

From: Theo Geurts

Date: Saturday, January 27, 2018 at 02:40

To: "gdpr@icann.org"

Subject: [Ext] Feedback on the proposed models and more.

Dear Mr. Marby,

Below my comments on the proposed models by ICANN and other observations.

Realtime Register B.V. has conducted several data protection impact assessments (DPIA's) since June 2017. While I think we mapped most data flows, I still encounter new situations, which we have previously not been mapped before. This demonstrates how complex our situation is on a registrar level.

Based on our DPIA results, I cannot support the three proposed models by ICANN, mostly due to the fact, to keep most of the WHOIS intact and it's current policies. While I understand the desire and the need it does not help me to reach full data protection law compliance, GDPR is important and most pressing, it is not the only factor I have to be compliant with.

The ECO model based on my assessment, as an interim solution, seems to cover most issues and allows for a short implementation period amongst registrars and registries and goes beyond the GDPR if required and covers more data protection laws.

Scope

<https://www.cnil.fr/en/data-protection-around-the-world>

<https://www.dlapiperdataprotection.com/index.html#handbook/world-map-section>

I assume the above two links are self-explanatory and provide the scope of all the data protection laws that contracted parties are facing. This is a moving target.

Data retention periods

Instead, ICANN setting the data retention periods and putting the ICANN organization in the data controller seat, the retention periods should conform to the applicable law of the contracted parties.

Data Escrow/RDE

Contracted parties still do not have the same level of access to EU based escrow providers as with Iron Mountain.

While there is a firm legal basis for data escrow, storing the data in the USA continues to be a risk.

Transfers, policies, non-public WHOIS

The Interim Model PDF suggests that registrars should access the non-public WHOIS to obtain the data for transfers.

I have researched this option in April 2017, and there are unknown variables here, and in the current setup, data breaches will be a reality.

Mapping all the data flows here will require months of work, and from a technical point of view, I am not even sure we can fix this for all registrars and registries as technical solutions might prove to be complicated.

Consent

Often cited as the silver bullet and while it could be a legal basis, it places a considerable burden on contracted parties and registrants.

In data protection, there is the fundamental principle which is unchanged even in the age of Big Data.

The data subject has to be in control of her/his data, which means for consent, a registrar/reseller will require consent for every each of the data processing activities (even for minor changes in the processing).

To put the above into perspective. The change of the email address of the technical contact could require consent from the data subject due to the location of the registry just for the processing.

Currently, registrars have no automated processes developed to obtain such consent. Development of such automated means will be costly and complicated as those systems need to be able to differentiate between what is personal data or not.

While the GDPR affects most of us, new data protection requirements in other countries released this year prove to be more complicated than the GDPR. Data minimization principles are fundamental to solve those issues in those countries.

To end on a positive note, I do appreciate the proposed models by ICANN, and I see it as a first step in the right direction.

Best regards,

Theo Geurts

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