



Whois Workshop, ICANN Montreal Meeting Topic, June 2003

Privacy and Data protection consideration of the Whois directories discussion

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Legal framework in Europe

- **Directive 95/46/EC: general DP directive**
- **Directive 2002/58/EC: electronic communications directive (previous 97/66)**
- **Many documents of Article 29 Working Party**
- **Council of Europe Convention 1981**



Concerns regarding Whois discussion

- **European Commission: several contributions sent to ICANN and Whois Task Force**
- **DPA's: complaints about misuse of Whois data. Document about to be issued by WP 29**
- **International Working Group on Privacy in the telecom sector: Common position of May 2000**
- **Citizens: complaints and petition to EP**



Increasing concerns for several reasons

- More and more individuals register their own domain names
- Reports of the Whois Task Force seem to ignore the original purpose of the Whois and the existing legal framework in the EU



Applicability of directives

- **Clearly personal data**
- **Processing: collection, publication, access, further use**
- **Directives fully apply to data made publicly available**

- **Conclusion: not everything that might seem useful or desirable is legally possible!**



Key-issue: the purpose of the Whois

- Original purpose, technical contact in case of problem, is legitimate
- Directive only allow use for the original purpose or other compatible ones (reasonable expectation of the user)
- Other uses might seem useful, desirable or legitimate to some parties but are not necessarily compatible and therefore legal under our legal framework
- WP 29 opinion June 2003 refers in this context to self-police activities of private parties as not compatible



Proportionality principle

- **Necessary to make difference between data necessary for registration of domain name and data that should be published in Whois**
- **Need to look for less intrusive means to serve the same purpose: solutions found in some countries through ISPs**
- **EC has proposed several times two-step approach**



Only data relevant and not excessive

- **This principle should be kept in mind in uniformity discussion**
- **Data should be kept to a minimum**
- **Specific problems concerning telephone numbers and general right not to be included in a directory: article 12.2 of directive 2002/58**



Big concerns about more searchable Whois

- Issue addressed by WP 29 in opinion of 2000: the processing of personal data in reverse directories or multi-criteria searching services without unambiguous and informed consent by subscriber is unfair and unlawful



Support for some proposals

- **Accuracy: one of principles of the directives**
- **Limitations for bulk access for direct marketing**
- **Bulk access is not acceptable for any purpose (proportionality)**
- **Directive 2002/58 only allows use of e-mail addresses for direct marketing with consent of user**



Conclusions

- **Need to respect the existing data protection framework in Europe, contracts can in no case overrule the law**
- **Need to look for privacy-enhancing ways to run the Whois directories in a way that serves the original purpose whilst protecting the rights of individuals**



Available for your questions

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