

The Digital Services Act is an Opportunity for the European Commission to Restore Urgently Needed Access to WHOIS Data

Executive Vice-President
Margrethe Vestager

Commissioner
Thierry Breton

Commissioner
Ylva Johansson

Commissioner
Didier Reynders

European Commission
200, rue de la Loi
B-1049 Brussels
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24th November 2020

Dear Executive Vice-President Vestager and Commissioners Breton, Johansson and Reynders:

We request the European Commission to undertake action on an urgent basis to restore access to WHOIS data—information about domain name registrants, including who they are and how they can be contacted. The Domain Name System is an important part of the Internet’s infrastructure and WHOIS data is a vital resource. WHOIS data is critical to the efforts of law enforcement agencies as well as non-governmental organisations to investigate and combat a broad range of illegal activity spreading via the Internet.

Ready access to this information is vital to protect the public interest. The European Commission has explicitly recognised *“the need to preserve WHOIS functionality and access to its information.”*¹ Yet, access to WHOIS data has been largely denied to both government agencies and private entities since May 2018. That is when the Internet Corporation for Assigned Names and Numbers (“ICANN”), in an attempt to comply with the GDPR, required the redaction of the most important components of WHOIS data and created a broken and fragmented system with respect to access and therefore transparency.

We write to urge the Commission to propose a legislative or regulatory solution as part of the forthcoming Digital Services Act², or otherwise, to:

¹ <https://www.icann.org/en/system/files/correspondence/avramopoulos-et-al-to-marby-29jan18-en.pdf>

² We note that the Commission posed several questions about the use and value of WHOIS Data as part of the Open Public Consultation on the Digital Services Act package and that the Commission received multiple responses

1. **Recognise the public interest in publicly accessible WHOIS data;**
2. **In accordance with the GDPR's accuracy principles and Know Your Business Customer ("KYBC") imperatives, require verification of WHOIS data when it is collected; and**
3. **Limit the use of privacy and proxy services to "mask" WHOIS data and hide the identity of domain registrants.**

These recommendations, along with the background on the importance of WHOIS data, the inadequacy of ICANN's policies, and the urgent need for EU action are explained in greater detail in the Annex to this letter.

The undersigned organisations represent a broad array of EU citizens' interests. They include child safety, cybersecurity, health and patient safety, and intellectual property. We work to combat a broad range of abusive and illegal online activity including: (i) the creation and distribution of child sexual abuse materials, (ii) cyberattacks such as phishing, botnets and ransomware, (iii) the sale of falsified medical products and illegal and dangerous drugs, such as opioids which cause significant mortality³, and (iv) the sale of a plethora of counterfeit goods and rampant online piracy of copyrighted works. The current lack of ready access to WHOIS data impedes the important work of our organisations as well as law enforcement and other government agencies with which we collaborate across these issues. The demonstrated increase in online illegal activity and cyber-attacks is not only negatively impacting public safety in the EU, but also seriously eroding consumer trust online. Therefore, we are united in our call for the European Commission to undertake the actions recommended above and further explained in the Annex to protect EU citizens.

As confirmed by the Commission, the ongoing COVID-19 crisis has *"opened the door to an extraordinary increase in malicious attacks."*⁴ From a public health perspective, there is a rising tide of websites taking criminal advantage of fear and misinformation regarding COVID-19 and seeking to sell falsified medicine and even vaccines. This is evidenced by the registration of more than 100,000 new domain names using terms such as "covid", "corona", and "virus" between January 1 and March 31, 2020 and the finding that over 40,000 of these registrations are classified by cybersecurity experts as either high risk or malicious.⁵ Clearly this points to the need for the Domain Name System to take on greater accountability, including obligations with respect to WHOIS data. The rising level of cybercrime combined with the greater dependence of citizens on digital technology during the pandemic only reinforce the urgency of the need to restore access to WHOIS data.

that emphasised the importance of restoring access to WHOIS data. ICANN itself responded to the Consultation and noted the current situation with respect to WHOIS data has "fragmented a system that many rely upon for reasons as varied as law enforcement investigations, intellectual property, and security incident response, among others." See: <https://www.icann.org/en/system/files/files/icann-org-responses-dsa-consultation-10sep20-en.pdf>

³ Over 80% of drug induced deaths reported in Europe are caused by opioids. See:

https://www.emcdda.europa.eu/system/files/publications/11485/20193286_TD0319444ENN_PDF.pdf

⁴ Communication from the Commission on the EU Security Union Strategy at p. 3: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0605&from=EN>

⁵ See: <https://unit42.paloaltonetworks.com/covid19-cyber-threats/> "We've identified 116,357 newly registered domains with coronavirus-related names between January 1 and March 31. Out of these, 2,022 are classified as "malicious" and more than 40,000 are considered "high-risk". Additionally, from February 1 to March 31, we witnessed a 569% growth in malicious domain registrations, preying on consumers[.]"

