
ICANN Org Response to EPDP Phase 2A Team Questions regarding Legal and Natural Person Study

Background and Question

ICANN org presented its study entitled *Differentiation between Legal and Natural Persons in Domain Name Registration Data Directory Services (RDDS)*¹ to the EPDP Phase 2A team on 26 January 2021.² During its presentation, ICANN org responded to questions submitted by the Phase 2A team, one of which (quoted below) dealt with differentiation between natural and legal persons by ccTLD operators in the European Union as well as how legal and natural person data is handled in different types of registries.

Question: “SSAC has previously noted important deficiencies in the ICANN study ‘Differentiation between Legal and Natural Persons in Domain Name Registration Data Directory Services (RDDS).’ Those deficiencies need to be cured. As stated in SAC112: “The research report did not look at some of the most relevant and obvious examples, such as how and why natural and legal person data is collected and published in real estate registries, company registries, and trademark registries inside the EU; and how such registries outside the EU handle the data of subjects who reside in the EU. While the report stated that ‘most EU ccTLD operators continue to publish some (and sometimes all) contact data fields for domains registered by legal persons,’ the report did not provide the details, such as a list of which ccTLDs publish what data.”³

ICANN org committed to investigating whether it could provide additional information on these topics, and this overview serves as ICANN org’s response. This document is divided into two parts:

1. [Methods of Differentiation between Legal and Natural Person Data in European ccTLDs](#)⁴
2. [Handling of Personal Data in Trademark and Company Registers](#)

1. Methods of Differentiation between Legal and Natural Person Data in European ccTLDs

ICANN org reviewed the websites of individual ccTLD registry operators to gather information regarding potential methods of differentiation of legal and natural persons. ICANN org reviewed, for example, WHOIS, GDPR, and privacy policies and statements, registration agreements and guidelines, frequently asked questions (FAQs), and general terms and conditions. In a couple of instances, direct correspondence between ICANN org and the ccTLD operator provided the

¹ See: https://mm.icann.org/pipermail/gnso-epdp-team/attachments/20200708/5f72ece1/Rec17.2_Legal-Natural_8jul201-0001.pdf.

² See: <https://community.icann.org/pages/viewpage.action?pageId=155191075>.

³ See: <https://www.icann.org/en/system/files/files/sac-112-en.pdf>.

⁴The question from the SSAC is specific to ccTLDs in the European Union (EU). In formulating its response to this question, ICANN org conducted research related to the domain registration and WHOIS policies of the 27 EU ccTLDs along with the following: European Union’s .EU; Iceland’s .IS, Liechtenstein’s .LI, and Norway’s .NO (the three of which are part of the European Economic Area (EEA) and to which the GDPR applies); Switzerland’s .CH; and, United Kingdom’s .UK.

necessary information. The results of this research are provided in Appendix A, which includes summaries of the applicable registration data policies as well as a breakdown of what legal or natural person data is published, if any. Below, ICANN org has provided a high-level summary of the detailed findings in Appendix A.

Examples of Differentiation

ICANN org reviewed 33 European ccTLDs⁵ and of those 21 appear to utilize a form of differentiation. For example, Lithuania's dot-LT registry operator outlines their differentiation method in their privacy policy, stating that the "Privacy Policy is not applied to the processing, publishing and provision of the data of legal entities" and that the name of the legal entity is "public by nature". The dot-LT registry operator specifies that their WHOIS searches of domains belonging to natural persons publishes:

"17.1. Name of .lt second level domain, current domain status, time of the last creation and expiration of the term;
17.2. Time of the update of information about the domain in the register;
17.3. Technical contacts identified in subparagraph 3.6.3 of the Privacy Policy, except for a case when domain holder has appointed a technical representative, his / her personal data are not published."

