

Unclassified

DSTI/CP(2003)1/FINAL



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

02-Jun-2003

English - Or. English

**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY
COMMITTEE ON CONSUMER POLICY**

**DSTI/CP(2003)1/FINAL
Unclassified**

**CONSUMER POLICY CONSIDERATIONS ON THE IMPORTANCE
OF ACCURATE AND AVAILABLE WHOIS DATA**

JT00145317

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English - Or. English

FOREWORD

The OECD's Committee on Consumer Policy has been focussed on the consumer policy challenges arising out of the development of the Internet and the emerging electronic marketplace for a number of years. In 1999 it developed *Guidelines for Consumer Protection in the Context of Electronic Commerce*, which set out the core characteristics for effective consumer protection for online business-to-consumer transactions.

This document builds on several provisions of the *Guidelines* to explain how accurate and available Whois data can contribute to building consumer trust in the online marketplace. It identifies some concerns about the current functioning of Whois, and suggests possible approaches to addressing these concerns.

The Committee on Consumer Policy agreed to declassify this document by written procedure completed on 30 May 2003. It is published on the responsibility of the Secretary-General of the OECD.

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CONSUMER POLICY CONSIDERATIONS ON THE IMPORTANCE OF ACCURATE AND AVAILABLE WHOIS DATA

I. Introduction

The OECD's Committee on Consumer Policy (CCP) brings together experts from its 30 member governments, along with consumer and business representatives, to address the consumer policy issues shaping the global marketplace. In recent years, the CCP's work has focussed on the policy challenges arising out of the development of the Internet and the emerging electronic marketplace. In 1999, it produced a set of *Guidelines for Consumer Protection in the Context of Electronic Commerce* (the "OECD Guidelines") (OECD, 1999). These Guidelines set out the core characteristics for effective consumer protection for online business-to-consumer transactions, and aim to ensure that consumers are no less protected online than when they buy from their local store or order from a catalogue.

The OECD Guidelines were developed in close co-operation with business and consumer representatives, which has contributed to their wide acceptance. Since their release, the CCP has been working to monitor and promote the implementation of the Guidelines, and just produced the report, *Consumers in the Online Marketplace: the OECD Guidelines Three Years Later* (OECD, 2002). Effective identification of businesses online is an important element of the Guidelines, helping to maintain the integrity of the commercial online space and assisting effective consumer protection law enforcement. As described below, accurate and available Whois data support these aims.

In June 2002, the Government Advisory Committee (GAC) to the Internet Corporation for Assigned Names and Numbers (ICANN) called for ICANN to obtain advice from external expert bodies in several areas of public policy, notably consumer protection.¹ Emphasising the role of International Treaty Organisations (e.g. the OECD), the GAC called for constructive participation with ICANN facilitated by the GAC. It is in this context that the CCP expresses these views, which it hopes will serve as a useful contribution to the ongoing policy discussion of Whois data.² In keeping with commercial focus of the OECD Guidelines, this paper focuses on Whois issues related to commercial domain name registrations.

This document explains how accurate and available Whois data can help build consumer trust in the online marketplace, building on several provisions of the OECD Guidelines. It then briefly identifies current concerns about the functioning of Whois and describes recent efforts to ensure the accuracy and availability domain name registration information. The conclusion suggests a number of measures for making improvements in this area.

II. The importance of business identification to building online consumer trust

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. These points are reflected in the OECD Guidelines. The importance of business transparency to online consumer trust has also been recognised in other forums. For example, the Global Business Dialogue on Electronic Commerce has called for online

merchants to provide comprehensive and accurate information including contact details for online merchants (GBDe, 1999). Likewise, Consumers International recommends that consumers avoid doing business with an online merchant that fails to provide its full business name, postal address and contact details, such as an e-mail address or telephone number (Consumers International, 2001).

Maintaining the integrity of the online commercial space

The OECD Guidelines call for online businesses to “provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum ... prompt easy and effective consumer communication with the business.” [Part Two, III(A)]. While the most obvious location for an online business to provide contact details is on the Web site itself, domain name registration information can serve as a useful compliment. Conversely, businesses that provide false contact information can undermine the online experience of a consumer that decides to conduct a Whois search about the business.³ In this respect the OECD Guidelines are also explicit, exhorting businesses not to “exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.” [Part Two, II]. 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.

