

Publication of personal information about agents for domain registrars

Date: 28-03-2019

Decision

The Danish Data Protection Agency has issued an order to DK Hostmaster A / S to cease publishing personal information about agents for domain name registrars in the WHOIS database.

Journal number: 2018-31-0455

Summary

The Danish Data Protection Agency has dealt with a complaint in which a person working in an IT function often performs the duties of a clerk for one or more domain name registrars. In this connection, the person's personal information has been published by DK Hostmaster in the WHOIS database.

On 28 March 2019, the Danish Data Protection Agency made a decision in the case and ordered DK Hostmaster to stop publishing personal information about complaints as a proxy for one or more domain name registrars as well as personal information about proxies for domain name registrars in general.

In the opinion of the Danish Data Protection Agency, the publication of this information was not necessary for the performance of a task in the public interest, just as the processing of the information was not limited to what was necessary in relation to the purposes for which the information was processed.

Decision

The Danish Data Protection Agency hereby returns to the case where [complainant] on 10 July 2018 complained to the Danish Data Protection Agency that DK Hostmaster A / S publishes personal information about him in the WHOIS database in connection with him being a proxy for several domain name registrars.

1. Order

The Danish Data Protection Agency finds that the processing of personal data in question is not in accordance with Article 5 (1) of the Data Protection Regulation [1]. Article 6 (1) (c) and Article 6 (1) 1, letter e.

The Danish Data Protection Agency must then issue an order to DK Hostmaster A / S to stop publishing personal information about complaints as a proxy for one or more domain name registrars as well as personal information about proxies for domain name registrars in general. The order is issued pursuant to Article 58 (1) of the Data Protection Regulation. 2, letter d.

The deadline for compliance with the order is 25 April 2019. The Danish Data Protection Agency must request no later than the same date to receive a confirmation that the order has been complied with.

According to the Data Protection Act [2] § 41, para. 2, no. 5, is punishable by a fine or imprisonment for up to 6 months for anyone who fails to comply with an order issued by the Danish Data Protection Agency pursuant to Article 58 (1) of the Data Protection Regulation. 2.

2. Case presentation

It appears from the case that complainants originally on 18 November 2016 complained to the Danish Data Protection Agency that DK Hostmaster published personal information about him in the WHOIS database in connection with him being a proxy for several domain name registrars.

By letter dated 26 April 2017, the Danish Data Protection Agency forwarded the complaint to the Danish Business Authority, as questions concerning the WHOIS database as a starting point fall within the Danish Business Authority's remit.

On 12 June 2017, the Danish Business Authority made a decision in the case before the Danish Internet Forum (which owns DK Hostmaster) and found in this connection that the Danish Internet Forum is not with reference to section 18 of Act no. 164 of 26 February 2014 on internet domains entitled to publish the name and address of a representative via the WHOIS database.

Complaints have since 10 July 2018 complained to the Danish Data Protection Agency, as DK Hostmaster continues to publish personal information about agents for domain name registrars, including complaints.

2.1. DK Hostmaster's remarks

In response to the Data Inspectorate's request of 13 September 2018, DK Hostmaster on 4 October 2018 issued a statement in the case:

"DK Hostmaster processes information about complaints by virtue of its role as representative for a number of .dk domain names. Some of this information is subject to the definition of personal data in the Data Protection Regulation. This is the following information:

user ID (unique identification number that identifies the person in DK-Hostmaster's IT systems),

name,

address,

phone number.

DK Hostmaster has published the above-mentioned personal information on the Internet in the WHOIS database. It is noted that the complainant's telephone number was only published until 18 November 2016, after which this has not been published for technical reasons. The other information is still published in connection with the active .dk domain names for which the complainant is a proxy.

There are several purposes for publishing information in WHOIS, including in particular:

to create openness for a primarily technical contact to the person / persons behind a domain name, for example if the content of the domain name is not available, or if a third party commits cybercrime from the domain name,

to create transparency about who is behind the content of a domain name, so that the person (s) can be contacted with a view

to asserting any liability for content on a website. This consideration is the basis for section 18 of the Domain Act, according to which DK Hostmaster has a duty to publish the name, address and telephone number of all persons who have the right to use a .dk domain name (called "registrants"). § 18 is a continuation of the former Domain Act § 8, of which it appears in the preparatory work:

"The committee's starting point for the introduction of the provision has been to create a high-quality domain with as much transparency in the area as possible. Everyone should be able to find out the identity of a registrant and thus who was behind a specific internet domain name. The provision should, among other things, help to limit gross websites as well as harassment on websites, etc., as registrants were not anonymous in principle. "

It remains DIFO's purpose to remain a high quality domain, and the need for transparency, including for crime prevention purposes, has diminished. The threat posed by cybercrime is a growing global problem, and DIFO sees it as one of its main objectives to help curb this threat within its business area. It is therefore DIFO's view that the transparency created by publishing registrants' contact details should also include agents, as this role is intended for persons who carry out - or contribute significantly to carrying out - the activity on a domain name.

DIFO / DK Hostmaster therefore considers that the above-mentioned personal information about agents can be published on the basis of Article 6 (1) of the Data Protection Regulation. 1, letter e. According to the Domain Act, DIFO / DK Hostmaster has a duty to ensure a .dk domain of high quality and with as much transparency as possible, especially to help limit crime on the Internet. It is DIFO / DK Hostmaster's opinion that this is a task that is performed in the interest of society and not least a task

of such a significant nature that the consideration of individuals' interest in not having their contact information displayed publicly should give way to this.

