Summary of Article 29 Data Protection Working Party Opinion 01/2010 on concepts of “controller” and “processor” 00264/10/EN WP 169 adopted Feb., 2010

This Opinion from the Article 29 group summarizes the interpretation of the concept of “data controller” and “data processor”, which are key concepts in the Directive 95/46/EC and therefore present in all national data protection laws in the EU. The data controller was introduced as a concept in the Convention 108 (1981) but when the Directive appeared in 1991, finalized in 1995, the concept was broadened to allow for the existence of joint control, and the new concept of a data processor operating under instructions from the data controller. This takes into account the reality of modern ICTs, the existence of multiple organizations performing specific functions in the data processing life cycle, and plays an important role in allocating responsibility under the Directive.

Briefly, the determination of who the data controller is rests on the following issues taken from the definition in the Directive:

* “the natural or legal person, public authority or any other body”
* “which alone or jointly with others”
* “determines the purposes and means of the processing of personal data”.

Concrete factual analysis is required in order to determine who actually determines the requirements surrounding the data processing. Whether the data processing is lawful or not is not relevant to the determination of who the controller is. A “processor” means “a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller”. Since the Directive provides for different accountabilities and responsibilities for the different roles, distinguishing which role an actor is playing is important. It is also important in determining which national law applies; for instance with respect to security measures for processing, it is the state wherein the data processor resides.

The opinion is helpful in interpreting the various letters and opinions which ICANN has received from the European Data Protection Authorities, as the responsibilities of data controllers and processors are implicit in those documents, not necessarily spelled out in detail.