

Newsletter from DK Hostmaster – March 2018

DK Hostmaster, data processor vs. data controller

Background

DK Hostmaster recently announced that when the new registrar agreement enters into force, registrars are no longer considered data processors but rather individual data controllers. This has led to some questions regarding the conditions for when a party is a data controller and what responsibilities come with this role.

Data processor vs. data controller

Based on the definitions of a data controller and processor in art. 4 (7) and 4 (8) of the GDPR, the assessment on whether a party is a data processor or controller should be based on whether one party decides the purpose(s) and the means of processing.

Registrars process data for DK Hostmaster as this is an obligation in the registrar agreement in order to enable DK Hostmaster to establish a customer relationship directly with the registrants. Thus, DK Hostmaster decides part of the purpose of the processing. However, the registrar also decides the purpose of processing (at least some of) the data since it is needed in order to establish a contract with the registrant. Neither does DK Hostmaster decide the means of collecting the personal data from the registrant.

One of the decisive factors for deciding whether there is a data processor setup, is whether a processing of personal data is done by another party while as a data controller one party continues to decide on the purpose and on the most important processing steps, including collection, deletion, disclosure and use by any sub-processors. In the relationship between DK Hostmaster and a registrar, DK Hostmaster does not – and has no reason to – decide on the most important processing steps in the lifecycle of the personal data collected by a registrar after it is transferred to DK Hostmaster.

It is also important to look at the purpose of the contract between the parties: is the purpose data processing or is the data processing accessory to the actual purpose of the agreement? The main purpose of the registrar agreement is not to process data on DK Hostmaster's behalf, but to enable the registrar to sell the right of use of domain names to registrants and to enable DK Hostmaster to establish a contractual relationship with the

registrants. Thus, the relationship between DK Hostmaster and a registrar is that of individual data controllers seen from a GDPR perspective.

What are the obligations of a data controller?

At a registrar meeting held by DK Hostmaster on 26 February 2018, the new registrar agreement draft was discussed and some registrars requested more information on the consequences of being an individual data controller.

A data controller is the primary responsible party for the overall handling of the personal data in question. The data controller is responsible for reporting to the data protection agencies in case of data breaches etc. The data controller is also directly responsible for making sure that the data subject (the registrant) can exercise his or her rights under the GDPR (right of access, right to be forgotten etc.).



Who is responsible for what and when?

In essence, this just means that all registrars have a responsibility to handle all personal data collected due to the registrar contract as they handle other personal data that is processed for the registrar's own purposes. Sometimes, this data will be the same but for some registrars, not all data requested by DK Hostmaster is necessary for registrars to process in other areas of their business.

A registrar's responsibility as an individual data controller begins when the registrar collects the personal data on a registrant as requested in the registrar agreement. When a registrar transfers this data to DK Hostmaster, DK Hostmaster also becomes a data controller for that data.

This means that both the registrar and DK Hostmaster are considered data controllers for the same data set. This also means that each party is responsible to the registrant for their own data set. However, the registrar is not responsible for DK Hostmaster's processing of the data in question – only

its own data set. Thus, the registrar is not responsible to the registrant for keeping DK Hostmaster's data correct and up to date. To give another example, the registrant is not responsible to the registrar for providing access to DK Hostmaster's data if the registrar sends a request for access to the registrar.

What does this mean for registrars?

Each party simply has the responsibilities of a data controller as set out in the GDPR. This also means that a registrar has the right to delete the data if the registrar has no other obligations to retain it.

As both the registrar and DK Hostmaster are individual data controllers, there is no need for a data processing agreement and no obligations for DK Hostmaster to set out specific requirements for the technical and organizational data protection practices for each registrar and to conduct auditing thereof. Hence, the registrar only has to comply with its own practices of data protection.