

Transparent, Open and Secure Internet Act of 2018

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FINDINGS.—Congress finds the following:

(1) WHOIS information is the database of identification and contact details associated with the individual, group, or company that registers a particular domain name and other technical attributes relating to such domain name. Registrants have provided such information since the earliest days of the Internet, with the understanding that the information would be publicly available in the WHOIS service and may be used for matters of law enforcement, public safety, consumer protection, dispute resolution, and enforcement of rights. Internet Domain Name Service Registrars and Registries recognized by the Internet Corporation for Assigned Names and Numbers (in this section referred to as “ICANN”) are contractually required by ICANN to collect and make available WHOIS information.

(2) WHOIS information is a critical tool for law enforcement; cybersecurity; intellectual property rights enforcement; consumer protection; online child safety; the safety, security, stability, and resiliency of the domain name system and the Internet more broadly; promoting Internet transparency and accountability; and other purposes that seek to protect the public and engender trust in the Internet for users around the world.

(3) ICANN, as part of its mandate to operate the DNS, is responsible for preserving the WHOIS service and has contractual requirements with the Internet Domain Name Service Registrars and Registries.

WHEREAS:

(1) *NTIA shall work to ensure that—*

- i. *the multistakeholder model of Internet governance maintains the security, stability, and resiliency of the Internet domain name system.*
- ii. *ICANN and Internet Domain Name Service Registrars and Registries shall adopt and enforce policies and practices that continue:*

- a. *The collection of accurate WHOIS information, or any successor system of registration data; and*
 - b. *the free, public, ready availability of such information*
 - iii. *the implementation of new laws and regulations, domestically or internationally, preserves the vital functions of the WHOIS service.*
- (2) *Numerous federal criminal and civil statutes are predicated upon continued public access to a full range of WHOIS data, including but not limited to Anti-Cybersquatting Consumer Protection Act, Fraudulent Online Identity Sanctions Act, CAN-SPAM, and the suppression of public access to much of this data by new policies adopted by domain name registrars and registries undermines these statutes and frustrates efforts to employ them to protect consumers, vindicate intellectual property rights, and combat cybersecurity threats.; and*
- (3) *Law enforcement, cybersecurity investigators, consumer protection agencies and advocates, child advocacy groups, anti-human trafficking organizations, copyright and trademark holders, journalists, academics, and others rely on WHOIS to help determine who is operating a criminal website, sending malicious (SPAM, phishing) emails, or initiating cyber security attacks; and*
- (4) *When WHOIS data goes dark it takes away a critical source of information that is used to help keep the Internet safe, secure and sustainable for all Internet users.*

Therefore:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled:

SECTION 1. SHORT TITLE.

This Act may be cited as the Transparent, Open and Secure Internet Act of 2018” or “TOSI Act of 2018.”

SECTION 2. REQUIREMENTS

(a) SCOPE - A domain name registrar, registry, or other domain name authority that:

1. Is operated or involved in commerce among the several States; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State; or between the District of Columbia and any State or territory, or
2. Offers to register or assign domain names for any legal or natural person in the United States; or
3. Registers or assigns, or offers to register or assign, domain names that are used to market or sell goods or services to, residents of the United States.

shall comply with this Act.

(b) REQUIREMENTS – **two options for approaches below**

OPTION A: Broad

[(1) For each domain name it administers, a domain name registrar, registry, or other domain name authority as provided for in Section 2(a) shall publish in a publicly accessible WHOIS registration directory the following data elements for each domain name that it administers:]

OPTION B: Narrow

[(1) For any domain name registrar, registry, or other domain name authority subject to this act by reason of section (2)(a)(1), this section 2(b) applies for each domain name it administers. For any domain name registrar, registry or other domain name authority subject to this act solely by reason of section 2(a)(2) or 2(a)(3), this section 2(b) applies for each domain name it administers that is registered to any legal or natural person in the United States or is hosting a website which is marketing or selling goods or services to residents of the United States .

