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The Honorable Lamar Smith
Subcommittee on Courts, the Internet, and Intellectual Property
House Judiciary Committee
2231 Rayburn House Office Building
B-351A
Washington, DC 20515

September 16, 2003

Dear Chairman Smith,

We write to you, on behalf of the Public Interest Registry, (PIR), regarding Internet privacy and the September 4th hearing on WHOIS. PIR appreciates the interest that the committee has shown in the operation of WHOIS, an important database for the management of the Internet. At the same time, we are concerned that the committee has failed to consider the significant privacy issues surrounding the WHOIS database or the need to ensure that the goal of accuracy and privacy safeguards are pursued simultaneously. As one of the largest Internet registries in the world, PIR has a particular interest in ensuring that the policies developed for the WHOIS database respect the interests of individuals who register Internet domains.

The Public Interest Registry, the not-for-profit corporation that manages the .ORG registry, is responsible for the nearly 3 million registrants in the .ORG domain. PIR is dedicated to providing an open, responsible, and truly global approach for the .ORG community. PIR was created by the Internet Society (ISOC), a professional membership society that provides leadership in addressing issues that confront the future of the Internet. ISOC is the organizational home for the groups responsible for Internet infrastructure standards. Together PIR and ISOC are working to promote the continued growth and development of the Internet.

All users of domain names have a justified and reasonable expectation of privacy, and there are many users, particularly in the noncommercial world, who have legitimate reasons to conceal their identities or to register domain names anonymously. Unfortunately, there are also some domain name registrants who use the Internet to conduct fraud or whose use violates intellectual property rights of other users. PIR believes that a sensible policy



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for WHOIS must consider both legitimate privacy expectations for domain registrants and some form of access to WHOIS data to deal with fraudulent and improper use of domain names.

In these comments, PIR is responding to the statements of various participants in the September 4 oversight hearing on “Internet Domain Name Fraud - the U.S. Government’s Role in Ensuring Public Access to Accurate WHOIS Data”. While accurate data may be preferable to inaccurate, PIR believes that the Subcommittee has failed to consider the critical issues of privacy and data protection.

The noncommercial community served by PIR would be especially disadvantaged by a policy that fails to protect adequately the privacy of Internet registrants. WHOIS data currently consists of contact information (including address information on registrants, administrative contacts, and technical contacts). Domain registrants include businesses; individuals; media organizations; non-profit groups; public interest organizations; political organization; religious organizations; support groups; and so on. These domain name registrants may share their services, organizations, ideas, views, and activities by way of websites, email, newsgroups, and other Internet media. While some domain name registrants may use the Internet to conduct fraud, the vast majority does not, and many registrants have legitimate reasons to conceal their identities or to register domain names anonymously. In fact, requiring detailed personal information to be publicly available almost certainly facilitates fraud. WHOIS data is globally, publicly accessible. Everyone with Internet access, including those with bad motives as well as those with good motives, have access to WHOIS data.

It is critical that the Subcommittee understand the important privacy issues surrounding WHOIS as well as the risk that the widespread dissemination of personal information could actually exacerbate the problem of Internet-based fraud.



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First, compelling the disclosure of personal information, even information related to domain registration, poses dangers to freedom of expression and privacy on the Internet. Domain name registrants – and particularly the noncommercial users of the .ORG domain - may not wish to make public the information furnished by them to registrars. Some of them may have legitimate reasons to conceal their actual identities or to register domain names anonymously. For example, there are political, cultural and religious groups around the world that rely on anonymous access to the Internet to publish their messages, In order to avoid persecution, anonymity may be critical in this respect. It is important to note that anonymizing proxy servers are not an adequate alternative.

Second, anyone with Internet access -- including spammers, stalkers, scam artists, identity thieves, and others with no legitimate interests, has access to WHOIS data. It is well known that access to personal information online contributes to frauds such as identity theft. The Federal Trade Commission (FTC) report "National and State Trends in Identity Theft" found that identity theft is the number one consumer complaint and constitutes 43% of all complaints in the agency's complaint database. The FTC advises consumers to protect themselves from identity theft and generally from Internet-related frauds by not disclosing personally identifiable information. In all cases, when consumers choose to disclose such information, they should know who is collecting it, why it is being collected, and how it is going to be used. The mandatory publication of WHOIS data is contrary to this sound advice. The domain name registrant has no control over or information about the uses of WHOIS data.

Third, the .ORG community is international in scope, and PIR seeks to respect international views on privacy and data protection. Policies pursued in the United States that fail to respect privacy concerns established in law elsewhere in the world will disadvantage our organization and lead



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Internet users to register with others outside the United States that will provide stronger privacy safeguards.

We urge the Subcommittee to consider our views and the views of others on Internet privacy before any further action is taken on the WHOIS issue. At a minimum, PIR believes it essential that the purposes of the collection and publication of personal data of domain name holders be specified. The amount of data collected and made publicly available in the course of the registration of a domain name should be limited to what is essential to fulfill the purposes specified. Any secondary use incompatible with the original purpose specified should require the individual's informed consent. Such a policy would not frustrate legitimate criminal investigations or copyright investigations. It would help ensure base level privacy safeguards and reduce the risk that the widespread availability of personal information will lead to greater fraud, possibly putting millions of Internet users at risk.

We ask that our comments be included in the hearing record for the September 4th hearing. We would also appreciate the opportunity to meet with Members of the Subcommittee in the near future regarding these critical issues.

We appreciate your consideration of our views.

Respectfully Submitted,

David W. Maher
Chairman

cc: Mr. Michael D. Gallagher, Acting NTIA Administrator
Dr. Paul Twomey, ICANN President and CEO



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