**Natural vs. Legal** - Proposed updated language for inclusion in the Initial Report (8 November 2018)

*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?*

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

*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 EPDP Team discussed these questions extensively.

In answer to question “h3,”

* the EPDP Team agrees that Contracted Parties should be allowed to treat legal and natural persons differently;
* the EPDP Team did not agree on whether treating legal and natural persons differently should be required; and
* the EPDP team did not agree what further steps could or should be undertaken to determine whether consensus could be obtained for this part of the question.

In answer to question “h4,” the EPDP Team agrees that, under GDPR, there is a legal basis to treat legal and natural persons differently.

In answer to question “h5,” the NCSG highlighted how the information of legal persons might also be the personal information of a natural person, or could lead to the identifiability of a natural person. In support of this claim, the NCSG brought attention to Opinion 4/2007 of the Article 29 Data Protection Working Party, which advised that where information about a legal person or business is “considered as "relating" to a natural person, it should be viewed as personal data, and the data protection rules should apply.”[[1]](#footnote-1) The NCSG also noted that laws and regulations other than the GDPR guarantee the rights of individuals associated with entities, such as national constitutions and the European Charter of Fundamental Rights, which entitle both individuals and legal entities (such as religious groups) to protection.

The contracted parties identified substantial legal, liability, and cost risks associates with attempting to differentiate registrant status as legal or natural persons across multiple jurisdictions with globally dispersed data operating under different privacy regimes. See their comments below.

A small group was convened to discuss the charter questions and (among other items) whether the legal and liability risks described by contracted parties could be ameliorated to an extent so that contracted parties could undertake a distinction between legal and natural persons.

As a result of the small group recommendation, the EPDP team debated whether additional research should be undertaken to inform the policy debate. The EPDP team is divided on the issue – this division is described in their comments:

* Contracted Parties, supported by the NCSG, stated that they “oppose/reject any recommendations for new contractual requirements in the EPDP Draft Initial Report, and will remain opposed to these recommendations as we move towards final recommendations”. Stated opposition to retaining the current permissive language of the Temp Spec, are, in the opinion of the CPH and NCSG, based on “refuted assertions or non-implementable options, many of which, even if they were in scope, given the state of the art, the cost of implementation, and the likely impact to the rights of the data subjects, are currently unreasonable”. The Contracted Parties and the NCSG are of the view that the already stated requirements of the Temporary Specification “remain outside the scope of the EPDP and should be a matter for another, more appropriate PDP.”
* [Add other comments as appropriate]

The EPDP Team identified a number of risks, including:

* The difficulty of distinguishing between the two at the point of registration could lead to the unnoticed and unintended publication of the private data of many natural persons.
* 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 enjoying rights and protections under GDPR. Some noted that this risk may be minimized through clear explanatory language beneath each field when filling in data fields within domain name registrations.
* There may be situations in which it can be difficult to separate the data of natural persons from that of legal persons. This can be the case, for example, if the legal person is a sole proprietorship, if the name of a person appears in the company’s name, if the business address is a natural person’s residence, or if an email address is assigned to a single individual (“john.doe@company.example.com” as opposed to “info@company.example.com.

The EPDP has discussed whether risks may be somewhat mitigated through educational resources. Some in the EPDP Team expressed caution, as a stated necessity to rely on educational resources may not be considered to be compatible with the concepts of privacy by default or privacy by design i.e. where additional ‘educational resources’ are deemed necessary, the process itself is likely not established or presented in a sufficiently clear manner.

The EPDP Team would like to request input on the following questions in relation to this topic to help inform any further deliberations on this topic:

* Are there examples from other industries or areas, e.g. ccTLDs, where a mechanism has been developed and implemented to distinguish between natural and legal person, factoring in some of the challenges identified above?
* Should the EPDP Team decide to recommend requiring distinguishing between natural and legal persons, how should implementation be carried out, especially considering legacy registrations?
* Should the EPDP Team decide to recommend that further research is undertaken, what and how should this research be carried out?
* (For the EDPB) If registrars allow registrants to self-identify at the time as a natural or legal person, who will be held liable if the registrant incorrectly self-identifies and personal information is publicly displayed? Apart from self-identification, are there any other ways in which risk of liability could be mitigated by registrars?

The input on these questions will help the EPDP Team further analyze if it is possible and desirable to conduct additional research in order to inform the discussion about making this distinction in the context of domain name registrations, in a manner that is commercially reasonable, implementable and does not result in unreasonable liability or cost for contracted parties.

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1. https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136\_en.pdf [↑](#footnote-ref-1)