



CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI

Comments to the proposed Removal of Searchable Whois Service from .MEET Registry Agreement¹

After checking for competition, security or stability issues arising from the proposed amendment to remove searchable Whois service for the .MEET domain,² ICANN has opened this proposed amendment to public review, to gather community input for the .MEET domain in particular, and open gTLDs in general.³

1. **Background:**

The Affirmation of Commitments⁴ requires ICANN to ensure timely, unrestricted and public access to Whois information. Registration Data Directory Service (Whois service) is a public directory that contains the name and contact details of registered domain name holders, a.k.a. ‘registrant’. Anyone who wants information on the registrant can make a request through Whois, and find out the real world identity, business location and contact information of the registrant.⁵ Searchable Whois is an enhanced service that gives users the option of searching for registrant information on the basis of name, postal address, contact names, registrar IDs and IP addresses, not just the domain name. As provided in the New gTLD Program Applicant Guidebook, this is an optional service that earns its provider an extra point in the ‘Technical and Operational Capability’ section of the application.⁶ However, Exhibit A (Approved Services) of the Registry Agreement,⁷ which is sought to be amended, mandates the provision of Searchable Whois

¹ Authored by Aarti Bhavana with inputs from Gangesh Varma.

² Proposed amendment to Exhibit A of the .MEET Registry Agreement, available at <https://www.icann.org/sites/default/files/tlds/meet/meet-proposed-amend-22oct15-en.pdf>.

³ <https://www.icann.org/public-comments/meet-proposed-amendment-2015-10-22-en>.

⁴ <https://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm>.

⁵ <https://whois.icann.org/en/primer>.

⁶ A-19, Attachment to Module 2: Evaluation Questions and Criteria, New gTLD Program Applicant Guidebook, available at <https://newgtlds.icann.org/en/applicants/agb>.

⁷ Section 3, Exhibit A, .MEET Registry Agreement, available at <https://www.icann.org/resources/agreement/meet-2014-01-16-en>.

service. The deletion of this provision would not affect .MEET registrant data on Whois in any way; it only reduces access by limiting the search field to the domain name.

2. Concerns with the existing policy:

2.1 Whois Protocol

The basic Whois protocol has been subjected to a lot of criticism on account of lack of accuracy and privacy concerns. Information on the database is often inaccurate, as the details ultimately need to be filled by the registrant.⁸ While the registrar is required to take reasonable steps to ensure the data submitted is accurate and if not, to correct it, this is difficult to verify in actuality. If the system has loopholes that allow for fabrication of data, it is of no real use to anyone trying to contact the domain registrant. Further, Privacy and Proxy services give registrants the option of paying to keep their information private. These services are not accessible to everyone since they need to be paid for, creating asymmetry in who is able to secure their data and who is not. Since people have found a way around the system, it is easy enough for intentional infringers or lawbreakers to keep their details private, thereby penalising only the innocent.⁹ The privacy concerns in such a system are fairly obvious: public access to private contact details makes registrants vulnerable in the event that the data storage is not secure enough or if there is misuse of the data by any party who has access to it.¹⁰

2.2 Searchable Whois service

Searchable Whois only further increases the problems within the existing policy.¹¹ Should a Registry Operator choose to provide this service, they are required to implement anti-abuse measures as well as ensure that its services are compliant with the applicable privacy laws.¹² This becomes problematic especially since many countries around the world are yet to develop effective legal norms that protect their citizens' privacy in the digital age. Additionally, there are countries that may offer effective legal safeguards to their own citizens but may not extend these safeguards or rights to citizens of other countries who may want to access their services in the

⁸ Bob Parsons, *Whois Privacy vs. Anonymity*, available at http://www.circleid.com/posts/whois_privacy_vs_anonymity/.

⁹ See <https://tinyurl.com/ccg-whois-privacy>.

¹⁰ See further, Dr Monika Zalnieriute and Thomas Schneider, Council of Europe Report, *ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values*, 8 Oct 2014, available at <https://tinyurl.com/ICANN-HR>.

¹¹ Registry Request Service: Removal of Searchable Whois from .MEET agreement, available at <https://www.icann.org/en/system/files/files/request-2014134-meet-03sep15-en.pdf>. (Google Registry argues that a non-searchable WHOIS would lead to greater registrant privacy)

¹² 1.8.6, Specification 4, New gTLD Program Applicant Guidebook, available at <https://newgtlds.icann.org/en/applicants/agb>.

borderless commercial world of the Internet. It therefore follows that serious privacy concerns may arise that are not addressed adequately by the local laws of many countries in which the registrars and registries are situated.¹³ Requiring the registry operator to ensure that the applicable privacy laws are followed may not be a high enough standard. As we have previously recommended,¹⁴ Whois protocol should function on the basis of international best practices on privacy and data retention, developed by ICANN and included in Registrar and Registry Agreements. Searchable Whois, as it currently stands, ‘further erodes’¹⁵ the registrant’s privacy, without doing anything to solve the problem of lack of accuracy.