The dot-LT registry operator's privacy policy further specifies that "[p]ersonal data of the data subjects are not published in WHOIS, except for the cases when data subject expressed his / her will to publish his / her personal data."⁶

Several ccTLD registry operators have implemented similar methods and redact all registration data unless it is an organization or legal entity. For instance, Czechia's dot-CZ registry operator states that

"all data is automatically hidden (e.g. e-mail, date of birth, telephone or fax numbers). If the organization is not filled in, the contact should belong to the individual, so if this is confirmed by verifying the correctness of the entered data . . . the mailing address will be hidden from the Whois public database. Therefore, only the name or organization is always visible."⁷

The dot-CZ registry operator asserts that their method of distinguishing between individuals and organizations is for "the sake of protecting the rights of you, as a domain name holder, and others, including consumers, securing Internet security as well as trust in the content that is published on it."⁸ The dot-CZ registry operator further specifies in their *Rules of Domain Names Registration under the .cz ccTLD* that

"if no legal entity is specified in the Holder entry (in the name field), the Holder will be deemed to be the natural person specified therein; if the name of the legal entity is completed, the legal entity will be deemed to be the Holder."⁹

⁵ See Footnote 4.

⁶ See: <https://www.domreg.lt/informacija/dokumentai/privacy-policy.pdf>. (Section VI).

⁷ See: <https://www.nic.cz/page/383/faq/#faq26>.

⁸ Ibid.

⁹ See: https://www.nic.cz/files/documents/20180525_Pravidla_registrace_CZ_-_AJ.pdf. (Section 2.2.15).

Norway's dot-NO¹⁰ also differentiates between legal and natural person data in its WHOIS search output. According to dot-NO registry operator policy “[d]ifferent amounts of information are given about the domain holder depending on whether they are an organisation, a sole proprietorship or a private individual.”¹¹ The dot-NO registry operator further specifies that

“for domain holders that are legal persons, the name shown is the name registered in the Brønnøysund Register Centre. In some instances (such as sole proprietorships), this name will contain a personal name. However, as legal persons may acquire a far larger share of the domain resource than private individuals (100 domains each against five for individuals), it is reasonable that the public is able to discover who is responsible for these domains.”¹²

The dot-NO registry operator further notes that the “processing of domain holder names for organisations is necessary to safeguard the legitimate interests of Norid and third parties (GDPR Article 6, Item 1f).”¹³

Estonia's dot-EE registry operator also has a differentiation scheme. According to the dot-EE registry operator domain policy, a WHOIS search will display the “Name Servers’ names, DNSKEY records, the Registrar’s name, date of registration of the Domain Name, date of the most recent amendment of the Registration data, the Domain Name status and the Domain Name expiry date” and “[i]n the case of a Registrant who is a legal person, the EIF also publishes the name, registry code, and the name and e-mail address of the Administrative and Technical contacts.”¹⁴ Natural person data will only be disclosed upon consent by the registrant.¹⁵

Examples of No Differentiation

Other ccTLD registry operators do not differentiate between natural and legal persons when publishing registration data. In some cases, registration data is treated and published in the same fashion, and in others, it is completely redacted regardless of whether the registrant has legal or natural person status. For example, Denmark's dot-DK registry operator treats registration data from natural and legal persons equally. In a 28 May 2020 letter received from the dot-DK registry operator, the dot-DK registry operator noted that it does not distinguish between natural and legal persons because their “obligation to public [sic] registrant’s names, addresses and telephone numbers applies to both natural and legal persons.”¹⁶ The dot-DK registry operator does, however, distinguish between natural and legal persons when processing and verifying applications for dot-DK domain registration. According to the letter mentioned above:

“it is mandatory to state in an application for registration of a .dk domain name whether the registrant is an individual (natural person), a private company, an organization or a public authority (legal persons). Hence, in the application for a .dk domain name the

¹⁰ See Footnote 4.

¹¹ See: <https://www.norid.no/en/domeneoppslag/personvern/domeneoppslag/>.

¹² Ibid.

¹³ Ibid.

¹⁴ See: https://meedia.internet.ee/files/Domain_Regulation_EN_01.07.2020.pdf. (Section 3.4)

¹⁵ Ibid. (Section 8).

¹⁶ See: <https://www.icann.org/en/system/files/correspondence/vignal-schjoth-to-plexida-28may20-en.pdf>.

registrants themselves state whether they are a natural or legal person. The subsequent verification of identity and contact information also verify the accuracy of that statement.”

