

## Bulk Access to WHOIS Data

### Summary

The majority of the Task Force concludes that cross-category consensus among respondents can be found with respect to the following points:

- Respondents strongly favor policies based on registrants opting into bulk access (or policies prohibiting any kind of bulk access) over opt-out approaches or unregulated bulk access.
- Respondents agree that bulk access provisions should be maintained in the gTLD environment.
- Respondents agree that bulk access provisions should be extended to apply to other TLDs.

Since the kind of bulk access policy favored by a huge majority of respondents is different from the one currently in force, a review of the current bulk access policy may be in order.

*The gTLD and non-commercial constituencies don't at this point of time agree with the conclusions stated in this document.*

### Questions Asked

The bulk access issue was covered by questions 16 and 17 of the survey. For your reference, we include the questions' text:

*Sale and marketing of customer data*

16. Should registrars be allowed to engage in resale or marketing use of the registration contact information?

- Yes
- Yes, but only with the express permission of the registrant (opt-in)
- Yes, but only after the registrant had the opportunity to opt-out.
- No

*Bulk access/mandatory sale of customer data/manipulation and adding*

*value to customer data*

The current provisions with regard to the mandatory sale of Whois data, and uses that can be made of the data obtained through bulk access, are contained in the Registrar Accreditation Agreement at sections 3.3.6 and following<sup>1</sup>, *Third Party Bulk Access to Data*.

These provide for the mandatory sale of customer data on certain specific conditions. These conditions are discussed in terms of a contract between the registrar and a third party seeking access to the data. The data *may not* be used for mass unsolicited emailing, but can by inference be used for mass mailing (3.3.6.3), "other than such third party's own existing customers". In addition, the "Registrar's access agreement *shall require* the third party to agree not to use the data to enable high-volume automated electronic processes that send queries or data to the systems of any Registry Operator or ICANN accredited registrar, except as reasonably necessary to register domain names or modify existing registrations". (3.3.6.4)

The agreement says that the registrar "... may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registration available for bulk access for marketing purposes based on Registrar's 'Opt-Out' policy, and if Registrar has such a policy Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service." (3.3.6.6)

The text allows the Registrar discretion

- to prohibit, or
- to permit under conditions he chooses,

the use of the registrants' data

- to condition the subsequent use of the data (3.3.6.5), and
- to have a privacy policy, or not, (3.3.6.6)

but unless the registrar takes positive steps to have a privacy policy different from the Registration Agreement, the registrant's personal data is available as the Agreement prescribes. "Personal data" refers exclusively to data about natural persons.

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<sup>1</sup> <http://www.icann.org/registrars/ra-agreement-17may01.htm#3.3.6.3>

17. Do you think that:

a. These provisions should be maintained in the gTLD environment?

Yes

No

b. These provisions should be extended to apply to other TLDs

(subject to any comments in 12)?<sup>2</sup>

Yes

No

c. As a user would you welcome information from your chosen service provider introducing you to the additional services they may be able to provide?

Yes

No

d. These provisions should be changed?

Yes

No

If so, how?

## ***Method of Evaluation***

The multiple choice questions were evaluated for the full set of 3035 submitted responses. This analysis is also broken down by respondent's category (as given in question 1).

The free-form part of question 17.d was evaluated manually for a pseudo-random set of 303 responses.<sup>3</sup>

The selection of the 303 pseudo-random responses was performed in such a way that the number of responses from any particular category of respondent (question 1) was proportional to the number of responses from that category in the total set of questionnaires received. An analysis of the full set of answers to question 17.d may be undertaken after the Ghana meeting.

In order to derive results from the free-form answer to question 17.d the following set of "baskets" was agreed upon by the members of the task force:

<sup>2</sup> Question 12 asks whether respondent thinks that the data elements used in .com, .net, and .org should be available uniformly in country code top-level domains, and asks for reasons for respondent's opinion. This question will be evaluated elsewhere.

<sup>3</sup> <http://www.dnso.org/dnso/notes/20011221.Whois-survey-result.doc>

- No answer
- No bulk access or sale of data
- No bulk access for marketing
- Opt-in before any sale or bulk access
- Opt-in before any sale or bulk access for marketing purposes
- Improve opt-out
- Better privacy protection
- Relax current restrictions

## ***Results of Evaluation***

### **Overall analysis of multiple-choice questions**

The table below summarizes the results from the multiple-choice parts of questions 16 and 17.a–d. For each question, we list the number of respondents for each choice, and the corresponding percentages.

