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**ICANN Transcription**  
**ICANN Org Presentation on Legal v. Natural Study**  
**Tuesday, 26 January 2021 at 14:00 UTC**

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TERRI AGNEW:

Good morning, good afternoon, and good evening and welcome to the ICANN Org presentation on Legal versus Natural Study, taking place on the 26<sup>th</sup> of January, 2021 at 14:00 UTC. In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom Room.

If you're only on the telephone, could you please identify yourself now? We have no list of apologies for today's meeting. All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see your chat.

Attendees will not have chat access, only view to the chat access. Alternates not replacing a member are required to rename their lines by adding three Zs at the beginning of your name and then in parentheses at the end, your affiliation-alternate, which means you are automatically pushed to the end of the queue. To remain in Zoom, hover over your name and click remain.

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As a reminder, the alternate assignment form must be formalized by the way of the Google link. The link is available on all meeting invites. Statements of interest must be kept to date. If anyone has any up-to-date, please speak up now or raise your hand. Seeing or hearing no one, if you do need assistance, please email the GNSO secretariat.

All documentation and information can be found on the EPDP Wiki space. Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Thank you very much, Terri. Hi, everybody. This is Keith Drazek, Chair of the EPDP Phase 2A Working Group. So, welcome to all. Just wanted to note that this is an opportunity for the members of the EPDP Phase 2A Working Group as well as observers to have the benefit of the ICANN Organization study that took place last year on the topic of legal and natural person differentiation.

So, I'm going to very quickly here hand it over to Karen to kick things off so we can get into the substance. And with that, Karen,

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thank you so much to you and your team for being with us today and giving us this presentation. Thanks.

KAREN LENTZ:

Thank you, Keith. And hello everyone. What we thought we'd spend the time on today is to give you a brief overview of the study, understanding that the members have all been given homework to read it already so we won't go through in detail the whole study again. But we will do a brief recap to refresh your memory.

And then we'll spend most of our time on the questions that were submitted from the group, with our responses to those, and then if there's time after that, any additional questions or discussion from the group.

I'll introduce a couple of members from my team. The study was done, as Keith said last year, by a group of people within the organization. Jared Erwin is going to cover the outline of the study and what the questions were and how it was constructed.

And when we get to the portions concerning the questionnaire and the questionnaire responses—that was a really good source of information—Isabelle Colas will speak to those. So, with that, I will turn it to Jared.

JARED ERWIN:

Thank you, Karen and hello everyone. Thank you for having us. So, as Karen mentioned, just going to take us through a brief

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overview of the study so that we can get into the questions that were submitted. So, next slide, please.

KEITH DRAZEK: Jared. I'm sorry to interrupt but folks are saying that they're having a bit of a hard time hearing you so if you could speak a little bit louder or closer to the mic. Thank you.

JARED ERWIN: Yeah, sure. Sorry about that. Is this a little better?

KEITH DRAZEK: That's much better. Thank you so much.

JARED ERWIN: Sorry about that. So, yes, so a little bit of background on the request and recommendation from the EPDP team. The study stems from the request and recommendation 17.2 from the Phase 1 final report where the EPDP team recommended that ICANN Org undertake a study that considered feasibility and costs related to differentiation between legal and natural persons, as well as examples of industries, other organizations that successfully differentiated privacy risk to registered name holders, and differentiating between legal and natural persons and other potential risks to registrars and registries of not differentiating.

Also, as recommended, ICANN Org and the EPDP team consulted on the study at ICANN 66 and determined that the study would examine the effects of differentiation between legal and

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natural persons on various stakeholders, including registries, registrars, registrants and end-users. Next slide please.

So, based on this recommendation, the study looks at five key variables, cost, risk mitigation, benefits, and feasibility. And the study explores those variables in more detail, using legal analyses and academic research. It looks at the variables in a qualitative way, as they are not entirely amenable to a quantitative measurement or would require a much more detailed and extensive study to do so.

So, the questions that guided our research in terms of looking at those variables were, what are the potential risks and costs of differentiation to contracted parties, registrants and end-users? What factors work to mitigate those risks and costs? What are the benefits of differentiation? How do mitigation factors and the benefits of differentiation impact the risks and costs of differentiation? And what factors explain the relative feasibility of differentiation for each party?

Ultimately, these questions were built into the model which we'll talk about in a second, in a few slides, that was developed to help the EPDP team assess overall feasibility of differentiation.

