



Level 25  
Optus Centre  
367 Collins Street  
Melbourne VIC 3000 Australia

**P:** +613 9221 6151  
**F:** +613 9383 5293  
**E:** info@guyassociates.com.au

[www.guyassociates.com.au](http://www.guyassociates.com.au)

## **Analysis of “auDA's Response to Public Comments”**

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

There were two clearly opposing points of view put forward in submissions. Several people argued that registrant contact email addresses should be masked or removed from WHOIS due to possible spam abuse.

On the other hand, submissions from AUSTRAC and ASIC and Guy & Associates argued that WHOIS should disclose full contact details for registrants, as well as other information including domain creation and expiry dates.

Disclosure of registrant contact email address auDA's view is that the disclosure of registrant contact email addresses on WHOIS remains necessary to ensure that the registrant can be contacted in relation to their domain name. We believe that there is a significant benefit to registrants in being able to check via a public WHOIS query that their contact email address is up to date. This is especially useful for registrants who are preparing to transfer their domain name to another registrar of record.

There is no evidence to suggest that registrant email addresses are being harvested from the WHOIS database for spamming purposes, and in any case auDA believes that the best way to manage this risk is by imposing WHOIS query limits and bulk access restrictions.

*[Comment: The same risks of receiving renewals exist whether email is used or standard mail sent to a physical address. The only difference is that standard mail would be more expensive to use for abuse of this system and is potentially more prolific.]*

auDA notes comments about various technical solutions, such as email masking, one-time-use email addresses or contact via web forms. For the reasons given above, we do not consider it appropriate to introduce such measures at this time. However, we will monitor the development and implementation of different technologies by industry providers in other domain spaces for possible application in .au.

#### **Disclosure of other information**

The current policy states that the street address, telephone and facsimile numbers of registrants will not be disclosed, due to Australian privacy legislation.

*[Correction: How does the white pages and yellow pages achieve listings of names and physical addresses of persons and businesses? There is of course the ability to have an unlisted number. We are happy for this to be available to registrants on the single condition that they agree that auda can be the address for service of any legal proceedings. We do not advocate this approach*

*for those claiming eligibility through trade mark ownership. The trade mark database provides an address for service of legal proceedings.]*

We note the suggestion that disclosing full contact details for companies and other corporate entities would not breach privacy legislation and should be allowed.

- We note that ASIC, ABR and other government databases do not disclose full contact information for companies and businesses.

*[Correction: The government's trade mark database does disclose the owners address for service.]*

We are not sure why the WHOIS database should be held to a higher disclosure standard than other public databases.

*[Comment: Probably the fact that e-commerce is fighting a battle for credibility in the face of widespread online fraud. Further, to ensure the auDA policy retains commercial integrity by providing the consumer with a means of monitoring transfers of domain names between entities takes place within the terms of the policy. This is a transparency matter.]*

We also note comments that domain creation, renewal and expiry dates should be disclosed on WHOIS. The current policy cites the problems caused in the marketplace by misleading renewal notices as the reason for not disclosing this information on WHOIS. Unfortunately these problems still exist, and therefore auDA believes that the current policy remains justified.

*[Correction: A failure to publish domain name creation, renewal and expiry dates will prevent the consumer from checking when the domain license is due to expire and companies such as MelbourneIT will charge significant sums for what is referred to as domain consolidation. We doubt that there is a direct link between timing of fake domain renewal notices and expiry dates.]*

## **2. Is the WHOIS query limit (20 per hour) appropriate?**

The majority of submissions were in favour of imposing a limit on WHOIS queries, and considered the current limit reasonable.

Submissions that argued in favour of unrestricted public WHOIS queries were received from AUSTRAC and ASIC and Guy & Associates.

*[Correction: Guy & Associates Solicitors stated:*

*1.3 We propose a tiered system of access to whois data be provided with full access to all information being provided to law enforcement and legal practitioners upon request. A full disclosure in this policy will inform legal practitioners of the full contact details of a registrant to permit enforcement of Intellectual Property Rights against registrants following infringement....*

*1.17 We submit that auDA should permit the use of bulk whois data and support an automatic electronic query process for domain name service providers who are or are not registrars on the ground that such access should be granted to increase competition in the domain name industries and to enhance services available to the consumer. Competing industries should not be competitively disadvantaged by this policy. Such access should be granted on the basis that service providers adhere to technical requirements, national privacy principles, and do not otherwise infringe the legal rights of registrants.]*

**auDA response:**

auDA is of the strong view that limits must be imposed on WHOIS queries, to guard against abuse. We believe that the current limit of 20 queries per hour is appropriate for the majority of users.

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

Submissions from law enforcement agencies (AUSTRAC and ASIC, ACCC) argued that they should have bulk access to WHOIS data.

*[Correction: see above]*

*auDA response:*

auDA is not sure that people who commented on this issue understand what is meant by "bulk access" to WHOIS data. It does not mean access to the full record of a particular domain name. It means access to the full records of all domain names held in the registry.

*[Comment: We know exactly what we are requesting]*

auDA is aware that law enforcement agencies may require access to the full record of a particular domain name or names as part of an investigation, the details of which would be specified by warrant, court order or other official document. auDA has entered into a formal protocol with the ACCC for this purpose, and we invite other law enforcement agencies to do the same.

However, we have difficulty understanding the type of investigation that would require bulk access to the full records of all domain names held in the registry. We do not believe that it is appropriate to compromise the integrity of the WHOIS database and the privacy of registrants merely for the convenience of law enforcement officials.

*[Comment: Trade mark infringement investigation, digital rights management. AuDA needs to look at the recent decisions that have been handed down against Universities. This sets the legal precedent for providing access to this type of information to monitor infringement. The alternative is that applicants and auda will be involved in expensive litigation along the same lines.]*

The revised WHOIS policy states that law enforcement agencies may be granted access to data for purposes of an official investigation.

#### **Conclusion**

In conclusion, the revised policy would:

- retain the same WHOIS data set (Schedule A)
- retain the same restrictions on access to WHOIS data
- state that law enforcement agencies may be granted access to data for purposes of an official investigation.

*[Comments: Conclusions are parochial and logically flawed.]*

Kind regards

James Guy  
Principal