Assisting consumer protection law enforcement efforts

For law enforcers working to prevent Internet fraud, the problem of false domain name registration information has become an impediment to effectively identifying law violators. Whois is often a first step in investigating an online consumer problem. When its contact data are accurate and available, Whois can help law enforcers quickly identify actors responsible for the problem. Unless the company or individual can be quickly and efficiently located, however, pursuit of a consumer protection enforcement action may not be worthwhile. The OECD Guidelines recognise the importance of accurate information for this purpose as well, providing that online businesses should provide: “accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum ... location of the business and its principals by law enforcement and regulatory officials.” [Part Two, III(A)]. Thus, the importance of accurate contact information, whether through the Web site itself or the domain name registration process, is a key element in the policy framework for effective consumer protection online. The need for accurate information is particularly acute in the cross-border context, where determining a potential defendant’s country of residence will help ensure that the appropriate enforcement authorities can pursue the case (FTC, 2002).

Although this paper focuses on public availability of Whois data for commercial registrations, the Committee notes that appropriate consumer protection enforcement authorities should have access to Whois data for all registrations so that they can find fraud operators quickly and efficiently.⁴ If it is determined that there should be less disclosure of Whois data for non-commercial than for commercial Web sites, those committing fraud against consumers should not be permitted to take advantage of this distinction to hide from consumer protection enforcement authorities by claiming to be non-commercial for registration purposes and then using their sites for commercial purposes. This approach is consistent with the OECD Guidelines call for businesses not to “exploit the special characteristics of electronic commerce” to avoid consumer protection enforcement mechanisms. [Part Two, II].

III. Current problems with Whois data

Problems regarding the accuracy of Whois contact data

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. 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.

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 (WHOIS Task Force, 2003). 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 know for its practice of providing fictitious Whois contact information.⁵ 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 OECD itself has encountered falsified Whois data in the course of addressing a problem with a cybersquatter.⁶ Finally, experiences of consumer protection law enforcement authorities in actual cases have highlighted the day-to-day nature of the problem (FTC, 1999).

Issues regarding the availability of Whois data

In addition to the problems with the quality of the Whois data, there are also issues regarding the availability of such data. For generic Top Level Domains (gTLDs), public availability is mandated by ICANN through the Registrar Accreditation Agreements. These agreements require registrars to collect and maintain accurate and up-to-date contact data directly from the domain name holders. The registrars are required to make the contact data publicly available, which they typically do through a Whois service. In the event that a registrar fails to comply with its obligations in this respect, ICANN can terminate the accreditation of the registrar. However, the situation with respect to country-code Top Level Domains (ccTLDs) is considerably more uncertain. A recent OECD report on the administration of ccTLDs noted the variety of policies and practices on Whois in OECD countries (OECD, 2003). Here ICANN does not have a mandate to impose contact data collection requirements, or to insist that the data collected be publicly available. As a result there is considerable variation among different ccTLDs as to whether there is a Whois function and what information is provided.⁷

IV. Current efforts to improve the accuracy and availability of Whois contact data

The problem of inaccurate Whois contact data is neither new nor unique to consumer policy. The World Intellectual Property Organization (WIPO) has considered at length issues related to Whois data from the perspective of intellectual property disputes and issued recommendations (WIPO, 1999, 2003). The OECD's Committee on Fiscal Affairs (CFA) has addressed this issue from the perspective of the needs of revenue authorities and shared its views with the GAC.⁸ The OECD's Working Party on Telecommunications and Information Services Policies (TISP) has also examined the issue with a view to ensuring network interoperability. As a result of the comments from these and other stakeholders, there have been initiatives to address concerns about Whois.⁹ The CCP welcomes these initiatives.