So, taking those questions, the report, in terms of scope and content, provides a few things. One, an introduction to differentiation from a legal and policy perspective. So, looking at a little bit of background on the GDPR, as well as existing policy requirements related to provision of contact information.

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It also looks at problems and prospects related to the stakeholders based on those key variables that we just discussed. So, the report provides a detailed look at each of the variables and how it affects the various stakeholders, registries, registrars, contracted parties, registrants, end-users.

It also provides some examples of differentiation in and outside of the DNS ecosystem, so looking at how some EU ccTLD operators handle differentiation, using a lot of the responses to the questionnaire that we sent out to the ICANN community to provide more examples of how some organizations handle differentiation.

We've also provided a few examples from outside the DNS ecosystem, including an example using the phonebook, travel loyalty programs, banking, looking at the ways that those types of organizations handle the differentiation of certain information.

And again, we used the responses to the questionnaire throughout the report. They're kind of sprinkled, if you will, throughout the report, providing a lot of really interesting and useful information. And my colleague, Isabelle, is going to talk about that in just a second.

And finally, leading up to the model and framework that was developed to help assess overall feasibility of implementing a differentiation method. What the report does not provide, however, is recommendations or normative assessments of differentiation. So, it does not say whether one should or should not differentiate or what the best method of differentiation is. So, now I'm going to turn it over to Isabelle to talk about the questionnaire. Isabelle?

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ISABELLE COLAS: Thank you, Jared, and good morning everyone. So, as Jared mentioned, ICANN circulated a short questionnaire to the ICANN community, focusing on five groups: the Contracted Parties, natural person registrants, legal personal registrants, the RDDS end-users, and the ccTLD community.

The questionnaire, we received 247 responses. So out of those, 47% of those were identified as legal person registrants, 30% were identified as RDDS end-users. 14% were identified as Contracted Parties and then the remaining responses were split between natural person registrants and the ccTLD operators.

The questionnaire was comprised of six questions, as you see here on this slide, that focused on why the organizations differentiate or why they chose not to, the methods that they chose to differentiate, and if their jurisdiction impacted their decision, and ultimately, what were the perceived main benefits and risks associated with the differentiation? And as Jared mentioned, these responses were sprinkled throughout the report. Next slide, please.

Thanks. So, these next two slides provide a high-level example of some of the responses that were provided for the questionnaire. So, for example, when we asked why their organization decided to differentiate, most noted that because it was due to the requirements imposed by data protection law, and in general, providing opportunities for legal and natural persons such as trademark enforcement and gaining access to data.

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And those who differentiate, they tend to be dependent or reliant, if you will, on the organization field in order to identify if the person was a legal or natural person. While those who chose not to differentiate, most noted it was due to the complexity behind implementing a business model that would allow them to differentiate. And then, therefore, applying a uniform approach was the safest way to mitigate any type of risks. Next slide, please.

So, in regards to jurisdiction, as I mentioned before, those who decided to differentiate was because of the jurisdiction that impacted them so for example, the GDPR. And then while those who chose not to differentiate, it was because their jurisdiction didn't impact their decision at all.

And then in general, when it came to some of the main benefits associated with differentiation, the main benefits that we received were security, transparency and access to increased information. And then while those who perceived the main risks of differentiation included accidentally publishing personal information, as well as the financial burden that would be associated with implementing such a business model. Thank you. So, now I'll pass it back to Jared.

JARED ERWIN:

Thank you, Isabelle. So, next slide please. So, the next two slides are about the model and feasibility assessment tool that was presented in the study. This first slide here is the template, the heat map template that is provided in the study.



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So, again, this uses the variables that we talked about just a second ago, risk and cost, as well as mitigation and benefits. Those added together will provide a feasibility value. And you can see that each of the stakeholders are provided there in the left-hand column, Contracted Parties, natural person registrants, legal person registrants and RDDS end-users.

And so within each of the boxes is where the factors affecting that particular stakeholder in terms of the variable are listed. And on the next slide, you'll see that we've provided references to the report, where our research shows how we came up with those particular factors affecting that variable and that stakeholder.

But in terms of coming up with the score, you can see there, the green box represents a plus one feasibility point. So something that has a positive effect on the stakeholder gets a plus one feasibility point—in other words, something that is considered to be more on the feasible spectrum, end of the spectrum, whereas a red box represents a negative one feasibility point or something that has a negative effect on a stakeholder and in other words, on the more infeasible side of things.

