

BOIP



Benelux Office for
**Intellectual
Property**

www.boip.int



Your idea deserves IP

Trademarks
Intellectual Patents
Property Designs
Copyright Ideas





Data protection at BOIP

Impact of GDPR and
other related questions



Agenda

The GDPR at BOIP

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

Data protection in an IP Office – related issues



Benelux Organisation for IP

- 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





Execution of BCIP: 3 pillars

TRADEMARKS

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

DESIGNS

- Application
- Publication
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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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**+ Digital
services**

- MyBOIP portal
- Message Box
- E-form
- ...

- 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)



Application of GDPR?

1. EU Regulation > < International organization and immunity of jurisdiction?
→ application of legislation applicable in the host country / BCIP parties
2. “Personal data” = natural persons > < most IPR applicants
→ 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))
- ✓ 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 than subject’s consent, compatibility to be assessed based on 5 criteria (Art. 6, par. 4)



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**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] → *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 (ThatsIP, 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...



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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?



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TMview
DesignView



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?

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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

... What do you think?





Conclusion & next steps?



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Thank you for your attention!

