

## **Agenda item 1.**

### **Small Team #1 – Legal vs. Natural Person**

#### **h) Applicability of Data Processing Requirements – Draft responses**

*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?*

We seem to have agreed that yes, contracted parties should be allowed to treat legal and natural persons differently but the mechanism by which this should or can be done should be further explored.

*h4) Is there a legal basis for Contracted Parties to treat legal and natural persons differently?*

We agreed that under GDPR there is a legal basis. While the focus of this EPDP is GDPR compliance, we did note that not all jurisdictions have this same distinction so we have to make sure our policy recommendations are flexible enough to take this into account.

*h5) What are the risks associated with differentiation of registrant status as legal or natural persons across multiple jurisdictions? (See EDPB letter of 5 July 2018).*

The main risk seems to be that while legal persons don't have the same protections under GDPR, natural persons employed by a legal person (and who may be designated as the registrant, admin or technical contact) are still natural persons with rights/protection under GDPR. This risk may be minimized through educational resources as recommended below. [further flesh out risks: James Bladel to provide proposed language]

#### **Proposed Preliminary Policy Recommendation for inclusion in the Initial Report**

The EPDP Team recommends that:

- The distinction between legal and natural persons is useful and necessary for GDPR and some other data protection laws.
  - However, the EPDP Team recognizes that there are challenges in making this distinction in the context of domain name registrations as well as the potential implementation of any new functionality that would apply to pre-existing registrations.
  - Additionally, other jurisdictions may have other categories of protected groups that would need to be factored in.
- The EPDP Team recommends that GDD staff who will be tasked with the implementation of these policy recommendations commence research by investigating how ccTLDs and contracted parties currently distinguish between natural and legal persons to inform the EPDP Team.

- Following the receipt of the research, the EPDP Team will explore in a timely manner how this distinction can be made in the context of domain name registrations in a satisfactory way.
  - The EPDP Team should also consider the timeline needed to implement, which could follow a phased approach whereby implementation would start immediately following completion of the further work and agreement on a satisfactory manner to distinguish between legal and natural persons for new registrations while existing registrations would be phased in upon renewal or by other means.
  - The EPDP Team should also consider which data fields (if any) need to be added to accomplish this distinction. This could require further liaising with the IETF if data fields in RDAP need to be added or changed.
  
- The EPDP Team recommends that, as a best practice, registries, registrars and ICANN each develop (educational) resources available that help registrants understand the distinction between a domain name that is registered by a natural person vs. legal person / entity. These resources and communications should also encourage legal persons to provide non-personal information for their email address and other contact information.

## **Agenda item 2**

### **Small team #2 – Geographic basis**

*Charter question h1) Should Registry Operators and Registrars (“Contracted Parties”) be permitted or required to differentiate between registrants on a geographic basis?*

The EPDP Team agrees that contracted parties should be at least permitted to differentiate between registrants on a geographic basis; however, there is not agreement that differentiation on a geographic basis should be required. Specifically, members of the BC, IPC and GAC [add others as appropriate] have expressed the view that contracted parties should be required to differentiate between registrants on a geographic basis.

The Members expressing support for requiring differentiation between registrants on a geographic basis noted the following:

When GDPR was adopted, the global nature of the DNS was not taken into account. It therefore may be shortsighted to just focus on GDPR.

Applying GDPR to all registrants would undermine the role of sovereign states to be able to enforce their own laws and regulations.

Businesses are always required to take into account local laws when choosing to do business with various countries; therefore, cost is not necessarily a persuasive argument to not require differentiation.

The Members not expressing support for requiring differentiation between registrants on a geographic basis noted the following:

The actual location of the registrant is not alone dispositive of whether GDPR applies especially because of the widespread industry use of additional processors (e.g., backend registry service providers and resellers for registry operators and registrars, respectively).

Data subjects need to be informed at the time of collection about how their personal data is being processed, i.e., what data is collected, to whom it is transferred, how long it is stored, etc. Not having a common approach for all registrants could lead to two classes of registrants, which may result in competitive advantages to certain registrars/registries (due to their establishment in jurisdictions with privacy protection), fragmentation in the marketplace and interoperability issues.

There are significant liability implications for Contracted Parties if they are incorrect.

Any consensus policy needs to be commercially reasonable and implementable, and in the current market place, differentiation based on geographic location will be difficult to scale.

*Charter question h2) Is there a legal basis for Contracted Parties to differentiate b/w registrants on a geographic basis?*

Yes, there is a legal basis for contracted parties to differentiate b/w registrants on a geographic basis. However, the location of the registrant alone is not a dispositive indicator if the GDPR applies. If the controller or any processor is within the EU, the GDPR will also apply.

Members of the BC [add others as appropriate] have requested ICANN, in conjunction with interested community members, explore the feasibility of a mechanism allowing geographic differentiation (such as the EWG rules engine). [Other members of Small Team #2 did not agree to this request – to be updated, as appropriate.]

### **Agenda item 3.**

#### **Small team #3 – Reasonable Access**

##### **j). Temporary Specification and Reasonable Access**

**j1) Should existing requirements in the Temporary Specification remain in place until a model for access is finalized?**

##### **Draft Policy Recommendation for inclusion in the Initial Report**

The EPDP Team recommends that the current requirements in the Temporary Specification in relation to reasonable access remain in place until work on a system for Standardized Access to Non-Public Registration Data has been completed, noting that the term should be modified to refer to “parameters for responding to lawful disclosure requests”. Furthermore, the EPDP Team recommends that criteria around the term “reasonable” are further explored as part of the implementation of these policy recommendations addressing:

- [Practicable]\* timelines criteria for responses to be provided by Contracted Parties;
- Format by which requests should be made and responses are provided;
- Communication/Instructions around how and where requests should be submitted;
- Requirements for what information responses should include (for example, auto-acknowledgement of requests and rationale for rejection of request);
- Logging of requests.

[\*Some concern expressed that timeliness that should not be translated into requirements that are impractical for contracted parties]