And then there's also the orange box which represents a null or neutral value, a zero-feasibility point where it has neither a negative or a positive effect on the stakeholder and so it does not affect the feasibility value in terms of more feasible or more infeasible.

And again, this is a tool for the use by the EPDP team. So we do present three scenarios in the study: scenario zero, which has no differentiation; scenario one, which is one we'll look at on the next

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slide, which is where the registrant self-identifies; and then scenario two, which is where the Contracted Party conducts the differentiation itself. But these are merely examples and not necessarily exhaustive or definitive. So again, it's up to the EPDP team how they wish to use it and implement the model to the best of their understanding and how they would like to.

So, looking at an example on the next slide ... We can go to the next slide, please. So, we'll just walk through this, as I think it also will help to answer one of the questions we got and that Karen is going to talk about in a little bit. But this is an example using registrant self-identification as a differentiation method, scenario one. And this is essentially an example of an infeasible differentiation method, based on the feasibility value that was determined from the various variables and factors.

So, starting with the Contracted Parties, you can see the risk there is that, natural person registrant misidentifies as a legal person and personal data is published in the public RDDS. There is, of course, a cost potentially associated with that, depending on the severity of violation of the GDPR. However, there is a mitigation tactic here, where the Contracted Party could potentially verify registrant designation but because of the cost associated with doing that, we've listed that as a neutral value—so as a zero point in terms of feasibility.

And then we've not identified any comparative benefits to not differentiating and so we haven't listed a benefit there. So, overall, the Contracted Party would have a feasibility value of negative two. In other words, this would be considered an infeasible approach for the Contracted Party. And again, the page numbers I

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mentioned refer back to the report and where that research comes—how we came up with that particular variable factor and weighted it, if you will.

In terms of those natural person registrants, they of course might misidentify themselves as a legal person and their data is published publicly. The cost, then, would be the privacy. And so those two factors together are two negative points and no identified mitigation tactics or benefits. So overall, negative two feasibility score.

Legal person registrants, here the risk is that a legal person registrant might identify as a legal person but in doing so provides personal data of an associate during registration and does so without their consent. Again, the cost here is potential violation of the GDPR.

And in terms of mitigation, there is potential mitigation tactic here, where the legal person registrant could obtain consent from the relevant associates to share the personal data or they use a generic contact information such as admin@company.example. This gets a positive one score. So it has a clear, positive effect on the stakeholder and gets a positive one feasibility point.

In terms of benefits, we listed here that this would improve reachability of the legal registrant. However, we've put it as a neutral score because not all legal person registrants may want to be more reachable so we've listed that as a zero point. Overall, a negative one feasibility value for legal person registrants.

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Finally, RDDS end-users, the risk here is that they may inadvertently process personal data as a result of incorrect self-identification. Again, potential violation of the GDPR is listed as the cost here.

And in terms of mitigation, the end-user could potentially apply technical methods to identify personal data from any data that they've obtained from the RDDS. However, because of the cost in doing that, we've listed that again as a zero—kind of a wash in terms of the score. And the benefits, which is the maximization of data in the RDDS. More RDDS data is available. And that gets a positive one point.

However, overall, again, a negative one score for the RDDS end-user. So, based on those scores, again, as I mentioned, this would be an example of an infeasible approach based on the model.

Okay. I think we can go to the next slide. So, to sum up, some of the key points that the report makes are, essentially, that there are several scenarios. In any scenario, there's going to be risks and costs and differentiation simply redistributes those risks and costs associated with processing RDDS data.

So, on the one hand, while differentiation might maximize availability of registration data, there's an imbalance of the burden and benefit in terms of conducting differentiation. And it's unlikely that a global policy to differentiation could ever reach a state that is viewed as ideal by all. Simply, some parties will bear the risks and costs and others will enjoy benefits.

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So, that requires some decisions as to whether or how to balance those factors, and what the relative merits of differentiation are, and what is considered to be feasible, I guess, in terms of who will bear the risk cost and who will enjoy the benefits. And that's it for the overview so I think I'll turn it back over to Karen. Thank you.

KAREN LENTZ:

Thank you, Jared and thank you, Isabelle. So, this section, we will look at the questions that were submitted from the EPDP Phase 2A team. There are about 10 of those so we'll go through. And we have the responses on this slide but I'll talk to them as well.

