

Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
UNITED STATES DEPARTMENT OF CONGRESS

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In the Matter of :
 :
 : Docket No. 060519136-6136-01
The Continued Transition of the Technical :
Coordination and Management of the :
Internet Domain Name and Addressing :
System :
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**COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS**

The American Society of Composers, Authors and Publishers (“ASCAP”) hereby submits these comments in response to the Notice of Inquiry (“NOI”) of the National Telecommunications and Information Administration (“NTIA”) dated May 23, 2006 seeking comments on the continuation of the transition of the technical coordination and management of the Internet domain name and addressing system to the private sector.

While all the questions posed by the NTIA are of critical importance, ASCAP’s comments are limited to one significant point. Question two of the NOI addresses the progress of the Internet Corporation for Assigned Names and Numbers (“ICANN”) in fulfilling its tasks under the existing memorandum of understanding with NTIA (the “MOU”). Those tasks include “implementing measures to improve the accuracy of Whois data” (para. II.C. 10) and augmenting its “system for auditing material contracts for compliance by all parties to such agreement” (para. II.C.14.g). As set forth more fully below, while ASCAP strongly supports the critical role played by ICANN in managing the domain name system, ASCAP urges the NTIA to ensure that in continuing the transition of such management, such transparency and accountability tasks made a part of ICANN’s managerial role – i.e. providing accurate Whois data and managing its contracts -- be continued, and improved upon where possible.¹

ASCAP’s Interest in Ensuring Free Unfettered Access to Accurate Whois Data

ASCAP is the oldest and largest performing rights society in the United States and a founding member of ICANN’s intellectual property constituency. ASCAP licenses

¹ Contract compliance is significant since domain name registrars and registries are obligated by contract with ICANN to provide free, web-based, real-time Whois services, and to take reasonable steps to maintain its accuracy.

the public performance of copyrighted musical works on behalf of over 225,000 songwriter and publisher members, in addition to works of virtually every foreign society through reciprocal agreements with such societies. ASCAP has entered licenses with thousands of music users who perform the millions of songs in ASCAP's repertory in all venues and media, including television and radio broadcasts, satellite and cable transmissions, and since 1995, the Internet.

As part of its licensing efforts, ASCAP identifies and licenses web sites that make public performances of ASCAP music. Unfortunately, not all web site owners are willing to cooperate, and some make even the most preliminary contact very difficult. Without the ability to identify and, where appropriate, contact the owners of these sites, ASCAP would be substantially impaired in obtaining fair compensation to ASCAP's members for the use of their works. Indeed, the majority of ASCAP's members are not superstars earning millions of dollars annually, and must rely on every penny to earn a living. It is for their benefit that ASCAP's licensing efforts are so crucial.

Identifying the owner/operators of some media outlets is fairly simple. For example, television and radio broadcast stations must be licensed with the FCC and data concerning such stations, including contact information, is readily available to the public. Similarly, information regarding restaurants, clubs, arenas and other venues are also publicly available. However, performances of music via Internet web sites may be made – and often are made – anonymously. In such instances, ASCAP must rely on Whois information to identify and contact such user to negotiate a fair and reasonable license.

Without publicly available accurate Whois data – particularly owner name and contact information -- it would be unreasonably difficult for ASCAP to determine the owner of web sites that perform copyrighted music. With accurate, publicly available free Whois data, ASCAP is able to contact web site owners, negotiate performance licenses and fairly distribute royalties to the owners of performed copyrighted music.

Of course, ASCAP's members have additional personal needs for transparent Whois data. ASCAP's members are also recording artists who seek to prevent piracy of their recordings, consumers who want to be ensured that the web sites they visit are not fraudulent, journalists who seek to identify perpetrators of hatred and violence, and parents who want the ability to control and hold accountable those that target their children with inappropriate content. In each case, accurate publicly available Whois information is crucial to meet those ends.

Ensuring the free and open availability of accurate Whois information supports many of ICANN's core values, including:

- Preserving and enhancing global interoperability of the Internet
- Respecting the creativity, innovation and flow of information made possible by the Internet

- Seeking and supporting broad, informed participation, reflecting the functional, geographic and cultural diversity of the Internet at all levels of policy development and decision-making
- Acting with a speed that is responsive to the needs of the Internet
- Remaining accountable to the Internet community

As the domain name system has evolved over the years to include competition among registrars, both domestic and foreign, installing and policing a standard Whois policy is not an easy task. Accordingly, we strongly urge the NTIA to evaluate whether ICANN has done enough to improve the accuracy of Whois data, and whether it has effectively audited compliance with the Whois-related obligations of domain name registrars and registries. The NTIA should consider how best to shape its relationship with ICANN to ensure the preservation of unimpeded access to Whois data for consumer protection, assertion of legal rights, prevention of fraud and identity theft, and other legitimate, beneficial and well-established uses of this data.

Dated: July 6, 2006

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Respectfully Submitted,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

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