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***An Open Letter to Tucows RSPs and the General Internet Public concerning
Registrant Privacy Protection***

Situation

Recent events in the domain name sector have indicated, even pursuant to ICANN intervention, that business interests continue to refuse to truly align themselves with the needs and interests of the general public.

- A growing number of third parties continue to utilize the publicly accessible Whois databases as a source for sales leads
- Industry leaders have stepped up their efforts to sell their Whois database and related market demographics
- Registrant privacy does not appear to be a pending agenda item for any relevant policy bodies.

It is our position that steps must be taken to alleviate, if not eliminate, the pressure on the market due to these conditions.

Background¹

Each accredited registrar must conduct themselves within the operating agreements governing all registrars. In Tucows' opinion, these agreements, the Verisign Registrar License & Agreement (RL&A) and the ICANN Registrar Accreditation Agreement (RAA) do not sufficiently protect the rights of registrants in today's market.

Both the licensing agreements of Verisign and ICANN allow registrants to protect their personal information. However, because the registrant must take positive steps to protect that information, and the way to do this is not clear, few have taken advantage of the option.

The basis for solving the problem lies with the possibility within the ICANN rules that registrars and others could develop a consensus policy. All registrars have agreed to

¹ The terms used in this memo are to be construed as being consistent with the definitions found in the IETF Draft, "Domain Name and Related Definitions" (R. Rader, "Domain Name and Related Definitions", <http://www.ietf.org/internet-drafts/draft-ietf-provreg-dn-defn-00.txt>, February 2001.)

conduct their operations in accordance with any future policies adopted by ICANN as the result of community discussion and consensus agreement.

Tucows Corporate Position

Consistent with our historical position on similar matters² it is our position that;

- The business community must engage in the work necessary to ensure the rights of the individual registrant prior to legislative intervention by various governmental bodies.
- What is good for the Internet is good for Registrars. Confidence in the security of one's personal information increases Internet - based business, which increases our actual and potential markets.

Tucows' Plans

In the light of these facts and interests, we are actively pursuing the adoption of a consensus policy that will lead to the modification of the RL&A and provide more favorable conditions for the registrant.

These consensus policies will focus on achieving a very important goal:

“Registrant privacy is not an option, but a right. All submissions of data are subject to treatment consistent with an individual's privacy and the registrant must explicitly permit any secondary or third party use of this data”

To this end, Tucows will be enlisting support for this initiative from the widest possible cross-section of concerned individuals, entities and organizations. Once this has occurred, we will endeavor to work within the structures of ICANN's DNSO and other working groups to have these policies ratified and accepted as part of the obligations that each accredited registrar has.

Specifics

A Positive Obligation to Have a Privacy Policy

Tucows proposes to change the Accreditation Agreement so that there is a positive burden on name-holders to elect to have their names and personal information available for marketing efforts. The only exception would be those parties with whom they originally contracted for service, who would not be able to resell this information. There would also be a positive obligation on registrars to have a privacy policy, which they could enforce on third parties.

² Tucows Comments to DNSO Working Group B: Sunrise Proposals (<http://www.icann.org/dns/wg-report-17apr00.htm#Attachment5>), Tucows Comments to DNSO Names Council: New gTLDs (<http://www.dns.org/dns/dnsocomments/comments-wipo/Arc01/msg00022.html>), Tucows Comments to DNSO Working Group C: New gTLDs (<http://www.dns.org/wgroups/wg-c/Arc01/msg00479.html>)

To achieve this, section II.F.6.f from the ICANN Registrars Accreditation Agreement (<http://www.icann.org/nsi/icann-raa-04nov99.htm>) should be modified to read:

"Registrar shall have a privacy policy, allowing SLD holders to elect to have Personal Data concerning their registrations to be included in bulk access for marketing purposes. The Registrar shall require the third party to abide by the terms of that privacy policy. SLD holders declining, or otherwise not availing themselves of this option shall not have their Personal Data concerning their registrations included in bulk access."

The current language reads:

"Registrar may enable SLD holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service."

In the current language of II.F.6.f, a registrar is allowed to opt-out of having any privacy obligations, and the burden of making information private is on the name-holder, if he or she given that choice.

Clarify and Extend Prohibition against Direct Solicitation

The second change we recommend is to clarify the language in section II.F.5 regarding the means of distribution of unsolicited commercial advertising and direct solicitation.

II.F.5 would read as follows:

"In providing query-based public access to registration data as required by Sections II.F.1 and II.F.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by an ICANN-adopted policy. Unless and until ICANN adopts a different policy, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission of mass unsolicited commercial advertising via e-mail or other means, or direct solicitation via e-mail (spam) or other means; or (b) enable high volume, automated, electronic processes that apply to Registrar (or its systems)."

The current language reads:

“ In providing query-based public access to registration data as required by Sections II.F.1 and II.F.4, Registrar shall not impose terms and conditions on use of the data provided except as permitted by an ICANN-adopted policy. Unless and until ICANN adopts a different policy, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (b) enable high volume, automated, electronic processes that apply to Registrar (or its systems).”

Why This Is Important

Tucows has substantial obligations to our customers and resellers. Increased public confidence in this sector will lead to increased adoption by consumers of the products and services offered by players in this sector.

By taking this stance on consumer privacy, we will be able to benefit our customers and resellers and the larger Internet community.

Further information concerning this issue will be made available at <http://www.opensrs.org/privacy> as it becomes available. Please do not hesitate to contact me at your convenience.

Sincerely,

Elliot Noss
President & CEO
Tucows Inc.