

Michael D. Gallagher
Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Mr. Gallagher,

We write to join other public interest groups and Internet companies in urging the NTIA to refine a decision that threatens the privacy of Americans who own addresses in the nation's sovereign '.us' Internet domain. Although we understand the reasoning behind NTIA's decision to ban so-called 'proxy' registrations, we fear that the decision, which was made without opportunity for public comment, is overbroad and unnecessarily threatens the privacy of thousands of Americans. We urge NTIA to adopt a policy that allows for greater privacy in the .us domain. Left unchanged, the decision, which was intended to increase the accuracy of the data on who owns .us addresses, could have the opposite effect, as registrants lie to avoid having their identities exposed.

The publicly available 'whois' databases for Internet domains like .com, .net and .us are valuable resources that provide contact information for millions of domain name registrants. Originally designed to allow users to contact a web site operator in the event of a technical problem, the databases are now used by law enforcement, consumer protection agencies, and private groups including intellectual property holders.

Before NTIA made its ruling, Internet users who bought Web addresses ending in .us could pay an additional fee to register them through one of several proxy, or private registration services. The proxy services in turn kept those records in their internal files, substituting their customers' data with their own contact information in the whois database for the .us domain. All of the proxy services maintain a policy of willingly providing their customers names to law enforcers working on investigations, and as such do not provide any sort of shield for criminal activity. Rather the services offer people a safe, legal way to keep their personal data out of the hands of idle surfers, marketers and potentially dangerous stalkers.

A privately registered domain name is the online equivalent of an unlisted phone number. Both provide valuable protections to individuals without interfering with the needs of law enforcers and courts. If NTIA upholds its ban on proxy registrations in their current form, we urge the agency to allow for some sort of private registration process. NTIA could specify how such services could operate and in what situations they would be required to divulge customer data, thus serving the need for an open and public whois database, without harming customer privacy.

Whois registration requirements raise privacy concerns for individuals. While full public registrations are generally uncontroversial for large commercial registrations, most

domain operators force customers to make their names, home addresses, home phone numbers, and home e-mail addresses public in order to register an Internet address.

Proxy or private registrations have been widely endorsed as at least a partial solution to the whois privacy problem by a range of stakeholders on the issue. While many privacy advocates have argued that proxy registrations do not go far enough, they have at least seen them as a useful tool, far preferable to full public registrations.¹ Meanwhile, many copyright holders and others that have generally advocated for more public access to Whois information have also supported proxy registrations as a way of responding to some privacy concerns while preserving the access they believe is needed.²

In the absence of any such mechanism to protect their privacy, many more users are likely to place false information in the Whois database. At a time of concern about identity theft and online security, it is unwise to require millions of individual registrants to place their home phone numbers, home addresses, and personal email accounts into a publicly available database that places no restrictions on the use of that data.

We believe a balance can be struck on Whois data that protects privacy and allows reasonable access to data for important public purposes. The interpretation of the rules that banned proxy registrations represented a major enough change in .us policy that it warrants public input. We believe the Commerce Department and the American online public could benefit greatly from a more in-depth examination of the decision. We would be eager to discuss this issue with you in greater detail. Feel free to contact me at (202) 637-9800 or by e-mail at jberman@cdt.org.

Respectfully,

Jerry Berman
President, Center for Democracy & Technology

¹ See, e.g., Tom Cross, *DNS WHOIS: Barking Up the Wrong Tree*, CIRCLE ID (Jun. 28, 2004), at http://www.circleid.com/article/630_0_1_0_C/ (“Political speakers on the Internet have a legitimate need to protect their identities. The Internet presently supports a vibrant ecology of political websites and weblogs of every flavor and prejudice. Together they constitute a meaningful discourse on nearly every issue of the day. A large portion of these sites employ WHOIS proxies or publish limited contact information.”)

² See, e.g., *Legislative Hearing on H.R. 3754, the "Fraudulent Online Identity Sanctions Act," Before the Subcomm. on Courts, the Internet and Intellectual Property of the House Comm. on the Judiciary*, 108th Cong. 91605 (2004) (Mark Bohannon, on behalf of the Copyright Coalition on Domain Names: “I think that with regard to those websites that may be registered by individuals, which I think is probably the more sensitive issue, in principle, we work with intermediaries and proxy services who can, in fact, keep that information, and so long as it is accurate and readily available, we have no problem with that.”); Viacom International, Comments on ICANN Whois Task Force on Privacy Preliminary Report, (Jul. 1, 2004) available at <http://gnso.icann.org/mailing-lists/archives/whois-tf2-report-comments/msg00018.html> (Proxy registrations can, “if properly implemented provide a viable system for registrants that seek to achieve better privacy protection.”)