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**Comments of the American Intellectual Property Law Association
on the WHOIS Task Force Preliminary Report**

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to provide comments to ICANN and the WHOIS Task Force on the proposed changes to accessibility to WHOIS data. In this regard, we wish to express our support for the “special circumstances” proposal and, at the same time, our opposition to the oPOC proposal.

AIPLA’s 17,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community comprising a wide and diverse spectrum of individuals involved in the practice of patent, trademark, copyright, trade secret and unfair competition law. AIPLA members represent both owners and users of intellectual property, including many large and small businesses that make commercial use of Internet websites or otherwise provide services over the Internet.

AIPLA deems it critically important that ready access to WHOIS data be maintained in order to ensure accountability and transparency online. Intellectual property owners, particularly trademark owners, are under a constant barrage from cybersquatters, counterfeiters, unscrupulous operators of porn and gambling sites (or their “consultants” who promise to “Increase traffic to your site!”), and perpetrators of phishing scams and other fraudulent activities on the web. Consumers are equally harmed by such activities, if not more so. We deem it critical to maintain open access to WHOIS data in order to be able to identify such bad actors and pursue appropriate civil or criminal remedies.

We are opposed to the oPOC proposal. Under this scheme, nearly all the contact information for most registrants would be hidden, without any clear rules on how and when the information could be obtained. It would result in serious delay and frustration in efforts to determine who is responsible for a domain name.

Under the “special circumstances” proposal, on the other hand, nearly all WHOIS data would remain publicly available. Accordingly, we support that proposal, provided that current uncertainties about how the proposed centralized mechanism for recognizing registrants with “special circumstances” would operate. It is essential that ICANN establish a clear and predictable procedure for rapid access to any WHOIS data that is withheld from public access.

With regard to the concern for privacy that some have expressed, the “special circumstances” proposal includes a mechanism to meet the privacy concerns of individual, non-commercial registrants who can meet criteria showing their need to hide WHOIS data. The oPOC proposal, by contrast, would suppress public access to the data of every registrant, including corporations, businesses, and others who are holding themselves out to the public via their websites, not to mention the types of bad actors mentioned above. This goes far beyond what any legitimate privacy concern would require.

There is one segment of the oPOC proposal that we could support, but only in the context of maintaining the status quo of an open WHOIS system, such as would occur under the Special Circumstances proposal. That segment is the one which would require registrants to de-activate a domain name if a complaint is made about false contact data in WHOIS and the registrant does not respond. In the main, we feel strongly that ICANN should require registries and registrars fulfill their contractual obligations to ICANN and their moral obligations to all internet users by doing more to ensure that the contact data submitted by registrants is accurate and current.