(2) For every domain name meeting one of the criteria defined in section 2(b)(1), the domain name registrar, registry or other domain name authority administering that domain name shall publish in a publicly accessible WHOIS registration directory the following data elements for each domain name that it administers:]

- A. Domain Name
- B. Registry Domain ID
- C. Registrar WHOIS Server
- D. Registrar URL
- E. Updated Date
- F. Creation Date
- G. Registrar Registration Expiration Date
- H. Registrar
- I. Registrar IANA ID
- J. Registrar Abuse Contact Email
- K. Registrar Abuse Contact Phone
- L. Reseller
- M. Domain Status
- N. Domain Status
- O. Domain Status
- P. Registry Registrant ID
- Q. Registrant Name
- R. Registrant Organization
- S. Registrant Street
- T. Registrant City
- U. Registrant State/Province
- V. Registrant Postal Code
- W. Registrant Country
- X. Registrant Phone
- Y. Registrant Phone Ext
- Z. Registrant Fax
- AA. Registrant Fax Ext
- BB. Registrant Email
- CC. Registry Admin ID
- DD. Admin Name
- EE. Admin Organization
- FF. Admin Street

GG.	Admin City
HH.	Admin State/Province
II.	Admin Postal Code
JJ.	Admin Country
KK.	Admin Phone
LL.	Admin Phone Ext
MM.	Admin Fax
NN.	Admin Fax Ext
OO.	Admin Email
PP.	Registry Tech ID
QQ.	Tech Name
RR.	Tech Organization
SS.	Tech Street
TT.	Tech City
UU.	Tech State/Province
VV.	Tech Postal Code
WW.	Tech Country
XX.	Tech Phone
YY.	Tech Phone Ext
ZZ.	Tech Fax
AAA.	Tech Fax Ext
BBB.	Tech Email
CCC.	Name Server
DDD.	Name Server
EEE.	DNSSEC
FFF.	URL of the ICANN WHOIS Data Problem Reporting System
GGG.	Last update of WHOIS database

(2) Data as required by 2(b)(1) shall be transparent, not anonymous or masked, except as allowed in Section 3(b) below, available at no charge, and available through web-based query and Port 43.

(3) Data shall be validated and verified as accurate consistent with the requirements outlined in the WHOIS Accuracy Specification of the 2013 Registrar Accreditation Agreement, as may be updated from time to time.

SECTION 3: EXCEPTIONS and EXEMPTIONS

(a) EXCEPTION FOR PRIVACY/PROXY SERVICE:

- (1) A domain name registrar, registry, or other domain name authority subject to this Act is permitted to offer domain name registrants use of privacy/proxy services offered by Eligible Privacy/Proxy Service Providers provided however that such privacy and proxy services may not be used with respect to a domain name that connects users to a website that:
 - (A) Collects and maintains or stores personal information on the users of or visitors to the registered domain name website, or on whose behalf such information is collected, maintained or stored; or
 - (B) Is being operated for transactional commercial activity, including but not limited to: offering products or services for sale through that registered domain name website; monetization through any advertisement or solicitation; or the sending of commercial email from the email domain.
- (2) A domain name registrar, registry, or other domain name authority subject to this Act shall
 - (A) Terminate the privacy/proxy services for a domain name registrant using privacy/proxy services upon knowledge or notice from a third party that the registrant is engaged in any of the activities provided in section 3(a)(1)(A)-(C); and
 - (B) Provide notice to the registrant in the privacy/proxy terms of service that privacy/proxy is not allowed for domains engaged in any of the activities provided in section 3(a)(1)(A)-(C).

(b) EXEMPTIONS:

- (C) Any entity that as of April 30, 2018 which was not required by ICANN to collect data elements under Section 2(b)(1)(Q) through 2(b)(1)(GGG) shall have one year from the date of enactment of this Act to comply with this Act.

SECTION 4: ENFORCEMENT BY THE FEDERAL TRADE COMMISSION¹

- (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES - A violation of Section (2) shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

¹ Joint enforcement by the FTC and state Attorneys General is modeled after the Consumer Review Fairness Act of 2016, 15 U.S.C. 45b; the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501–6505; the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, and other similar consumer protection laws.

