

**auDA WHOIS Review**  
**June 2003 Review**  
**Australian Competition and Consumer Commission Comments**

**Introduction**

The most significant difference for consumers in dealing with on and off line traders is their ability to see the trader's physical presence. Consequently, the provision of identifying information, either on a web site or at registration is vital for both consumers and regulators, for without it both redress and other remedies are either impractical or at the least problematic. As stated in a recent OECD paper, "easy identification of online businesses is a key element for building consumer trust in the electronic marketplace."<sup>1</sup>

As a consequence, a robust WHOIS policy is essential to bridge the gap between the on and off line environment. As stated in the auDA WHOIS Policy No. 2002-06 ('WHOIS Policy')<sup>2</sup>, the objective of the policy is to strike an acceptable balance between the rights of the registrants in relation to how their personal information is handled, auDA in seeking to promote a competitive and efficient domain name industry and law enforcement agencies in accessing information.

Review of the WHOIS policy, which facilitates comment by the industry and consumers, is essential to enable development of the policy to ensure it continues to meet changing industry needs and meets its objective.

The Australian Competition and Consumer Commission ("ACCC") welcomes the WHOIS review process and offers comment regarding the effectiveness of the policy. The ACCC is only concerned with conduct covered by the Trade Practices Act 1974 ("TPA"), which is commercial conduct.

This submission provides general comment on the current status of the Australian WHOIS environment and then proceeds to address the three issues specifically raised by auDA, namely:

- *How much data should be disclosed on WHOIS?*
- *Is the WHOIS query limit appropriate?*
- *Should bulk access to WHOIS data be permitted in certain circumstances?*

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<sup>1</sup> OECD paper 'Consumer Policy Considerations on the Importance of Accurate and Available WHOIS Data' 2 June 2003, DSTI/CP 2003 1/Final

<sup>2</sup> Paragraph 2.2

## General comment

The ACCC believes that Australia has a good WHOIS environment by global standards and notes the work of auDA in monitoring the industry and implementing the WHOIS policy, which has had a demonstrable positive impact on the industry.

Globally there have been widespread concerns about the quality of international WHOIS data. As noted in the OECD paper, “the value of data is of course dependent upon its accuracy. WHOIS cannot serve its functions if the data are incomplete or inaccurate”.<sup>3</sup> Stringent measures are now required to rectify the quality of global WHOIS data, which may prove costly and time consuming.

Fortunately the ACCC has not yet encountered any difficulties in carrying out its functions caused by inaccuracy of WHOIS information in .au domain names. The WHOIS policy specifically targets the accuracy of information in paragraph 3.4, implementing a process to verify information, whereby registrars must contact their registrants at least every six months to verify current data.

The ACCC believes this process is crucial to ensure the accuracy of information, and recommends close monitoring of the verification process to avert Australia from developing similar data quality problems to those faced by the ACCC in relation to global Top Level Domains such as .com. If there does appear to be an increasing problem with the accuracy of information with .au domain names, the ACCC recommends that this part of the policy be swiftly re-examined.

This submission will address the three issues posed by the WHOIS review.

### 1. How much data should be disclosed on WHOIS?

The ACCC recognises that this question must be dealt with cautiously, as there are numerous competing interests which must be considered<sup>4</sup>. The ACCC notes that auDA has opted into to the Federal privacy regime<sup>5</sup>, thereby agreeing to comply with the private sector provisions of the Privacy Act.

Accordingly, auDA must not use or disclose personal information about an individual for a purpose (the *secondary purpose*) other than the primary purpose of collection unless it falls into an exemption<sup>6</sup>. Personal information is defined in s 6 of the Privacy Act,<sup>7</sup> and the ACCC interprets this to exclude company information.

The ACCC is of the view that there must be enough information publicly available to enable consumers to seek redress or to take private action. This requires the disclosure of the registered business address and business contact telephone number for .com.au and .net.au domain names. A registered business address and business related

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<sup>3</sup> See footnote 1

<sup>4</sup> As per WHOIS policy Paragraph 2.2

<sup>5</sup> *PRIVACY ACT 1988 No. 119 of 1988 (Cth)* ('Privacy Act')

<sup>6</sup> National Privacy Principle 2.1

<sup>7</sup> s 6 definition: 'information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.'

telephone numbers are company information, and the ACCC submits that this is therefore information which can be disclosed under the Privacy Act.

If a consumer believes an off-line trader has contravened the law, they have access to the physical address of the trader, and accordingly, can contemplate taking action. A major difference in the on-line environment is that the trader may not have a physical presence, and therefore consumers may have difficulties locating and discussing the problem or serving a notice on an online trader. Making registrants' registered business addresses and contact business telephone numbers available on WHOIS would rectify this, minimising the gap between the bricks and mortar world and the world of on-line commerce.

There has been substantial discussion about whether the registrant's email address should be disclosed. The ACCC believes the registrants' email address is information that should be disclosed where the domain name is being used for business purposes. It has been suggested that this could lead to an increase in SPAM mail. However, this argument appears flawed because there is a high probability that the email address would already be widely circulated through normal business activities, consequently already making the registrant open to SPAM.

In addition, the WHOIS policy has specific mechanisms in place to deter the practice of obtaining large quantities of email addresses from the WHOIS database for spamming. These mechanisms include the query limit and limits to bulk access, which will be discussed below.

As a summary, the ACCC believes the current information available through a WHOIS search should remain, and believes that the registered business address and business telephone numbers of commercial registrants should also be included.

## **2. Is the WHOIS query limit appropriate?**

There is a limit imposed by auDA on how many queries an individual can carry out<sup>8</sup>, set currently at twenty queries per hour. The ACCC supports this limit and believes it is appropriate. The query limit is designed to stop data mining, which is a term for automated searches that seek to obtain large quantities of information, for example, registrants' email addresses. It is important that such a limit exists, and the current limit of 20 is seen as appropriate for most circumstances.

However, the ACCC notes that there are instances where this limit is not appropriate, namely for law enforcement agencies who are conducting investigations into internet traders. It is recommended that in these circumstances alternative arrangements be made, which is discussed below. It is not recommended that the limit be increased to incorporate this need, but rather the ACCC proposes the development of a specific mechanism which satisfies this particular requirement for law enforcement agencies.

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<sup>8</sup> Paragraph 5.2

### **3. Should bulk access to WHOIS data be permitted in certain circumstances?**

The ACCC is of the view that bulk access should be permitted in certain circumstances. As detailed above, it is suggested that these circumstances will involve law enforcement agencies conducting investigations into internet traders.

However, the ACCC notes that this bulk access to information must be lawful, and consequently must comply with the National Privacy Principles (NPP) contained in the Privacy Act.

The development of such a mechanism will require a comprehensive analysis of the Privacy Act, to ensure its compliance. The ACCC believes upon initial examination that it is possible to develop a bulk access mechanism which complies with the Privacy Regime.

The ACCC envisages that such a mechanism operate through a secure, password protected site which enables law enforcement agencies to have access to the type and quantity of information they require to exercise their statutory function, without imposing an increased burden on the resources of auDA.

As stated, it is essential that measures are taken to ensure adherence to the privacy regime, which will require extensive analysis of the relevant law. For example, such a mechanism will require the implementation of rigorous internal processes to monitor and record the use of information and will require an obligation on auDA to make domain name industry participants aware that their information may be used for certain specified purposes.