So, the first question is that the study mentions that Contracted Parties bear many of the costs and risks or that their costs and risks are uncertain and asked, "Are the authors of the study of the opinion that ICANN Org does not face any risks associated with differentiation. If so, what motivated that assumption?"

So, the report doesn't make the claim that ICANN Org does not face any risks but the study is oriented towards looking at the risks and the costs and the benefits for the stakeholders that Jared mentioned—various stakeholder groups in the community. So, the examination of what the risks would be for ICANN as an organization were out of the scope for this report. Next slide.

So, this question asks for an explanation of the differentiation scenario model that's contained at the end of this study, especially how the burden and benefit values are calculated. So, Jared walked you through how that was set up. And what the model

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attempts to do ... So earlier sections of the report focus on certain specific aspects.

So, looking at risks for various stakeholders or looking at a particular—focusing on a particular group like data subjects. And what the model is trying to do is to combine all of those into a single overview that accounts for all of the risks and costs and benefits that were mentioned for each of the different groups. So, the model is really intended to be a tool for incorporating that information.

Looking at it from the whole picture, one of the things that it says in the report, in introducing the model, is that it doesn't account for intensity or degree of a risk or a cost. Everything is a one. It's binary. It's there or it's not.

The data points that are listed in the examples, as far as if there's a risk or if there's a benefit and what it is, came from the responses to the questionnaire, largely. So it wasn't us, this team, deciding which things we thought were a benefit or a risk for whom. But we're accounting for the points that were made as far as what the risks costs and benefits were for the different stakeholder groups. So, if there's something that's not included on an example, it doesn't mean that it can't be plugged in or shouldn't be accounted for but that it wasn't specifically mentioned in any of the responses.

The model is intended to be used so that different values can be plugged in. A lot of the assessments are somewhat qualitative in terms of the value of a particular risk or benefit.

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And then the last thing I'll say is that ... Let's see. I shared that it's meant to be a tool. It's also providing relative weights so the costs are looked at in the context of the benefits and looking at how those relate to one another. And then the risks are looked at on opposite side of the equation as the mitigation factors to determine what the feasibility is of a given scenario. Next slide.

So, this question, we asked for some clarification. And Laureen kindly clarified this was really meant as more of a comment. But it notes that the letter from the European Data Protection Board in 2018 spoke to the question of including personal data in the technical or admin contact fields.

So, if you have a registrant, they shouldn't be required to provide personal data—for example, employees. And it should be made clear to registrants that they have the option to either put the same entity as the registrant in those contact fields or to provide contact information that doesn't directly identify someone—so a role account, for example. And that is, as noted here, directly spoken to in that data protection board letter. Next slide.

So, this question is about the ... There's a reference in the risk mitigation section to data a processing impact assessment and that is a tool. And the question is why is this positioned as a risk mitigation? And also, considering a scenario where there are processes or steps, such as messaging or verification, confirmation, right to correct that impact the risk.

So, the data processing impact assessment is mentioned in the context of risk mitigation. I think it's maybe not the right word exactly to say that it's a risk mitigation method. But it is a tool in

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that if an entity is going through the process of doing this DPIA, they're going to first take into account their circumstances, where they are, what their business is, their customers, etc., and then determine what actions or steps or procedures they want to put in place for their entity in terms of processing data.

And then the action of doing that creates a record of how they have attempted to consider their data processing in the context of the law. And so the data processing impact assessment is really mentioned as a mechanism that would tend to have the effect of mitigating some of the risks. Next slide.

So, the report does note, at some point, the requirement for consent for processing personal data and some writings that have been done on how to design a consent message or how that step takes place. So, the question asks if there's any research on how ccTLDs and others do this.

And if I'm understanding the question, I think that's very relevant in the question of if there's a—looking at whether there's a confirmation step or an input required, an action required from the registrant on the legal or natural person differentiation.

The report doesn't specifically go into the methods for requiring consent or for obtaining consent at the time of a registration. But it does ... As is linked here in the response, there was a memo, I believe, in Phase 2 from Bird & Bird that looked very closely at the question of consent and what the requirements are for that step or how to design it. Next slide.



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So, for this question, this was an interesting question. I'm going to have Isabelle respond to it. It's asking, from the questionnaire, why there seemed to be a difference in perceptions of level of effort between those who were currently doing a differentiation and those who were not. So, Isabelle, can you speak to this one?

ISABELLE COLAS:

Sure. Thank you, Karen. So, in regards to this question, there was actually no additional insight that was provided for those who differentiate and why they perceived it as a low effort, outside of what is already provided in the report.