The Council of the EU was correct when it stated more than two years ago in October 2018, *“The EU and its Member States note the concerns raised by law enforcement authorities, cybersecurity organisations and intellectual property rights holders about the negative impact of limitations of access to WHOIS data on their work. Finding a workable solution for access to non-public WHOIS data should be treated as a matter of priority.”*⁶

Yet two years later, the policy recently proposed by ICANN⁷ perpetuates the current fragmented system and lack of access to redacted WHOIS data. The overwhelming majority of requests for access to redacted WHOIS data, even when they are submitted by government agencies, are either denied or ignored. Indeed, even European Data Protection Agencies have had their requests for access to WHOIS data denied.⁸ In its Communication on the EU Security Union Strategy earlier this year, the Commission committed to working with ICANN *“to ensure that legitimate access seekers, including law enforcement, can obtain sufficient access to WHOIS data,”* but also stated that further solutions may be necessary, including legislation *“to clarify rules for accessing such information.”*⁹ Given that ICANN is unable to implement a workable solution, EU legislative action as a matter of priority is now both warranted and urgently needed.

Thank you for your consideration of these important issues and our recommendations.

cc: Mr. Roberto Viola
Director-General
DG CNECT

Mr. Khalil Rouhana
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DG CNECT

Mr. Pearse O’Donohue
Director
DG CNECT

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DG CNECT

Mr. Olivier Bringer
Head of Unit
DG CNECT

⁶ <https://data.consilium.europa.eu/doc/document/ST-13443-2018-INIT/en/pdf>

⁷ See: <https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2-temp-spec-gtld-registration-data-2-31jul20-en.pdf>

⁸ See: <https://www.icann.org/en/system/files/correspondence/marby-to-jelinek-22may20-en.pdf>

⁹ See pp. 11-12: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0605&from=EN>

Mr. Prabhat Agarwal
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Ms. Kerstin Jorna
Director-General
DG GROW

Mr. Slawomir Tokarski
Director
DG GROW

Ms. Amaryllis Verhoeven
Head of Unit
DG GROW

Sincerely,

The European Brands Association (AIM) <https://www.aim.be/>

The Anti-Counterfeiting Group (ACG) <https://www.a-cg.org/>

Aktionskreis Gegen Productt-und Markenpiraterie (APM) <https://www.markenpiraterie-apm.de/>

The EU chapter of the Anti-Phishing Working Group (APWG.EU) <https://apwg.eu/>

Alliance for Safe Online Pharmacy in the EU (ASOP EU) <http://www.asop.eu/>

The Cybersecurity Tech Accord (CBT) <https://cybertechaccord.org/>

Children's Charities' Coalition on Internet Safety (CHIS) <http://www.chis.org.uk/>

Comité Colbert <https://www.comitecolbert.com/>

Coalition for Online Accountability (COA) <http://www.onlineaccountability.net/>

Digitale Chancen <https://www.digitale-chancen.de/>

Fédération Internationale des Associations de Producteurs de Films (FIAPF) <http://www.fiapf.org/>

Istituto di Centromarca per la lotta alla contraffazione (INDICAM) <http://www.indicam.it/>

International Video Federation (IVF) <https://www.ivf-video.org/>
Motion Picture Association (MPA) <https://www.motionpictures.org/>
Rattighetsalliansen <http://www.rattighetsalliansen.se/>
Rettighedsalliancen <https://rettighedsalliancen.dk/>
The Anti-Counterfeiting Network (REACT) <https://www.react.org/>
The Spamhaus Project (Spamhaus) <https://www.spamhaus.org/>
Together Against Counterfeiting (TAC) Alliance <https://tacalliance.eu/>
Transnational Alliance to Combat Illicit Trade (TRACIT) <https://www.tracit.org/>
Union des Fabricants (UNIFAB) <https://www.unifab.com/>