

From: Bozhidar Bozhanov

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To: "gdpr@icann.org"

Subject: [Ext] Feedback on the proposed models

Hello,

I'd like to give feedback on the proposed models. I think they are based on a misunderstanding of the legal framework and so I think none of them should be adopted. Instead, a more transparent, quite similar to the current WHOIS practices.

I've explained my thoughts here: <https://medium.com/@bozhobg/whois-in-the-gdpr-era-ee069c5b9c56>[\[medium.com\]](https://medium.com/@bozhobg/whois-in-the-gdpr-era-ee069c5b9c56) , but let me draw a few points:

- WHOIS data does not necessarily need to be collected on the basis of consent. Each registrar-registrant relationship is a contract and so depending on the contract contents, data can be published as part of the performance of the contract. E.g. there could be a clause that says "the registrar is obligated to inform the public about the ownership of the domain". There are already examples of that in the world - e.g. phone companies publishing your phone in a phone book (which follows from your contract in some cases)

- WHOIS records can be seen as a public directory. Public directories, contrary to the assumptions made, are not subject of GDPR. They are subject of the ePrivacy directive and the corresponding national legislation. GDPR is not about hiding personal data, it's about processing personal data lawfully and transparently. This may include publishing it fully in public directories, if that is deemed needed (and it is, in the case of WHOIS, for the sake of the transparency of how the web operates)

So I propose a model that relies on a contractual obligation to have the data published, for the purpose of transparency, rather than on consent: and one that does not assume personal data should be hidden. I would also suggest updating the legal analysis by including the ePrivacy directive into the equation.

Best,

Bozhidar Bozhanov