc.</b> Bellevue, WA USA
<b>E.I. du Pont de Nemours &amp; Co.</b> Wilmington, DE USA	<b>Knowledge Adventure</b> Schiller Park, IL USA	<b>Paypal Inc.</b> San Jose, CA USA
<b>EMCOR Group</b> London, ENGLAND	<b>Lastminute.com</b> London, ENGLAND	<b>PerkinElmer</b> Wellesley, MA USA
<b>First Data Corporation</b> Greenwood Village, CO USA	<b>Live Nation</b> Beverly Hills, CA USA	<b>PetSmart Inc.</b> Phoenix, AZ USA
<b>Fontainebleau Resorts</b> Las Vegas, NV USA	<b>Logitech Inc</b> Romanel-sur-Morges Caud SWITZERLAND	<b>Priceline.com</b> Norwalk, CA USA
<b>Forbes Media LLC</b> New York, NY USA	<b>Lumenis</b> Santa Clara, CA USA	<b>Quiksilver</b> Huntington Beach, CA USA
<b>Ford Motor Company</b> Dearborn, MI USA	<b>Mercer Human Resource Consulting</b> New York, NY USA	<b>Raymond James Financial</b> St. Petersburg, FL USA
<b>Franklin Templeton Invest.</b> San Mateo, CA USA	<b>Microsoft</b> Redmond, WA USA	<b>Renold plc</b> Manchester, ENGLAND
<b>Garmin</b> Olathe, KS USA	<b>Molson Canada</b> Montreal, PQ CANADA	<b>Reviews.com</b> New York, NY USA
<b>General Motors Corporation</b> Detroit, MI USA	<b>Morton's The Steakhouse</b> Chicago, IL USA	<b>RevolvingDoorSlammers.net</b> Jabiru, Australia
<b>Hasbro Inc.</b> Pawtucket, RI USA	<b>Mozilla</b> Mountain View, CA USA	<b>Saint-Gobain</b> London, ENGLAND
<b>Hilton Hotels Corporation</b> Beverly Hills, CA USA	<b>NetJets</b> Woodbridge, NJ USA	<b>SB Management Services Inc.</b> USA
<b>HouseValues Inc.</b> Kirkland, WA USA	<b>News America Incorporated</b> New York, NY USA	<b>Sherwin-Williams Co.</b> Cleveland, OH USA
<b>IBM</b> Armonk, NY USA	<b>Nordstrom Inc.</b> Seattle, WA USA	<b>Shimano</b> Sakai, Osaka JAPAN
<b>InfoSpace Inc.</b> Bellevue, WA USA		<b>Shopping Inc.</b> Brisbane, CA USA
		<b>Silverpop Systems</b> Atlanta, GA USA

**Snap-on Inc et al**  
Kenosha, WI USA

**State Farm**  
Bloomington, IL USA

**T. Rowe Price**  
Baltimore, MD USA

**Tahitian Noni International**  
Provo, UT USA

**Terex Corporation**  
Westport, CT USA

**The Body Shop International**  
Littlehampton, ENGLAND

**The Clearing House**  
New York, NY USA

**The Cobalt Group Inc.**  
Seattle, WA USA

**The Dial Corporation**  
Scottsdale, AZ USA

**The Goodyear Tire & Rubber Co.**  
Amherst, NY USA

**The Saul Zaentz Company**  
Berkely, CA USA

**The Scotts Company LLC**  
Marysville, OH USA

**Visa International**  
Foster City, CA USA

**W.L. Gore & Associates Inc.**  
Putzburnn, Bayern GERMANY

**Warner Bros. Entertainment**  
Burbank, CA USA

**Washington Mutual Inc.**  
Seattle, WA USA

**Watson Pharmaceuticals**  
Corona, CA USA

**WebHostingBuzz.com**  
Wilmington, DE USA

**Wells Fargo**  
San Francisco, CA USA

**Wm. Wrigley Jr. Company**  
Chicago, IL USA

**Yahoo! Inc.**  
Sunnyvale, CA USA

**Young Life**  
Colorado Springs, CO USA

**Zurich Insurance Company**  
Zurich SWITZERLAND