

## **PUBLIC INTEREST REGISTRY**

### **POLICY STATEMENT REGARDING THE WHOIS SERVICE**

#### INTRODUCTION:

The PUBLIC INTEREST REGISTRY (PIR) is committed to the protection of privacy of registrants in the .ORG domain. The Privacy Policy of PIR currently in force is available at:

[http://www.pir.org/about\\_pir/legal/privacy](http://www.pir.org/about_pir/legal/privacy)

This is a statement of PIR's position on possible changes in the WHOIS service. As a registry operating under contract with the Internet Corporation for Assigned Names and Numbers (ICANN), PIR is constrained, at the present time, to make domain name registration information available through the WHOIS service in accordance with the requirements of the Registry Agreement, 2 August 2002<sup>1</sup>.

PIR believes that the present requirements of its registry agreement, as well as the ICANN agreements with other registries and with registrars, need to be changed.<sup>2</sup>

In the words of the European Union Data Protection Working Party (the EU Advisory Body on Data Protection and Privacy): “[WHOIS directory data] data were originally made publicly available to give people who operate networks a way of contacting the person technically responsible for another network, another domain, when there was a problem. This purpose is in itself a legitimate purpose.”<sup>3</sup>

As the Internet and the number of its users has grown, the justification for making WHOIS data publicly available is no longer applicable. While business users may have little or no objection to publication of their contact information, individual users have an expectation of reasonable protection of rights of privacy. They are justifiably concerned that far more information is now publicly available than is necessary for any legitimate purpose.

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<sup>1</sup> Available at:

<http://www.icann.org/tlds/agreements/org/>

<sup>2</sup> Please see the chart showing the data fields and the information currently displayed by each registry in the WHOIS:

<http://gns0.icann.org/issues/whois-privacy/whois-elements.pdf>

<sup>3</sup> Available at

[http://europa.eu.int/comm/internal\\_market/privacy/docs/wpdocs/2003/wp76\\_en.pdf](http://europa.eu.int/comm/internal_market/privacy/docs/wpdocs/2003/wp76_en.pdf)

PIR believes that there should be no requirements in ICANN contracts with registries and registrars that they make contact information (such as email addresses, physical addresses and telephone numbers) relating to individual persons publicly available through the WHOIS service. PIR also believes that there should be no requirements that such information be available to anonymous requesters.

## DISCUSSION

### 1 European Union Approach

The European Union's 2002 Directive on privacy and electronic communications (the "EU Directive")<sup>4</sup> provides a useful statement of the principles that should be the basis for the protection of personal privacy in the WHOIS service:

- A. From the data protection viewpoint it is essential to determine in very clear terms what is the purpose of the WHOIS and which purpose(s) can be considered as legitimate and compatible to the original purpose. The purpose of the WHOIS directories can not be extended to other purposes just because they are considered desirable by some potential users of the directories.
- B. Whatever data is collected should be relevant and not excessive for the specific purpose. The registration of domain names by individuals raises different legal considerations than that of companies or other legal entities registering domain names.
- C. Individuals should have the right to determine whether their personal data are included in a public directory. An individual's identity and contact information should be known to the individual's service provider
- D. Any use of e-mail addresses for direct marketing must be based on opt-in only.

### 2. ICANN

ICANN has recognized that there is substantial support for change in the WHOIS service. In the "Staff Manager's Issues Report on Privacy Issues Related to Whois 13 May 2003"<sup>5</sup>, the ICANN staff called for "fact-finding and issue-definition work, prior to commencing policy-development processes on the substance of particular issues." This led to the creation of three Task Forces with responsibilities which may be summarized as follows:

1. Restricting Access of WHOIS for Marketing Purposes
2. Collection and Display of WHOIS Data
3. Accuracy of WHOIS Data

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<sup>4</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector

<sup>5</sup> Available at:

<http://www.icann.org/gns0/issue-reports/whois-privacy-report-13may03.htm>

PIR has participated directly in Task Forces 1 and 2. The Chairman of PIR has served as the representative of the Registry Constituency in both. PIR has also followed closely the work of Task Force 3. The Task Forces have now published their Preliminary Reports<sup>6</sup>.

Following a period for public comments on the Preliminary Reports, Final Reports will be prepared. The GNSO Council and the Board of Directors of ICANN will then consider possible changes in the WHOIS service.

In general, PIR supports the conclusions set forth in the Preliminary Reports of Task Forces 1 and 2, but not the Preliminary Report of Task Force 3. Specific comments on the work of the three Task Forces are set forth below.

#### A. Task Force 1

Task Force 1 considered six questions regarding “Restricting Access of WHOIS for Marketing Purposes”, as follows:

(i) What types of access should be made available for viewing WHOIS information? (Web-based access, Port 43, Bulk Access, etc.)

