

Privacy Protection for Domain Name Registrants at ICANN: Discussion of Factors Important to the Determination of Purpose

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Outline

1. Why is purpose important?
2. What have the data protection commissioners said?
3. Article 29 Opinion 2013
4. Other data protection acts

Importance of Purpose Limitation

- A broad interpretation of the purpose of collection, use and disclosure allows subsequent reuse for different reasons
- Purpose limitation is the first premise of data protection analysis, purpose must be narrow, proportionate

2013 Registrars Accreditation Agreement

1. WHOIS data delivery requirements are stipulated here
2. Registrant data collection and retention requirements for law enforcement purposes (2 years after last contact with registrant)
3. Registrant data escrowed in US for recovery and legal issues
4. Data must be available for bulk processing by third party service providers

Factors in the Analysis

- ICANN is the data controller
- Registrars are data processors with respect to all data mandated by the RAA, data controllers for their customer relations data
- Registries are data processors with respect to the data required by their contracts, including PICs
- Purpose needs to be established in the context of ICANN's mandate and mission

What have the EU DPAs said?

- Art 29: 5/2000 The Use of Public Directories for Reverse of Multi-criteria Searching Services: new purpose not compatible with original
- IWGDPT 2000: Common position on WHOIS: State purpose, restrict data published, restrict marketing and secondary use
- 2003 EC DG15: Note reverse directories, define purpose, proportionality
- 2003 IWGDPT: Letter to ICANN re Names Council WHOIS task force: Notes earlier interventions, define purpose, objection to searching by name

What have the EU DPAs said?

- 2003 Art 29: Opinion 2/2003 on WHOIS: Summary of views expressed so far, response to WHOIS task force
- 2006 Art 29: Letter to ICANN 22/06 Schaar to Cerf re WHOIS discussions: Purpose not defined, data must be limited
- 2007 Art 29: Letter to ICANN 12/03 Schaar to Cerf re WHOIS Task Force: Expresses same concerns as earlier
- 2014 EDPS: Letter to ICANN 17/04 Hustinx to Jeffrey: Data retention practices required by RAA are not in compliance with EU Charter of Rights

Article 29 Opinion 2013

- http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf Prepared as advice concerning the proposed regulation, discusses issues surrounding purpose limitation

Other Jurisdictions

- Revised OECD Guidelines: Purpose Specification Principle
- 9. The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.
- Must be read in conjunction with other principles

Other Jurisdictions

- Canada:
- Appropriate purposes
- 5(3) An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.
- Must be read in conjunction with CAN/CSA-Q830-96 Principle 4.2 Identifying Purposes

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Proposed Solutions: Purpose

- Purpose of RDS data collection, use and disclosure (processing) must match narrow ICANN remit
- Public safety actors and private sector security firms want easy public access to data, but is lawful investigation and trade mark enforcement a purpose of registration data collection?
- Risk of purpose of RDS data collection being broadened through “public interest commitments” (PICS) in new top level domains
- Language barriers: use case vs purpose of processing: we need to understand how the different communities discuss data processing so that we can have a more effective dialogue

Questions?

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