So, for example, as I mentioned before, relying on the organization field was perceived as quite a simple task. So, what we did here was we also provided a little bit of additional insight that for those who did perceive it as a high level of effort, where there was a shared mutual concern that in general, the concept of legal and natural person is mostly foreign to most human beings. And in general, this would probably increase the possibility of accidentally exposing personal information or having data inserted or inputted improperly.

This also led to another mutual concern where that, in general, respondents felt that this specific risk associated with differentiating between legal and natural person, just in general, provided little return of investment if they were to try to implement such a business model. Thank you. Back to Karen.

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KAREN LENTZ:

Thank you, Isabelle. Can we go to the next slide? So, this question notes that the example of RIPE NCC, which is also discussed in the report. RIPE NCC has published information on their policy, which is to publish all contact details regardless of status and their rationale for doing that.

And so I think this question asks for potential further legal advice—why couldn't that rationale be applied elsewhere? And also noting the French ccTLD example which is also discussed in the report. So, if we're reading the question correctly, it seems to be a request for additional legal advice on this question using the RIPE NCC example. But I'll stand to be corrected if there's something else in that question. Can we go to the next one?

So, this question, there are two parts to it. This was from SSAC. So, the first part was suggesting that there were other very relevant examples of differentiation that should be included in the report, such as ... The examples here are real estate registries, company registries, and trademark registries in the EU, and also how those outside the EU would handle the data of subjects who are from the EU.

This is something that we did look at in terms of trademark registries, for example, the functions tended to be—where the information that we found tended to note the reliance on local law for those processes. But if it's helpful to the team, we can specifically provide and package some of the information that we have on those.

The other part of the question was about a statement that most of the ccTLD operators continue to publish some contact data for

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domains registered by legal persons and is asking for a detailed list of who does what. So, the statement that's referenced is from an SSAC document, as well as citing an article that goes through some of the specific ccTLDs and what they're doing.

So there's not a comprehensive or granular look at every ccTLD and what their practices are. The report does mention some illustrations of specific TLDs which have given very detailed responses to how they differentiate or what drove their decisions. Those are responses from Denmark and Finland for their ccTLDs that are cited in the report. So, that is the most detailed information on those particular CCs. And next slide.

So, this is the last question, asking, "In the feasibility heat map of scenario zero, which has no differentiation, why is less legal risk not considered as a benefit for Contracted Parties?" And as I mentioned, the data points that are in the examples, in terms of the feasibility calculations and what's a one or a zero or a minus one, really came from the questionnaire responses. And so, if there wasn't specifically noted by the Contracted Parties, a point on less legal risk as a benefit in the scenario zero, that's not included. And some of the other questions have been around why wasn't something accounted for in that.

So, again, the model is really intended to be a tool so that other values can be plugged in and some of the gradations can also be accounted for as well, as a way of incorporating the effects on the various stakeholders. So, I believe that was the last question. So, I will turn it back over to Keith for any questions or further discussion from the team. Thank you.

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KEITH DRAZEK:

Thank you very much, Karen. So, Karen, thanks to you and Jared and Isabelle for all the work that you all put into this study and for, again, being here with us today to give it, to present it, respond to the questions that were submitted previously and to engage in any follow-on Q and A.

So, I'll ask the EPDP Phase 2A team members to go ahead and put your hand up in queue, if you've got anything that you'd like to ask—any clarifying questions to what's been discussed today, any additional questions. And if there are new questions to be posed to the team, certainly they can answer them if they have the answers. If not, I'm sure they'd be happy to take them away and come back to us with any additional feedback. So, I see a hand from Greg Aaron, who's SSAC alternate. Go ahead, Greg.

GREG AARON:

Thank you, Keith. Our comment from SSAC112 was that there was missing information from this report, specifically some highly relevant examples. And I think it would be a good idea—the SSAC as a whole thought it would be a good idea—if this report was supplemented with that missing information.

The report did not really talk about what the RIR's doing. They're perhaps the most relevant example in the world because they offer WHOIS and they're just doing IP addresses rather than domain names. So, that was one of the things that was missing.

In regards to question nine, SSAC, yes, does want more legal advice on what RIPE does. Keith, there's some history that I won't

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go into here but we really would like to explore what they do because they have an option that they think is GDPR-compliant and also has some advantages, as far as ease of deployment and uniformity. So, we definitely would like to talk about getting that legal advice more.

