

**[Draft] Section I: Privacy and Proxy Services Accreditation Policy IRT Review Version 31**

I. Scope and Definitions

A. ICANN adopts the following policies concerning the accreditation of Privacy and Proxy Service providers in gTLDs.

B. Key terms in this Policy are defined as follows:

- i. "Affiliate" means a Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.<sup>i</sup>
- ii. "Customer" means the licensee or beneficial owner of a registered domain name registered using a Privacy Service or Proxy Service.<sup>ii</sup>
- iii. "Disclosure" means the reveal of a Person's (i.e. the licensee or beneficial owner of a registered domain name) identity/contact details to a third party Requester without Publication in the WHOIS system.<sup>iii</sup>
- iv. "Electronic Communications" include emails, web forms, automated telephone calls or SMS messages, and future automated technology not yet in existence. Human-operated faxes and non-automated telephone calls are not Electronic Communications.<sup>iv</sup>
- v. "Knowingly" refers to actual knowledge at the time the registration is submitted to the Registrar. This knowledge would normally be obtained through a report to the Registrar from ICANN or a third party.<sup>v</sup>
- vi. "Law Enforcement Authority" means law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the Privacy or Proxy Service provider is established or maintains a physical office.<sup>vi</sup>
- vii. A "Persistent Delivery Failure" will have occurred when an electronic communications system abandons or otherwise stops attempting to deliver an electronic communication to a customer after a certain number of repeated or duplicate delivery attempts within a reasonable period of time.<sup>vii</sup>
- viii. "Person" is understood to include natural and legal persons, as well as organizations and entities.<sup>viii</sup>
- ix. "Privacy Service" means a service by which a Registered Name is registered to its beneficial user as the Registered Name Holder, but for which alternative, reliable contact information is provided by the Privacy or Proxy Service provider for display of the Registered Name Holder's contact information in the Registration Data Service (WHOIS) or equivalent services.<sup>ix</sup>
- x. A "Proxy Service" " is a service through which a Registered Name Holder licenses use of a Registered Name to the privacy or proxy Customer in order to provide the privacy or proxy Customer use of the domain name, and the Registered Name Holder's contact information is displayed in the Registration Data Service (WHOIS) or equivalent services rather than the customer's contact information.<sup>x</sup>

**Commented [AB1]: NOTE:** these definitions will be reviewed/revisited when discussed as applied in the substantive sections of the Policy.

**Commented [AB2]: NOTE:** the use of the word "customer" (as opposed to the phrase "beneficial user" or some other word(s)) will be considered as we discuss the substantive sections of the Policy.

It is possible that this word might be confusing when considered in the registrar context and might need to be changed later.

**Commented [AB3]: NOTE:** this definition is taken from the RAA. It might be discussed in the context of the to-be-created LEA framework, but the IRT supports consistency among definitions here and definitions used in the RAA.

**Commented [AB4]: NOTE:** general terms in this definition (reasonable period of time, certain number of repeated or duplicate delivery attempts, may need to be revisited in discussions surrounding Relay requirements.

In comments submitted on 1/10, Lisa Villeneuve proposed that 7 days is reasonable unless there is precedent elsewhere within ICANN policies.

- xi. "Publication" means the Reveal of a Person's (i.e. the licensee or beneficial owner of a registered domain name) identity/contact details in the WHOIS system.<sup>xi</sup>
- xii. "Registered Name" refers to a domain name within the domain of a gTLD, whether consisting of two (2) or more (e.g., john.smith.name) levels, about which a gTLD Registry Operator (or an Affiliate or subcontractor thereof engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).<sup>xii</sup>
- xiii. "Registered Name Holder" means the holder of a Registered Name.<sup>xiii</sup>
- xiv. "Registrar" means a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.<sup>xiv</sup>
- xv. "Relay" means to forward a request to, or otherwise notify, the Privacy or Proxy Service Customer that a Requester is attempting to contact the Customer.<sup>xv</sup>
- xvi. "Requester" means an individual or entity (or its authorized representatives) that requests from a Privacy or Proxy Service provider a Relay or Reveal of the identity or contact details of a Customer.<sup>xvi</sup>
- xvii. "Reseller" means a Person or entity that participates in a Registrar's distribution channel for domain name registrations (a) pursuant to an agreement, arrangement or understanding with the Registrar or (b) with the Registrar's actual knowledge, provides some or all registrar services, including collecting registration data about Registered Name Holders, submitting that data to the Registrar, or facilitating the entry of the registration agreement between the Registrar and the Registered Name Holder.<sup>xvii</sup>
- xviii. "Reveal" describes two distinct actions: Disclosure and/or Publication.<sup>xviii</sup>
- xix. References to "WHOIS" are to the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto.<sup>xix</sup>
- xx. The key words "MUST", "MUST NOT", "REQUIRED", "SHALL", "SHALL NOT", "SHOULD", "SHOULD NOT", "RECOMMENDED", and "MAY" in this document are to be interpreted as described in RFC 2119, which is available at <http://www.ietf.org/rfc/rfc2119.txt>.<sup>xx</sup>

**Commented [AB5]:** NOTE: This definition is from the RAA and the IRT supports maintaining consistency between the RAA and these requirements.

