

*Stakeholder Sign-On Letter*

May XX, 2021

Dear Member of Congress,

On behalf of the undersigned organizations, we write to urge you help **quickly restore access to WHOIS domain name registration information**. Regaining access to WHOIS data at scale is critical to the public safety; global governments, law enforcement, cybersecurity professionals, businesses and third-party advocates agree. As discussed below, the issue is now ripe before Congress. We urge you to act to restore access to WHOIS data.

WHOIS information is a critical tool in identifying *who is* behind a domain name or website. This information has been a public safety tool used for accountability in the protection of consumers on the Internet from all types of fraud and counterfeited products, in the development of cybersecurity measures and in halting sexual trafficking and exploitation. Moreover, WHOIS information enables law enforcement and investigators to connect malicious actors to one another and preemptively stop harmful activity.

In an overbroad and misapplied response to the European Union's General Data Protection Regulation (GDPR), since 2018 domain name registries and registrars globally have systematically shut down access to WHOIS data. This result is merely commercially convenient for registries and registrars, not required by the EU law. In the two years since implementation of the GDPR, the internet has gotten darker, less transparent, and less safe for individuals and businesses alike.

The lack of the access to WHOIS data has negative implications for a variety of public interests, including but not limited to:

- Online shopping and sales,
- Illegal online sales of medicines and controlled substances,
- Online fraud and sales of counterfeit products,
- Cybersecurity,
- Anti-human trafficking and anti-sexual exploitation, and
- Intellectual property protection,

Last year, several Executive Branch agencies responded to an inquiry from Congressman Latta (R-OH) as to the role WHOIS plays in their investigative and enforcement obligations, how the loss of access to this information has critically impeded those efforts and whether they would be able to better carry out those obligations with restored access to WHOIS.

The responses from these agencies are informative to the role and value of WHOIS information. Consider:

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- The **U.S. Food & Drug Administration** stated, “Access to WHOIS information has been a critical aspect of FDA’s mission to protect public health. Implementation of the E.U. General Data Protection Regulation has had a detrimental impact of FDA’s ability to pursue advisory and enforcement actions as well as civil and criminal relief in our efforts to protect consumers and patients.”
- According to the **Federal Trade Commission**, “Before the GDPR took effect in May 2018, the FTC and other consumer protection and law enforcement agencies routinely relied on the publicly-available registration information about domain names in WHOIS databases to investigate wrongdoing and combat fraud.”
- The **U.S. Immigration and Customs Enforcement Homeland Security Investigations** (HSI) and the **National Intellectual Property Rights Coordination Center** (IPR Center) indicated, “HSI uses domain name registration information, previously available via online WHOIS query, to aid in the identification of persons or entities responsible for registering domains that are used to conduct a wide variety of crimes, which include intellectual property crimes, cyber-crimes (such as theft of personally identifiable information [PII] and credit card information), crimes related to illegal importation and exportation of goods, and the promotion and distribution of child sex abuse material.”

Copies of these letters are enclosed for your review.

**Congress is also on record supporting accessible WHOIS information.** Last year’s *Consolidated Appropriations Act for 2021* (P.L. 116-260) provided that:

*“NTIA is directed, through its position within the Governmental Advisory Committee, to work with ICANN to expedite the establishment of a global access model that provides law enforcement, intellectual property rights holders, and third parties with timely access to accurate domain name registration information for legitimate purposes. NTIA is encouraged, as appropriate, to require registrars and registries based in the United States to collect and make public accurate domain name registration information.”*

Unfortunately, the Internet Corporation for Assigned Names and Numbers (ICANN) has failed to resolve the WHOIS problem. An overwhelming majority of public interest stakeholders have pointed to the failure of ICANN’s WHOIS recommendations, especially the 170+ member Governmental Advisory Committee (“GAC”), including the U.S. representative from the U.S. National Telecommunications & Information Administration (NTIA). The GAC stated:

*“ICANN’s Bylaws recognize that WHOIS data is necessary for “the legitimate needs of law enforcement” and for “promoting consumer trust.” The GAC has also repeatedly recognized these important purposes, noting that WHOIS data is used for a number of legitimate activities including: assisting law enforcement authorities in investigations; assisting businesses in combatting fraud and the misuse of intellectual property,*

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*safeguarding the interests of the public; and contributing to user confidence in the Internet as a reliable means of information and communication”<sup>i</sup>*

In December 2020, the U.S. National Telecommunication & Information Administration (NTIA) contacted Senate Commerce Committee Chairman Wicker (R-MS) noting:

*“[T]he [WHOIS Policy] Recommendations failed to address the following basic issues:*

- Measures to ensure data accuracy,*
- Policies to allow freely given consent or objection to disclosure of data at the time of domain name registration,*
- Rules that distinguish between natural and legal entities and*
- Efforts to examine the feasibility of unique contacts to have a uniform anonymized email address.”*

In closing, NTIA told Congress that it:

*“encourages the Committee to explore alternate approaches to providing federal and local law enforcement, cybersecurity industries, the business and the IP communities – as well as small businesses and the public – prompt and effective access to information they need to build a safe, secure, and trustworthy internet.”*

We share the view of the NTIA, many other USG agencies, and global public safety advocates to urge Congress to act. To be clear: the issue of WHOIS data access is now ripe before the 117<sup>th</sup> Congress and Congress has a clear mandate to act. We urge your attention to restoring open access to WHOIS data at scale.

Thank you for your consideration,

Sincerely,

[Individual organization signatures]

Enclosures

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<sup>i</sup> See: GAC Consensus Advice, March 21, 2021: <https://gac.icann.org/contentMigrated/icann70-gac-communicu> at page 12