One of the things about the report is because it did not give some obvious examples which we listed, it didn't help us as much as we had hoped to understand what some of the options are. Yes, it gives us a methodology for thinking about risks. But what goes into those boxes is also sometimes going to be quite subjective. But we didn't see enough options, based upon what's happening in the real world. Thanks.

KEITH DRAZEK:

Thank you, Greg. And so, I guess if the request at this point is for some additional legal guidance or legal feedback, then that's something to be submitted through our legal committee. And I believe they have a call coming up very soon. So, let's take an action item there to make sure that that's raised at the legal committee.

But yeah, thanks for flagging all of that and I think the questions about what other existing providers are doing in similar spaces I think is relevant. I see Melina has her hand up. Melina, go ahead.

MELINA STROUNGI:

Yes, thank you. I did not see some of the questions that we raised for the EPDP Team Phase 2 A process. I just wanted to briefly raise the philosophy around it. So, I agree that there is merit to

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one of the comments that this binary way of characterizing the cost and benefits by using one for instance, does not account for the gravity of such cost or benefit.

For instance, we may have a solution with huge and important benefits and then give like point of one. And the actual cost can be really minimal and can be easily resolved and again, we gave a point of one. But apart from that, also, it is my view that—and also my idea when reading this study—that the costs and risks explained are not associated with a differentiation as such but with the scenario that we have an incorrect identification.

So, the main argument repeated all over, again and again, in the report is what would happen if a mistake happens. But this is not a cost strictly or a danger strictly associated with differentiation. It's just a matter of what happens if once in 100 times we have this mistake? And this is something that can be quite easily be resolved

And also, in the Bird & Bird memo, there were some suggestions, very simple ones such as, for example, sending a confirmation email, which it would be interesting to know why there hasn't been any cost of solutions such as like this while similar solutions, for instance, would be implemented in the case of consent, right? Because also when obtaining consent, you also need to send confirmation emails or have an information notice in place.

So, it's not clear why, by doing exactly the same effort as you would do with consent, to just simply reduce the risk of wrongly differentiating ... You wouldn't have any extra cost. So, I think an analysis on that is missing. And also, an analysis is missing on

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any compliance cost that would be also taken into account on risks and benefits.

So, these are some remarks from my side. We had raised them as remarks in the questions but maybe they were, I don't know, misplaced. Thank you.

KEITH DRAZEK:

Okay. Thanks Melina. So, I'll ask Karen if she'd like to respond on the methodology point in a moment but I've got a queue building. So, I have Laureen and then James in queue next. But I understand that Melina is also asking that there may have been some questions submitted and also a request for some further work. So, we'll capture those and make sure that we address them. So, Laureen, you're next and then James.

LAUREEN KAPIN:

Thank you. First of all, I wanted to thank all the people who worked on the study. Clearly, it required a tremendous amount of effort and analysis and it is very useful. Building on Melina's comments, which I agree with in total, I very much found it useful to discuss in general the feasibility, the risks, the benefit. But I too was troubled by a methodology that I really did not fully understand, despite your explanation. I was the one who asked that question about how these weights were assigned.

And it struck me ... Well, I'll stop and say that I didn't quite understand why you would assign a one versus a higher number. It seems somewhat arbitrary to me. And I think Melina's point, in

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terms of how you are weighing these benefits, is the key one. It really is subject to interpretation.

That's why I think a dry one, two, or minus one, two, and then coming up with a color that says something is feasible or not feasible, overly and inaccurately, in my view, simplifies the outcome. These are complex issues as to how you assess the risk or liability compared to the benefits to the public and I really think aren't susceptible to a dry numeric value. In fact, that's the reason we're engaged in this policy processes, is to have these debates.

So, I did want to make those comments. I, for one, would have found it much more helpful to have the research and the facts and analysis presented but without some numeric weighing, which I find subject to interpretation.,

KEITH DRAZEK:

Okay. Thank you, Lauren. We'll come to James next and then I'll turn to Karen for any response. James?

JAMES BLADEL:

Hi, thanks Keith. And I wanted to first off thank ICANN. Thanks to ICANN staff for putting together this report. I agree it's sometimes hard to quantify the magnitude or relative risks, costs and benefits but I think assigning a plus one, zero, minus one is as good as any attempt. I think that there's always going to be downsides with that approach.

