

COALITION FOR ONLINE ACCOUNTABILITY

WWW.ONLINEACCOUNTABILITY.NET

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Comments of Coalition for Online Accountability

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The Coalition for Online Accountability (COA) appreciates the opportunity to comment on the ICANN-commissioned study on Whois privacy and proxy service abuse. See <http://www.icann.org/en/news/public-comment/whois-pp-abuse-study-24sep13-en.htm>.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners (listed below). COA and its participants have engaged actively in many aspects of ICANN's work since the inception of the organization, including through the Intellectual Property Constituency. For further information, see www.onlineaccountability.net.

This study confirms and documents what COA participants have consistently experienced in their efforts to combat online copyright infringement and counterfeiting over the past decade: entities that use gTLD domain name registrations to carry out or facilitate illegal and harmful online activities rely disproportionately on proxy registration services to hide their identities and locations. The study goes on to re-document what was already clear from past studies commissioned by ICANN: proxy and privacy registration abuse is only one of the tools that these bad actors employ to evade accountability. Even when registering domain names outside of the proxy environment, the contact data they provide makes it impossible to identify, locate or contact them, thereby impeding efforts to prevent, contain or remediate their destructive behaviors.

COA believes that this report should provide further impetus to ICANN efforts to address this problem on two fronts. First, ICANN should move as expeditiously as possible to launch the much-touted but long-delayed initiative to bring greater accountability to the current completely chaotic landscape of proxy and privacy registration services. We look forward to participating in the development and implementation of a strong accreditation regime for such services. Second, ICANN must continue and enhance its efforts to improve the accuracy and reliability of all gTLD registration data collected and made available to the public. While the 2013 Registrar Accreditation Agreement and (in the new gTLDs) the Public Interest Commitments and other aspects of the new Registry Agreement have the potential to contribute significantly to this effort, that potential will be realized only if these new requirements are vigorously implemented by all contracted parties.

American Society of Composers
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

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As noted on page 52 of the report, as originally conceived this study would have focused on (inter alia) the registration of domains for use in carrying out four types of intellectual property infringement. It is unfortunate that the report's authors chose not to pursue this path. COA believes that this represents a significant missed opportunity, especially since the justifications the report provides for this failure are unpersuasive.

The report explains its failure to pursue the prevalence of proxy registrations for domain names associated with "media piracy" as follows:

The bandwidth requirements of this type of website are substantial, which in turn means that considerable monetary sums will be involved in running such operations. Hence, when attempting to locate the website operators, investigations are far more likely to consider hosting providers, rather than domain name registrants.

COA participants know from their extensive experience in combating online "media piracy" that this statement is simply not true. Sites that link to infringing material (such as films, TV episodes, or musical recordings) are a leading form of media piracy, and they do not require "substantial bandwidth." Furthermore, peer-to-peer and Torrent sites are among the most egregious examples of online media piracy, and they are attractive to pirates precisely because they decentralize the process of delivering pirate product and thus do not have great bandwidth demands.

Not only is the premise mistaken; the conclusion that investigations into domain name registrations are unlikely to be part of the effort to identify and locate online copyright pirates is also unfounded. To the contrary, many such sites are hosted by operators who are completely uncooperative, and who are located in jurisdictions where courts are inhospitable to copyright infringement claims. In fact, use of the Whois database to seek at least clues about the identity and location of pirate site operators is an important part of almost every investigation against online media piracy. COA participants that are engaged in these investigations on a daily basis report that in the vast majority of such cases, this effort is severely hampered, either because the registrants employ proxy services that refuse to provide any actionable information regarding their customers, or because the registrants furnish entirely bogus data.

The draft report asserts that it was not necessary to study software piracy because "we believe that the people engaged in software piracy operate in broadly similar ways to the [unlicensed] pharmacies," which were studied. The validity of this statement – probably more true 20 years ago than it is today – depends upon the "breadth" of similarity observed. Both types of operations engage in fraudulent and illegal behavior, but their operations also differ in important ways that could have made it worthwhile for the investigators to follow the directions proposed by ICANN. In many ways, online software piracy today shares more characteristics with "media piracy," including the inability to contact pirate site operators that hide behind proxy registrations, than with unlicensed online pharmacies.

Even though the authors of this report, for stated reasons that are not well founded, declined to study abuse of proxy registrations by people engaged in these types of intellectual property violations, it is critical that the ICANN initiatives noted above – to reform the proxy registration system, and to improve overall Whois accuracy and reliability – reflect these

concerns and protect against such abuse. COA looks forward to working with ICANN staff, contracted parties, and other community participants to advance this goal.

Respectfully submitted,

Steve Metalitz, counsel to COA