
WHOIS data

The EU legal principles

ICANN - GNSO meeting

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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
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GNSO questions to GAC

- 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
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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
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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
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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
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GNSO questions to GAC

- 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
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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)
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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
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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
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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
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Questions?

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