

PAUL ANDERSON - MODERATOR

Okay, ladies and gentlemen, welcome back. I hope you enjoyed the break there.

Joining me on the stage again — my name is Paul Anderson, I have again Byron Holland, CEO, and Michael Stewart, our General Counsel. So this will be our WHOIS Open Microphone. I'm going to give you some background to start.

Background:

So in June 2008, after a series of consultations with a variety of our stakeholders, CIRA introduced its new WHOIS Privacy Policy. In developing their revised policy CIRA strove for an appropriate balance between protecting the privacy of individual registrants and providing timely mechanisms for legitimate information requests.

When the WHOIS policy was introduced last year, we committed to conducting a review of this policy within a year, taking into account our actual experience with the policy in the past 15 months. As part of this review, CIRA consulted with a variety of stakeholders, including registrants, registrars, CIRA members, the Canadian public, the legal and law enforcement groups, and subject matter experts such as privacy advocates and intellectual property specialists. In each case, we wanted to solicit their feedback on whether or not the policy had achieved the appropriate balance given the experience of the past 15 months.

This Open-Mike is part of this process, and it's something new — we've never tried this before — in which we provide you with an opportunity to provide us with feedback, your comments and questions. In this section your comments will be compiled and included in the analysis for a final report.

Before we get started on the mike, I've asked Michael Stewart on WHOIS for those who might not be familiar with it and kind of where we came to there. So Michael.

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MICHAEL STEWART

Thank you, Paul. Again I just want to give a very brief introduction for those who may not be as current as others. As a CIRA registrant, certain information regarding your registration is found on-line on our WHOIS database, and every registry has one; and it has certain specific information about the registration and who the administrative contact is, who the technical contact is, and some information related to that. And as many of you know there's been an on-going discussion as to the level of privacy that should be associated with those registrations and the WHOIS information.

And last year CIRA, after a lot of consultation, implemented a system whereby for those registrants who were individuals, as opposed to businesses or co-ops or other forms of registrants, their information would, for the most part, be kept confidential and hidden from the WHOIS database. So if you did a WHOIS search you'd simply find very, very limited information about that.

There has been lots of discussion and debate about that. Different registries around the world had different perspectives as well as obviously people have different perspectives. And now that we've got 15 months of time so-to-speak under our belt, we want to take the opportunity to assess how that's gone and what people's perspective are on that and, as Paul has outlined, we did a whole slew of consultation with people; and many of you will no doubt have been pained with e-mails asking for your opinion, asking you to fill out surveys and all that; and I'm sure that some of you are probably tired from hearing us on the question. But we wanted to take the opportunity, now we've got a bunch of you in the room, to try out and open-mike, and add your input into the overall consultation we're doing, again keeping in mind what's gone on in the past 15 months and your perspectives on that.

Q: *(inaudible question)*

Michael Stewart: Yes. Just to reiterate quickly: If you are an individual and you can register with CIRA, and then for different forms, like you'd register as a corporation or as a partnership, etc. But if you're an individual, your WHOIS data generally will not be available.

There are certain exceptions to that which are very limited and very publicly outlined in our policies. Basically speaking there are two broad categories: If the authorities, for a certain, very severe life-threatening type thing such as child endangerment, come to us with an issue indicating that the domain is associating with that and they're conducting an investigation — after following again a delineated process — it's there on our website for all to see, and basically proving to us that that's the case that they're investigating these matters, that information can't *(or can?)* get disclosed. [04:43]

The other broad category is if some people have a dispute over the domain name, and again they have to prove to us they have a good faith dispute — very certain type of categories, such as a trademark dispute or a copyright dispute or things of that nature, and again they have to evidence the dispute, and they'd then have to try to communicate, showing that they've tried to communicate with us, with you, as a holder of that domain, and again they won't have an anonymous means of communication, so that people still, who try to communicate with you don't know who you are yet, but they tried to communicate to resolve that dispute, only then will we reveal the information, at the same time, within 30 days... sorry 30 to 60 days, then we'll notify the registrants that we've disclosed this information. So in a nutshell, I think that's the current policy. And I know I've left stuff out, so my apologies for those who caught my mistakes.

[05:44]

BYRON:

Thanks very much. I just wanted to add a couple of comments and I'll be very brief. From my perspective or the perspective from which I approach trying to implement a new policy for the organization; and first and foremost I just wanted to mention a couple of additional details.

