

30 October 2007

BY EMAIL: whois-comments-2007@icann.org

To The Generic Names Supporting Organization (GNSO) of ICANN

Re: Public Comment in relation to Whois changes

We write to encourage the GNSO Council to support the motion that ICANN conduct an objective and comprehensive study on the legitimate abuses and uses of Whois data before making policy changes that may permanently alter the structure of the domain name and Whois system.

There are many ways in which we legitimately use Whois data on a daily basis in assisting our clients. We often utilise much of the available Whois data including the registrant details (name, address and contact information), the listed contacts' details and the registrar.

Some of the main reasons we access Whois data are are outlined below:

Basic research purposes

Another common purpose for accessing Whois data is basic research. If a client wants to register a domain name and we find that it is already registered but not actually in use, the Whois data can provide us with information as to whether we think the registrant is likely to use it or whether it may in fact be available for transfer.

Domain name disputes

We access Whois data to obtain the registrant contact details when our clients' trade marks are hijacked by cyber-squatters. The availability of domain name registrant information allows domain name disputes to be settled privately without having to resort to arbitration. Further, if Whois data is no longer accessible, it will make arbitrations lengthy and costly for our clients.

Phishers

Although in most cases phishing activities are remedied via a request to the domain name registrar, registrant information is important in allowing us to identify domain name filing patterns and potentially identify those responsible for the criminal activities

Sale of Counterfeit Goods

When counterfeit goods are identified for sale on a website, the Whois information is often our first line of inquiry. Although it is sometimes the case that this information is intentionally false or incomplete, there have been cases where we have been able to identify the intellectual property infringer through the details provided in the Whois data.

Trade Mark Use Inquiries

When conducting inquiries to determine if a trade mark is vulnerable to removal for non-use, we often identify use of the sign which is subject to the trade mark registration. In some cases it is not possible to determine from information on the website as to whether this use of the sign is use of the registered trade mark by the registered owner; we need to look to the Whois information to determine this.

In most jurisdictions businesses and companies are required to register the legal entity carrying on the business and to provide contact details for the business with a government body. As the internet moves further and further into the direction of a global business platform, we see no reason why those conducting businesses on the internet should not be required to meet the same minimum standards as other businesses conducted at geographic locations.

If Whois data is no longer available to the public, it will significantly impact our clients' ability to protect their intellectual property rights; in both a logistical and financial sense. Intellectual property rights are worthless if they cannot be enforced.

Yours faithfully
PHILLIPS ORMONDE & FITZPATRICK

A handwritten signature in cursive script that reads "Rodney Cruise".

(Rodney Cruise)
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