This is done both for the full set of questionnaires, and for the selected subset of 303 responses which are used in the next section of this analysis

Question	Answer	All responses	Selected 303	% All Responses	% selected 303
16	Yes	83	4	3%	1%
	Opt-out	236	24	8%	8%
	Opt-in	1054	113	37%	40%
	No	1488	145	52%	51%
	Total	2861	286		
17.a	Yes	1665	172	66%	67%
	No	850	85	34%	33%
	Total	2515	257		
17.b	Yes	1611	162	65%	64%
	No	862	92	35%	36%
	Total	2473	254		
17.c	Yes	1079	95	42%	36%
	No	1489	168	58%	64%
	Total	2568	263		
17.d	Yes	1173	121	49%	49%
	No	1223	125	51%	51%
	Total	2396	246		

It can be noted, that, with the possible exception of question 17.c ("As a user, would you welcome

information from your chosen service provider?"), the results we get from the selected set of 303 responses predict the results from the full set of responses very well.

## By-category analysis of multiple-choice questions

We now give by-category numbers of the answers given to multiple-choice questions.

### Question 16

Question 16	yes	opt-out	opt-in	no	Total
commercial	28	79	389	540	1036
governmental	3	3	12	17	35
individual	23	59	374	535	991
isp	7	15	69	142	233
non-commercial	4	36	64	96	200
not stated	1	2	11	11	25
other	7	25	97	85	214
registrar-registry	10	17	38	62	127

Question 16	% yes	% opt-out	% opt-in	% no
commercial	3%	8%	38%	52%
governmental	9%	9%	34%	49%
individual	2%	6%	38%	54%
isp	3%	6%	30%	61%
non-commercial	2%	18%	32%	48%
not stated	4%	8%	44%	44%
other	3%	12%	45%	40%
registrar-registry	8%	13%	30%	49%
Min	2%	6%	30%	40%
Max	9%	18%	45%	61%

Question 16	% opt-in/no	% opt-out/yes
commercial	90%	10%
governmental	83%	17%
individual	92%	8%
isp	91%	9%
non-commercial	80%	20%
not stated	88%	12%
other	85%	15%
registrar-registry	79%	21%
Min	79%	8%
Max	92%	21%

For question 16, a by-category tabulation shows that individuals participating in the survey had the strongest demand for opt-in or better protection of their data, with 92%. This desire was lowest in the non-commercial category of survey participants, where 80% demanded such protection. Opt-out approaches were most popular with non-commercial respondents (18%), and most unpopular with individual and ISP participants in the survey (6%). Permitting marketing and sales (the "yes" answer to this question) was most popular among governmental participants (9%), and most unpopular among non-commercial and individual participants.

*Question 17.a*

Question 17.a	yes	no	Total	% yes	% no
commercial	600	290	890	67%	33%
governmental	19	8	27	70%	30%
individual	564	305	869	65%	35%
isp	144	79	223	65%	35%
non-commercial	122	61	183	67%	33%
not stated	13	8	21	62%	38%
other	118	68	186	63%	37%
registrar-registry	85	31	116	73%	27%
Min				62%	27%
Max				73%	38%

Between 62% and 73% of respondents suggest that bulk access provisions should be maintained in the gTLD environment. This demand is strongest in the registrar-registry communities, and weakest with participants from the "not stated" category.

*Question 17.b*

Question 17.b	yes	no	Total	% yes	% no
commercial	580	298	878	66%	34%
governmental	17	9	26	65%	35%
individual	550	307	857	64%	36%
isp	138	79	217	64%	36%
non-commercial	112	69	181	62%	38%
not stated	14	7	21	67%	33%
other	120	61	181	66%	34%
registrar-registry	80	32	112	71%	29%
Min				62%	29%
Max				71%	38%

Between 62% and 71% of respondents suggest that bulk access provisions should be extended to apply to other TLDs. This demand is strongest with the registrar-registry communities, and weakest with the

non-commercials.

*Question 17.c*

Question 17.c	yes	no	Total	% yes	% no
commercial	376	526	902	42%	58%
governmental	9	21	30	30%	70%
individual	359	543	902	40%	60%
isp	80	142	222	36%	64%
non-commercial	83	102	185	45%	55%
not stated	13	9	22	59%	41%
other	91	102	193	47%	53%
registrar-registry	68	44	112	61%	39%
Min				30%	39%
Max				61%	70%

Distribution of responses varies stronger than usual with this question: The registrar-registry and "not stated" groups of respondents both state with a majority of approximately 60% that they would welcome information from the chosen service provider. In other categories, between 53% (other) and 70% (commercial) of respondents would *not* welcome such information.

