

ACCURACY AND HARMONISATION OF WHOIS DATABASES

UNICE position paper

I. GENERAL COMMENTS

Following the ICANN Bucharest meeting which took place on 24 – 28 June 2002, the ICANN Task Force Report on WHOIS has been published and comments are invited. The report thereafter will be presented to the Domain Name Supporting Organisation of ICANN for approval.

UNICE believes that European business and the European Institutions should support many of the recommendations and viewpoints expressed in this report and should use this information to press also for changes not only within ICANN but also amongst national registries and registrars administering the so-called 'country code' top-level domains (ccTLDs). In particular, UNICE supports those issues in the report, which are described below in the section "Detailed Comments".

ICANN is the body which administers the naming space for generic top-level domains (gTLDs), including .net, .org, .info and .biz, and ensures that registrars give a wide range of information, including contact details and dates when the domain was registered and/or renewed. National registries and registrars offering ccTLDs vary significantly in the amount of information they offer and some do not provide any data as to the true legal owner. In some instances, the owner or contact details may include fictitious or inaccurate names and addresses.

The WHOIS service provides "look up" details of ownership and registration and renewal dates relating to domain names. The service for gTLDs is distributed among ICANN approved registrars. The data available is consistent but the formatting varies. ccTLDs are generally not subject to any uniform rules.

It is not possible to make a registrant search of available WHOIS databases in order to know how many domains are owned by a particular company or individual. Such a tool would be useful for those who wish to establish patterns of bad faith applications for UDRP claims or to make audits of domain name property owned by individuals or companies in instances such as company sales or acquisitions.

Although the ICANN Task Force survey was conducted prior to the launch of the new TLDs and cannot be considered statistically valid, UNICE believes that it provides valuable insight into the concerns of business in Europe and in particular to the concerns of Intellectual Property Rights holders.

A paraphrased version of the initial terms of reference to the ICANN Task Force was: "*To consult with the community with regard to establishing whether a review of any questions related to ICANN's WHOIS policy is due and if so to recommend a mechanism for such a review.*"

The survey attracted around 3,000 responses from all areas although commercial and individual/household users dominated the population of respondents to the survey.

The Report identifies four regions of concern:

1. Accuracy of the data contained in the WHOIS database
2. Uniformity of data formats and elements across both gTLDs and ccTLDs
3. Better searchability
4. Better protection against marketing use of the data contained in the WHOIS database.

UNICE agrees that these are four areas of concern for European business. Owners of domain name property need accurate and harmonised data to be able to search for availability of domain names for their own use and as a starting point to contact the owners of domain names or websites who may be in breach of intellectual property or other rights. Unavailable, inaccurate and incomplete data allows individuals and companies to use such anonymity to act in bad faith. The use of WHOIS database information to target domain name owners for unsolicited marketing purposes is also an unacceptable intrusion for both individuals and companies alike.

II. DETAILED COMMENTS

Generally, the most important purpose of a WHOIS database should be to check whether a domain name is available and to conduct a search for similar domain names but there is also a need for an on-line source to identify intellectual property infringements. Such a database system also has a value for tracking spammers, security violations and consumer protection purposes.

1. ACCURACY OF THE DATA CONTAINED IN WHOIS DATABASES

When ICANN appoints a registrar they have to enter into a Registrar Accreditation Agreement, which requires that registered domain name holders provide registrars with "accurate and reliable contact details". The remedy for non-compliance is breach of contract and cancellation of the registrar's appointment as an accredited registrar.

This current system does not provide mechanisms for insistence on or improvement of the accuracy of data and the ICANN Report does not provide useful statistical data on how respondents have been harmed by the inability to contact the registrants or trace operators of websites. UNICE believes that companies are disadvantaged by inaccurate data because they have to spend more time and resource in tracing and investigating infringers and, for example, operators of pornographic sites, which may be harming their business.

UNICE believes that the problems which were initially encountered as a result of inaccuracies have reduced because the Uniform Dispute Resolution Policy for gTLDs (and certain ccTLDs) has reduced the number of cybersquatters and also because renewal processes are removing some anomalies. In addition some ccTLD operators, such as Nominet in the UK, are voluntarily updating their records with accurate information. It remains the case however that the vast majority of ccTLDs contain insufficient and inaccurate data for the purposes of the business community, and much data remains unavailable.

The ICANN Report suggests that ICANN should encourage registrars to make efforts to correct and update data regularly, for example on an annual basis. UNICE believes that the same obligation should be placed not only on ICANN accredited registrars but on those offering ccTLDs also. Sanctions such as the possibility to cancel or suspend an inaccurate domain name should also be in place.

2. UNIFORMITY OF DATA FORMATS ACROSS TLDS AND REGISTRARS

Whilst the data across the gTLDs is currently generally uniform, it is not so amongst ccTLDs, some of which do not even provide access to a WHOIS.

UNICE believes that the information provided by gTLDs is a suitable format for ccTLDs to follow:

- The registrant's name and full street and postal address
- Email and postal addresses for the registrant and administrative and technical contacts
- Original registration dates and expiry dates
- Details of any changes made during the life of the domain name

Additional information such as phone and fax numbers of the registrant could be made available on an opt-in basis but are not considered to be information essential for the purposes required by business and IP interests.

A concept of a centralised database containing both gTLD and ccTLD WHOIS data would also assist business by avoiding the need for searching across several different sources. UNICE believes that it is not necessary for such a centralised database to be provided by ICANN and the harmonisation of the data now being called for will bring about opportunities for commercial enterprises to provide searching tools which meet the needs of the business community.

3. BETTER SEARCHABILITY

Importantly, all the fields of data in the accurate and uniform WHOIS database should be searchable. UNICE suggests that whilst basic information should be available free for users and paid for as part of registration fees, a more detailed search could be paid for on demand for the service as this would still be more cost-effective than the investigations currently required.

4. MARKETING USE OF WHOIS DATA

UNICE does not support the use of personal information contained in WHOIS databases for unsolicited marketing activities. An "opt-in" approach accepting such use rather than an opt-out clause and restrictions on the selling of access to bulk data would assist in reducing opportunities for misuse of the data. This would be in line with the trend in data protection legislation generally.

PRIVACY ISSUES

Uniformity of data across gTLDs and ccTLDs brings conflicting views based on national, cultural and legal differences especially privacy rights. There are of course other personal risks particularly for individual users with regard to the targeted use of their home address and telephone numbers by some members of the Internet community. However transparency across all gTLDs and ccTLDs would provide a more even playing-field and opportunities to provide procedures to challenge such behaviour.

UNICE supports a harmonised, fully searchable and accurate system of WHOIS databases freely available to the public. This should apply to both gTLDs and ccTLDs and legal and contractual consequences, including the cancellation of a domain name, should follow for failure to comply with obligations to supply accurate and up-to-date details.

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