

AGEC COMMENTS ON DRAFT REVISED WHOIS POLICY

This submission is made by the Action Group on the Law Enforcement Implications of Electronic Commerce (AGEC) in response to auDa's invitation to make further comment on the draft revised WHOIS Policy.

AGEC is a body created by the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) and comprises the following agencies:- the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police, the Commonwealth Attorney Generals Department, the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission, the Australian Customs Service, the Director of Public Prosecutions, the Department of Immigration, Multicultural and Indigenous Affairs, the Australian Prudential Regulation Authority. The National Office of the Information Economy has observer status on AGEC.

auDA specifically invited comment on three issues:

1. How much data should be disclosed on WHOIS?
2. Is the WHOIS query limit (20 per hour) appropriate?
3. Should bulk access to WHOIS data be permitted in certain circumstances?

1 HOW MUCH DATA SHOULD BE DISCLOSED ON WHOIS?

ANALOGY WITH TLDS

While .au is a ccTLD, AGEC strongly supports the internationally consistent application of the same policy that ICAAN applies via its Registration Accreditation Agreement. In that regard, notwithstanding the .au ccTLD Sponsorship Agreement, we support the comments made by the Government Advisory Committee of ICAAN (GAC) that ccTLDs, including .au, should follow ICAAN policies concerning the accuracy and availability of contact information for domain name registrants and the publication of that data for use by anyone.

"On 23 February 2000, the GAC issued its "Principles for the Delegation and Administration of Country Code Top Level Domains". **Principle 10.2.5 suggests that ccTLDs should abide by ICANN policies related to the accuracy and availability of contact information for domain name registrants.**" (OECD 2/6/03 Consumer Policy Considerations on the Importance of Accurate and Available WHOIS Data)

AGEC's position is aptly summarized by Brian Williams and Bob Liu of Silicon Valley's internetnews.com:

"Presently, anyone registering domain names in the TLD's .com, .net and .org must disclose key personal information such as name, postal address, e-mail address, voice telephone number, and (where available) fax number into a registrar's WHOIS database. And in order to remain accredited by ICANN, this information must be accurate and publicly accessible to anyone seeking information about a domain name registrant. The policy dates back to the Internet's infancy when Network Solutions Inc., now a part of Verisign Inc., was the government-sanctioned monopoly administering all domain names."

The ICAAN Registration Accreditation Agreement (RAA) mandates that Registrars shall place the information listed below in a publicly available database:

"E. Submission of SLD Holder Data to Registry. During the term of this Agreement:

1. As part of its registration of SLDs in the .com, .net, and .org TLDs, Registrar shall submit to, or shall place in the registry database operated by Registry the following data elements concerning SLD registrations that Registrar processes:

- a. The name of the SLD being registered;*
- b. The IP addresses of the primary nameserver and secondary nameserver(s) for the SLD;*
- c. The corresponding names of those nameservers;*
- d. Unless automatically generated by the registry system, the identity of the registrar;*
- e. Unless automatically generated by the registry system, the expiration date of the registration; and*
- f. Other data required as a result of further development of the registry system by the Registry.*

2. & 3...

F. Public Access to Data on SLD Registrations. During the term of this Agreement:

1. At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e. updated at least daily) data concerning all active SLD registrations sponsored by Registrar in the registry for the .com, .net, and .org TLDs. The data accessible shall consist of elements that are designated from time to time according to an ICANN-adopted policy. Until ICANN otherwise specifies

by means of an ICANN-adopted policy, this data shall consist of the following elements as contained in Registrar's database:

- a. The name of the SLD being registered and the TLD for which registration is being requested;
- b. The IP addresses of the primary nameserver and secondary nameserver(s) for the SLD;
- c. The corresponding names of those nameservers;
- d. The identity of Registrar (which may be provided through Registrar's website);
- e. **The original creation date of the registration;**
- f. **The expiration date of the registration;**
- g. The name and postal address of the SLD holder;
- h. **The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the SLD; and**
- i. **The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the SLD.**

Schedule A of auDA's proposed Whois Policy should be consistent with in particular (e), (f), (h) and (i) of ICAAN's Registration Accreditation Agreement (RAA).

At present second level domains in **.au** do not reflect the RAA policy. For example, the only information available to the public on auDA's domain registration itself, as returned by a popular law enforcement utility, hosted at NetBenefit.com.au, is as follows:-

Enter either a domain name (without www.) or an IP address.

auda.org.au

Array

```
(
  [rawdata] => Array
    (
      [0] => Domain Name:      auda.org.au
      [1] => Last Modified:    Never Updated
      [2] => Registrar ID:    R00001-AR
      [3] => Registrar Name:  auDA
      [4] => Status:          ok
      [5] =>
      [6] => Registrant:      .au Domain Administration Ltd
      [7] => Registrant ID:   OTHER 079 009 340
      [8] =>
      [9] => Registrant ROID:  C0059419-AR
      [10] => Registrant Contact Name: THE MANAGER
      [11] => Registrant Email: ceo@auda.org.au
      [12] =>
      [13] => Tech ID:       C0059421-AR
      [14] => Tech Name:     auDA Postmaster
      [15] => Tech Email:    postmaster@auda.org.au
    )
  )
```

4

[16] =>
[17] => Name Server: warrane.connect.com.au
[18] => Name Server IP: 192.189.54.33
[19] => Name Server: yarrina.connect.com.au
[20] => Name Server IP: 192.189.54.17
[21] => Name Server: ns1.iinet.net.au
[22] => Name Server IP: 203.14.168.3
[23] => Name Server: ns2.iinet.net.au
[24] => Name Server IP: 203.59.24.3
[25] => Name Server: ns1.auda.org.au
[26] => Name Server IP: 203.202.88.210

Withheld, or not available to the user, are the following: A telephone number, a contact person, a technical contact, fax number, a contact technical person, or any immediately contactable information apart from email address.