PIR believes that access to WHOIS data should be dependent on strict limitations on the type of data available. As a general rule, information available in response to public, anonymous inquiries (whether from registries or registrars) should be limited to domain names, the identity of the registrar and an email address to contact the registrar, and this information should be the only information retained by registries. Registrars must have additional information in order to fulfill their functions, but the full information regarding domain name registrants should not be generally available in response to public, anonymous inquiries. The present provision in ICANN’s accreditation agreement with registrars for “bulk access”<sup>7</sup> should be eliminated. Port 43 access should be limited to registries and registrars and the information available should be limited to technical contact information that is needed for operational functions of registries and registrars. Under this proposed scheme, the public should be able to determine whether a domain name has been registered, and, if so, provided with an email address to contact the registrar, and no other information. All other access should be on a need-to-know basis and limited to users that can demonstrate a legitimate need for the information. For example, law enforcement agencies with an appropriate legal basis for a request, e.g., a subpoena, should be able to have access to personal information when necessary for law enforcement purposes. Intellectual property researchers take the position that they have a legitimate need for access to additional information including personal information related to registrants, because limitations on information available would result in additional conflicts over intellectual property rights and litigation that could otherwise be

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<sup>6</sup> The reports are available at:

Task Force 1: <http://www.gnso.icann.org/issues/whois-privacy/Whois-tf1-preliminary.html>

Task Force 2: <http://www.gnso.icann.org/issues/whois-privacy/Whois-tf2-preliminary.html>

Task Force 3: <http://www.gnso.icann.org/issues/whois-privacy/Whois-tf3-preliminary.html>

<sup>7</sup> Section 3.3.6 of the ICANN Registrar Accreditation Agreement, available at: <http://www.icann.org/registrars/ra-agreement-17may01.htm>

avoided. To the extent that this position is justified, the information should be available subject to applicable national law and enforceable agreements limiting its use.

(ii) What has been the effect on the registries systems of having to make available WHOIS information via Port 43 and the web?

PIR has experienced operational problems arising from very high rates of requests to Port 43. These problems could be alleviated if the proposals above were implemented.

(iii) Ha[s PIR] noticed a problem with data mining? If so, [are there] any facts to support this?

Data mining is a serious problem, and PIR has records that are available to support this.

(iv) If the answer to #3 is yes, ha[s PIR] instituted any mechanisms to deal with such mining (i.e., put in speed bumps on Port 43, or a cloudy GIF on web-based access? If yes, what has been the effect of instituting these measures?

PIR has instituted limitations on access to Port 43, which has been successful in limiting repeated requests.

(v) Is it feasible to have tiered access to WHOIS information (i.e., only some groups being able to use Port 43, while all others using web based access)? If so, how could that be implemented? What are the pros and cons? What issues would still need to be worked out?

As stated in answer to item (i) above, PIR believes that it is feasible to have “tiered access” strict limitations on information available in response to public, anonymous requests, and limited availability of additional information to some entities with a demonstrated need for the information.

(vi) In other words, how can [ICANN] ensure that legitimate parties (however that is defined) have access to Whois information, but also reduce data mining and the burdens on our systems.

PIR believes that ICANN should administer access to WHOIS information in a way that is consistent with individual privacy rights, as outlined above, with appropriate separate treatment for different TLDs, where necessary.

## B. Task Force 2

Task Force 2 considered “Collection and Display of WHOIS Data”.

PIR, like other registries, is a provider of WHOIS service rather than a user. PIR uses the data under the heading “General Information” in the chart referenced in footnote 2 as an essential part of registry information, and registries must on occasion obtain information from registrars, or provide information to registrars, e.g., in cases of transfer disputes.

The data under the other headings is generally not used by the unsponsored registries.

PIR does not believe that there are significant privacy concerns with respect to the data under the heading “General Information”. There are privacy concerns about making any other data publicly and anonymously available.

PIR does not see a need for additional fields beyond those presently available within WHOIS.

PIR is aware that there are some registrar services that offer anonymous registration or limited privacy protection for some TLDs. Generally this is not the case of sponsored TLDs where strict eligibility criteria apply. In some instances, e.g., response to legal process, lifting of anonymity may be required.

### C. Task Force 3

With respect to “Accuracy of WHOIS Data”, PIR believes that:

- (i) Verification mechanisms for registrant contact data should be implemented at the registrar level and should be consistent with overriding concerns for the protection of personal privacy. This enhances effective communication with the registrant and allows for a more efficient methodology for correction of any inaccurate information by the registrant.
- (ii) Implementation of any data verification schemes should be done on a “global basis” and not be applied to any gTLD on a country-by-country basis.
- (iii) The GNSO Council (or another appropriate body) should undertake an in-depth examination of Registrar data collection and protection practices, in order that the GNSO community can accurately discern policy implications of the various data protection regulations in effect in various registrant jurisdictions.
- (iv) Concerns of privacy must be dealt with on a regional and international basis. It will be very difficult to resolve WHOIS data accuracy problems until that is done. Regardless of what mechanisms are put in place to improve accuracy, individuals concerned about privacy and registrars and registries operating in jurisdictions with strict privacy regulations will find ways to protect privacy, which may work against steps to improve accuracy. One way to implement, from a technical perspective, the policy objectives of achieving accurate WHOIS information, while at the same time providing necessary protection for privacy interests, may be through the nearly completed IRIS protocol being developed by the CRISP working group.

### CONCLUSION

PIR urges ICANN to take prompt action to revise its agreements with the top level domain registries so that personal contact data relating to individuals is no longer publicly and anonymously available through WHOIS. PIR further urges ICANN to allow registries to amend their registry agreements to implement protection of personal privacy as outlined above.