

To the Members of the Whois Task Force:

The Public Interest Registry (PIR), the not-for-profit corporation that manages the .ORG registry, appreciates the opportunity to comment on the Final Report of the GNSO Council's Whois Task Force on Whois Accuracy and Bulk Access.

PIR is a not-for-profit corporation created to manage the .ORG registry. PIR is dedicated to providing an open, responsible, and truly global approach for the .ORG community. PIR was created by the Internet Society (ISOC). ISOC is a professional membership society that provides leadership in addressing issues that confront the future of the Internet, and is the organizational home for the groups responsible for Internet infrastructure standards.

PIR recognizes the importance of this issue and the time and effort the Whois Task Force has put behind important Whois policy questions. We support the effort to prohibit bulk Whois access for marketing purposes as set out in proposed policy #2. However, we are surprised that the Task Force proposes going forward with a recommendation on the enforcement of the accuracy of Whois data in policy #1 when privacy and data protection issues remain unresolved. The .ORG community would be especially disadvantaged if ICANN were to adopt this recommendation.

In expressing our position on proposed policy #1, PIR understands that Whois data consists of domain name registrants' contact information (including registrant's mailing address, email address, telephone number, and fax number); administrative contact information (including mailing address, email address, telephone number, and fax number); technical contact information (including mailing address, email address, telephone number, and fax number); domain name; domain servers; and other information. Furthermore, domain name registrants include a wide variety of businesses, media organizations, non-profit groups, such as public interest, political and religious organizations, as well as individuals. These domain name registrants may share their services, organizations, ideas, views, activities, etc. by way of websites, email, newsgroups, and other Internet media. At the present time, Whois data is globally, publicly accessible. Everyone with Internet access has access to Whois data, whether their interests are legitimate or not

PIR also understands that ICANN's current version of its Registrar Accreditation Agreement (RAA) requires registrars to provide public access to registrant Whois data. The RAA mandates that registrants provide accurate and reliable contact details to their respective registrars and promptly correct and update them during the term of the domain name registration, stipulating that a registrant's willful provision of inaccurate or unreliable information and his or her willful failure promptly to update information provided to the respective registrar shall constitute a material breach of the registrant-registrar contract and be a basis for cancellation of the registered domain name.

All users of domain names have a justified and reasonable expectation of some degree 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. 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 recognizes that a balance must be struck between legitimate

privacy expectations 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 Whois Task Force's recommendation on the enforcement of existing contractual obligations (in the RAA) regarding accuracy of Whois data. While accurate data may be preferable to inaccurate, PIR believes that the Task Force has failed to focus on the paramount issues of privacy and data protection.

PIR believes that the following three points should be considered:

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. Enforcement of the requirement of accurate Whois data in such instances is a misplaced emphasis on administrative requirements and may place a serious burden on the ability of individuals or groups to maintain their anonymity and thus their fullest ability to exercise free speech online. It is important to note that anonymizing proxy servers are not an adequate alternative. The establishment of an intermediary between the operator of a website and the general public may avoid short-term identification of the actual user of a particular domain name. However, for controversial political and religious speech, it will be difficult for an online speaker to find an intermediary that will offer to have the speaker's own identity made public in lieu of the actual speaker. In addition, the third-party licensing provision of the RAA is unambiguous in stating that the intermediary will be directly liable for use of the domain name by the actual user.

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 this openness contributes to frauds such as identity theft. The United States 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, recommended by the Whois Task Force contradicts this sound advice. The domain name registrant has no control over or information about the uses of Whois data.

Third and finally, the .ORG community is international in scope, and PIR seeks to respect international views on privacy and data protection. The International Working Group on Data Protections in Telecommunications (hereafter referred to as the Working Group) recognized that there are important data protection and privacy issues connected with the collection and publication of personal data of domain name holders as early as May 2000. In particular, the Working Group commented:

“The current Registrar Accreditation Agreement does not reflect the goal of the protection of personal data of domain name holders in a sufficient way.... It is essential that the purposes of the collection and publication of personal data of domain name holders are being specified.... The amount of data collected and made publicly available in the course of the registration of a domain name should be restricted to what is essential to fulfill the purpose specified. In this respect, the Working Group has reservations against mandatory publication of any data exceeding name, address and email address in cases where the domain name holder is not himself/herself responsible for the technical maintenance of the domain.... Any additional data - although they might be collected by the registry as necessary with respect to its task - should in such cases either refer to the respective service provider or only be made available with the explicit consent of the data subject.... Any secondary use incompatible with the original purpose specified should be based on the data subject's informed consent.” International Working Group on Data Protection in Telecommunications, Common Position on Privacy and Data Protection aspects of the Registration of Domain Names on the Internet <http://www.datenschutz-berlin.de/doc/int/iwgdpt/dns_en.htm#TOP>

PIR intends to offer new services that may help address some of the concerns raised by public access to Whois data. PIR urges the Task Force to amend its Final Report to recommend to ICANN that it adopt appropriate policies that safeguard the interests of the users of the Internet. Accuracy of Whois data should not become in any sense a priority until an adequate resolution of the far more serious goal of protecting registrants' privacy interests is achieved and implemented.

In summary, we support the Task Force proposal #2, and we urge that the Task Force put off action on accuracy requirements until the privacy and data protection issues associated with the use of Whois data are adequately addressed.

Respectfully submitted,

Public Interest Registry

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