Implementing current rules for gTLDs

ICANN's current procedure for accrediting a registrar includes a number of important elements for ensuring the accuracy and availability of Whois data. These are imposed through ICANN's Registrar Accreditation Agreement (RAA) which:

- Requires domain name registrants to give the registrar accurate and reliable contact details and to promptly correct and update them during the term of the registration.
- Makes wilful breaches of this obligation a basis for cancellation of the registration.
- Requires registrars to take reasonable steps to investigate claims of inaccurate Whois data when they are brought to their attention by any person; and
- Requires registrars to take reasonable steps to correct any inaccuracy in registrant contact data of which the registrar learns.¹⁰

The problems with Whois data quality described above partially reflect that registrars have not always implemented the RAA measures in practice and that ICANN has not vigorously enforced the agreements. However, ICANN has recently stepped up its role in ensuring that registrars live up to their agreements under the RAA.

On 10 May 2002, ICANN issued a "Register Advisory Concerning Whois Data Accuracy" to remind registrars of their current obligations under the RAA.¹¹ ICANN followed up its advisory with an announcement on 3 September 2002 of several steps to improve Whois data accuracy. ICANN initiated an enforcement action against a registrar for breach of the RAA by failing to provide to investigate and correct inaccurate Whois data.¹² The enforcement action was accompanied by a mechanism put in place by ICANN for users to complain about inaccuracies in contact information. One can now submit a Whois data problem report directly to ICANN.¹³ Reports that are received will be forwarded to the responsible registrar for handling. A tracking mechanism will be implemented to provide registrars with periodic summaries of outstanding reports about inaccurate or incomplete Whois data and to allow them to note that reported problems have been resolved.

Efforts regarding ccTLDs

Progress in addressing the Whois issues with ccTLDs has been a greater challenge. On 23 February 2000, the GAC issued its "Principles for the Delegation and Administration of Country Code Top Level Domains".¹⁴ 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. ICANN continues to discuss these issues with the ccTLD community, has entered into agreements with several ccTLDs, and is working to reach agreement with others. However, ICANN's recent status report notes that progress in this area has been slow.¹⁵

WIPO has focussed special attention on Whois issues as impacting ccTLDs and released a set of best practices for ccTLD registrars (WIPO, 2001). For the most part, however, each ccTLD continues to set its own policies with respect to Whois. Some ccTLDs are working to improve the accessibility of contact data through Whois. For example, the registry for the .uk domain, Nominet UK, has recently announced a new policy to make available the physical address of .uk domain name holders.¹⁶

V. Further measures for improving the accuracy and availability of Whois data

There remains room for improving the existing system. The Final Report of the Whois Task Force identifies improving the accuracy and reliability of Whois data to be one of four main areas of dissatisfaction with the Whois. The OECD's cybersquatting episode suggests that the current regime fails to provide sufficient incentives for registrars to exercise diligence in ensuring the accuracy of Whois contact information. Further efforts can help insure that Whois becomes a more effective tool for building consumer trust online.

Privacy considerations

OECD member countries are committed to "the protection of privacy on global networks in order to ensure the respect of important rights, build confidence on global networks, and to prevent unnecessary restrictions on transborder flows of personal data" (OECD, 1980, 1998). The public disclosure of Whois contact information about domain names registered for **non-commercial** purposes raises important privacy issues. However, these concerns are outside the scope of this paper.¹⁷

The consumer protection issues discussed in this paper concern **commercial** Web sites. For online businesses, disclosure is the key principle, as is highlighted in the provisions of the OECD Guidelines described above. Disclosure of professional contact information (*e.g.* name, a work e-mail address or telephone number) should not pose a danger to privacy and individual liberties where the individual is acting as a representative of an online business.

Suggested approaches

What follows are some possible approaches for addressing these issues:

- All contact data for commercial registrants across the gTLDs and ccTLDs should be accurate and publicly available via Whois.
- Accurate contact data for all domain name registrants across the gTLDs and ccTLDs should be readily available to appropriate consumer protection law enforcement officials.
- Registrars across the gTLDs and ccTLDs should perform reasonable up-front verification to improve the accuracy of contact data.
- ICANN should continue its efforts to enforce its registrar accreditation agreements with gTLD registrars.
- ICANN should consider altering its registrar accreditation agreements so that, where a domain name registrant has failed after appropriate warnings to provide accurate contact information, suspension of the domain name is mandatory.

