

September 13, 2006

The Honorable Carlos M. Gutierrez  
Secretary of Commerce  
U.S. Department of Commerce  
Mail Stop 61  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Memorandum of Understanding with ICANN

Dear Mr. Secretary:

The undersigned organizations and companies write to underscore a critical factor in your consideration of the next steps in the relationship between the Department and the Internet Corporation for Assigned Names and Numbers (ICANN).

The existing Memorandum of Understanding (MOU) with your Department gives ICANN stewardship of a critical information resource that promotes accountability and transparency on the Internet: the Whois database of contact information on domain name registrants. The goals that are set for ICANN, in an extended MOU or similar charter, must include ensuring that public access to the Whois database in all “generic” Top Level Domains is maintained, and that the quality of data it contains is improved.

Whois data is essential to maintain accountability and transparency in electronic commerce. Millions of Internet users rely on Whois data every day. Consumers use Whois to know more about whom they are dealing with online. Parents use the data to look into who may be behind websites that their children visit. And law enforcement agencies use the database to investigate crimes, frauds, and identity theft carried out online.

The business community and major non-profit institutions also depend on ready, real-time access to Whois data for many purposes, including:

- to identify cybersquatters and others who are infringing on trademarks online ;
- to investigate those conducting piracy, product counterfeiting, online fraud or phishing schemes over the Internet;
- to prevent or limit damage to our customers or contributors who are victimized by online frauds that are facilitated by misleading registrations of domain names;
- to cooperate with law enforcement to protect consumers against a wide range of crimes and misconduct carried out online, including identity theft and other invasions of privacy.

Public access to Whois data is a long-standing feature of the Internet and predates the establishment of ICANN. ICANN’s stewardship of Whois should be a critical factor in shaping the Department’s future relationship with ICANN. In particular, the Department should evaluate whether ICANN has done enough to fulfill its obligations under the existing MOU to improve

the accuracy of Whois data, and to effectively audit compliance with the Whois-related obligations of domain name registrars and registries. We believe these tasks have not been completed and that their fulfillment should be a requirement of any extension of the MOU.

Recent steps within ICANN toward restricting public access to Whois threatened many of the legitimate, beneficial and pro-consumer uses of Whois data outlined above. We commend your Department and other federal agencies for their efforts to ensure that the full range of public policy concerns, including consumer protection, are thoroughly considered before any changes are made in the well-established policy of unrestricted public access to Whois data. We strongly believe that this principle must be enshrined in any extension of the MOU between your Department and ICANN.

Extension of the MOU raises several other issues critical for ICANN's future activities. A number of the signatories to this letter have stressed these concerns in their individual submissions in NTIA's public consultation process. We thank you in advance for your consideration of those submissions, as well as of our shared views regarding Whois, in the upcoming decisions of your department regarding ICANN.

Respectfully submitted,

Activision Publishing Inc.  
American Heart Association  
American Hotel & Lodging Association  
American Intellectual Property Law Association  
American Society of Composers, Authors and Publishers  
AT&T Inc.  
Best Western International, Inc.  
BITS (Financial Services Roundtable)  
Broadcast Music, Inc.  
Business Software Alliance  
eBay Inc.  
Electronic Arts Inc.  
Entertainment Software Association  
Guest Services, Inc.  
Hotel Consumer Protection Coalition  
Hyatt Hotels Corporation  
InterContinental Hotels Group  
International AntiCounterfeiting Coalition  
International Federation of the Phonographic Industry  
International Trademark Association  
JPMorgan Chase & Co.  
MarkMonitor Inc.  
Marriott International, Inc.  
Metavante Corporation  
Motion Picture Association of America  
News Corporation  
Recording Industry Association of America, Inc.

The Honorable Carlos Gutierrez  
September 13, 2006  
Page 3

Software & Information Industry Association  
Starwood Hotels & Resorts Worldwide, Inc.  
The Body Shop International Plc  
The Walt Disney Company  
Transamerica Corporation  
VegasInsider.com, Inc.  
Verizon Communications  
Walgreen Co.  
Wyndham Worldwide, Inc.

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cc: The Honorable John M. R. Kneuer  
Acting Assistant Secretary for Communications and Information