

THE IMPACT OF THE PROTECTION OF PERSONAL INFORMATION ACT ON SOUTH AFRICA DOMAIN NAME REGISTRATION AND MANAGEMENT

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ABSTRACT

This paper serves as a concise guide for domain name management within the framework of the Protection of Personal Information Act 4 of 2013 (POPIA), offering insights into privacy, legal requirements, and practical compliance measures in the digital era. POPIA in South Africa profoundly impacts privacy rights, especially in the digital age. This paper explores how POPIA intersects with domain name management, highlighting its key provisions and implications for key role players in the domain namespace, including registries, administrators, operators, registrars, and registrants. POPIA safeguards the right to privacy while acknowledging its limitations, per Section 36 of the Constitution of South Africa. Key POPIA provisions include consent, data minimization, data security, and data transfers. For domain registries, administrators, operators, and registrars, POPIA compliance entails additional costs, geared towards ensuring transparency, and accountability in the value chain. Data subjects gain rights to access and remove their personal information, adding to compliance obligations. To achieve compliance, the key role players should update policies, conduct data mapping, enhance data security, and provide training on data protection.

Keywords: Privacy, Domain Name Management, Data Protection, Consent, Data Security, Compliance, Transparency, User Rights, Data Transfer, Data Minimization and the Fourth Industrial Revolution

1. INTRODUCTION

Privacy is a human need that is as old as the writing of Greek philosophers, a conversation between solitude and seclusion.¹ In response to the rest of the world in protecting the right to privacy in this digital age of the Fourth Industrial Revolution, South Africa enacted the Protection of Personal Information Act 4 of 2013 (POPIA). POPIA or the Act applies to processing personal information relating to an identifiable, living, natural person and, where it is applicable, an identifiable, existing juristic person.²

Continuous technological advancements remain essential in addressing POPIA concerns; the domain name management landscape is not immune to these concerns. In the earlier decades, organizations and individuals primarily focused on registering top-level domains (TLDs) like '.com' or country code top-level domains (ccTLDs) such as '.co.uk.' However, the introduction of generic top-level domains (gTLDs) has expanded the range of options for registrants. This proliferation of domain name choices has also increased

domain name abuse, which can be seen as a contributing factor to online criminal activities.³ Consequently, the registration and administration of domain names have undergone a significant transformation, leading to a rise in online criminal incidents.⁴

In the case of *Delshery Trust and Others v ABSA Bank Limited*,⁵ the court said:

“Modern technological developments have brought about a revolution in the way that information, including legal information, is captured and disseminated.”⁶

POPIA is known for its strict rules and the heavy responsibilities it places on anyone who collects personal data, whether as individuals or organizations. Registrars (RARs) are no strangers to these demanding requirements.⁷

This paper seeks to be a guide to the key provisions that apply to domain name management and the implications for domain name registries, administrators, operators, registrars, registrants.

2. IMPORTANCE OF POPIA FOR DOMAIN NAME MANAGEMENT

POPIA is important because it ensures the protection of the right to privacy, a fundamental right guaranteed by Section 14 of the Constitution. This right has been considered a distinct and inherent personal entitlement, consistent with the concept of *dignitas* in common law since the 1950s.⁸

Regarding the status of constitutional rights in South Africa, it is important to understand that the right to privacy is not without limitations. It needs to be weighed against other conflicting interests and rights, as acknowledged in the preamble of POPIA. Consequently, it can be constrained under the provisions of Section 36 of the Constitution.⁹

3. KEY PROVISIONS OF POPIA

Understanding the essential provisions of POPIA is crucial in grasping its impact on domain name registration and management:

3.1. Consent and Purpose

POPIA stipulates that organizations must obtain explicit consent from data subjects before collecting and processing their personal information.¹⁰ Domain name registries, administrators, operators, and registrars now must ensure they have legally acquired consent to collect and use personal data associated with domain names for specific, legitimate purposes.

