Privacy and Proxy Service Provider Accreditation Policy Section II [IRT Discussion Draft v1]

II. Terms and Conditions of Accreditation Agreements: Privacy and Proxy Service providers SHALL enter into and maintain in effect Accreditation Agreements with ICANN. The following is an outline of the general terms and conditions of accreditation, to be specified in greater detail in the Privacy and Proxy Service Provider Accreditation Agreement executed by ICANN and each Privacy and Proxy Service provider, in conformity with the following general terms[i]:

A. Contactability of Privacy and Proxy Service Providers
   i. Privacy and Proxy Service providers SHOULD be fully contactable through the publication of business contact details on their websites, as specified in the Privacy and Proxy Service Provider Accreditation Agreement. [ii]
   ii. Privacy and Proxy Service providers SHOULD declare their Affiliation with a registrar (if any), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.[iii]

B. Labeling
   Privacy and Proxy Service providers SHOULD ensure that domain name registrations utilizing their services are clearly labeled as such in WHOIS (including the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.[iv]

C. Data Reminders
   i. Privacy and Proxy Service providers SHALL comply with the requirements of the WHOIS Data Reminder Policy, as may be updated from time to time, to the extent that their Customers' information appears in WHOIS.[v]
   ii. Privacy and Proxy Service providers SHALL inform each Customer annually of the Customer's requirement to provide accurate and up-to-date contact information to the Privacy and/or Proxy Service provider.[vi]
   ~~iii. When a Privacy and/or Proxy Service Provider has any information suggesting that a customer's information is incorrect (such as the provider receiving a bounced email notification or non-delivery notification message) for any customer, the Provider must verify, or re-verify the email address(es).~~
      ~~(a) If, within fifteen (15) calendar days after receiving any such information, the Privacy and/or Proxy Service Provider does not receive an affirmative response form the customer providing the required verification, the Privacy and/or Proxy Service Provider shall verify the applicable contact information manually.~~

D. Data Validation and Verification
   i. Privacy and Proxy Service providers SHALL validate and verify Customer data in a manner consistent with the requirements outlined in the WHOIS Accuracy

Commented [AB1]: Note to IRT: The Statement of Registrar Accreditation Policy, https://www.icann.org/resources/pages/policy-statement-2012-02-25-en, includes a section "Terms and Conditions of Accreditation Agreements."

ICANN org drafted this section to mirror that structure, incorporating the basics of the major substantive requirements from the Final Report, with the understanding that the details of these requirements will be further defined through the Accreditation Agreement (which the IRT will review to ensure consistency with the intent of the PDP WG). ICANN org requests the IRT's feedback re: the level of detail here vs the contract throughout this document.

Commented [AB2]: Question/Note for IRT: ICANN org proposed (and IRT reviewed) the use of standard IETF definitions for words "SHALL" "SHOULD", etc. ICANN org has flagged instances of the word "SHOULD" for discussion on PDP WG intent.

SHALL means "an absolute requirement." SHOULD means that "there may exist valid reasons in particular circumstances to ignore a particular item, but the full implications must be understood and ...

Commented [AB3]: Question to IRT: "SHOULD" or "SHALL"?

Commented [AB4]: Question to IRT: SHOULD or SHALL?

Commented [AB5]: Question to IRT: "SHOULD" or "SHALL?

Commented [AB6]: Question to IRT: Final Report said "Similar to the WDRP" PP service providers should be required to inform the PP service customer annually of his/her requirement to provide accurate and up-to-date contact information to the PP service provider. ...

Commented [AB7]: Note to IRT: Pursuant to discussion on 1/10 surrounding definitions, the word "Customers" would be defined as discussed (the beneficial user/licensee of registration). If it is later determined that the word "Customer" is confusing, this word should be updated for ...

Commented [AB8]: Note to IRT: Final Report defines WHOIS to include "the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto."

Commented [AB9]: Note to IRT: This tracked change is an example of a provision that was included in the Final Report, where ICANN org believes the specific requirement might be more appropriately included in the contract. Does IRT agree?

Commented [AB10]: Question to IRT: Is this referring to the data that appears in WHOIS, underlying Customer data, or both? ...