VI. Conclusion

Taking full advantage of the opportunities of the digital marketplace requires a high level of consumer trust. The OECD and its CCP have been engaged since the early days of e-commerce in promoting policies aimed at helping to build that trust. Effective identification of online businesses is one element of the framework for consumer trust. Accurate and available Whois contact data contribute to this goal, helping to maintain the integrity of the online commercial space and assisting in the effective enforcement of consumer protection laws. The CCP encourages further efforts to improve the usefulness of Whois data and help ensure the continued growth of this important commercial medium.

NOTES

1. The GAC statement is available at: www.noie.gov.au/projects/international/gac/meetings/mtg13/gac13statement.htm.
2. The OECD has previously provided input to the GAC on Whois issues related to taxation, through its Committee on Fiscal Affairs. More broadly, OECD work on domain name issues dates back to 1996, when its Working Party on Telecommunications and Information Service Providers (TISP) organised a pre-ICANN public workshop that addressed international co-ordination of domain name issues. This was followed in 1997 by the release of the report on domain name issues, which noted that only half of registrars in OECD countries offered a Whois service, with even fewer making available contact data on the registrant. See "Internet Domain Names: Allocation Policies" p.31, available at: www.oecd.org/pdf/M000014000/M00014302.pdf.
3. Some Web tools automatically conduct a Whois search for every Web site visited (e.g. Amazon's "Alexa Toolbar"). See <http://pages.alex.com/exec/faqsidos/help/index.html?index=22>. For consumers using such tools, Whois contact information is immediately displayed without the consumer having to independently conduct a Whois search.
4. The CCP is not suggesting that *only* consumer protection law enforcement officials should have access to all Whois data. Other parties may have legitimate needs for access to all Whois data as well. However, the CCP's views are confined to the area of consumer protection.
5. 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>.
6. The OECD difficulties in obtaining accurate Whois contact information arose in the context of resolving a cybersquatting problem. Despite being presented with evidence of the intentionally falsified contact information, the registrar in question refused repeated requests to obtain accurate contact data or suspend the domain registration. See "Cybersquatting: The OECD's Experience and the Problems it Illustrates with Registrar Practices and the "Whois" System", www.oecd.org/pdf/M00027000/M00027316.pdf.
7. For example, the ccTLD registrar for Tonga (www.tonic.to) provides no public Whois information, whereas the registrar for Christmas Island (www.nic.cx) provides the name and country of the domain name holder, but no contact details. For a list of all ccTLD registries visit: www.iana.org/cctld/cctld-whois.htm.
8. See "Business Identification Guidance: Exposure Draft", www.oecd.org/pdf/M00028000/M00028484.pdf.
9. Hearings on the issue have been held in the US Congress. See www.house.gov/judiciary/courts.htm. Legislation has been introduced that, if passed, would make criminal the submission of false information in the context of registering a domain name. H.R. 4640, 107th Congress (2002), available at <http://thomas.loc.gov/home/c107query.html>.
10. The RAA is available at: www.icann.org/registrars/ra-agreement-17may01.htm.
11. The advisory is available at www.icann.org/announcements/advisory-10may02.htm.
12. See www.icann.org/announcements/announcement-03sep02.htm.
13. See www.internic.net/cgi/rpt_whois/rpt.cgi.
14. See www.noie.gov.au/projects/international/gac/docs/cctld/cctld.pdf.
15. As of August 2002, ICANN had agreements with Australia, Burundi, Japan, and Malawi. See ICANN (2002), "Fourth Status Report to the US Department of Commerce", 15 August, www.icann.org/general/status-report-15aug02.htm.

16. The new policy will permit non-traders to opt out from having their address made public. See www.nic.uk/RegisteringYourDomainName/RegistrantFaq.
17. For additional information on privacy issues, see: “Whois Issues Paper on Privacy”, 11 March 2003, available at: www.dnso.org/dnso/notes/20030311.WhoisTF-privacy-issues.pdf; “Privacy Issues Report” of the Non-Commercial Constituency, 10 March 2003, available at: www.dnso.org/dnso/notes/20030310.Whois-PrivacyIssuesReport.pdf; 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”, released in May 2000 and re-affirmed in November 2002, available at: www.datenschutz-berlin.de/doc/int/iwgdpt/dns_en.htm.

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