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Data protection at BOIP

Impact of GDPR and other related questions

Hugues Derème hdereme@boip.int



<u>Agenda</u>



The GDPR at BOIP

- Benelux Office for Intellectual Property
- Application of the GDPR
- Implementation

Data protection in an IP Office – related issues









- Official body for registration of TM and DS (+ i-Depots) in the three Benelux countries (indivisible titles)
- Independent international organization; legal personality at (inter)national level
- Diplomatic statute, privileges and immunities, Headquarters Agreement
- ➢ 3 organs, 1 Treaty, 4 official tasks
- Financial autonomy

Benelux Organisation for IP











Execution of BCIP: 3 pillars

TRADEMARKS

- Application
- Publication
- Refusal on AG
- Opposition
- Registration
- Cancellation
- Modifications
- Renewal

DESIGNS

- Application
- Publication
- Registration
- Modifications
- Renewal

IDEAS

- i-DEPOT
- Extension
- Publication









In our daily work, we do collect a lot of data

- Mostly in the framework of our official tasks
- Mostly from corporate entities

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- → Name and addresses of users (→ public registry)
- → Contact data (phone, email)
- → Bank data
- → Third parties (oppositions, licenses, etc.)









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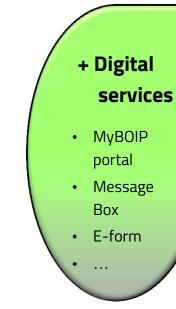
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- → Bank data





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- Mostly from corporate entities





→ Name and addresses
→ Contact data (email)
→ Possibly bank data

+ Of course: staff BOIP, suppliers, visitors, relations, participants workshops, etc.

+ Data in execution of tasks on behalf of NL (CaribIE and SXM)



1.

Application of GDPR?

- 2. "Personal data" = natural persons > < most IPR applicants
 - ightarrow levelling data protection for users

CONCLUSION

Application of GDPR with balance in rights and interests BOIP official mission (TM/DS) requires publicity and free access No consent required from users for data processing



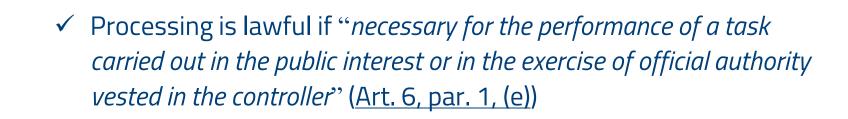


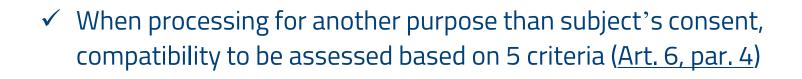


Regime of GDPR?

Processing is lawful if "necessary for compliance with a legal obligation to which the controller is subject" (Art. 6, par. 1, (c))











Regime of GDPR?

Processing is lawful if "necessary for compliance with a legal
 obligation to which the controller is subject" (Art. 6, par. 1, (c))

Processing is lawful if "necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller" (Art. 6, par. 1, (e))

✓ When processing for another purpose the compatibility to be assessed based on 5

BCIP, Art. 1.3 + Titles II, III, IV





Implementation

Special attention to Art. 5:

- Lawfulness, fairness and transparency (par. 1, (a))
- Purpose limitation (par. 1, (b)): for specified, explicit and legitimate purposes
- Data minimisation (par. 1, (c)): limited to what is necessary
- Integrity and confidentiality (par. 1, (f)): appropriate security









Specific cases (1)

In the framework / As a continuation of its primary mission, BOIP performs different other tasks.

- [Searches] \rightarrow deleted as of Sept. 1st, 2019
- Subscriptions
- Datolite

Necessary for compliance with a legal obligation (Art. 6, par. 1, (c)), based on Implementing Rules completing the BCIP; assessment of compatibility with original purpose





Specific cases (2)

In the framework / As a continuation of its primary mission, BOIP performs different other tasks.

- Workshops
- Surveys
- Online tools (<u>ThatsIP</u>, etc.)

→ Necessary for the purposes of the legitimate interests pursued by the controller (Art. 6, par. 1, (f)) + possibly Art. 6, par. 1, (e)









Implementation of the GDPR (1)

Compliance measures in relation with primary tasks:

- ✓ Internal procedures to comply with right of access (Art. 15), right to rectification (Art. 16), right to object (Art. 21)...
- ✓ Record of processing activities (Art. 30)
- ✓ Art. 37, par. 1, (a): data processing carried out by a public authority or body → designation of a Data Protection Officer
- Data breach protocol, notification to supervising authority (Art. 33-34)





Implementation of the GDPR (2)

Other measures:



- ✓ GDPR in combination with online services → modification of Privacy Policy (part of General Terms & Conditions)
- ✓ GDPR in combination with paperless work streams → new policy for retention time of documents
- ✓ GDPR in combination with security policy → new rules for visitors' registration



✓ HR policy (like any organization), internal communication...









Data Protection: related issues

In an IP Office, where publicity and free access to data are requirements for most primary tasks (opposability to third parties), the "balance" (4th recital Regulation 2016/679) between the right to protection of personal data and other interests at stake might be delicate to find...





















Data in (TM/DS) register

Is it necessary / useful / desirable to show contact data (address) of TM applicants/owners in the register?

- In the light of Art. 5, par. 1, (c): "limited to what is necessary"...?
- Not a formal requirement according to international treaties
- Triggers bad faith practices (e.g. unsolicited invoices for TM renewals)
- DPMA is currently the only IP Office in the EU making address data invisible to the public
- ... What do you think?

















Public databases

Is it compliant / desirable that (all) IP Offices worldwide make their data available through unofficial databases?

- Next to the official public registers, not in relation with (legal) opposability
- Coming extension of content and functions for purposes of search reports
- EUIPO's plan to use blockchain technology to exchange information with IP Offices



... What do you think?

















Assessment of novelty in DS

Is the right 'to be forgotten' compatible with the (legal) concept of novelty as applied in IP?

- Erasure of data from registers after expiration of design protection?
- Novelty of designs is assessed based on prior art, inter alia other registered (possibly expired) IPR
- Public character as an original condition of legal validity



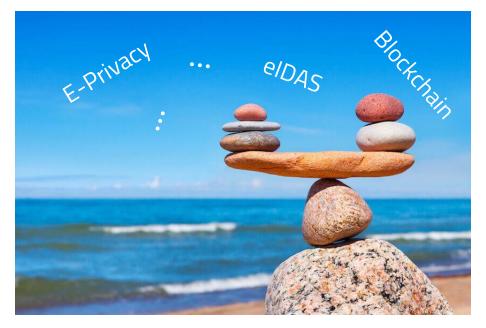
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Thank you for your attention!