It is noted in this connection that registrants and agents have the opportunity to have their contact information from WHOIS hidden by choosing name and address protection in CPR. The specific significant reasons that a person may have for not wanting the publication of his contact information are thus taken into account pursuant to this option.

It is noted in this connection that DK Hostmaster decided on 21 June 2018 to no longer publish user IDs in WHOIS, and that this change is expected to be implemented within a short time.

It is also noted that with effect from 19 December 2017, DK Hostmaster has changed its terms for the right to use a .dk domain name, and that in this connection the wording of the provision regarding publication of proxies' contact information has been tightened.

It now follows even more clearly from DK Hostmaster's new terms that it is a prerequisite for the assignment of the role as proxy that a proxy accepts the role, including that DK Hostmaster publishes the proxy's name, address and telephone number in WHOIS.

When a person receives a request to accept the role of proxy, it is also very clear from this request that the proxy's contact details are published in WHOIS. This change has been made to create increased information for the clerk about the processing of his personal data. It is noted that DK Hostmaster has not made this change with a view to basing the publication of personal data on the consent of the proxy. "

2.2. Complainant's remarks

Complainants have initially stated that as part of his job he is a proxy for several domain name registrars.

Furthermore, complainants have stated that DK Hostmaster publishes his private contact information rather than his professional contact information, which according to complainants is otherwise the standard for other domain names.

Complainants have further stated that the duty as a proxy for a domain name is typically a technical function performed by employees of an IT function, and that proxies thus have no direct influence on how the domain is used, as they are not owners of the domain. .

Complainants have stated below that the position is part of his job function and that he can therefore not opt out of being a representative for a domain name.

Similarly, complainants have stated that it is not fair for him to have name and address protection in order to avoid having his personal data published in connection with a regular IT job.

Complainants have finally referred to the fact that the administrator of domain names in i.a. Germany only discloses personal information according to individual documentation, and that the administrator in Sweden does not disclose information at all.

Justification for the Danish Data Protection Agency's decision on injunctions

The Danish Data Protection Agency considers that the publication of personal data on complaints in connection with the fact that he is a representative of one or more domain name registrar (s) is not necessary for the purpose of performing a task in the public interest and thus cannot take place pursuant to Article 6 of the Data Protection Regulation. , PCS. 1, letter e.

Furthermore, the Danish Data Protection Agency finds that DK Hostmaster's processing of personal data on complaints is not limited to what is necessary in relation to the purposes for which the data is processed, cf. Article 5 (1) of the Regulation. 1, letter c.

The Danish Data Protection Agency finds below that DK Hostmaster has not sufficiently explained the need to publish personal information about complaints in connection with complaints being a proxy for one or more domain name registrar (s).

In this connection, the Danish Data Protection Agency has emphasized that any civil or criminal liability for content on a domain name will in principle have to be asserted against the registrant of the website and not his representative. In the Authority's view, this consideration has been met by e.g. the Domain Act, section 18, subsection 2, according to which the administrator is obliged to publish personal information about the registrant of a domain name.

The Danish Data Protection Agency has also emphasized that the Danish Business Authority has decided that section 18 (1) of the Domain Act 2, does not also imply an obligation to publish personal data about a proxy for the registrant.

It also appears from pkt. 8.2. in DK Hostmaster's terms and conditions for the right to use a .dk domain name, that a proxy may dispose on behalf of the registrant, including changing name servers and changing payers, and that notifications from DK Hostmaster regarding the actions that the proxy has access to perform on behalf of the registrant, is sent only to the agent.

Against this background, the Danish Data Protection Agency is of the opinion that a representative in relation to a domain name has access to act on behalf of the registrant in relation to DK Hostmaster, including setting recommendations regarding the domain name and making payment for it. However, in the opinion of the Danish Data Protection Agency, this does not mean that an agent for a registrant is the person who handles - or contributes significantly to handling - the activity on a

domain name.

The Danish Data Protection Agency has also emphasized that the pursued purposes can be achieved with less intrusive means, including by passing on personal information about agents on request rather than publishing the information on the Internet.

The Danish Data Protection Agency notes below that pkt. 7.2. DK Hostmaster's terms and conditions for the right to use a .dk domain name state that DK Hostmaster may, upon request, provide information about a registrant or about a registered domain name to natural and legal persons who have documented being entitled to do so pursuant to Danish law.

Finally, the Danish Data Protection Agency notes that the European Data Protection Council in relation to the global WHOIS database administered by ICANN, most recently by letter dated 5 July 2018, has stated, among other things: following:

"The EPDB considers that registrants should in principle not be required to provide personal data directly identifying individual employees (or third parties) fulfilling the administrative or technical functions on behalf of the registrant. [...] It should therefore be made clear, as part of the registration process, that the registrant is free to (1) designate the same person as the registrant (or its representative) as the administrative or technical contact; or (2) provide contact information which does not directly identify the administrative or technical contact person concerned (e.g. admin@company.com). "

Following an overall assessment of the above circumstances, the Danish Data Protection Agency finds that DK Hostmaster's publication of personal data on complaints in connection with its duties as a representative for one or more domain name registrars is not in accordance with Article 5 (1) of the Data Protection Regulation. Article 6 (1) (c) and Article 6 (1) 1, letter e.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation). [2] Act no. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data (the Data Protection Act).