**Commented [AB6]:** New comment from Lisa Villeneuve (1/10): Reveal should have one meaning so as to mitigate confusion for PPS and customers.

### C. Registrars' Acceptance of Privacy and Proxy Service Registrations

- i. Registrars SHALL NOT knowingly accept gTLD registrations from Privacy or Proxy Service providers who are not accredited by ICANN.<sup>xxi</sup>
- ii. Registrars and/or Resellers are prohibited from knowingly accepting registrations from any Proxy and Privacy Service providers who are not accredited by ICANN. This prohibition SHALL be included in the Registrar and/or Reseller Agreements including Terms and Conditions and/or Acceptable Use Policies.<sup>xxii</sup>

**Commented [AB7]:** NOTE: ICANN proposed to add "and/or Resellers" so that this reads "Registrars and/or Resellers SHALL NOT.." IRT members on the 1/10/17 call indicated that this is consistent with the PDP WG's intent.

- iii. If a Registrar becomes aware that one or more registrations made through the registrar involves an unaccredited Privacy or Proxy Service provider, the Registrar SHALL:
- (a) Promptly notify ICANN;
  - (b) Promptly distribute notice to the unaccredited Privacy or Proxy Service provider, alerting the provider that:
    1. The provider appears to be offering an unaccredited Privacy and/or Proxy Service; and
    2. The provider has been reported to ICANN for offering an unaccredited Privacy and/or Proxy Service; and
    3. The provider's ability to register or renew names through the registrar has been suspended until such time as the provider has obtained the required accreditation by ICANN.
  - (c) The Registrar SHALL suspend the registration(s) by the unaccredited Privacy or Proxy Service provider within fifteen (15) days, until such time as the Privacy and/or Proxy Service provider is accredited.

iv. Proxy Service providers registering names on behalf of third parties shall Accredited Privacy and/or Proxy Service providers SHALL incur no obligations as the Registered Name Holder, as outlined in Section 3.7.7 of the 2013 Registrar Accreditation Agreement, for their Customers' activities, so long as the Privacy and/or Proxy Service provider is in compliance with all Policy and contractual requirements of this accreditation program.<sup>xxiii</sup>

#### D. Non-Accredited Entities

- i. Non-accredited entities that offer Privacy and/or Proxy Services or otherwise register domain names and license use of the name(s) to a third party(ies) is the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequately to facilitate timely resolution of any problems that arise in connection with the Registered Name.<sup>xxiv</sup>
- ii. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a Person providing the Registered Name Holder reasonable evidence of actionable harm.<sup>xxv</sup>

#### E. No Limitations on Availability of Services

- i. This Policy does not distinguish between Proxy Service Customers who are engaged in commercial or non-commercial activity. -This Policy does not distinguish between Proxy Service Customers who are engaged in commercial or non-commercial activity, and does not require any accredited privacy or proxy

**Commented [AB8]: NOTE:** On the 1/10/17 IRT call, it was suggested that a subteam of registrars can develop a proposal for this process and bring it back to the IRT for discussion.

ICANN will follow up with IRT to recruit the subteam and kick off this process.

**Commented [AB9]: Question to IRT:** What was the intention of the PDP in the following scenario: Registrar and/or Reseller becomes aware of registrations from an unaccredited privacy or proxy service?

This was not explicit in the Final Recommendations. This process is being proposed by staff for discussion.

**Commented [AB10]: Note to IRT:** Staff is proposing this process for discussion purposes. We could consider this generally at this stage, and revisit this process in further detail when we get to the accreditation process discussions, at which time this can be revisited to ensure the proposed process works and is accounted for within the accreditation process.

**Commented [AB11R10]: Comment from Steve Metalitz:** As noted, this is a good starting point for discussion on what registrar should do when becoming aware of non-accredited services.

**Commented [AB12R10]: Question for IRT:** Was the WG's intent here to motivate PP service users to use only accredited services (so that they would be penalized if they use an unaccredited service)?

**Commented [AB13]:** New comment from Lisa Villeneuve (1/10)—I oppose these requirements as enforcement of this policy should be up to ICANN and not the responsibilities of individual registrars.

**Commented [AB14]: Comment from Theo Geurts:** At first glance, section C3 seems to carry some operational issues and creates some room for potential abuse. But nothing pressing for now.

**Commented [AB15]: NOTE:** This text was introduced for clarity by ICANN in light of the policy recommendation in Section 1D below. On the 1/10/17 IRT call, IRT members indicated that this was the general intent of the PDP WG but this will be revisited later during this IRT to ensure this is consistent with all other requirements.

~~service provider to do so. All applicable rules and regulations apply equally to all Registered Name Holders.~~<sup>xxvi</sup>

- ii. Accredited Privacy and Proxy Service providers may adopt and implement policies that restrict who can utilize their services. This right is subject to Privacy and Proxy Service providers' compliance with this Policy and all other relevant requirements.<sup>xxvii</sup>

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<sup>i</sup> "Affiliate" is defined on p. 7 of the Final Report, and refers back to the 2013 RAA definition.

