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**To:** <JPAMidTermReview@ntia.doc.gov>  
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**Subject:** Response to Notice of Inquiry, Docket No. 07102363-7617-01

TO: Ms. Suzanne R. Sene

Office of International Affairs

National Telecommunications and Information Administration

On behalf of the more than 350,000 composers, songwriters and music publishers that we represent, Broadcast Music, Inc. (BMI) is pleased to submit these comments in the above-referenced docket. We commend NTIA for conducting this mid-term review of its Joint Project Agreement (JPA) with the Internet Corporation for Assigned Names and Numbers (ICANN). BMI urges NTIA not to terminate the JPA, as ICANN proposes. Instead, we encourage NTIA to provide a "mid-course correction" by negotiating with ICANN some more concrete, specific steps ICANN will take during the remaining term of the JPA (through September 2009). These steps must include, but should not be limited to, active enforcement of ICANN's contracts with domain name registrars and registries.

ICANN insists that it has executed all the terms of the JPA and that the agreement no longer serves any purpose. In the area in which BMI has been most intensively involved with ICANN over the past several years - seeking to preserve public access to Whois data, and improving that data's accuracy - BMI does not believe that ICANN has not yet delivered on its commitments.

BMI supports the unique and innovative model that ICANN represents. It is certainly preferable to have an entity led by the private sector and committed to transparent decision-making to manage technical aspects of the domain name system - and the associated policy questions - rather than turning those issues over to one or more governments or to an intergovernmental organization. But for such a model to work, ICANN, which has no governmental regulatory authority, must depend on the integrity of its contractual arrangements with wholesalers and retailers of domain names - i.e., with registries and registrars. Currently, that integrity is lacking because ICANN is not rigorously enforcing its contracts. We know this is true specifically in the area of obligations to make accurate contact information on domain name registrants available to the public through Whois.

A recent ICANN audit report

(<http://www.icann.org/compliance/reports/contractual-compliance-audit-report-18oct07.pdf>) demonstrates once again that the measures that have been taken so far to address this problem are not working. Even when false Whois data is reported to ICANN through the mechanism it has established, too often nothing is done to correct it. In many cases - at least one-third -- the domain name registration remains live with flagrantly false Whois data, making it difficult or impossible to

contact the registrant. While we are pleased that ICANN announced in late December that it would ask certain registrars to explain their inaction in these cases, see <http://www.icann.org/announcements/announcement-2-21dec07.htm>, surely this is indicative of a corrective process that is just beginning to work, not one that has been fully executed.

BMI's concerns about termination of the JPA go beyond the issue of contract compliance. Aside from the question of whether existing obligations regarding Whois accuracy are being adequately enforced, BMI believes that those obligations need to be made more specific and actionable. BMI flagged this issue in two filings submitted to ICANN in public comment periods last year. See <http://forum.icann.org/lists/whois-services-comments/msg00056.html> (January 2007) and <http://forum.icann.org/lists/whois-comments-2007/msg00209.html> (October 2007). We question whether we and other private sector entities are being heard by ICANN on this issue.

It has been amply demonstrated that publicly accessible Whois is critical to a wide range of efforts, both by law enforcement agencies and by the private sector, to combat online frauds, to identify the parties who instigate them, and to protect and compensate fraud victims. Improved Whois data accuracy will improve the effectiveness of these efforts. Thus, success in this field will promote greater accountability online, not only for copyright owners like BMI members, but for all Internet users.

Whois data accuracy is an example of an issue on which ICANN's attention needs to be focused during the remaining 18 months of the JPA. That point will mark a natural juncture at which ICANN's performance can be realistically evaluated, and its future relationship with the U.S. government discussed. Until that point, the JPA should remain in place, with more specific, concrete benchmarks worked out with ICANN that will allow for a meaningful evaluation and an informed decision on next steps.

BMI appreciates NTIA's consideration of its views. We look forward to continuing to participate in the ICANN process, and hope that over the next 18 months, ICANN will continue to develop its contract compliance capabilities, and that it will show more responsiveness to the concerns and needs of private sector entities that are directly affected by decisions ICANN makes.

Respectfully submitted,

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BMI

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