WHOIS Policy, specifically Schedule A, as proposed in the revised draft (20/8/03), does not address the publication of this information.

It is not clear whether Australian privacy policy or legislation requires that these be absent. This needs to be clarified with the Office of the Federal Privacy Commissioner. There is no other legal impediment to the consensual publication of this information. The policy applied in North America and in particular in ICAAN's RAA should be applied in Australia. There are compelling technical reasons for the publication of administrative and technical contact names, phone numbers and fax numbers apart from the significant trust and consumer protection interests.

The OECD

AGEC supports the comments made in the Final Report "Consumer Policy Considerations on the Importance of Accurate and Available WHOIS Data" 2 June, 2003., DSTI/CP 2003 ("OECD Report 2003")

"Easy identification of online businesses is a key element for building consumer trust in the electronic marketplace. Because a Web site has no obvious physical presence, consumers are deprived of many of the usual identifying characteristics that help instil trust in a traditional retailer. A Web site can be online one moment and offline the next, leaving consumers with concerns about the availability of redress in the event of a problem. Likewise, effective consumer protection enforcement may require that an enforcement authority be able to locate the physical presence of a business."

The contractual obligation, between registrant and registrar, has since the infancy of the internet, required that phone numbers and actual person contact details be provided for a myriad of very good reasons. ICAAN's own RAA specifies that these be diligently

published, maintained and updated. AGECE supports the adoption by auDA of the spirit of the RAA and the inherent internationally consistent approach for general publication of such data in the same medium as a potential user would operate in.

An interest in good WHOIS Policy is not the sole domain of law enforcement. Falseness and fraud on the internet have a profound effect on potential user experiences. The OECD Report 2003 reported on its findings:

"Businesses that provide false contact information can undermine the online experience of a consumer that decides to conduct a Whois search about the business.Where the results of a Whois search produce obviously false information a consumer may be discouraged from doing business with the company in question, and more generally from engaging in e-commerce at all."

"Whois data is an important information source, often enabling the efficient identification of a Web site operator. However, the value of the data is of course dependant upon its accuracy. Whois cannot serve its functions if the data are **incomplete** or **inaccurate**."

While AGECE acknowledges the general accuracy of information available pursuant to auDA policy, this information holds minimal value to a consumer if it is not available. The minimalist policy, ie minimum information published, but great accuracy with what is published, can tend to have the same effect as the research findings of both the OECD Report 2003 and ICAAN's WHOIS Task Force 2003 as noted below:

The OECD Report found:-

"At present there are widely reported concerns about the quality of Whois data. Although some Whois inaccuracies may be attributable to accidental errors, in many cases it appears that Whois data has been intentionally falsified. This can be seen through Whois searches that turn up fictitious cities or countries, phone numbers consisting entirely of letters, and the like. In even more cases, the most rudimentary investigation would demonstrate the falsity of Whois data.

Other evidence of the Whois data accuracy problem is collected in a recent case study of the registration of 988 domains by a single entity known for its practice of providing fictitious Whois contact information. The firm has provided false addresses, invalid phone numbers, and has registered nearly one-half of its domain names under the name of "Allen Ginsberg" (a deceased poet). See Ben Adelman, Large-Scale Intentional Invalid Whois Data: A Case Study of 'NicGod Productions'/'Domains For Sale', available at: <http://cyber.law.harvard.edu/people/edelman/invalid-whois>. Likewise, a survey by revenue authorities in Australia suggests that approximately 15% of commercial Web sites could not be traced to a registered business entity or person (Australian Taxation Office, 1999)."

The WHOIS Task Force 2003:-

"The Final Report of the GNSO Council's Whois Task Force on Accuracy and Bulk Access, notes significant concerns about the ability of Whois to effectively identify a domain name holder, with nearly one-half of commercial and government users reporting that they had been harmed or inconvenienced by inaccurate Whois data."

2. & 3. WHOIS QUERY LIMIT AND BULK ACCESS

AGEC recognises that there are times that a registrant may want to sell part or all of the WHOIS information it is responsible for pursuant to any existing contractual registration agreement. If this right is exercised pursuant to contractual rights and obligations entered into between the parties, privacy becomes irrelevant to considerations surrounding the exercise of such an option under an agreement.

ICAAAN'S Policy Report of the Names Council's WHOIS Task Force on 'ACCURACY and BULK ACCESS' Revised 27 January, 2003 states:

"We recognize that there may be legitimate uses being served by bulk access to WHOIS data (eg research, law/intellectual property enforcement, and registrant inquiry, etc.

It should be noted that while the Task Force recognizes that privacy issues are relevant to the discussion of WHOIS generally, and perhaps more specifically to bulk access WHOIS, respondents to the survey generally did not identify privacy as a primary concern."

AGEC notes that the proposed auDA Whois policy has acknowledged that there may be times when on a case by case basis law enforcement may seek access to any further detail in the registry, but has not picked up on the proposal to enable this via secure web technology access.