*Question 17.d*

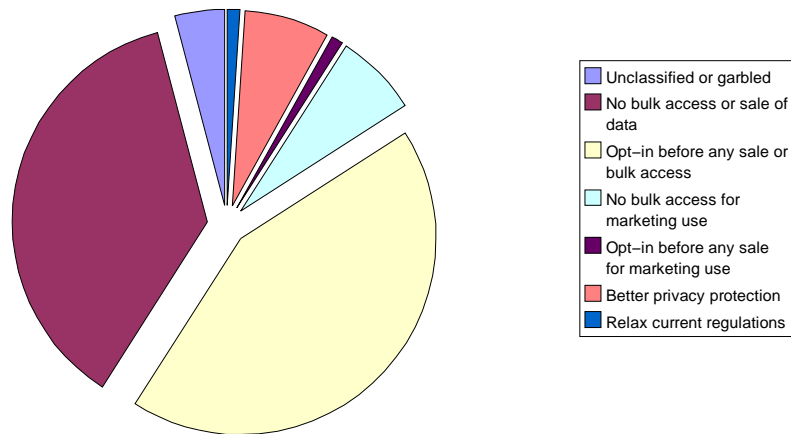
Question 17.d	yes	no	Total	% yes	% no
commercial	415	415	830	50%	50%
governmental	11	16	27	41%	59%
individual	395	451	846	47%	53%
isp	104	110	214	49%	51%
non-commercial	90	87	177	51%	49%
not stated	9	10	19	47%	53%
other	100	76	176	57%	43%
registrar-registry	49	58	107	46%	54%
Min				41%	43%
Max				57%	59%

Results vary between constituencies: Between 40% and 60% of respondents explicitly suggest that bulk access provisions should be changed. The group of "other" respondents expresses the strongest desire for a change of bulk access provisions (57%), while governmental respondents are most conservative in suggesting that provisions should stay as they are (59%).

## Analysis of free-form responses to question 17.d

The free-form part of the question was answered on 99 out of the 303 questionnaires whose free-form responses were investigated by the task force's members. Of these responses, two could not be easily classified, and two more responses were garbled. Of those which could be classified according to the baskets listed above, 37 ended up in the "no bulk access or sale" basket, and another 43 were classified as "opt-in before any sale or bulk access". Seven respondents more specifically suggested no bulk access for marketing, and one respondent was categorized as "opt-in before marketing use". Nine respondents asked for improved opt-out, 7 generally asked for better privacy protection, and a single respondent suggested to relax the current restrictions.<sup>4</sup>

Classification of Free-Form Answers to Question 17.d



Calculating percentages, we find that 88% of responses looked at ask for opt-in or better protection of their data when marketing use is suggested. When those answers which specifically mention marketing use are left out of the picture, we still have 80% of responses looked at which ask for opt-in or better protection of their data.

An analysis of free-form answers to this question by category of respondent has not yet been performed.

## Findings

### Questions 16 and 17.d

A total of 89% of respondents, with the percentage varying between 79% and 92% in individual categories, ask for opt-in or better protection of their data when bulk access is concerned. This result is

<sup>4</sup> <http://www.dnso.org/clubpublic/nc-whois/Arc00/msg00214.html>



further confirmed by the evaluation of free-text responses to question 17.d, where 88% of responses analyzed favor opt-in protection (or no bulk access at all) over opt-out solutions or bulk access. It can safely be asserted that there is consensus across all categories of respondents that bulk access provisions should provide opt-in (or better) protection of personal data stored in the WHOIS system. This is in contrast with the current policy, which is based on registrants opting out of bulk access to their data. However, there is *no* consensus across categories of respondents when they are explicitly asked whether or not bulk access provisions should be changed: In fact, the picture we obtain from this question's results is one of indecision.

Since, however, question 16 gives a result of extraordinary clarity in response to a clear, simple, and specific question, the majority of the WHOIS task force concludes that the results from question 16 alone warrant the recommendation to review ICANN's WHOIS policy, with the consensus measured among survey participants in mind.

*Note: The gTLD and non-commercial constituencies do not agree, at this point of time, with the conclusion stated in this section, and demand that further research be carried out before any conclusions can be stated.*

#### **Question 17.a**

It can be safely stated that there is consensus across categories of respondents that bulk access provisions should be maintained in the gTLD environment.

*Note: The gTLD and non-commercial constituencies do not agree, at this point of time, with the conclusion stated in this section, and demand that further research be carried out before any conclusions can be stated.*

#### **Question 17.b**

It can be safely stated that there is consensus across categories of respondents that bulk access provisions should be extended to apply to other TLDs.

*Note: The gTLD and non-commercial constituencies do not agree, at this point of time, with the conclusion stated in this section, and demand that further research be carried out before any conclusions can be stated.*

### *Question 17.c*

As a preliminary finding, it can be stated that the registrar-registry (and "not stated") groups of respondents have a strong tendency to welcome advertising information from the chosen service provider. On the other hand, strong majorities of governmental, commercial, individual, and ISP respondents clearly stated that they would not welcome such advertising. The non-commercial and "other" groups of respondents have thin majorities which do not welcome advertising as described in question 17.c. While there is certainly no consensus across constituencies, it is worth noting that those who would actually receive the kind of advertising this question is about have typically indicated that they would not welcome it. On the other hand, registry and registrar respondents – that is, those who'd send out the advertising material – state that they would also welcome it "as a user".