

Jo Lim  
Chief Operations and Policy Officer  
au Domain Administration Limited  
114 Cardigan Street, Carlton VIC 3053

Via email to: [jo.lim@auda.org.au](mailto:jo.lim@auda.org.au)

31<sup>st</sup> January 2014

**Re: WHOIS Policy Review**

Dear Jo,

EFA welcomes the opportunity to provide input into this review. Please find our submission on the following pages. Please do not hesitate to contact me should you require any further information.

**About EFA**

Established in January 1994, Electronic Frontiers Australia, Inc. (EFA) is a national, membership-based non-profit organisation representing Internet users concerned with on-line freedoms and rights.

EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting online civil liberties. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

Our major objectives are to protect and promote the civil liberties of users of computer based communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communications systems.

EFA's website is at: [www.efa.org.au](http://www.efa.org.au).

Best regards



**Jon Lawrence**  
Executive Officer

## EFA Submission

*1. Should there be any changes to auDA's WHOIS Policy covering the collection, disclosure and use of WHOIS data for .au domain names?*

- *Registrant contact information*

### EFA response

EFA believes that the current auDA WHOIS Policy largely achieves an appropriate balance between providing necessary contact information relating to registered domain names, while also providing protection from unsolicited marketing approaches. EFA does not believe there is a case for adding additional fields to the publicly-accessible WHOIS, particularly where there are alternative means for accessing contact information for the registered entity to which domain names are registered, via ASIC or other registration authorities.

- *Private or proxy registration services*

### EFA response

EFA does not believe there is a case for WHOIS privacy or opt-out services for those 2LDs that require a business or other external registration, particularly given the limited amount of information available through the public WHOIS search interface.

EFA does however believe that there should be a form of WHOIS opt-out available to registrations by individuals, such as under the .id.au 2LD. This would be in line with current practice in the .uk and other EU-based ccTLDs, where EU privacy laws require suppression of the contact information of individuals from public searches.

- *Domain name creation and expiry dates*

### EFA response

EFA believes that it would be appropriate to reinstate domain name creation dates to the publicly-accessible WHOIS search interface, but only after the restriction of registration periods is lifted. EFA believes it is well overdue for .au to allow registrants to choose the length of their registration, up to a five year maximum. A longer maximum registration period may be problematic, given the eligibility requirements involved in most .au 2LDs.

EFA further recommends that consideration be given to adopting a model similar to that currently used by the .nz registry, which provides registrations on a monthly basis, thereby providing maximum choice and flexibility to registrants, registrars and service providers.

Were a flexible registration period to be adopted, this would avoid any issues relating to the publishing of the creation date of domain names. Such a model would also render expiry dates largely redundant, as they would be based on the service agreement between the registrant and the registrar.

## **2. Should access to .au domain name data (other than via WHOIS) be opened up?**

### **EFA response**

EFA believes that access to registry data for advanced searching, as described in the scenarios (a) to (e), would be appropriate, though with strict controls to ensure such access is not abused. EFA suggests that a centralised service, where requests are submitted and processed on behalf of the requestor (rather than providing direct access to registry data), ideally to be run by auDA itself, on a cost-recovery basis, is likely to be the most appropriate means for providing such access while ensuring appropriate usage.

EFA believes that access to registry data for academic research purposes (as in scenario (g)) should be available, subject to approval on a case-by-case basis, depending on the nature of the research to be conducted. Research should be conducted according to ethical guidelines, such as the Australian Code for the Responsible Conduct of Research, and the National Statement on Ethical Conduct in Human Research, and where appropriate supplemented by more specialised guidelines such as the Association of Internet Researchers Ethical decision-making and Internet research recommendations. EFA suggests that a sub-committee of the auDA Board could be formed to review and approve any such requests. In most cases of academic research, it would be sufficient for auDA to verify that the research has been approved by the ethics committee of a recognised tertiary institution, or equivalent, in addition to auDAs specific privacy requirements.

Such search requests should also be performed by auDA, on behalf of the requestor, on a cost-recovery basis, though it may be appropriate for auDA to perform such requests for free, where appropriate (such as where the research is being funded by a grant from the auDA Foundation).

EFA does not believe that access to registry data beyond what is available via the public WHOIS search interface, should be available for other commercial purposes, such as in scenario (h).

In all cases, the data returned to requestors should be limited to the absolute minimum required to satisfy their requirements. For example, in almost all circumstances, contact information, beyond the name of the Registrant and associated registration number (ABN, ACN) should not be included. In many cases, just a list of domain names would be sufficient to meet the needs of the requestor.

In the case of requests relating to protecting Intellectual Property, EFA believes that strict limitations should be applied to both the nature of and volume of such requests, to ensure that the system is not abused, to the commercial advantage of the IP provider. In this regard, EFA also believes that such requests should require a justification of some form (ie a statement indicating why the search is required). Clearly, where an order from a court of competent jurisdiction has been issued, auDA should comply with such orders.

In the case of requests from law enforcement agencies, EFA believes that strict limits should be placed on which agencies are authorised to submit such requests. EFA further believes that a justification of some form should also be required. This could take the form of a statement from a senior officer about the nature of the offence under investigation, or a warrant. Where searches over a large amount of data are requested, this should be performed by registry staff, rather than direct access or bulk data being provided to law enforcement.