**Article 29 Working Party (A29WP) Letters**

1. October 10, 2007, letter from ICANN Board to A29WP
   1. Subject: ICANN Procedure for Handling WHOIS Conflicts with Privacy Law
   2. A29WP had submitted input for WHOIS draft procedures on handling conflicts with privacy laws
   3. A29WP formally offers to review finalized text of the procedures
   4. Makes the Working Party available for contact for further discussion on these topics especially related to EU and national data protection legislation
2. March 15, 2007, letter from ICANN Chairman of the Board to A29WP
   1. Confirming receipt of A29WP and publication on the ICANN correspondence page.
   2. A29WP commented on the following topics:
      1. “Draft Procedure for Handling Potential Conflicts between Whois Requirements and Privacy Laws”
         1. ICANN staff is to follow-up with A29WP should they need clarification on their concerns
      2. “Preliminary Task Force Report on Whois Services”
         1. Final task force was already concluded and submitted to GNSO Council, so A29WP concerns were brought to the Council as well
         2. GNSO will take up the next step on this issue
         3. ICANN welcomes A29WP comments on the “Final Task Force Report on Whois Service”
   3. The A29WP supported the Operational Point of Contact proposal, which was recommended in the Final Report (by a narrow margin).
3. March 12, 2007, letter from A29WP to ICANN Board of Directors
   1. Subject: Comments on the GNSO Whois Task Force Preliminary Task Force Report on Whois Services of 22 November 2006; and on the Draft ICANN Procedure for Handling Whois Conflicts with Privacy Law of 3 December 2006
   2. Comments are in reference to:
      1. Impact on the EU Data Protection Directive (Directive 95/46/EC)
         1. Particularly the processing of personal data for domain name registration including making data available for WHOIS services
      2. Draft ICANN Procedure for Handling Whois Conflict with Privacy Law of 3 December 2006
   3. Documents referenced:
      1. Opinion 2/2003 – on the application of the data protection principles in the WHOIS directories
      2. 22 June 2006 – letter to the Board of Directors detailing relevant data protection principles
      3. EU Data Protection Directive (article 2-d)
   4. Noted privacy/data protection issues:
      1. **Legal and natural person differentiation**: there is a need to make a distinction between the two and a primary concern for those who are “private domain holders that use domains solely in a non-commercial context”
      2. **Direct access for bulk marketing**: “not in line with the purpose for which the directories were set up and are being maintained”
      3. **EU registrars conflicted position**: need to uphold EU data protection law and conflicts with the ICANN registrar accreditation agreement
         1. The main conflict: The accreditation agreement requires making registrant personal data available to third parties
         2. Registrars/registries are considered “data controllers” and therefore must “observe data protection rules set by the Data Protection Directive and national laws implementing it”
      4. **Current and *actual* (not *potential*) conflicts** between WHOIS practice and EU data protection and privacy laws
   5. Suggestions/ Comments
      1. **Distinction between publicly accessible and inaccessible data (or tiered access)**: “Introducing a distinction between publicly accessible and publicly inaccessible data”
         1. to address privacy and bulk marketing issues
      2. **National privacy legislation is not negotiable**
         1. Re: ICANN wishes to negotiate with “local/national enforcement authority”
      3. **ICANN’s current suggestions will not resolve the conflict** for registrars between ICANN accreditation and the EU Directive
      4. Solutions to the privacy/data protection issues “**should be solved through amendments to the registrar accreditation agreement**”

**Article 29 Working Party – Opinion on the application of the data protection principles to the Whois directories**

1. Referenced documents or groups
   1. ICANN Whois Task Force
   2. International Working Group on Data Protection in Telecommunications
   3. EU Data Protection Directive
      1. Article 6c
   4. Opinion 5/2000 on The Use of Public Directories for the Reverse of Multi-criteria Searching services
2. Noted privacy/data protection issues & comments
   1. There is “**improper use of the Whois data** in several countries”
      1. Proper use being – contacting a person technically responsible for another domain when there is a problem
   2. DN **registration by private persons increases the importance** of the Whois discussion around privacy/data protection
   3. Comments on data protection **apply to other domain name and IP address registries** including regional levels (i.e. RIPE and AP-NIC), not only Whois
   4. The Data Protection Directive sets limits on data collection, which **data should be relevant and not excessive for the purpose**
      1. The meaning of “relevant and not excessive” may change **depending on who is registering** (private personal, legal person or companies)
   5. Excessive data collection in the Whois database cannot be tolerated because some potential users consider it desirable
   6. A29WP is **concerned about the searchability of the Whois and use as a Reverse Directory**, infringing privacy and data protection
   7. Agrees in the need for **more accurate data** and limitation on access for bulk direct marketing
   8. People should be able to register for DNs without personal details appearing in a “publicly available register”
3. Suggestions
   1. It is “**essential to determine…the purpose of the Whois**” to avoid **extending its purposes in a way that creates data protection** **issues**
   2. **Data minimization** – The amount and type of personal data collected and processes should be limited specifically to the purpose
   3. **The right to object** provides individuals (private persons or those related to a company) the right to abstain from disclosing personal information
   4. **Proportionality principle** – in line with this principle, Whois **directories should not have “all data directly available on-line to everybody”,** and should look for “less intrusive methods” that would allow the Whois to serve its purpose
      1. The Principle: The content and form of the action must be in keeping with the aim pursued
   5. Encourages researching **“privacy enhancing ways to run the Whois directories”** to protect the rights of individuals