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
- 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
- DPAs: 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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