Update on GDPR & ICANN

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Quick Recap

- On May 25, 2018, the GDPR will enter into force, see Art. 99 GDPR.
- As it is a European Regulation, it will apply throughout Europe immediately from this date.
- Other than directives, a regulation does not need to be transposed into national law.
ICANN
- asked for community input resulting in the submission of several proposals
- Published the plan to separate action lines “contractual compliance” and “community work”
- hired Hamilton to write memos
- came up with 4 different models (1, 2a, 2b and 3)
- solicited comment on the models
ICANN
- liaised with external stakeholders including Art. 29 WP
- Received input from the GAC, the EC, Art. 29 WP and many others
- came up with the calzone / cookbook model
- asked the Art. 29 WP for advice on the model and for a moratorium
Today, we will focus on:
- the draft interim model
- the Art. 29 WP response
- real and potential consequences
- conclusions
Key Elements of the Interim Model (slides “stolen” from the ICANN61 session)
<table>
<thead>
<tr>
<th>Data Collection, Processing, and Retention</th>
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<tr>
<td><strong>Collection from Registrant to Registrar</strong></td>
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<td><strong>Data Transfer from Registrar to Registry</strong></td>
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<td><strong>Data Transfer to Escrow Agents</strong></td>
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<td><strong>Data Retention</strong></td>
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<table>
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<th>Applicability</th>
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<td><strong>Must Model be applied globally or only to European Economic Area?</strong></td>
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<td><strong>Registrant Types Affected</strong></td>
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<tr>
<td>Layered/Tiered Access to WHOIS Data: Public WHOIS</td>
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<td>Registrant Name in Public WHOIS?</td>
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<td>Registrant Postal Address in Public WHOIS?</td>
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<td>Registrant Email in Public WHOIS?</td>
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<td>Registrant Phone and Fax in Public WHOIS?</td>
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<td>Admin &amp; Tech Contact Names in Public WHOIS?</td>
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<td>Registrar Must Offer Registrant an Opt-in to Publish Additional Data in Public WHOIS?</td>
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<td>Layered/Tiered Access to WHOIS Data: Non-Public WHOIS</td>
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<td><strong>Accreditation Program for Access to Non-public WHOIS?</strong></td>
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Registrants

Registrars

Registries

Escrow Provider

ICANN (Thin data)

Access, via Website and Port 43

Registrant Data for Public display
- anonymized registrant email or web form
- registrant organization
- registrant state/province & country
- primary & secondary nameserver(s)
- information about Registrar
- creation and expiration date of registration

Non-Public Registrant Data, for:
- GAC & LEA List
- Criteria and/or List
- Individual Governments
- Certification Program
The Art. 29 WP response

- Welcomes layered access
- Welcomes alternative methods to contact registrants (anonymized e-mail, web form, other technical means)
- Purpose limitation, Art. 5 I b GDPR needs to be followed, not given: Purposes pursued by other interested third parties should not determine the purposes pursued by ICANN.
The Art. 29 WP response

- WP takes note of ICANN’s intention to undertake legal analysis – translates to: It is not there yet!
- No bulk access, individual requests
- Binding contractual agreements required between Rys, Rrs and ICANN
- Questions data retention for +2 years beyond the end of the registration
Real and potential consequences

- ICANN has failed to trigger a response from the Art. 29 WP, now there is no detailed guidance that can be operationalized.
- Contracted parties will now implement solutions they deem appropriate to protect them.
- The solutions will not be uniform.
Real and potential consequences

- No central accreditation available (would not have been possible even if there was substantive guidance now)
- More or less manual treatment of disclosure requests
- Accreditation model will not make all current Whois customers happy
Conclusions (my own :-=))

- ICANN needs to sit together with the contracted parties
- Roles and responsibilities need to be discussed, acknowledged and written up
- Art. 29 WP will not write up the concept for ICANN
- A lot of detail is out there (Playbook etc)
JOURNEY & DATA
- Collection question has been neglected, if not ignored
- Controller / processor question has not been solved
- Disclosure of non-public data debate has been driven by interests and emotional arguments, not by legal rationale
- You need purpose / legal basis for every processing activity plus justification for non-EU data transfer

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Different approaches required for private requestors
- IP interests
- Security researchers
- Consumer protection agencies
- Domain traders
- …
Different approaches required for LEAs

- Domestic EU-LEA to domestic Ry/Rr
- Other EU Country-ELA to domestic Ry/Rr
- Non-EU LEA to EU Ry/Rr
- Domestic non-EU LEA to domestic non-EU Ry/Rr
- Third country LEA to domestic non-EU Ry/Rr
Conclusions (my own :-=))

- ICANN should use that detail and get back with a substantive proposal to Art. 29 WP together with CPH reps to discuss legal and operational issues)
- Community process needs to be advanced asap
- We all need to advocate for ICANN‘s role and the MSM
Thank you!

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