The organization has been wrestling with this for several years as a matter of fact, and we've done extensive consultation both face-to-face speaking to interested parties, as well as a considerable amount of pure empirical research — true, statistically significant surveys, both Canadian registrants, dot.ca holders, as well as members, to truly get an understanding of what Canadians in general want, while trying to achieve the objectives of privacy — privacy for individuals.

Because part of our role is not to be ideologues but take one position over another. As you can imagine on a debate like this there are widely varying views on different ends of the spectrum, and it's easy for it to devolve into fundamentally an ideological or political debate. But our role is to do — find the best balance; the pragmatic approach, what's best to protect the privacy of individuals in Canada, while also acknowledging that there are other reasonable, rational interests at play in this debate.

So our policy that was developed — and through many, many board meetings and staff work on this particular subject, as well as all the consultations — and I can assure you that the board discussions were robust — very robust. So there has been much healthy debate in terms of trying to find the appropriate balance. And I think we've done that. And I think we've seen over the course of the year that as we've implemented this, and in terms of the feedback we've started to receive now in this part of the consultation, that we have drawn a good balance. Is it perfect? Time will tell. Is everybody a little bit annoyed by it? Probably — which I think indicates that we've struck the right balance for it.

And I think that something that happened just recently really spoke to the notion that the balance we have drawn between protecting people's rights to privacy with other legitimate interests, is that all the privacy commissioners in Canada — Provincial as well as our Federal privacy commissioner — have spoken to an issue very similar to this. And the language that they used about a balance, it literally almost could have come out of the pages of the policy that we drew up over a year ago. So I think from that perspective, the members of the board here were prescient in coming up with the policy that we did, which is now effectively, to a very great degree, been echoed as the appropriate balance by all the privacy commissioners in the land. So while we certainly, we want to understand if we have drawn the right balance, I think so far we believe that it is a pragmatic approach to the WHOIS question.

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[09:23]

PAUL ANDERSON:

All right, so thank you Byron and Michael. So before we begin, just to align the process on how this will work. This is not again part of the actual Annual General Meeting portion — this is more of an informal session. Just to reiterate, we've never tried this before; again, but we did think since there was a consultation underway during the AGM, this would be an appropriate time, so we're curious to see how it goes.

I would ask if people may have comments or maybe start with question about the policy that you approach the microphone. As usual, before you provide a comment, please say your name and affiliation, because as this is part of our consultation process, we need to make sure that the information is properly noted.

So with that, who wants to be the first to jump up to a microphone.

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[10:07]

COMMENTS / QUESTIONS

John Wonderlink: Thank you, sir. My name is John Wonderlink*. Fair disclosure — I work in this space in Consulting and Information Privacy and Consulting, and I did use to work for one of the privacy commissioners. So I applaud CIRA for this policy.

My question or comment is: Aside from the wording of protecting privacy rather than enable individuals to choose how to protect their privacy (which I think is a better way of wording it) — How are you judging your success? Have you set up any metrics or standards by which you can evaluate the success of the policy in meeting the goals that you set out?

Michael: Yes. Our first and foremost is a Satisfaction Survey; and I don't know where as a member you've got it, but we've had an independent company that does this for a living, send out surveys. And we don't have the results yet because it's still ongoing. But for us that's the key indicator — a satisfaction survey with members, as well as we've disclosed for the purposes of this forum and others — all the statistics we have is about the number of requests that have been made and the results of those requests for people to be able to evaluate and give us feedback.

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[11:27]

Derek Seabrook: My question is: Would the police not be able to simply get a warrant to get the information from CIRA? Why would they have to go through this process.

Michael: A warrant is available. Our feedback from the police and others is a warrant and it's difficult and time-consuming and very expensive in some cases. It also is used, we understand, in the more egregious circumstances; but what we were trying to achieve with our policy is a mechanism... As you know, before the change in policy the information was freely available. What our policy tries to do is allow in kind of, for lack of a better phrase, "life threatening situations" where there's a real urgency to it, such as child endangerment issues or the like; the police have another mechanism to show that they are investigating these types of events and can get the information without having to go through the time and expense of getting a warrant first.

Derek Seabrook: Would that not mean that CIRA is doing the job of the courts?

