

ANALYSIS OF AMENDED WHOIS POLICY

1. BACKGROUND

1.1 This document sets out auDA's policy on the collection, disclosure and use of WHOIS data in the open .au second level domains (2LDs). At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

1.2 auDA's Registry Licence Agreement and Registrar Agreement impose certain conditions on the registry operator and registrars in relation to the collection and use of WHOIS data. This policy operates to clarify some of those conditions.

2. WHOIS POLICY PRINCIPLES

- 2.1 The public WHOIS service is a standard feature of domain name systems around the world. The purpose of the WHOIS service is to allow users to query a domain name to find out the identity and contact details of the registrant.
- 2.2 auDA has drafted this policy with the aim of striking an acceptable balance between:
- a) the rights of registrants, under Australian law, in relation to how their personal information is handled;
 - b) the role of auDA to promote a competitive and efficient domain name industry; and
 - c) the interests of law enforcement agencies in accessing information about domain names for consumer protection and other public interest purposes.

[Comments: auDA should seek an opinion from the Federal Privacy Commissioner as to the form of this policy.]

3. COLLECTION OF WHOIS DATA

- 3.1 Data about each domain name registration is collected from the registrant by the registrar, and submitted to the registry in accordance with the procedural requirements of the registry. The registry provides a public WHOIS service for all 2LDs under its control, which displays a subset of the full registry data for each domain name (known as the "WHOIS data").
- 3.2 Under the Registrar Agreement, and in accordance with Australian privacy legislation, registrars must inform registrants of the fact that some of their personal information will be disclosed on the WHOIS service. Under the domain name licence agreement, registrants grant to the registry the right to disclose information for the purposes of maintaining the WHOIS service.

[Comment: Accordingly the physical address can be made available.]

- 3.3 Due to the policy requirements in the .au domain, the WHOIS data that is collected by registrars at the time of registration is highly accurate and reliable. However, the integrity of the WHOIS database is undermined if the data is not kept up-to-date.

[Comment: The statement is far from the truth. auDA has not conducted any studies into the accuracy of this data. The Australian Taxation Office has produced a damning report on the inaccuracy of domain information. Further, accuracy of the whois information is the foundation

upon which other auDA policy is built. For instance eligibility and transfer policy is dependant upon accurate whois data.]

- 3.4 In order to maintain the integrity of the WHOIS database, registrants are required to notify their registrar of any changes to WHOIS data for their domain name(s) and the registrar must update the WHOIS database on receipt of new information from the registrant.

[Comment: auDA should provide a whois complaint function as ICANN provides and should conduct whois complaint inquiries as ensuring the accuracy of the information is in the best interests of the community. At present if a complaint is made to auDA a complainant is referred by auda to the registry who in turn advises that they will seek correction of the data. Registries seldom comply with complaints within the time specified by the policy. Registrars state that they are not empowered to cancel a domain license. Further, they permit transfers outside of the policy. The complainant can only resort to filing a complaint against the registrar with auda at which point the registrar then has to address the issue.]

The point is that this system is geared against ensuring the accuracy of whois information. AuDA must take the lead and enforce the accuracy of whois data. AuDA must also undertake the investigation of transfers directly where there is an update to whois data during the license period. To turn a blind eye to this problem is to pander to registrars and to ignore the consumer.]

4. DISCLOSURE OF WHOIS DATA

- 4.1 The table in Schedule A lists the data fields that will be disclosed on the public WHOIS service for all domain names in the open 2LDs.
- 4.2 In order to comply with Australian privacy legislation, the street address, telephone and facsimile numbers of registrants will not be disclosed.

[Comment: the argument in support is logically flawed. Further, those parties claiming eligibility on the basis that they hold a trade mark should have the trade mark registration number made available for viewing by the public. Trade Marks operate in the public domain. Trade Mark ownership is also made available to the public through IP Australia's database. This lists the physical address of the applicant. Also the physical address of businesses and companies are available to the public for a fee from ASIC's service providers.]

- 4.3 It is necessary for the WHOIS data to include a contact email address for the registrant, for purposes of contacting the registrant in relation to their domain name. The registrant does not have to nominate their own personal email address, but they must nominate an email address at which they can be contacted at any time.

[Comment: A more effective forum for scamming than a physical address.]

- 4.4 In the past, it was possible to use WHOIS to find out the creation and/or expiry date of a domain name. This enabled some members of the domain name industry to send unsolicited renewal notices to registrants with whom they did not have a prior business relationship, causing significant levels of customer confusion. As a result of these problems, auDA has determined that creation, renewal and expiry dates will not be disclosed on the WHOIS service. Registrants who wish to check the creation, renewal or expiry date of their own domain name can do so through their registrar or reseller.

[Comment: The proposed solution is flawed in that renewal notices are sent at any time and scammers deliberately avoid sending notices when the real registrar would send their own renewal notice.]

5. USE OF WHOIS DATA

- 5.1 In the interests of protecting the privacy of registrants, the following activities are strictly prohibited:
- a) use of WHOIS data to allow, enable or otherwise support the transmission of unsolicited communications to any person, by any means;
 - b) use of WHOIS data to support an automated electronic query process; and
 - c) bulk access to WHOIS data (ie. where a user is able to access WHOIS data other than by sending individual queries to the database).

- 5.2 In order to prevent the abuses listed in paragraph 5.1, auDA will impose restrictions on the number of queries that a user can send to WHOIS. The level of restriction will be clearly displayed on the WHOIS website. auDA may vary the restriction at any time.

[Comment: The above restrictions would equally apply to physical address details.]

- 5.3 auDA recognises that it may be necessary for law enforcement agencies to access the full record of a particular domain name or names as part of an official investigation. auDA will deal with requests from law enforcement agencies on a case-by-case basis.

[Comment: And so competing service providers are prevented from competing with registrars in providing services to the consumer. This is cartel behaviour.]

6. REVIEW OF POLICY

- 6.1 auDA will closely monitor the use of the WHOIS service, and hold a public review of this policy 12 months after implementation.

Kind regards

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Principal