3.2. Data Minimization

POPIA encourages the principle of data minimization, urging organizations to collect and retain only the personal information necessary for the specified purposes.¹¹ This may prompt domain name registries, administrators, operators, and registrars to reconsider the extent of personal data collected during registration.

3.3. Data Security

The Act imposes strict obligations on organizations to secure personal information from data breaches and unauthorized access.¹² Domain name registries, administrators, operators, and registrars are thus compelled to implement robust security measures to protect the personal information of domain registrants.

3.4. Data Transfer

POPIA places limitations on the cross-border transfer of personal information, particularly when such data moves outside South Africa's borders.¹³ Domain name registries, administrators, operators, and registrars need to be acutely aware of these constraints when transferring domain-related data internationally.

4. IMPLICATIONS FOR DOMAIN NAME REGISTRARS AND ADMINISTRATORS

The influence of POPIA on domain name registration and management is multi-faceted:

4.1. Compliance Costs

In the quest to meet the stringent data protection requirements set forth by POPIA, domain name registries, administrators, operators, and registrars may need to allocate additional resources to invest in upgraded security systems, staff training, and compliance audits.

4.2. Transparency and Accountability

POPIA demands heightened transparency regarding the collection and use of personal information. Domain name registries, administrators, operators, and registrars must now ensure clarity in communicating the purpose for which personal data is being collected and processed. They are also held accountable for securely managing and safeguarding this information.

4.3. User Rights

POPIA grants data subjects significant rights regarding their personal information. Amongst other rights, the Act empowers data subjects to exercise their rights to access and request the removal of their personal information. Domain name registries, administrators, operators, and registrars must establish mechanisms that facilitate these requests, further adding to their compliance obligations.

Access: Data subjects have the right to request access to their personal information held by the registrars. This necessitates the creation of processes and systems for responding to such requests promptly.

Rectification: Data subjects can request corrections to their personal data if it is inaccurate or incomplete. Registrars must have mechanisms in place to handle these requests efficiently.

Erasure: POPIA includes the right to be forgotten, allowing data subjects to request the removal of their personal information. Registrars must establish procedures to evaluate and respond to such requests, taking into account legal obligations that may require data retention for certain periods.

5. STEPS TAKEN TO ENSURE COMPLIANCE

To achieve compliance with POPIA, domain name registries, administrators, operators, and registrars should consider implementing the following measures:

5.1. Review and Update Policies

Organizations involved in domain registration and management should review and revise their privacy policies, terms of service, and data protection procedures to ensure alignment with POPIA requirements.

5.2. Data Mapping

Conduct a comprehensive data mapping exercise to identify the personal information collected and processed during domain registration and management processes. Ensure that this data complies with the Act's provisions.¹⁴

5.3. Data Security Measures

Implement robust data security measures such as encryption, access controls, and regular security assessments to protect personal information from breaches and unauthorized access.¹⁵

5.4. Training and Awareness

Provide comprehensive training to employees and staff engaged in domain registration and management on POPIA compliance and data protection best practices to foster a culture of data security.

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³ <https://businesstech.co.za/news/industry-news/473688/why-whois-must-evolve-to-comply-with-popia/> accessed on 30 August 2023.

⁴ <https://www.historyofdomains.com/paul-mockapetris>

⁵ [2014] 4 All SA 748 (WCC).

⁶ Ibid page 18.

⁷ S3 of the POPIA.

⁸ Swales, L. (2022). The Protection of Personal Information Act 4 of 2013 in the Context of Health Research: Enabler of Privacy Rights or Roadblock? *Potchefstroom Electronic Law Journal*, 25, (Published 9 March 2022) pp 1 – 32. Page 3 <https://doi.org/10.17159/1727-3781/2022/v25i0a11180>

⁹ S36 of the POPIA.

¹⁰ S10 of the POPIA.

¹¹ S10 of the POPIA.

¹² S19-22 of the POPIA.

¹³ S72 of the POPIA.

¹⁴ <https://www.lawtonsafrica.com/post/popia-compliance-tip-1-identifying-the-three-main-parties-under-popia> accessed on 18 August 2023.

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