



Update on GDPR & ICANN

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YESTERDAY. TODAY. BEYOND TOMORROW.



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

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Key Elements of the Interim Model (slides “stolen” from the ICANN61 session)

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Data Collection, Processing, and Retention

Collection from Registrant to Registrar

Full Thick data

Data Transfer from Registrar to Registry

Full transfer of data collected

Data Transfer to Escrow Agents

Full transfer of data collected

Data Retention

Life of registration + 2 years (Note: existing waivers for

Applicability

Must Model be applied globally or only to European Economic Area?

Must be applied to EEA, may be applied globally, subject to a data processing agreement between ICANN and the contracted parties

Registrant Types Affected

Registrations of natural and legal persons

Layered/Tiered Access to WHOIS Data: Public WHOIS

Registrant Name in Public WHOIS?	Only Registrant Organization (if applicable) in public WHOIS (not Registrant Name)
Registrant Postal Address in Public WHOIS?	Only Registrant State/Province and Country in public WHOIS (not Registrant street, city, postal code)
Registrant Email in Public WHOIS?	Create anonymized email or a web form to contact registrant
Registrant Phone and Fax in Public WHOIS? Admin & Tech Contact Names in Public WHOIS? Admin & Tech Contact Postal Addr Publi?	No
Admin & Tech Contact Email in Public WHOIS?	Create anonymized email or a web form to contact Admin and Tech contacts
Admin & Tech Contact Phone Public WHOIS?	No
Registrar Must Offer Registrant an Opt-in to Publish Additional Data in Public WHOIS?	Yes

Layered/Tiered Access to WHOIS Data: Non-Public WHOIS

Self-certification Access to Non-public WHOIS?

No. Create anonymized email address or a web form to contact registrant or due process

Accreditation Program for Access to Non-public WHOIS?

Yes, in consultation with the GAC. Individual countries to provide GAC a list of authorized law enforcement and other governmental authorities to have access. GAC to develop code of conduct for non-law enforcement agencies to abide by for access to non-public WHOIS data

Registrants



Registrars



Registries



Data 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

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

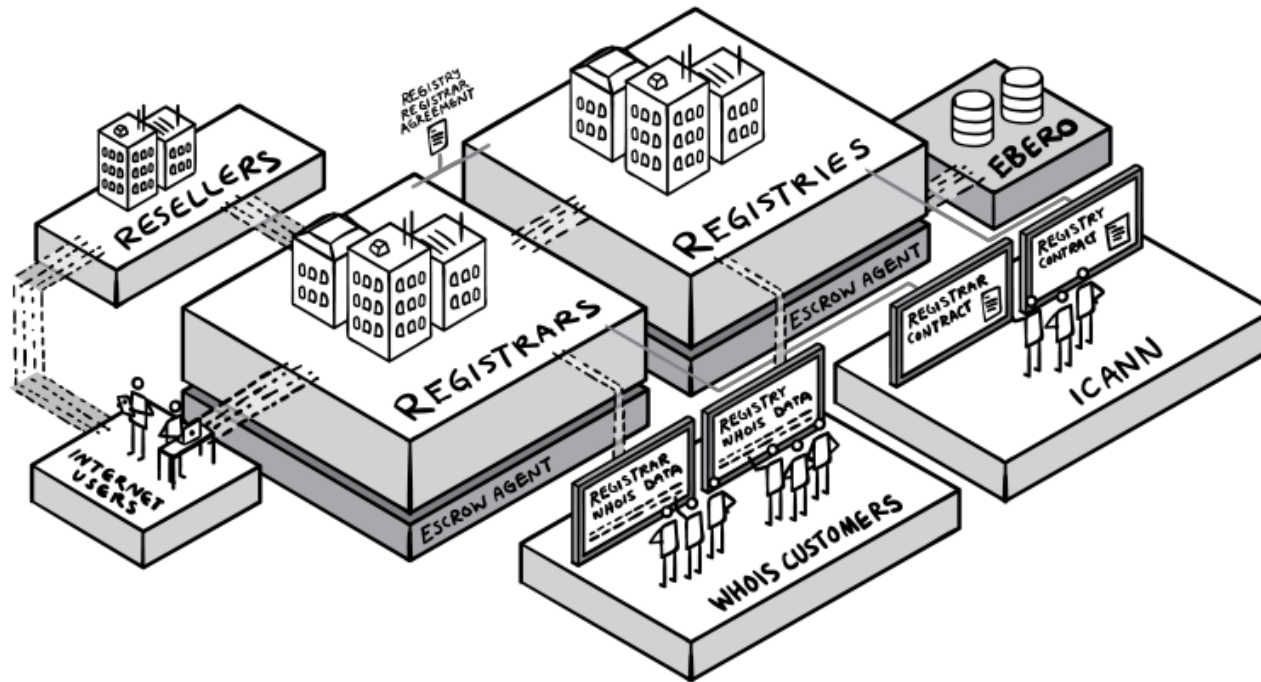
Real and potential consequences

- 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



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- 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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