Michael: It depends on whether you think the courts were involved in every circumstance. As I say, before we changed this policy, the information is publicly available, and in fact in most other registries around the world it still remains publicly available.

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Serge Medow: With this policy change, it seems that CIRA is taking a more active role in facilitating communications, if you will, between people wanting that information and justifying that the request is valid. This takes effort. Do you see that this is something that's scaleable in the future as we get more domain names and possibly a much larger amount of requests for this information?

Michael: I think that's an excellent question, and part of one the reasons why we want to hold this consultation... when we planned to hold this consultation —when we first made the policy change, was to see how it scaled. And so far we've found it very, very manageable. There aren't a whole lot of requests and they are... they haven't at all strained our resources. But it's an excellent point that in the future we should keep an eye on it. If in fact it starts taking up too much resources, we'll have to re-think it. But so far it appears that it's very scaleable for us.

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[14:01]

Lou Pitcher: My name is Lou Pitcher, and I run a personal website *digitalfreehold.ca*. My question to you is a background issue to those people like myself who are newly involved in Internet domains and websites and such and have limited technical knowledge — and I have more than limited technical knowledge, but I know there's a number of people in the audience who do.

Beyond the use that you've already indicated of the WHOIS database, your hiding of the personal information in the WHOIS database: What other legitimate uses does WHOIS have for people like — there's at least one member over on our side who is technically not up to speed on these things. There are reasons for WHOIS that aren't readily apparent if you're hiding things. Why should we have WHOIS at all?

Michael: That's an excellent point — historically — and again I'm going to have to maybe refer to Paul and others on the history. But WHOIS has been around as long as the Internet has been around, I believe. And initially was a technical, I think, focus, to make sure...

Lou Pitcher: (*guess*) I'm looking at John here to try and get ... pretty much from the beginning of time?

Michael: Yes, so it's been around since 1997, and WHOIS was historically one of the... the Internet community was much, much smaller — a bit more of an academic community. It was seen as a useful way to get contact information when one operator of one system was having a problem and wanting to get in touch with the appropriate party that was using that domain name—and it worked very, very well back at the time.

I think to go back to the previous point: (2) is, is that it's had some scaling problems, so it's because it was never anticipated for the volume of registrations that we have today. And that is one of the reasons. When we did start the WHOIS consultation several years ago, one of the first questions the board asked is: "Why are we even providing this information in the first place?"

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[16:28]

Michael: Just one quick note to, in talking about some of the international stuff earlier. You remember the global organization ICAN — they require WHOIS of the GTLDs, the generics (like com, net, org, etc.) So that's actually a requirement in their space. In the CC community we're more free to do as we want. Right now in the CC community in fact Canada pretty much leads the privacy charge. There are very few, I think possibly none; it's in flux, other registries that have the level of privacy that we provide. So Canada absolutely leads the landscape in term of offering individual registrant privacy.

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Duonalli: (??) I guess that kind of relates to my question. I just wanted to know how the dot.ca WHOIS procedures compare to other countries and how they differ. Like I know that dot-coms is pretty much, completely open, I believe — and what other countries have done and if you've learned from that; or if it's just a black and white situation where it's either open or closed.

Unidentified: That's a great question, and we've obviously looked into it in formulating our own policy. A number of them, most of them I would say, which is dot.com — and if you looked at absolute number of registrations, overwhelmingly the majority of them are wide open.

There are some registries and I'll take France as an example because I know it well. They will protect information of personal registrants, but they don't have any clear process for when they'll disclose it at all. And my understanding is, essentially if they think it's reasonable, well, they'll give out the information to the authorities or to whomever. We however have very clearly and publicly disclosed policies with a whole number of steps in limited circumstances in which we'll disclose. So we can't simply do it out of our discretion — people have to meet certain requirements and they have to clearly fit within the categories we've set out.

[18:34]

William Stratas: William Stratas again. I think the policy is fantastic. In practice it seems to be working well. I'd like to just understand to what extent does CIRA validate the identity of registrants either on an automated or a semi-automated fashion. I believe the privacy that you're offering is a privilege. If I'm going to hide my identity, it should be a truthful identity — I know that's in the Registration Agreement. But to what extent can you validate the information so that when it's protected we actually know that it's truthful, and therefore the integrity of the name space is maintained.