But what this chart does, in my view, is it illustrates the disconnect between risks and costs versus benefits, and how those are not



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equitably distributed throughout the spectrum of stakeholders here, and that certain parties bear all the costs and bear all the risks and certain stakeholders would potentially derive the benefits. And so, I think to Laureen's point, that's really the crux of what we've been discussing for the past couple of years.

But I wanted to just mention—I think it a was reaction to some couple of things in the Q and A. There was something in the chat. I think Melina brought it up. There is an over-reliance, generally, I think, in the ICANN community of registries and registrars should send an email to registrants to obtain consent, or to get their clarification, or to ask them if they're a legal or natural person, or to ask them to update their WHOIS information, or something like that.

I think it's important to communicate to this group how difficult that is to do at scale, and how a response rate to those types of emails that gets into the double-digit percentage of 11% or 12% would be cause for celebration, and how challenging it is to actually get registrants to behave in large groups the way we would expect individuals to behave and respond individually to those types of communications.

So, I want to put that out there as, if we had an email that could be structured in a way that would get, let's say, 20% response to “please identify yourself as a legal or a natural person,” that's still an unacceptable risk when multiplied out through the legacy install base of just the number of folks that would probably potentially be misidentified.

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So, again, I'm putting that out there because let's not please view sending registrants an email asking for consent or for confirmation of identification as a silver bullet to some of these very challenging problems because I think that more often than not, those messages are just ignored. But otherwise, thanks again for the report.

KEITH DRAZEK:

Thank you, James. So, Karen, I'm going to turn it back to you if you'd like to comment any further on the methodology or anything else that you've heard so far. And then if anybody else would like to get in queue, it is open. Thanks.

KAREN LENTZ:

Okay. Thank you, Keith. So, let me respond to a couple of things. One is on the point from Greg around missing information and could this be supplemented with more on the RIRs, for example. I'll take an action to look at what else we could provide as far as supplemental data to the report.

And then the other questions. I think all three—Greg and Melina and Lauren all touched on this—was the model in terms of the scoring. So, I think we tried to make it clear in the report that this is not meant to be a simple formula that spits out an answer. It's meant to be a tool and fully acknowledges that there's a lot more granularity to the ratings. What's the severity of a risk or a cost, for example, can certainly be accounted for in there.

And as Lauren said, these are complex issues. So this model is really meant to be a starting point, not a finishing point, to account

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for everything. And the information that it includes in these different colored boxes is all in different parts of the report. So you can read the report without the model. The model is just an attempt to combine all of the different variables. So I certainly appreciate the points around things that could be accounted for in further scenarios using this model. Thank you.

KEITH DRAZEK:

Thank you, Karen. And if anybody else would like to react or respond feel free to get in queue. I see Hadia. Go right ahead.

HADIA ELMINIAWI:

Thank you, Keith. And thank you for all those who worked on providing this study. And my comment here is that the report talks about the RDDS as a collective good and goes ahead saying that those who bear no cost in providing the service benefit from it, while those actually who bear the cost do not benefit at all with it.

And that's from the very beginning, that's in the introduction. And actually, that's not a correct way, in my opinion, in looking at the matter. And if it's a matter of cost, are we talking about ...? If it's only a matter of costs, those who are actually going to be using the system are willing to bear some of the costs, that's one thing.

And another thing that those who are benefiting from the system are not only the users of the system but it's also the entire internet community, like the users. It's not only those who are going to have access to the data. Those are not the only beneficiaries of such a system. But those who those users protect are also

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beneficiaries to that system. And I would argue that that would also benefit those who bear the cost of the system.

Again, this entire look of how we look at the RDDS data and who benefits from it and who bears the cost, I think is not entirely correct. Thank you.

KEITH DRAZEK: Okay. Thank you, Hadia. Thomas?

THOMAS RICKERT: Thanks very much, Keith, and hi everyone. Thanks for the presentation of this study. That's much appreciated. I'd just like to get back to the point that I made earlier in writing, And thanks, Karen, for responding to my question on those who are facing liability risks.

And you mentioned that your study was not focusing on other stakeholders than the Contracted Parties and that's well-understood. However, I think it's important to note that a comparison to ccTLD operators, for example, might be difficult because the ccTLD operators are in control of their own policies. So, they might have made a determination for themselves that they are willing to accept a risk, as low or as high that it might be, for their own operations.