Germany’s dot-DE registry operator also does not differentiate between natural and legal persons; however, in this case, very little data is published. According to the dot-DE registry operator’s WHOIS service website, the only information provided during a WHOIS search is:

- “The status of the domain, i.e. registered/unregistered;
- The technical data of the domain, and
- Information for establishing contact:
 - General Request
(This is the contact point to which you can send general and technical requests concerning the domain.)
 - Abuse
(This is the contact point to which you can send enquiries and information about possible unlawful or improper use of the domain.)”¹⁷

SWITCH, the registry operator for Switzerland’s dot-CH and Liechtenstein’s dot-LI¹⁸, on the other hand, completely redacts registration data, regardless of legal status. SWITCH announced on 18 November 2020 that the “name and address of the domain holder and the technical contact for a domain name will thus no longer be made public for data protection reasons, regardless of whether the holder is a private individual or a corporate entity.”¹⁹

Overview of Policies Regarding Access to Registration Data in European ccTLDs

According to the policies of many of the ccTLD registry operators, access to the data of natural persons is restricted and can only be accessed under limited circumstances which exhibit a legitimate reason for access to registration data. The access terms for registration data of Liechtenstein’s dot-LI, which does not distinguish between legal and natural persons, provide that:

“the registry must allow any third parties that can credibly establish an overriding legitimate interest to access the personal data contained in the domain name register concerning the contact persons for the domain name concerned. Access is granted based on an assessment of the individual circumstances.”²⁰

Similarly, the terms for Austria’s dot-AU, which also does distinguish between legal and natural persons, state that “[n]atural persons’ domain data is only accessible to people who provide proof of identity and are able to prove a legitimate interest for finding out who the domain holder is.”²¹

¹⁷ See: https://www.denic.de/en/service/whois-service/?tx_denic_notification%5Baction%5D=acknowledge&tx_denic_notification%5Bcontroller%5D=Notification&tx_denic_notification%5Bnotification%5D=4&cHash=945f07c9fcaa63442a02eb19a735fd92.

¹⁸ See Footnote 4.

¹⁹ See: <https://www.switch.ch/stories/Greater-privacy-and-protection-against-cybercrime/?sbquery=1%20january%202021>.

²⁰ See: <https://www.nic.li/terms/agb/#agb52>.

²¹ See: <https://www.nic.at/en/how-at-works/faqs/domain-holder>.

Whether or not one has access to registration data may also depend on the registered name holder. Though registration data in some cases may be undisclosed by default, the registered name holder often has the option to publish their data. Portugal's dot-PL registry operator, which does delineate between natural and legal persons, provides that the "personal data of contact persons associated with the domain names shall not be disclosed, unless they express their free, specific, informed and explicit consent to this end, consenting that their personal data be publicly disclosed through the WHOIS protocol."²² The United Kingdom's dot-UK²³ registry operator, which does not differentiate between natural and legal persons, similarly states that the ".UK WHOIS does not show a registrant's details unless they have given consent to publication."²⁴

Conclusion

The differentiation and publication of data of natural and legal persons varies from one ccTLD registry to another. Registry operators use different methods of differentiation, which include using business or corporate registration numbers in registration applications, only determining and publishing data if certain fields are populated, or forgoing the differentiation of data. There are also registry operators that do not differentiate natural and legal persons when publishing data, but do request this information when processing a registration application. Regarding access to non-public or redacted personal data, ccTLD operators' policies and terms specify the need for a "legitimate" reason to access the data; though in some cases, a natural person registrant may consent to publish their personal data.

2. Handling of Personal Data in Trademark and Company Registers

In response to the SSAC's question regarding trademark and company registers, ICANN org reviewed policies related to personal data for both the United States Patent and Trademark Office (USPTO) and European Union Intellectual Property Office (EUIPO). ICANN org also referred to the Hamilton Advokatbyrå memorandum *gTLD Registration Directory Services and the GDPR - Part 3* ("Hamilton Memo"), which specifically addresses this topic.²⁵

USPTO

The USPTO notes in its response to the FAQ "Why does the USPTO make [personal] information public?" that it is "required by law to maintain records of trademark applications and registrations, and to make them available for public inspection."²⁶ Additionally, it appears to be incumbent upon the trademark applicant to determine the type of data they are willing to have displayed when registering a trademark, though some data is required as part of the application regardless of the applicant's preference:

²² See: <https://www.dns.pt/en/data-protection/pt-whois-policy/>.

