

January 5, 2024

## Perspectives on the collection, use, and disclosure of Personal Information in Canada

*Submission by the American Registry for Internet Numbers, Ltd. (ARIN) on Bill C-27, an Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act, and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts.*

As responsible administrators of a shared global resource, the American Registry for Internet Numbers, Ltd. (ARIN) works hard to strike a careful balance between the necessity of maintaining an open and transparent Internet number registry and the need to protect the privacy of those who use it.

As an Internet number registry that collects and displays data in a public directory, ARIN treats the information we collect and maintain appropriately in a manner consistent with our mission and policies.

Through Bill C-27, the Government of Canada could potentially change this balance in ways that must be carefully considered. Therefore, ARIN is providing additional information and context for the consideration of government and Parliament.

### **About the American Registry for Internet Numbers, Ltd. (ARIN)**

Established in the United States in 1997, ARIN is a non-profit, member-based organization created to manage and distribute Internet number resources within its service region, including Canada, the United States, and many Caribbean and North Atlantic Islands, and is one of five Regional Internet Registries (RIRs) that cooperate in the provision of global Internet Number Registry Services.

ARIN's mission involves maintaining and distributing registration information about organizations that hold Internet number resources (Internet Protocol [IP] addresses and Autonomous System Numbers [ASNs]) in a public directory commonly referred to as Whois.

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*Whois provides network operators, technical troubleshooters, law enforcement, researchers, and other interested parties with information about which organization administers specific Internet number resources. **Distributing this information is very much in the public interest of the proper functioning of the Internet and aligns with ARIN's mission.***

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The primary data elements that ARIN collects in the normal course of its activities are business organizational and point of contact (POC) information, including contact name, business email, business phone number, and business address of an individual representing the organization.

ARIN's customers are primarily business entities. Our publicly accessible and free Whois directory provides Canadian law enforcement agencies, private sector technical troubleshooters, the public (civil society), and network operators with the ability to have access to vital information about which organizations administer specific number resources – information often necessary for correlation between specific network traffic and the responsible party.

Distributing this free directory of vital information is very much in the public interest of the proper functioning of the Internet in Canada and throughout the world. It is not practical or useful to keep this specific registration contact information confidential and unavailable.

### **ARIN already has robust policies in place to protect personal information**

ARIN's information and privacy policies evolved over decades of use and experience and strike a careful balance between "openness" and "protection". ARIN Personal Data Privacy Principles, are:

- ARIN obtains personal data only for specific lawful purposes and by consent of the individual.
- ARIN stores personal data with appropriate protections for its integrity and confidentiality.
- ARIN stores personal data for as long as necessary for the purposes for which it was obtained.
- ARIN will use reasonable efforts to process requests from individuals for correction or deletion of their personal data where feasible.
- ARIN will direct any agents or contractors acting on its behalf to adhere to these (or equivalent) personal data privacy principles.

ARIN's full Privacy Policy is available at: <https://www.arin.net/about/privacy/>

### **ARIN's voluntary privacy code already protects personal information**

In addition to our internal Privacy Policy, the ARIN Community has adopted a voluntary privacy code to further protect personal information in two key ways:

First, all network operators who receive ARIN issued number resources must designate business points of contact which are reflected in ARIN's public directory. If an organization wants to keep the name(s) of its contacts confidential, ARIN also allows the use of role accounts (e.g., "Abuse Department", [abuse@example.com](mailto:abuse@example.com)). These processes offer ample privacy to those who want it while supporting the public interest aspects of making Internet number directory data widely available.

Second, and perhaps most relevant to the goals of Bill C-27, the ARIN community has recognized that residential customers of an Internet Service Provider (ISP) in the ARIN region have privacy needs that outweigh the need and value of disclosure. The community's policy on residential customers allows them to be de-identified, substituting the ISP's name for the customers' name when publishing information in the Whois directory. While protecting customer privacy, these

policies still facilitate anti-abuse and technical communications, thereby balancing operational concerns with privacy in a way that ARIN's community deems appropriate and prudent.

Finally, while ARIN has sound privacy policies, all parties who operate portions of the Internet infrastructure serving the public must be reachable for purposes of reliable and lawful network operations, and thus are 'business organizations' subject to provision of voluntarily agreed industry standards to provide the ability of the government and/or public to contact them.

### **Bill C-27 could adversely impact the ARIN Whois**

Under PIPEDA, ARIN and its stakeholders had comfort that the operation of the Whois directory as described above was fully compliant. PIPEDA excluded "business contact information" from its ambit. In addition, if consent was necessary, it could readily be implied.

