

Newsletter from DK Hostmaster – February 2018

## From data processor to data controller

DK Hostmaster held a registrar meeting on 18 January, where a number of planned changes to the registrar agreement were presented and discussed. One of the changes is that DK Hostmaster will consider registrars as individual data controllers when it comes to processing the personal data needed to perform the obligations under the registrar agreement. As promised during the meeting, we are hereby sending you all a summary of the reasoning behind this change.

This should most likely not mean much in terms of technical or organizational setup with each registrar, since most – if not all – registrars are currently data controllers for a range of personal data already. However, it does mean that registrars should be aware of their responsibilities for processing of the personal data under the registrar agreement. For example, data controllers and data processors have different responsibilities in case of a data breach.

### The “as-is”

The current registrar agreement contains a number of provisions governing the registrar's processing of personal data. The provisions are designed as a data processing agreement under the assumption that registrars are data processors.

This way of looking at the relationship between the registrars and DK Hostmaster requires that a data processing agreement exists. When the GDPR comes into effect on May 25, the requirements for the contents of a data processing agreement increases.

### The “to be”

A review of the registrar agreement has given rise to considerations on whether registrars are actually independent data controllers under the registrar agreement. The difference in practice is whether a party is directly responsible to the data subject for its own processing of data. Also, the data controller is free to decide on the purposes and means for which he processes the data.

The distinction between a data controller and a data processor or between two individual data controllers is not straightforward. However, a recent guideline on the topic from the Danish Data Protection Agency sheds some light on the question. The guideline, which can be read [here](#) (in Danish only), describes the conditions to be emphasized when determining whether you are a data processor or data controller and illustrates the differences with a number of examples.

The reason behind the need for the distinction is to ensure that the data subject does not fall between the cracks and thus left unprotected because the data controllers or processors are

not sufficiently aware of their roles. It is DK Hostmaster's opinion that individual controllership is the best way to ensure the rights and protection of data subjects.

Data processor or data controller?

According to the GDPR, the controller determines the purpose of and means for the data processing.

### **Purpose of processing**

The purpose of the registrar agreement is to set the framework for registration and administration of domain names, including, in particular, giving registrars the right to act as a distributor of domain names to registrants. In this regard, the agreement requires a registrar to transfer personal data about the registrant in order for DK Hostmaster to establish contact with the registrant in order to establish an agreement.

The registrar agreement thus contains an element of data processing, but it cannot be said to be the primary purpose. The moment the registrar has transferred the data to DK Hostmaster, the registrar no longer needs to process this data on behalf of DK Hostmaster. Thus, it would seem artificial to perceive the registrar as a data processor for the remaining contract period and having DK Hostmaster decide on the requirements for registrar's technical and organizational setup for data processing etc.

The parties' purposes for processing data is also different. In some cases, a registrar does not need all the data required by DK Hostmaster to establish its own customer relationship. This data is therefore collected only because DK Hostmaster requires this in the registrar agreement. Thus, both parties determine the purpose of the collection and subsequent processing individually.

### **Who decides on the important processing steps?**

According to the guideline, it is a decisive factor for determining the relationship whether one party solely determines the most important processing steps, including collection, deletion, disclosure and use of subprocessors. While DK Hostmaster determines that registrars must collect and transfer the data, the registrar decides on all processing steps after the transfer which also points to an individual controller setup.

### **Why individual controllers?**

If the parties process personal information between them and each of them are responsible for their own processing, they should be considered individual controllers. For example, if there is an exchange of information between the parties but each party decides on the purpose of processing. The relationship between registrars and DK Hostmaster means that for the most part, each party individually decides on the purpose of and means for processing.