



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

21 October 2010

Lujia Chen
Policy Officer
auDA

Email: lujia.chen@auda.org.au

Dear Lujia

Re: auDA Review of WHOIS Policy and Registrant Contact Information Policy

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

Thank you for the extension to the submission-date on these matters.

The APF makes the following submissions on the WHOIS Policy and the Registrant Contact Information Policy currently under review by auDA.

Registrant Contact Information Policy:

The APF submits that this Policy should be retained in its current state.

Clause 2.1 should **NOT** be changed to require ISPs/registrars/re-sellers to verify the personal information of their domain registrants. Such a proposal would be unworkable and inefficient in imposing significant costs onto the Australian Internet community for very little benefit (which would flow primarily to trade mark holders). If a registrant provides updated personal information on renewal of their domain name, then this information will be updated in accordance with clause 3.2 (ie within 5 days) and therefore it is unnecessary to specifically require the registrar to update information on renewal. It would not be appropriate to increase the existing consequences for failing to update contact details within a reasonable period.

Clause 2.2 should **NOT** be changed to require registrants to provide personal (as opposed to positional) email addresses. Such a change would impose significant costs (and risks to privacy, personal safety and financial safety) onto the Australian Internet community in return for very little benefit.

It would be appropriate to clarify clause 2.2 such that a registrar/re-seller/ISP is only permitted to insert their information into the record after having received the opt-in permission of the domain registrant.

Clause 3 should **NOT** be changed to require ISPs/registrars/re-sellers to send compulsory personal information update reminder notices to registrants. If such an imposition were created, the stakeholders proposing such changes would have to directly subsidise the full costs of sending such notices.

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WHOIS Policy:

The APF submits that this Policy should be retained in its current state.

Clause 2.2 fairly reflects the acceptable balance between stakeholder interests in its current form and should **NOT** be expanded. Domain registrants should **NOT** be limited to relying only on statutory rights they may have under the Privacy Act and SPAM Act.

Clauses 3.3 and 3.4 should **NOT** be changed to require registrants to notify their ISP/registrar/re-sellers to send to registrants personal information update reminder notices. If such an imposition were created, the stakeholders proposing such changes would have to directly subsidise the full costs of sending such notices.

Clause 4.2 should **NOT** be changed to require disclosure of this information. Such a change would pose significant risks of harm to registrants. The situation is analogous to the vital right to have unlisted telephone numbers/addresses. The risks and costs significantly outweigh any limited benefits that might arise out of such a change.

Clause 4.3 should **NOT** be changed to require registrants to disclose personal (as opposed to positional) email addresses. Such a change would impose significant costs (and risks to privacy, personal safety and financial safety) onto the Australian Internet community in return for very little benefit. Over time, businesses need to be able to have different individuals fulfil the same role (rather than having to incur the cost of updating their WHOIS registration every time the relevant duties are re-allocated).

Clause 4.4 should **NOT** be changed. In the event that the security benefits provided by the current Image Verification Check were found to have been defeated, auDA should update its systems to adopt the most efficient and effective privacy and anti-spam protection systems available at the relevant time.

Clause 4.5 should **NOT** be changed. In its current form, it provides significant and appropriate protection against abusive business practices. Trade mark holders should not be permitted to impose materially higher costs onto domain registrants and the Australian Internet community solely in an attempt to minimise their own enforcement costs. This up-front barrier to abusive business practices is much more efficient and effective than relying solely on a retrospective (and far more expensive) remedy of auDA taking legal actions against infringers.

Clause 5.1 should **NOT** be changed. In its current form, it provides significant and appropriate protection against privacy violations. It is appropriate that auDA should support the activities of ACMA by providing policies specifically tailored to the needs of .au domain name registrants. The sending of a letter of demand would arguably fall within the 'reasonableness test' set out in National Privacy Principle 2.

Clause 5.2 should **NOT** be changed. In its current form, it provides significant and appropriate protection against privacy violations.

Clause 5.3 should **NOT** be changed. In its current form, it provides significant and appropriate protection against privacy violations. It would not be appropriate for ISPs/registrar/re-sellers to undertake the role of deleting already registered domains (e.g. in situations where contact information may not be up to date) without appropriate procedural fairness protections afforded by court orders and/or the .au Dispute Resolution Process.

The Australian Privacy Foundation appreciates this opportunity to comment on these policy reviews and looks forward to the outcome of the reviews.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Roger Clarke', written over a faint, dotted grid background.

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
(02) 6288 1472 Chair@privacy.org.au

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF's Board comprises professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by a Patron (Sir Zelman Cowen), and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87)
<http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90)
<http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07)
http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-)
<http://www.privacy.org.au/Campaigns/Media/>