<sup>ii</sup> This term was not defined in the Final Recommendations. The Final Report refers, in various places, to the "beneficial owner," "beneficial user" and "licensee" of a domain name. Staff is proposing to use this term, and proposing a definition for this term, for consistency across the policy and the accreditation agreement.

<sup>iii</sup> "Disclosure" is defined in the Final Report on p.8.

<sup>iv</sup> "Electronic Communications" was not fully defined in the Final Report; footnote 24, p.13 noted that "emails and web forms would be considered "electronic communications" whereas human-operated faxes would not. The WG recommends that implementation of the concept of 'electronic communications' be sufficiently flexible to accommodate future technological developments." This definition is being proposed by staff for discussion—it is intended to reflect the intent of the Final Report and to provide flexibility to accommodate future technological developments.

<sup>v</sup> "Knowingly" is defined in footnote 11, page 7 of the Final Report.

<sup>vi</sup> "Law Enforcement Authority" is defined on page 8 of the Final Report.

<sup>vii</sup> "Persistent Delivery Failure" is defined on page 14 of the Final Report.

<sup>viii</sup> "Person" is defined on page 8 of the Final Report.

<sup>ix</sup> "Privacy Service" is defined on p. 6 of the Final Report.

<sup>x</sup> "Proxy Service" is defined on p. 6-7 of the Final Report.

<sup>xi</sup> "Publication" is defined on p.7 of the Final Report.

<sup>xii</sup> The definition of "Registered Name" is discussed generally in the Final Report in footnote 51 (pp. 52-52). This footnote refers to the RAA definition; staff proposes to use the RAA definition verbatim.

<sup>xiii</sup> "Registered Name Holder" is not explicitly defined in the Final Report, but is shown capitalized around references to other terms that are defined in the RAA. On that basis, staff is interpreting the use of this as an apparent defined term in the Final Report as an intent to use the RAA definition, which is being proposed here.

<sup>xiv</sup> "Registrar" was not defined in the Final Report. Staff is proposing to add this for completeness and is proposing to use the definition of this term that appears in the 2013 RAA.

<sup>xv</sup> "Relay" is defined in the Final Report on p.8.

<sup>xvi</sup> "Requester" is defined in the Final Report on p.8.

<sup>xvii</sup> This term is not defined in the Final Report. Staff is proposing to incorporate this definition, from the 2013 RAA, because we anticipate that Resellers will also be impacted by these requirements including, at a minimum, the restrictions on Registrars' knowing acceptance of registrations from unaccredited Privacy and Proxy Service providers.

<sup>xviii</sup> This description of the WG's understanding of the word "Reveal" appears in the Final Report in footnote 13, p.7.

<sup>xix</sup> This elaboration on the meaning of the word "WHOIS" appears on p. 9, footnote 15 of the Final Report.

<sup>xx</sup> These terms are not defined in the Final Report. Staff is proposing to add this provision for clarity throughout the Policy.

<sup>xxi</sup> The Final Report says, on p.5, "Registrars are not to knowingly accept registrations from privacy or proxy service providers who are not accredited through the process developed by ICANN." Staff is proposing to use the phrase "SHALL NOT" to make clear that this is an absolute requirement.

<sup>xxii</sup> There is no explicit recommendation regarding resellers in the Final Report. This requirement is in the 2013 RAA's interim Specification on Privacy and Proxy Registrations and this seemed to be implied during the PDP discussions. Staff is proposing this provision to the IRT for discussion.

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<sup>xxiii</sup> The Final Report, at p.52, states that “For nonaccredited entities registering names on behalf of third parties, the WG notes that the obligations for Registered Name Holders as outlined in section 3.7.7 of the 2013 RAA would apply.” The Report goes on, in footnote 53, to say that “Section 3.7.7.3 of the 2013 RAA reads as follows: ‘Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name.’”

<sup>xxiv</sup> This is from the Final Report, p. 52, last paragraph, and footnote 53.

<sup>xxv</sup> This builds upon the language from the Final Report, above, referring to obligations of Registered Name Holders outlined in Section 3.7.7 of the RAA. This specific provision is from Section 3.7.7.3.

<sup>xxvi</sup> The Final Report, at p. 59, states that “In view of the fact that the current situation is one where there are no restrictions on uses to which domain names registered using these services may be put, the WG does not believe that the accreditation standards for P/P services should require service providers to differentiate between registrants who wish to use these services to engage in commercial activities or online financial transactions and registrants who do not.”

<sup>xxvii</sup> The Final Report, at p. 59, states that “The WG’s conclusion that such a prohibition should not be incorporated into accreditation standards at this time is not meant to discourage accredited providers from adopting and implementing such policies if they so choose (provided that other relevant criteria, such as publication of terms of service and grounds for termination of the service, are fulfilled).”