²³ See Footnote 4.

²⁴ See: <https://www.nominet.uk/whois/>.

²⁵ See: <https://www.icann.org/en/system/files/files/gdpr-memorandum-part3-21dec17-en.pdf>. (page 13).

²⁶ See: <https://www.uspto.gov/trademarks/apply/faqs-personal-information-trademark-records>.

“It is the responsibility of applicants and registrants to carefully consider the information provided to the USPTO to ensure that any information they wish to keep out of the public record is not included with their initial filing or in any subsequent filing submitted during the entire application and post-registration process. However, to file an application, certain minimum requirements must be met, including providing the owner’s name and an address to receive correspondence. Any type of existing legal entity, including an individual, corporation, partnership, limited liability company, association, or joint venture, may own a trademark. An applicant need not provide a telephone number as part of the application process, although providing a telephone number aids the USPTO in its ability to contact applicants.”²⁷

EUIPO

The EUIPO provides similar guidance regarding publication of personal information. Specifically, the EUIPO categorizes personal data into “mandatory” and “non-mandatory” types. Mandatory data are those where the EUIPO must comply with a “legal obligation” related to carrying out tasks that are considered to be in the “public interest.”²⁸ Some of these data are “made available to the public due to the Office’s legal obligation to maintain a public register.”²⁹ Regarding non-mandatory data, the EUIPO states that these data are “processed on the basis of consent only.”³⁰

Hamilton Memo

The Hamilton Memo provides an overview of the EU Trademark Regulation (EUTMR), which states in Article 111 that the “EUTMR explicitly requires that such register shall, among other things, contain the name and address of any applicant and that the register shall be updated with any changes in the name or address” and that such data be “easily accessible for inspection.”³¹ The Hamilton Memo emphasizes the importance of the data with respect to the “public interest” and finds that “the EU has considered it a public interest to keep a public record of the owners of any EU trademarks and...that such interest overrides the interests or fundamental rights and freedoms of the trademark registrants.”³²

Regarding company registries, it is noted in the Hamilton Memo that “[c]ompany registers throughout the EU member states contain certain personal data, such as the identity of board members.”³³ It is also noted that, as found by the Court of Justice of the EU (CJEU), the publication of such data “also constitutes a task carried out in the public interest.”³⁴ Additionally, in cases where individuals wished for their personal data to be erased from company registers after dissolution of a company, the CJEU “noted that the EU member states cannot guarantee that natural persons whose data are included in a company register

²⁷ Ibid.

²⁸ See: <https://euipo.europa.eu/ohimportal/en/data-protection>.

²⁹ Ibid. See also a full list of mandatory data here: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/data_protection/EUIPOs_explanatory_note_en.pdf. (Page 9)

³⁰ Ibid.

³¹ See: <https://www.icann.org/en/system/files/files/gdpr-memorandum-part3-21dec17-en.pdf>. (page 13).

³² Ibid. (Page 14).

³³ Ibid. (Page 15).

³⁴ Ibid.

have the right to...have the personal data concerning them erased.”³⁵ One of the reasons for this is that “it is justified that natural persons who choose to participate in trade through such a joint stock company or limited liability company, whose only safeguards for third parties are the assets of that company, should be required to disclose data relating to their identity and functions within that company.”³⁶

Conclusion

Trademark and company registers are guided by legal obligations to make data public. The USPTO and EUIPO must publish certain personal data as such data is considered to be in the public interest. Similarly, according to the Hamilton Memo, the CJEU has noted that the publication of personal or natural person data in company registers is also in the public’s interest. In light of this, ICANN org believes that such registers are not analogous to the publication of legal or natural person domain name registration data and additional research in this area may not further the Phase 2A Team’s deliberations.

³⁵ Ibid. (Page 16).

³⁶ Ibid. (Page 16).