**Thought Experiment:**

Let’s first assume the Phase 1 recommendations referenced in the background section have been fully implemented by Contracted Parties. Existing registrations are properly publishing the Organization field of registrations where the Registered Name Holder has agreed to its publication as part of the minimum public data set outlined in Phase 1, Rec#10 and that new registrations as part of the registration process obtain approval for publication of the Organization field. Let’s also pretend that some sort of legal risk fund exists to counter legal and operational risks for improper publication of personal data associated with legal persons. Finally, let’s theorize what changes would be required for Contracted Parties, building on what would already have been implemented from the EPDP Phase 1 recommendations (and possibly the phase 2 recommendations), to come in compliance with a consensus policy or legal requirements in a Contracted Party’s jurisdictions to differentiate between natural and legal persons for domain registrations, whereby non-personal data of legal persons is published.

1. Does the differentiation have to occur immediately at registration? What about existing registrations?
2. What types of notification would be required to make clear that this is a new requirement and consequences of confirming that it concerns a legal person registration with no personal data?
3. What changes to the registration process would have to occur prior to completing the registration to meet the requirement? What can be done to make these changes the least burdensome and costly for registrants and registrars?
4. Would changes to the registration process differ depending on the registrar model? For example, what would be the differences for these types of registrars:
	* Retail
	* Reseller
	* Brand Protection
	* Other?
5. What aspects of the process to differentiate between natural and legal persons (with no personal data) can be deferred after registration?
6. Would validation of legal entities be necessary / desirable? If so, what authorities could be used to validate a legal person/entity? What would be the impact of non-validation or a delay in validation on the registration and/or registration data?
7. What additional safeguards would need to be in place to ensure compliance with GDPR to protect personal data?
8. Assuming SSAD is adopted and implemented, should non-personal data of legal persons also be available via SSAD in an automated fashion, or is there another role SSAD should / could play in facilitating implementation of such a new requirement?

**Background Section**

The intent of this thought experiment is to consider previous work of the EPDP in Phases 1 and 2 in the context of the differentiating legal versus natural persons to further the deliberations in Phase 2A. The EPDP Team may first want to consider and gain a tangible understanding of how the adopted consensus policies will be implemented by Contracted Parties. Second, the EPDP Team could then contemplate how these implementations would change or evolve if a requirement of law forced the differentiation of legal (with no personal data) versus natural person registrations. The exercise should consider potential ideas that minimize disruptions to the registration process, minimal expense to implement, accommodates multiple jurisdictions, accommodates a variety of Registrar business model, minimize liability, and is legally compliant.

**Phase 1 Recommendations (Adopted by Council, Adopted by Board, In IRT):**

Final Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf>

**Rec#6 (p.42) –**

*“The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish redacted contact information, as well as the email address, in the RDS for the sponsoring registrar.”*

Discussion Questions: How are Registrars intending to implement or have already implemented this requirement? What mechanism are you using to obtain this consent as to minimize the impact to the Domain Name Registration process while ensuring compliance with the requirement and legal compliance?

**Rec 12 (p.51) –**

*“The EPDP Team recommends that:*

*• The Organization field will be published if that publication is acknowledged or confirmed by the registrant via a process that can be determined by each registrar. If the registered name holder does not confirm the publication, the Organization field can be redacted or the field contents deleted at the option of the registrar.*

*• The implementation will have a phase-in period to allow registrars the time to deal with existing registrations and develop procedures.*

*• In the meantime, registrars will be permitted to redact the Organization Field.*

*• A registry Operator, where they believe it feasible to do so, may publish or redact the Org Field in the RDDS output.*

*Implementation Advice: the implementation review team should consider the following implementation model discussed by the EPDP Team:*

*For existing registrations, the first step will be to confirm the correctness / accuracy of the existing Organization field data.*

*For the period between the adoption of EPDP policy recommendations and the conclusion of the implementation effort set for on, or before, 29 February 2020:*

*1) Registrars will redact the Organization field*

*2) Registrars will contact the registered name holders that have entered data in the Organization field and request review and confirmation that the data is correct.*

*a) If the registered name holder confirms or corrects the data will remain in the Organization field.*

*b) If the registrant declines, or does not respond to the query, the Registrar may redact the Organization field, or delete the field contents. If necessary, the registration will be re-assigned to the Registered Name Holder.*

*3) If Registrar chooses to publish the Registrant Organization field, it will notify these registered name holders that of the “date certain,” the Organization field will be treated as non-personal data and be published, for those Registered Names Holders who have confirmed the data and agreed to publication.*

*For new registrations, beginning with the “date certain”:*

*1) New registrations will present some disclosure, disclaimer or confirmation when data is entered in the Organization field. Registrars are free to develop their own process (e.g., opt-in, pop-up advisory or question, locked/grayed out field).*

*2) If the registered name holder confirms the data and agrees to publication:*

*a) The data in the Organization field will be published,*

*b) The Organization will be listed as the Registered Name Holder.*

*c) The name of the registered name holder (a natural person) will be listed as the point of contact at the Registrant Organization.*

*After the implementation phase-in period, the ORG FIELD will no longer be REDACTED by the registrar, unless registered name holder has not agreed to publication.*

*Note, this is a Registrar obligation. For a Registry to publish is optional, until such time a way has been found that allows for the transfer of consent from Registrar to Registry.”*

Discussion Questions: For new registrations after a “date certain,” how do Registrars intend to implement this requirement? What mechanism will you use to “present some disclosure, disclaimer or confirmation” that enables publication of the Organization field as to minimize the impact to the Domain Name Registration process while ensuring compliance with the requirement and legal compliance?

**Rec#17 (p.57) –**

“*1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.*

*2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the 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.*

*3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.”*

Discussion Questions: Do any ICANN Accredited Registrars intend to differentiate between registrations of legal and natural person? If so, are they considering deploying such a requirement for all registrations or just within the jurisdiction they operate only (ex. US based registrar only differentiating for US based registrations)? What authority(ies) are being considered to validate legal person entities, if at all? Would such an implementation occur during or after the registration process?

**Phase 2 Recommendations (Adopted by Council only):**

Final Report: <https://gnso.icann.org/en/correspondence/epdp-phase-2-temp-spec-gtld-registration-data-31jul20-en.pdf>

**Rec#14 (p.51) – Financial Sustainability**

\*\*\* full recommendation text not quoted due to length.

*“14.4 - The SSAD SHOULD NOT be considered a profit-generating platform for ICANN or the contracted parties. Funding for the SSAD should be sufficient to cover costs, including for subcontractors at fair market value and to establish a legal risk fund.39 It is crucial to ensure that any payments in the SSAD are related to operational costs and are not simply an exchange of money for non-public registration data.*

*Footnote 39: Given the potential for legal uncertainty and the heightened legal and operational risk on all parties included in the provision of the SSAD, creation of a legal risk fund refers to the creation of a suitable legal contingency plan, including but not limited to appropriate insurance cover, and any other appropriate measures that may be deemed sufficient to cover potential regulatory fines or related legal costs.”*

Discussion Questions: With the understanding that the ICANN Board has yet to adopt the Phase 2 recommendations and that the Operational Design Phase and discussions with the GNSO Council on Financial Sustainability of the SSAD are on-going and that there’s a theme of mitigating liability risks for contracted parties pertaining to differentiation of legal vs. natural, could the Phase 2A group leverage a similar concept of a legal risk fund in the event a complaint is filed and later investigated for the improper disclosure/publication of personal data as it relates to legal persons?