ARIN notes that C-27 as currently drafted includes the concept of "business activities" and "legitimate interest" in s. 18, but these provisions only authorize the collection and use of personal information, and not disclosure. For the Whois directory to operate, ARIN's activity would be more clearly facilitated by a clear legal instruction that the law permits the ISP businesses to *disclose* the contact information to ARIN, and for ARIN to be able to disclose it in the Whois directory.

We note that the concept of "implied consent" is maintained in s. 15(5), but it is not as clear to businesses and to ARIN that this specifically permits the inclusion of business contact information in the ARIN directories.

Against this backdrop, ARIN's singular concern about Bill C-27 is the ability to continue the current business practice of including contact information of each organization's designated POC in Whois. ARIN's public facing directory allows an employee's designated business contact data to be disclosed as directed by their employer. Businesses can and do routinely change the person whose business contacts are disclosed. ARIN believes that no meaningful privacy interest exists in this particular table of business addresses, which are disclosed for good and substantial benefits to Canadian government agencies and civil society.

### **Recommendations for C-27**

ARIN believes that further consideration of how the proposed changes in the current draft of Bill C-27 might inadvertently impact these practices are needed. Whois provides benefits to Canadian law enforcement, network operators, and civil society which cannot easily be replaced. Legal certainty is important. Businesses provide contact information to ARIN, and ARIN needs to know we have the lawful right to include this employer provided contact information in the ARIN Whois directory.

We propose two possible remedies to address the problems identified above. The first would be to restore the exclusion of "business contact information" from the requirement for consent in the *Consumer Privacy Protection Act*. The second, would be to make clear that an organization

may include individual contact information in a directory such as ARIN's, and a third party may use that contact information for purposes consistent with the existence of the directory.

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) was amended to include a definition of "business contact information" and an exclusion of the application of that Act to that "business contact information":

***Business contact information*** means any information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business, or profession such as the individual's name, position name or title, work address, work telephone number, work fax number or work electronic address. (*coordonnées d'affaires*)

#### **Business contact information**

4.01 This Part does not apply to an organization in respect of the business contact information of an individual that the organization collects, uses or discloses solely for the purpose of communicating or facilitating communication with the individual in relation to their employment, business or profession.

The concept of "business contact information" is absent from Bill C-27, as is the exclusion found in s. 4.01 of PIPEDA. If it were re-included in Bill C-27's *Consumer Privacy Protection Act*, this would clarify that organizations can list an individual's business contact information in ARIN directories and that this information can be used by third parties.

Both PIPEDA and the CPPA contain a concept of "publicly available information" to which the Act does not apply, subject to the regulations. The current [regulation](#) under PIPEDA would include the ARIN Whois directory in s. 1(b):

1 The following information and classes of information are specified for the purposes of paragraphs 7(1)(d), (2)(c.1) and (3)(h.1) of the *Personal Information Protection and Electronic Documents Act*: ...

(b) personal information including the name, title, address and telephone number of an individual that appears in a professional or business directory, listing or notice, that is available to the public, where the collection, use and disclosure of the personal information relate directly to the purpose for which the information appears in the directory, listing or notice;

While the Governor-in-Council can make an identical regulation that would apply to the ARIN Whois directory, legal certainty and stability are beneficial. Therefore, we would propose the following amendment to Bill C-27 (underlined) :

Publicly Available Information

## Information specified by regulations

51 An organization may collect, use or disclose an individual's personal information without their knowledge or consent if the personal information is

(a) contact information of an individual that appears in a professional or business directory, listing or notice, that is available to the public, where the collection, use and disclosure of the personal information relate directly to the purpose for which the information appears in the directory, listing or notice; or

(b) publicly available and is specified by the regulations.

We respectfully submit the government and parliamentarians should consider the burdensome duty if organizations like ARIN would be required to obtain a revolving and changing number of individual employees' approval to disclose their designated business contact information, when such data is provided from their employer for the purpose of this particular publication, which is clearly in the public interest to provide.

## Partners in privacy

ARIN has a close and collaborative partnership with the Government of Canada as one of the key sovereign states in our service region.


In March, for example, ARIN received a letter reflecting that continued cooperation from the Canadian Minister of Public Safety, which specifically supports ARIN's current Whois as an example of our useful services to Canada for Canadian law enforcement. We look forward to continuing that free service.

## Conclusion

ARIN will continue to monitor and follow the privacy laws and regulations of Canada, the United States, the Commonwealth of Virginia (where ARIN is headquartered), and the local law of the Caribbean countries within the ARIN service area. ARIN's Personal Data Privacy Policy will periodically be refreshed to further elaborate on ARIN's collection and processing of personal data with due regard to evolving privacy norms on the Internet.

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