

Afilias – Key Data Protection (Registrant Data)

1. Introduction

The following is a high level overview of the key compliance measures implemented by Afilias in order to comply with its obligations under data protection law. As an Irish incorporated company, the primary relevant legislation is the Irish Data Protection Acts 1988 and 2003 (“DP Acts”). However, the data protection legislation of other jurisdictions may apply to Afilias from time to time.

The rules pursuant to the DP Acts vary depending on whether an entity is a data controller or a data processor of the personal data that it processes. Afilias is considered both a data controller and data processor of personal data processed by it as described below. In its capacity as a Registry Operator for a Top Level Domain (TLD), Afilias is generally considered to be acting in the capacity of a data processor in relation to personal data of Registrants processed by it, with the relevant Registrar being a data controller. Afilias’ responsibilities in this regard are to a large degree set out in the various ICANN Agreements pursuant to which its main function in relation to the data is to collect that which is supplied to it by the Registrars and to collate it into a usable database that can be accessed for particular services to include WHOIS services.

2. Data Controller

In brief, a data controller is a legal entity which controls and is responsible for the keeping and use of personal data. Afilias is the data controller of information that it collects in relation to its employees or other personal data that it collects independently of its position as a data processor, for its own uses and purposes.

3. Data Processor

A company which holds or processes personal data (being data which can identify a living individual), on behalf of a data controller, but does not exercise responsibility for or control over the personal data, is a “data processor”.

Generally, a data processor has separate legal personality from a data controller for whom they are processing personal data. Data processors are contracted to provide particular data processing services for a data controller. “Processing” is extremely widely defined and covers all dealings in data such as storing, recording, keeping, disclosing, retrieving or using.

4. Responsibilities of Data Processors

Unlike data controllers, data processors have limited responsibilities under the DP Acts. Of most concern, Afilias is responsible to ensure that personal data is kept secure from unauthorised access, disclosure, destruction or accidental loss. The details of the written contracts relevant to Afilias’ processing of Registrant personal data are set out below under the heading “ICANN Agreements”.

The measures put in place in order to satisfy the requirements of ensuring appropriate security measures, a number of factors have been taken into consideration by Afilias:

- The current state of technological development and technical security measures; these measures are reviewed over time.
- The costs of implementing security measures.
- The harm that might result from any unlawful processing (such as access, disclose or use).
- The nature of the data concerned. For example, there will be a greater duty of care given to the processing of sensitive personal data (which is defined as including information as to race, physical or mental health, political opinions or religious or philosophical beliefs). Afilias has no plans to collect such data.

Afilias staff are aware of security measures and appropriate training is in place. Audit trails and logs produced through third-party customer relations software services are combined with internal audit and review procedures to ensure that staff comply with these measures.

5. ICANN Agreements

The following are the key provisions from the ICANN Agreements relating to data protection with which Afilias must comply.

5.1 *Registrar Accreditation Agreement between ICANN and the Registrar*

Clause 3.5 of this agreement indicates that the Registrar claims all rights and exclusive ownership in the personal data collected to include the name and address of the Registered Name Holder, the name, postal address, email address, voice telephone number and fax number of the Technical Contact and of the Administrative Contact. The Registrar also agrees to grant non-exclusive, irrevocable, royalty free licences to make use of and disclose the data elements mentioned above for the purpose of providing a service or services providing interactive, query based public access (WHOIS services). Clauses 3.7.7.4 – 3.7.7.8 and Clause 5.8 provide indications that the Registrar is a data controller and owner of the personal data provided to it in relation to the registration of a particular domain name within the TLD.

5.2 *Registry-Registrar Agreement between Afilias and the Registrar.*

This agreement provides that Registrars will provide internet domain name registration services for the applicable TLD, and Afilias shall provide the Registrar access to the registry system that it operates. Clause 2.6 provides that Afilias shall notify the Registrar of the purposes for which personal data submitted to it by the Registrar is collected, the intended recipients, and the mechanisms for access to and correction of the data. In addition Afilias is required to take reasonable steps to protect the personal data from loss, misuse, unauthorised disclosure, alteration or destruction.

Clause 3.6 of the same agreement provides that the Registrar will grant Afilias a non-exclusive, non-transferable, limited licence to the personal data for the propagation of and the provision of authorised access to the TLD Zone files and as otherwise required in Afilias' operation of the the TLD. Exhibit "E(II)" of the agreement provides that the Registrar shall require each Registered Name Holder to consent to the use, copying, distribution, publication, modification and other processing of Registered Name Holders personal data by Afilias and its designees and agents in a manner consistent with the purposes specified pursuant to subsection 2.6 (mentioned above).

6. Conclusion

Afilias is obliged to take reasonable steps to protect personal data from loss, misuse, unauthorised disclosure, alteration or destruction. Furthermore, Afilias is not provided the right under its agreement with ICANN to use or authorise the use of the personal data in a way that is incompatible with the notice provided to the Registrars. In addition, Afilias is not entitled to claim any intellectual property rights in data supplied by or through the Registrars. The purpose of this policy is to indicate that Afilias' sole function in relation to the data supplied to it by the Registrars is to collate it into a usable database that can be accessed for particular services to include WHOIS services. No ownership in the personal data passes to Afilias.