

Draft Terms of Reference: Legal / Natural Persons Study Recommendation 17.2

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Agenda

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2. Study Terms of Reference
 - Objective
 - Scope
 - Definitions
 - Research Questions
 - Research Schema
 - Information Sources
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1. Background

Phase 1 Charter Questions

Charter Question h3: *Should Contracted Parties be allowed or required to treat legal and natural persons differently, and what mechanism is needed to ensure reliable determination of status?*

- Question to legal counsel re: self-identification by registrant
- Legal counsel: parties could be subject to liability if registrant wrongly self-identifies
 - Suggestions: focus group testing, technical verification tools, providing clear notice to data subjects on designation implications, way for data subject to correct mistaken classification, follow-up email message

Phase 1 Policy Recommendations

17.1 Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.

17.2 ICANN org carry out a study on the costs and benefits of differentiating between Legal and Natural persons with regard to treatment of registration data. Terms of reference are developed in consultation with the community, that considers:

- *The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons;*
- *Examples of industries or other organizations that have successfully differentiated between legal and natural persons;*
- *Privacy risks to registered name holders of differentiating between legal and natural persons; and*
- *Other potential risks (if any) to registrars and registries of not differentiating*

17.3. EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.

2. Study Terms of Reference (Draft)

Objective

Complete a study that informs stakeholder deliberations on potential policy recommendations on differentiating between Legal and Natural persons in the handling of registration data.

Scope

The scope of this study includes considerations around differentiation between Legal and Natural persons with regard to registration data services (RDS) in the context of domain name registration and management processes.

Specifically, the study will include:

- ⦿ Identification and analysis of feasibility considerations relating to the differentiation between Legal and Natural persons in RDS systems
- ⦿ Identification of potential legal liabilities associated with differentiating between Legal and Natural persons for purposes of RDS data
- ⦿ One or more case studies of organizations that have differentiated between Legal and Natural persons for purposes of RDS data, and any insights generated by this experience
- ⦿ An examination of the potential risks in scenarios with and without differentiation between Legal and Natural persons as they relate to RDS systems

The report will serve as an input into the EPDP team's phase 2 work, during which the team will focus on resolving the issue of Legal and Natural persons in terms of RDS. Providing recommendations or normative assessments as to the differentiation between Legal and Natural persons is not in scope for the study.

Working Definitions

- ⦿ Natural Person: refers to a human being, who is an individual being capable of assuming obligations and capable of holding rights.
- ⦿ Legal Person: refers to those entities endowed with juridical personality who are usually known as a collective “person,” social “person,” or legal entity.

Research Questions

Scenario 1: May differentiate (status quo)
Scenario 2: Must differentiate

Feasibility

- Operations & Implementation: For each scenario, what operational procedures, systems, and technical standards are required? How do these requirements differ in each scenario? How do the operating environment (i.e., gTLD or ccTLD) and jurisdiction affect these requirements?
- Communications & Education: For each scenario, what is needed to ensure that registrants understand their choices in the registration process (e.g., identifying as Legal or Natural persons) and the resulting treatment of their registration data?

Costs

- Monetary and Human Resource: For each scenario, what are the costs of implementing and maintaining systems that facilitate the operational requirements? How do the operating environment (i.e., gTLD or ccTLD) and jurisdiction affect these costs?
- Allocation: For each scenario, who--i.e., which entities and/or organizations--assumes responsibility for identified costs? How do the operating environment and jurisdiction affect the allocation of costs?

Risks

- Privacy: For each scenario, what legal liability and other risks exist relating to registrant privacy? How do the operating environment and jurisdiction affect these risks?
- Errors and Criminal Activity: For each scenario, what legal liability and other risks are associated with undesired outcomes such as errors and criminal activity? How do the operating environment and jurisdiction affect these risks?

Research Schema

Scenario 1: May differentiate (status quo)
Scenario 2: Must differentiate

	Contracted Parties	Data Subjects	Data End-Users
Feasibility			
Costs/Benefits			
Risks			

Potential Information Sources

- ⦿ Literature review of prior and current reports and sources relevant to research questions
- ⦿ Requested information about processes from sample of registrars, ccTLD operators, and gTLD registry operators. What changes have been made as a result of GDPR? What changes would need to be made in the event of a change to policy on treatment of Legal/Natural persons?
- ⦿ Interviews with entities who do / do not currently differentiate
- ⦿ Interviews with/outreach to end-users of registration data (e.g. law enforcement, IP interests, researchers)
- ⦿ Inputs from data protection authorities
- ⦿ Survey for lessons and examples
- ⦿ Review of current and pending legislation
- ⦿ Survey of industries/organizations that process personal data and distinguish between Legal and Natural persons

Deliverables

Baseline Description of the Registration System

- ⦿ A description of how existing domain name registration data services work, including both the provisioning and lookup sides of the system. The description should include quantitative measures where available regarding volume of transactions, data transferred, and lookups. Where data is not available, the description should identify what data is missing.

Methodology

- ⦿ A detailed explanation of the questions guiding the analysis related to the differentiation of Legal and Natural persons and the methodology employed to conduct the analysis.

Model-Based Analysis

- ⦿ The principal deliverable of the study will be a model that illustrates how the various technical and legal aspects of RDS--including all of its provisioning and query components--interact under different policy scenarios. The model will be based on information gleaned from the qualitative and quantitative lines of inquiry described above. **The aim is to demonstrate how changing a variable at the policy level affects the system as a whole, to help inform the policy deliberations.**

Constraints

- ⦿ Ability to provide quantitative analysis may be limited given the qualitative nature of the study goals (i.e., “feasibility” analysis). Any aspect of the analysis focused on the monetary costs of implementing differentiation processes may be limited by the proprietary nature of those processes.
- ⦿ The “liability costs of differentiating between legal and natural persons” will vary among global jurisdictions. The scope of this aspect of the study could be limited to a few case studies or a sample given the impracticality of assessing the legal codes of each individual jurisdiction.
- ⦿ The study should seek to mitigate these limitations and so note where limitations preclude a comprehensive analysis.

3. Questions & Discussion

Engage with ICANN – Thank You and Questions



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