



**Children's Charities' Coalition on Internet Safety
10, Great Queen Street, London WC2B 5DG**

Ms Andrea Jelinek,
Österreichische Datenschutzbehörde
Wickenburggasse 8
1080 Vienna
Austria

16th May 2018

Dear Andrea Jelinek,

Re: Article 29, WHOIS and ICANN

We are writing to you in your capacity as Chairperson of the Article 29 Working Party to say we have been following with dismay and a growing sense of anxiety the still unresolved discussions between ICANN and Article 29 about the proper construction of the EU's new data protection laws (the GDPR) in relation to the accessibility of the WHOIS database. It is incredible that with 25th May less than ten days away there is still such a high level of uncertainty about whether or not, to whom and on what basis WHOIS data will be available.

You will know that from Day 1 of the worldwide web in the early 1990s, access to WHOIS data was important for systems administrators, law enforcement agencies and other elements within what might be thought of as the "cyber security industry" i.e. those concerned with detecting and preventing spam, fraud and different kinds of theft. To remove or limit such access will only help crooks. That cannot be right.

It seems to us that if someone establishes a web site they are stepping into a public space and, absent exceptional circumstances, particularly if the site engages in commercial activity, they must accept a degree of public accountability. Children, their parents, and internet users in general, ought to have the option to be able to check the credentials of a web site before engaging with it. And when they check they ought to be able to have confidence that the information they see and rely on is accurate.

In the original draft proposal for the GDPR, published by the European Commission in 2012, there is no mention of ICANN or WHOIS. Having trawled the public record of discussions about the draft as it made its way through the European Parliament, the Council of Ministers and national Parliaments, no mention of WHOIS or ICANN could be found. From our enquiries this was also true in discussions within the Trialogue. WHOIS and ICANN never featured.

We find it hard to believe any democratically established body would have intended to provide or allow any kind of assistance to the criminals and fraudsters who continue to undermine confidence in the internet and do so much damage both to individuals and legitimate businesses.

Yet we have no difficulty believing vested interests within ICANN would lose little sleep about having to publish less information about the entities with whom *they* transact.

Within our specific sphere of interest one of the consequences of ICANN's lassitude and indifference towards WHOIS is all too apparent when one looks at what has happened with child sex abuse material. It is hard to be precise about these things but there can be little doubt that billions of images of children being sexually abused are now circulating on the internet and the vast majority of these will have made their first appearance courtesy of a domain in the .com or .net spaces on the open web. Both these domains are owned by Verisign, the largest single contributor to ICANN's finances.

How is this possible? There are several answers but a key one is as plain as a pikestaff. Verisign fails to ensure the real-world identities and contact details of everyone who buys or maintains a web address under their umbrella is checked, confirmed and kept up to date. Neither do ICANN bear down on Verisign to get them to improve their performance in this respect. Moreover, this matters not just in respect of child sex abuse material. A great deal of intellectual property theft, fraud, fake pharmaceuticals and other online crimes are facilitated in like manner.

Thus, our hope is all WHOIS data will continue to be readily, swiftly and inexpensively available, at the very least to the law enforcement community and the wider cyber security industry but the case for continued public access is also very strong.

Maintaining accurate and up to date WHOIS information is a condition in every contract that has been issued by ICANN to a Registry. Article 29 and its associated Data Protection Authorities should make clear to ICANN, the Registries and Registrars that they expect WHOIS to be kept accurately. Anything less amounts to an acceptance of or acquiescence in a deceptive practice which harms the public interest.

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John Carr OBE
Secretary
www.chis.org.uk