(b) POWERS OF COMMISSION

- (1) IN GENERAL - The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.
- (2) PRIVILEGES AND IMMUNITIES – Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).
- (3) AUTHORITY PRESERVED – Nothing in this section shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

(c) ENFORCEMENT BY STATES

- (1) IN GENERAL – In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to Section (2) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States-
 - (A) to enjoin further violation of such subsection by such person;
 - (B) to compel compliance with such subsection; and
 - (C) to obtain damages, restitution, or other compensation on behalf of such residents.

(d) RIGHTS OF THE FEDERAL TRADE COMMISSION

(1) NOTICE TO THE FEDERAL TRADE COMMISSION

- (A) IN GENERAL - Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.
- (B) CONTENTS -- The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.
- (C) EXCEPTION – If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(2) INTERVENTION BY THE FEDERAL TRADE COMMISSION

The Commission may-

- (A) Intervene in any civil action brought by the attorney general of a State under paragraph (1); and
- (B) Upon intervening-
 - (i) be heard on all matters arising in the civil action; and
 - (ii) file petitions for appeal of a decision in the civil action.

(e) INVESTIGATORY POWERS – Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(f) PREEMPTIVE ACTION BY THE FEDERAL TRADE COMMISSION – If the Commission institutes a civil action or an administrative action with respect to a violation of Section (2), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(g) VENUE; SERVICE OF PROCESS

(1) VENUE -- Any action brought under paragraph (1) may be brought in:

(A) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or

(B) another court of competent jurisdiction.

(2) SERVICE OF PROCESS -- In an action brought under paragraph (1), process may be served in any district in which the defendant:

(A) is an inhabitant; or

(B) may be found.

(h) ACTIONS BY OTHER STATE OFFICIALS

(1) IN GENERAL -- In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(2) SAVINGS PROVISION – Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

SECTION 5: DEFINITIONS

(a) The term “collects” means – the electronic gathering of any personal information by any means, including but not limited to:

(1) Requesting, prompting, or encouraging an individual to submit personal information online;

(2) Enabling an individual to make personal information publicly available in identifiable form.

(3) Passive electronic tracking of an individual.

- (b) The term “Domain Name Registrar” means - an organization that manages the reservation of Internet domain names that is accredited by a generic top-level domain registry, a country code top-level domain registry, the Internet Corporation for Assigned Names and Numbers or its successor.
- (c) The term “Eligible Privacy/Proxy Service Provider” means - An eligible privacy/proxy registration service must, at minimum, adhere to a publicly disclosed process whereby third parties with a legitimate interest in the contact information of domain name registrants who are customers of the service may reliably and with reasonable promptness obtain access to such information solely for the purpose of investigating and resolving issues arising from any uses of the registered domain name that reasonably appear to violate applicable law or to present a threat to the security, stability or resiliency of one or more digital networks. Such a process must (a) provide service providers with discretion to refuse such requests based on specific facts, information or circumstances showing (i) that the stated basis for the request is pretextual or (ii) that disclosure to the requester will endanger the safety of the customer; and (b) prohibit service providers from rejecting such a request solely for lack of a court order or subpoena, pending civil action, or pending alternative dispute resolution proceeding.
- (e) The term “Port 43” means: a port designated by the Internet Assigned Numbers Authority using Transmission Control Protocol (TCP) for the establishment of host-to-host connectivity that is dedicated to the request and exchange of WHOIS data. TCP is defined by the Internet Engineering Task Force in the Request for Comment standards document number 793. References to Port 43 shall include any successor TCP based service dedicated to the efficient exchange of streams of domain name registration data.
- (f) The term “personal information” means individually identifiable information about an individual collected online, including-
- (1) a first and last name;
 - (2) a home or other physical address including street name and name of a city or town;
 - (3) an e-mail address;
 - (4) a telephone number;
 - (5) a Social Security number;
 - (6) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or
 - (7) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.
- (g) The term “2013 Registrar Accreditation Agreement” means: the contract that governs the relationship between ICANN and its accredited registrars for Registrar Accreditation Agreements entered into after 28 June 2013.