WHOIS data
The EU legal principles

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WHOIS - preliminary remarks

• Is there a clear definition of what is WHOIS? What data are we talking about? Are we not confusing WHOIS data with registration (customer) data?

• What is the purpose of WHOIS data? This is crucial for determining what data may be included and what uses may be made of that data
1) Must a data subject consent to the collection and processing of his data?

- Personal data may be processed only if:
  - the data subject has unambiguously consented, or
  - there is a contract to which the data subject is a party
  - processing is necessary for compliance with a legal obligation of the data controller
  - necessary to protect the vital interests of the data subject
  - to perform a task in the public interest or in the exercise of official authority
  - legitimate interests of the controller or third parties to whom the data are disclosed except where such interests are overridden by the fundamental interests of the data subject
GNSO questions to GAC

• However:

• Personal data must be:

• processed fairly and lawfully

• collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes

• adequate, relevant and not excessive in relation to the processing purpose

• accurate and, where necessary, kept up to date
GNSO questions to GAC

• 2) Must a data subject consent to the disclosure of his collected data?

  • No, if disclosure was part of the processing purpose, of which the data subject has been informed

  • At the time of collection of data from the data subject he must be informed of the (potential) recipients or categories of recipients of the data
GNSO questions to GAC

3) Can a data subject withdraw his consent to the disclosure of his data?

- In principle yes, but this is not an absolute right - there is room for judging the respective legitimate interests in question; this is first for the data controller to do, at a second stage by the national supervisory authorities and eventually the courts.
- The data subject has a stronger objection right to the use of his data for direct marketing purposes.
• **4) Has a data subject the right to stay anonymous and not disclose his data?**

  • In principle yes, there is a right not to be included in directories; but again this is subject to a balance of legitimate interests evaluation

  • The least privacy intrusive option has to be given priority for serving the specific purpose
GNSO questions to GAC

• Is there any regulation on the transmittal of personal data to other countries that is applicable in connection with domain name registration?

• Not explicitly in this connection, but articles 25 and 26 of Directive 95/46/EC deal with transfer of personal data to third countries and apply to all cases.

• There are various possibilities foreseen to facilitate international transfers of data while ensuring adequate data protection (consent, contracts, important public interest grounds, public information registers).
GNSO questions to GAC

• Does the applicability of the law of your country depend on the location or nationality of the data subject, the registrar, or the registry?

• In principle the law of the country where the data controller is applies; this may be the registrar or the registry

• Where the data controller is established outside the EU but has processing activities facilities/activities inside the EU, the law of the EU Member State where his processing equipment is used applies
Response to old questions

• More accurate data?

• Yes, this is in line with European law - to serve their purpose, data need to be accurate
Response to old questions

- **Bulk access?**
  - No, this is a disproportionate privacy infringing step; unless a very convincing, specific case may be made which has to be followed by due process
  - This applies not only to marketing but to any purpose
Response to old questions

• **Multi-criteria searching?**
  
  • No, privacy-intrusive, disproportionate, general presumption of guilt
  
  • WHOIS not a tool for self-policing by various interests
Questions?

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