However, we understand that there exists legitimate necessity for a searchable service that would allow one to access registrant data through fields other than just the domain name. This is true for any law enforcement agency investigating the incidence of spam or any other criminal activity, as it allows them to determine whether the same registrant has registered other domains.¹⁶ Further, it also increases the convenience and ease of accessing this data, making it desirable to some.¹⁷ Therefore, when considering the removal of Searchable Whois from any open TLD Registry Agreement, alternative means of serving the legitimate needs for this service must also be considered.

3. Concerns specific to .MEET:

3.1 Privacy

The above-mentioned privacy concerns are equally applicable to .MEET domains as well. .MEET is an open TLD meant for dating and companionship websites.¹⁸ Websites of this nature have been viewed as immoral by some governments, and have been blocked by others.¹⁹ Should the government (or any other person that has an objection) choose to identify the registrant as the facilitator of the objectionable content or website, a searchable Whois service only makes it easier to locate this person, possibly threatening their physical safety.

¹³ See <https://tinyurl.com/ccg-whois-privacy>

¹⁴ CCG’s Comments to the Initial Report of the IAG Review of Existing ICANN Procedure for Handling WHOIS Conflicts with Privacy Laws, available at <https://forum.icann.org/lists/comments-iag-whois-05oct15/msg00006.html>.

¹⁵ Google Registry comments to proposed Removal of Searchable Whois Service From .SHARP Registry Agreement available at <https://forum.icann.org/lists/comments-sharp-proposed-amendment-30jul15/pdfgvxRjQ9Bxf.pdf>.

¹⁶ ICANN Security and Stability Advisory Committee, *WHOIS Recommendation of the Security and Stability Advisory Committee* (SSAC publication No. 003), available at <https://www.icann.org/en/system/files/files/sac-003-en.pdf>.

¹⁷ ICANN Generic Names Supporting Organization (GNSO), (2002) *WHOIS Task Force Interim Report*. Shanghai, China, available at <https://gns0.icann.org/en/issues/whois-privacy/whois-shanghai-oct02.pdf>.

¹⁸ Afilias Limited’s application for the .MEET TLD, available at <https://tinyurl.com/affilias-meet-application>.

¹⁹ For example, South Korea: *South Korea Bans ‘Immoral’ Hook-Up Website Ashley Madison*, available at <http://time.com/64583/south-korea-bans-immoral-hook-up-website-ashley-madison/>; see also Iran: *Iran Launches ‘Ethical’ Dating Site*, available at <http://en.iranwire.com/blogs/8328/6068/>.

3.2 .MEET as an open TLD

While Afilias Limited did propose to provide the Searchable Whois service during the initial evaluation,²⁰ this Registry Agreement has since been assigned to Google Registry, which seeks to remove this service.²¹ A similar amendment was proposed for .SHARP and subsequently opened to public comment.²² However, the two must be differentiated on the grounds that while .MEET is an open TLD, open to anyone for registration, .SHARP is a closed, .brand domain. By virtue of being a TLD open to the public, greater caution must be exercised when considering the proposed amendment, since searchability is both a useful and convenient feature for law enforcement investigations. However, we refer once again to the concerns raised above, and reiterate that in order to balance the legitimate necessity of the Searchable Whois service with privacy and accuracy concerns, alternative services must be devised to meet these needs.²³

3.3 Initial Evaluation Score

Finally, Afilias Limited did not rely on the provision of Searchable Whois to pass the initial evaluation.²⁴ As mentioned above, the provision of searchable Whois service earns the Registry Operator an additional point in the Technical & Operational Capacity portion of the evaluation. The minimum score for this part is 22, and Afilias Limited scored 28 points, establishing that the additional point made no difference to the success of the application in this instance.

In light of the optional nature of the Searchable Whois service, and given the many concerns expressed above (over both Whois and Searchable Whois), we believe that the request to remove the Searchable Whois service from the .MEET Registry Agreement may be accepted.

²⁰ Afilias Limited's application for the .MEET TLD, available at <https://tinyurl.com/affilias-meet-application>.

²¹ Registry Request Service: Removal of Searchable Whois from .MEET agreement, available at <https://www.icann.org/en/system/files/files/request-2014134-meet-03sep15-en.pdf>.

²² Staff Report of Public Comments, available at <https://www.icann.org/en/system/files/files/report-comments-sharp-whois-17oct15-en.pdf>.

²³ As detailed under point 2.2 on page 3 of this document.

²⁴ Initial Evaluation Report of Afilias Limited's application for the .MEET TLD, available at <https://newgtlds.icann.org/sites/default/files/ier/viun4exoaqie2hl0qojm7uvi/ie-1-868-85241-en.pdf>.