But I think for the ICANN world, where we have ICANN Org contracting with hundreds and thousands of contractors that run TLDs or registrars, it all comes together at ICANN. And I think it is challenging to say the least to make a policy determination that

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potentially puts ICANN Org at risk of facing challenges because they enforce all those contracts. They make contractual requirements based on a policy that might require a differentiation that is legally problematic in certain areas.

And so I think it's vital for us and also for our policy deliberations to take icann.org into the equation. And maybe that's something that you can answer but so far, we've seen that ICANN Org was risk-averse. So, I guess the question that maybe our Org liaisons need to answer is that, if this group chose to go forward with a differentiation between legal and natural, would icann.org be willing to accept that risk potentially being exposed to third-party claims or from authorities for all TLDs that they're responsible for. Thank you.

KEITH DRAZEK:

Thank you, Thomas. And I assume there's probably no immediate response to that but it's, I think, an important question to consider. Would anybody else like to get in queue? The queue is empty at this point? Karen, go right ahead.

KAREN LENTZ:

Thank you, Keith. So, to respond to the last couple of comments, first of all, the one from Hadia on the collective good. So, I agree with what you're saying. Certainly appreciate those points. The discussion on collective good is somewhat theoretical, trying to apply these concepts to the multi-stakeholder world.

But yes. Certainly, I think the questions of overall costs and benefits are—opening up what the policy questions are ... What

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are the values that are assigned into policy or that the policy is designed around as far as what are the most important considerations?

And then to the point from Thomas, if I said that the report was only meant to focus on the Contracted Parties as stakeholders, I didn't mean to say that. It's focusing on the various groups of stakeholders including data subjects and end-users, internet users, not only the Contracted Parties. But the report is focused on the stakeholders rather than the Org. And the specific question, I think the liaisons can take back to look at. Thanks.

KEITH DRAZEK:

Thank you, Karen. So, just to summarize a bit. And there's some activity in chat. If folks would like to speak up, we have time and the queue is empty. So feel free to put up your hand. But I think just to summarize a bit on at least some of that discussion, I think Thomas made the point that that ccTLDs and gTLDs are not identical. But I think there is some value, as Greg has noted, in understanding the landscape. And more research on RIR CCTLDs and practices in other areas mentioned in SSAC112 could be beneficial to the group, in terms of understanding what a range of comparable, even if not identical, parties are doing. So, I think those are both important points. Margie, go ahead.

MARGIE MILAM:

Hi, everyone. I was just thinking about what Hadia had mentioned about the costs to the entire industry for having this differentiation. And one of that costs that I don't see reflected in the report is the

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cost of manually reviewing requests for information for data that's simply not protected under GDPR.

So, I see a lot of emphasis on registrar costs but not that aspect of it. And if you think about, if there were a way to do a legal, natural person distinction, you would not need to have the Contracted Parties reviewing manually requests for WHOIS data for folks that are legal persons. And so, I think that that's something that that perhaps is missing as part of the calculus.

KEITH DRAZEK: Thanks, Margie. Okay. The queue is empty. Would anybody else like to speak? Karen, go right ahead again.

KAREN LENTZ: Thank you, Keith, and thank you, Margie. That is mentioned in a few places, the idea that if there's more data available that there is less need to submit individual requests and for the Contracted Parties to spend time reviewing and considering these various requests. So, certainly that's a point that was made a few times in the—or more than a few times—in the questionnaire responses and that is discussed in that section. Thanks.

KEITH DRAZEK: Okay. Thanks Karen. Thanks Margie. Would anybody else like to get in queue? I will say going once, going twice. Okay. I think we're reaching the end of our call then. Karen, is there anything that you or your team would like to add at this point in closing before we move to close the call?

KAREN LENTZ: Well, thank you very much for the questions and for the good discussion. And we'll take our action items and come back to you and good luck with your work.

KEITH DRAZEK: Thank you very much. And we really appreciate the work and the time that you all put into this. And if there are further questions or comments, we'll make sure that we get them to you and we look forward to following up on some of the action items from the call today in terms of some additional work, some additional data for the team's consideration as we get into the topic of legal and natural within the EPDP Working Group.

Next plenary is on Thursday at 1400 UTC. Thank you, Berry. And we can now all wrap up this webinar, this presentation. And Terri, please go ahead and conclude the call. Thank you.

TERRI AGNEW: Thank you very much, all. The meeting has been adjourned. I will disconnect all remaining lines. Stay well and chat with most of you on Thursday.



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**[END OF TRANSCRIPTION]**