Michael: It is an excellent question. And for those who may not know, the validity of WHOIS data is a big issue. It's really tough to make sure that all the WHOIS information is valid, and that's not just the dot.ca issue

— that's a global problem. And believe me, the people who find out the information and who then find that it's inaccurate get very upset, such as the authorities. At CIRA we... first of all if anyone is aware of any information which is invalid, we frequently hear about it, and then we have a whole process for validating that. In fact we have a formal of what we call an array of... and Kelly will have to come up with what the acronym stands for...

Kelly Campbell: *(unclear comment)*... It stands for information (...)[19:57]

Michael: Thank you. But it's a process which effectively insures that the registrant has to validate the information or will get suspended or ultimately they'll lose it. We're implementing some policies in the near future in which we'll proactively start auditing certain categories — kind of a high-flyer so-to-speak in which we think we've seen the most problems. So we're going to be taking some proactive steps to try to authenticate as much data as we can.

Moderator: Thank you, Michael, and thank you to Kelly Campbell, or our Customer Service Director, just who maybe could stand up, because I know some people had some questions. So feel free to find her after, after she... and then she's going to find me and that might not be pretty. Next question.

[20:35]

Lloyd Lindsay: Lloydlinsey.ca. Quick question: What if any set of circumstances have you come across where somebody has used the dot.ca domain for fishing? Have you come across anybody who's misused the dot.ca.

Unidentified: I'm not aware of any, but I'll defer to Norm... and Norm Richie is shaking his head as well. So knock on wood... we've been...

Lloyd Lindsay: What I'm trying to drive at is that by doing the system we are, so far we haven't had any fishing coming out of a dot.ca domain. Is that correct?

Unidentified: As far as I'm aware, yes.

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[21:17]

FURTHER COMMENTS: [21:17]

Unclear Name: I'm a domain owner. My question is: Does this policy extend to the registrars? For example, if I have a "privacy" turned on, the registrar name is still there, and I didn't see his... or individuals or corporations can go to the registrar and get the information.

Michael: They can get the registrar name but they will not know who the registrant is.

Unidentified: I think this question is more clarifying: Can the registrar give that information out?

Michael: No.

Unclear Name: So they will defer it to CIRA?

Michael: Yes, the registrars are obliged to comply with the same policy. And I will just add that registrars on top of our policy, many of them if not all almost, offered their own privacy services on top of that as well.

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[22:13]

John Wonderlink: John Wonderlink again. Just a follow-up question then. If you care to comment on the upcoming legislation, the (awful access to LEA?) [22:19]. And I think as a communication to members, distinguishing between privacy on the WHOIS and the threats to privacy that are implicit in some of the proposed legislation and requirements in ISPs, because with the less technical members, that's a distinction I think that may not be very clear.

Michael: Sure. I'll defer on comment from CIRA's perspective on the upcoming legislation. There is legislation in front of parliament which is designed to give the police in their view or the government's view easier access to on-line information given the age of the current legislation that's out there. And in fact Byron's reference to the various privacy commissioners was encapsulated in their commentary that they publicly announced I think two weeks ago on that legislation, in which they feel it's very important as a matter of principle that any legislation balance the privacy needs of individuals against the reasonable access requirements of authorities and others. And again that's the exact same principle that we're trying to follow as well is to find that right balance. The legislation obviously will be debated and again I'll defer on my own personal take on that.

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[23:44]

Unidentified: In distinguishing between... we're not commenting on... but the fact if you turn on WHOIS, that doesn't prevent the government going after the ISP or your hosting environment. That's not something that you can take responsibility for. Maybe registrants need to be aware of where that line is drawn.

Michael: Sure. WHOIS information for example is held not just by CIRA but it's obviously your registrar has information about you as well. And like anything else, other people may in the world as well, so that our WHOIS policy extends as far down as a registrar level but no further. As mentioned, there may be other information about you that's available from the Internet service provider you choose — the web hosting company, et cetera. And so while we can protect your registration information, you should be aware that there's other information about you that you may have given to other providers such as your ISP or your web hosting company as well. And I've encouraged you to look at their privacy policies in that regard.

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[24:50]

CONCLUSION:

Paul Anderson: Further comments or questions before we close the mikes. This has been a very interesting session. I think there have been lots of interesting, great questions. We're not sure (how it will turn out?) [24:57].

Last call? Okay, well thank you very much. That will conclude our question session for the WHOIS Open Microphone.

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