



# WHOIS: WHAT A WONDERFUL WORLD

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Legal and Policies

## AIM: CHANGING OUR WHOIS' POLICIES

- respect due to users
- recommendations art 29 WP and GAC
- need to adjust ICANN agreement with data protection laws
- avoid DPA fines: up to 300k €!!!!

## our current WHOIS output

Registrant Name: Quimi Portet Serdà

Registrant Country: ES

Registrant Organization:

Registrant Phone: +34.654321000

Registrant Street: Avgda Jordi Pujol, 23

Registrant Phone Ext:

Registrant City: Roda de Ter

Registrant Fax: +34 654321000

Registrant State/Province: Barcelona

Registrant Fax Ext:

Registrant Postal Code: 08510

Registrant Email: [portet@atzucac.cat](mailto:portet@atzucac.cat)



# Model 1: AFNIC

The screenshot shows the AFNIC website's Whois tool interface. At the top, there is a navigation menu with tabs for 'L'association', 'Noms de domaine', 'Enregistrement .fr', 'Outils', and 'Opérations'. Below the menu, a breadcrumb trail reads 'Vous êtes ici : Accueil > Outils > Whois > boulanger.nom.fr'. The main heading is 'Whois'. A search form contains the text 'Whois' followed by an input field with 'boulanger.nom.fr' and a 'Rechercher' button. Below the search form is a results box with a title bar 'aide ?' and four entries, each with a plus icon and a small icon:

- Nom de domaine** : boulanger.nom.fr
- Titulaire** : *Diffusion restreinte, données non publiques*
- Contact administratif** : *Diffusion restreinte, données non publiques*
- Contact technique** : Hostmaster Namebay

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# Model 1: AFNIC

**Veillez remplir tous les champs suivants :**

Nom du domaine dont vous souhaitez contacter le contact administratif :

Vos prénom et nom complets :

Votre adresse de courrier électronique complète :

Objet de votre message :

Contenu de votre message :

Visualisation avant envoi

# Model 2: CIRA

## WHOIS search results

Personal information about the holder of this domain name is not available in the search results because the registration is privacy protected.

Interested in contacting the holder of this domain name? CIRA offers an [online Message Delivery Form](#) that allows you to send a message to the Administrative Contact for this domain name.

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<b>Domain name:</b>	philalain.ca
<b>Domain name status:</b>	EXIST
<b>Approval date:</b>	2004/09/24
<b>Renewal date:</b>	2008/09/24

# Model 2: CIRA

## Message Delivery Form

### Enter your contact information:

First name:	<input type="text"/>
Last name:	<input type="text"/>
Email:	<input type="text"/>
Re-type email:	<input type="text"/>

Your message is being sent to the Administrative contact of the following domain name:

### Enter a subject for your message:

### Type your message here *(maximum of 4,000 characters):*

### Attach a PDF file *(optional, maximum allowed file size allowed is 1 MB)*

Read the **Terms of Use** below before attaching a Portable Document Format (PDF) file to your email message:

# the hard life of a sTLD

**.cat**



**circumstances**





# circumstances

- 1.) paradigms
- 2.) legal documents

where did they lead us?

- 3.) current state of affairs
- 4.) some thoughts

## 1.) paradigms

- EU vs US
  - Directive 95/46 vs *ad hoc* regulation
  - transpositions jamboree
  - law vs contract

## 1.) paradigms

- cc's vs g's
  - statute vs agreement with ICANN
  - national asset vs industry agent

## 1.) paradigms

- DPA vs gTLD
  - regulatory approach vs experiential learning
  - territoriality vs no border
  - penalties vs negotiations

## 1.) paradigms

- lawyer vs techie
  - law vs code
  - legislation vs epp
  - problem vs problem

## 2.) legal documents

- regulation
  - Directive: LOPD and its development
  - no whois reference
  - interpretation task

## 2.) legal documents

- agreements
  - ICANN - Fundació puntCAT
  - Fundació puntCAT - registrant
  - Registry Services Evaluation Process

## 2.) legal documents

- Art 29 Data Protection Working Party
  - opinion 2/2003
    - **It should in any case be possible for individuals to register domain names without their personal details appearing on a publicly available register.**
- letter to ICANN Board '06
  - The Article 29 WP sees, in the current situation, **actual conflicts between current WHOIS practice and EU data protection and privacy laws**, not just *potential* conflicts as the title of the proposed procedure on ICANN's website states



## 2.) legal documents

- GAC principles regarding WHOIS. '07.
  - 2.2.2 The Gac recognizes that there are also legitimate concerns about: conflicts with national laws and regulations, in particular, applicable privacy and data protection laws

## 2.) legal documents

- DPA resolution
  - sent: nov '08 - resolved: sept '09
  - non binding (enough)
  - “changes would result in a more respectful situation towards data protection principles” .....¿?

### 3.) current state of affairs

- DPA: non binding resolution
- art 29 WP: non official endorsement
- ICANN staff: understood and agreed
- RSEP: delivered
- ICANN Board: ¿?

## 4.) some thoughts

- GAC: anybody out there?
- RySG liaison staff: kudos to Francisco and Karla.
- DPA: and how do you say this “whois” thingy looks like?
- techies-lawyers: two different languages
- constant menace of trademark lawyers

moltes gràcies :)

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