

[net-rfp-general]

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- *To:* <net-rfp-general@xxxxxxxx>
 - *Subject:*
 - *From:* "Steve Metalitz" <metalitz@xxxxxxxxxxxxxx>
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February 4, 2005

The Coalition for Online Accountability (COA) welcomes the chance to comment upon the applications that have been lodged with ICANN from entities seeking to operate the .NET registry beginning in July 2005.

COA (formerly the Copyright Coalition on Domain Names (CCDN)) consists of eight leading copyright industry companies, trade associations and membership organizations of copyright owners: the American Society of Composers Authors and Publishers (ASCAP); Business Software Alliance (BSA); Broadcast Music, Inc. (BMI); Motion Picture Association of America (MPAA); Recording Industry Association of America (RIAA); Software and Information Industry Association (SIIA); Time Warner, Inc.; and the Walt Disney Company. COA's goal is to enhance and strengthen online transparency and accountability by working to ensure that domain name and IP address Whois databases remain publicly accessible, accurate, and reliable, as a key tool against online infringement of copyright, as well as to combat trademark infringement, cybersquatting, phishing, and other fraudulent or criminal acts online.

At the outset we note that the opportunity for public review of these applications has been very limited. In our view, two weeks is not a sufficient time period to thoroughly review and comment upon the voluminous submissions that have been made. Accordingly, we focus this submission solely upon the applicants' proposals for operating a Whois registry service, as set forth in Appendix O of each application.

We note that the .NET RFP, see <http://www.icann.org/tlds/dotnet-reassignment/net-rfp-final-10dec04.pdf>, states that, with regard to publicly available Whois service, the .NET registry operator must meet the specifications of Appendix O either of the current .NET registry agreement (if the applicant proposes to maintain the “thin registry” model), or of the current .ORG registry agreement (if the applicant proposes a transition to the “thick registry” model). According to the RFP, “this is an absolute criterion.” .NET RFP at 13. An applicant who fails to meet any absolute criterion “will be eliminated from the process.” *Id.* at 2.

Under these ground rules, the DENIC application should be eliminated from the process. DENIC proposes to migrate .NET to a thick registry model, but its proposed Whois service does not resemble in any way the specification contained in Appendix O of the .ORG registry agreement. See .ORG Registry Agreement, Appendix O, at <http://www.icann.org/tlds/agreements/org/registry-agmt-appo-19aug03.htm>. Under Section 7.3 of that Appendix, the registry Whois output for both the Domain Record and the Contact Record contains a number of data elements to enable the Whois requester to identify and contact the registrant and the administrative and technical contacts of the registrant. By contrast, under DENIC’s proposed Appendix O, see <http://www.icann.org/tlds/net-rfp/applications/denic.htm>, registry Whois data output would include only registrant name and street address, with no other contact data (e-mail, phone, or even city/state/country) or any listing of administrative or technical contact information. Furthermore, the nameserver data provided would not include IP address.

Similarly, the Sentan proposal in its current form does not fulfill this absolute criterion. Sentan proposes migration of .NET to what it calls a “modified thick registry,” and thus its Appendix O must meet the specifications of the existing .ORG agreement. However, Sentan proposes that its registry Whois output would include name, organization and postal address of the registrant only, with no phone or e-mail information, and no data on administrative or technical contacts. The Sentan proposal does state that, “in the event ICANN desires Sentan to operate a fully thick registry, including the WHOIS display, it shall do so post transition.” See <http://www.icann.org/tlds/net-rfp/applications/sentan.htm>. This “event” has already occurred, and is reflected in the .NET RFP. Thus, the Sentan proposal should either be evaluated on the assumption that a “fully thick” registry model will be operated, or else the proposal should be eliminated for failure to meet an absolute criterion.

The Afilias proposal is ambiguous. While it appears to contemplate operation (after a transition period) of a thick registry Whois that complies with the current .ORG agreement, it also presents, in Section 7.3 of Appendix O, an incomplete set of data elements (lacking all address, phone and e-mail data for registrant and all contacts) as “an example of a Whois response for a domain that is stored in the registry as an EPP-based domain however certain information is not disclosed because of DCP considerations.” See Afilias .NET Application Form, at <http://www.icann.org/tlds/net-rfp/applications/afilias.htm>. Afilias may well have

the ability and willingness to meet the absolute criterion regarding public Whois output, but this should be clarified.

The concern raised in this submission is not a mere technicality. Failure of the .NET registry operator to fulfill the absolute criterion regarding Whois output would severely undermine or entirely eliminate the value of Whois and nameserver data in providing accountability and transparency to Internet activities taking place on .NET. This would undercut the efforts of consumers, parents, journalists, law enforcement agents, computer security operatives, intellectual property owners, and countless other Internet users to track down who is responsible for particular sites or nodes online. The result would be to make the second largest gTLD a much more comfortable place than it is today for online criminals, infringers, phishers, scam artists, and other malefactors. We know that ICANN already understands this, which is why it decided to make compliance with existing registry practices an absolute criterion in this competition. Now it is time for ICANN to implement that decision.

Thank you for considering our views.

Respectfully submitted,

Steven J. Metalitz
Counsel, Coalition for Online Accountability
Smith & Metalitz LLP
1747 Pennsylvania Ave., NW, Suite 825
Washington, DC 20006 USA
tel: 202/833-4198
fax: 202/872-0546
e-mail: metalitz@xxxxxxxxxxxxxx

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