Program Specification of the 2013 Registrar Accreditation Agreement, as specified in the Privacy and Proxy Service Provider Accreditation Agreement (as may be updated from time to time).[vii]

~~i.~~ii. In cases where a Privacy and/or Proxy Service provider is Affiliated with a registrar, and that Affiliated registrar has carried out the required validation and verification of the customer data, re-verification by the Privacy and/or Proxy Service provider of the same, identical information is not required.[viii]

E. Privacy and/or Proxy Service Terms and Conditions

i. Privacy and Proxy Service Providers SHALL clearly communicate all Customer and registrant rights, responsibilities and obligations in the Privacy and/or Proxy Service Provider's Registration Agreement.[ix]

(a) This disclosure SHALL include, at a minimum:

(b) The Privacy and/or Proxy Service Provider's obligations in managing customer rights and responsibilities;

(c) Any specific requirements applying to transfers of a domain name, including:

1. The conditions under which the Privacy and/or Proxy Service may be terminated in the event of a transfer of the domain name; and
2. How requests for transfers of a domain name are handled.

(d) Any specific requirements applying to renewals of a domain name.

ii. Privacy and Proxy Service providers SHALL publish (e.g. on the Privacy and/or Proxy Service provider's website) terms of service that set forth, at a minimum, the processes and requirements for third-party requests for Relay, Publication and Disclosure.[x]

iii. Privacy and Proxy Service providers SHALL indicate clearly in their terms of service when they are referring to Publication requests (and potential consequences) and when to Disclosure requests (and potential consequences).[xi]

iv. Privacy and Proxy Service providers SHALL expressly include a provision in their terms of service explaining the meaning and consequences of Disclosure and Publication.[xii]

v. Privacy and Proxy Service provider terms of service SHALL indicate clearly the specific grounds upon which a Customer's details may be Disclosed or Published or service suspended or terminated, including Publication in the event of a Customer's initiation of a transfer of the underlying domain name.[xiii]

vi. Privacy and Proxy Service provider terms of service SHOULD also include a link or other direction to the ICANN website where a person may look up the authoritative definitions and meanings of specific terms such as Disclosure or Publication.[xiv]

vii. Privacy and Proxy Service provider terms of service SHALL include pricing information.[xv]

Commented [AB11]: Note to IRT: This is a section where ICANN org specifically requests the IRT's feedback regarding the level of detail, and whether specific provisions might be more appropriately included in the contract.

Commented [AB12]: Question: What else would constitute "publication"? The Final Report only said "e.g. on their websites. Are there other ways these could be published? Should other ways be specified?

Commented [AB13]: Note to IRT: The Final Report refers to both "Registration Agreements" and "Terms of Service." This proposed section reflects the language used in the Final Report. Does this fit with the PDP WG's intent? (we read this as implying that Registration Agreements will incorporate the terms of service, but terms of service wouldn't include all the terms of the registration agreement)

viii. Privacy and Proxy Service provider terms of service shall indicate clearly, including required timelines and processes, whether or not:[xvi]
   (a) A Customer will be notified when a provider receives a Publication or Disclosure request from a third party; and
   (b) A Customer may opt to cancel its domain registration prior to and in lieu of Publication.

ix. Privacy and Proxy Service providers SHOULD indicate clearly, on their websites and in all Publication or Disclosure-related materials, that a Requester will be notified in a timely manner of the provider's decision:
   (a) To notify its Customer of the request; and
   (b) Whether or not the provider agrees to comply with the request to Disclose or Publish.[xvii]

x. Privacy and Proxy Service providers SHOULD include on their websites, and in all Publication or Disclosure-related policies and documents, a link to either:[xviii]
   (a) A request form containing a set of specific, minimum, mandatory criteria, or
   (b) An equivalent list of such criteria that the provider requires in order to comply with such requests (including requests from Law Enforcement Authorities and/or intellectual property holders).

xi. Privacy and Proxy Service providers SHALL state on any forms used for reporting and requesting purposes the applicable jurisdiction in which disputes (including disputes involving Law Enforcement Authorities and/or intellectual property holders) must be resolved.[xix]

F. Relay

i. Privacy and Proxy Service providers SHALL Relay to their Customers any notices and/or communications required under the Registrar Accreditation Agreement or an ICANN Consensus Policy.[xx]

ii. For all other Electronic Communications, Privacy and Proxy Service providers MAY elect one of the following options:[xxi]
   (a) Relay all Electronic Communications received (including those received via emails and web forms), but the Service provider MAY implement commercially reasonable safeguards (including CAPTCHA) to filter out spam and other forms of abusive communications; or
   (b) Promptly Relay all Electronic Communications (including those received via emails and web forms) received from Law Enforcement Authorities and third parties containing allegations of domain name abuse (i.e. illegal activity).

iii. Privacy and Proxy Service providers SHALL publish and maintain a mechanism (e.g. designated email point of contact) for Requesters to follow up on or escalate their original request.[xxii]

iv. When a Privacy and/or Proxy Service provider becomes aware of a Persistent Delivery Failure of Electronic Communications to a Customer, the Privacy and/or

Commented [AB14]: Note to IRT: Proposing to add to Final Recommendation to clarify that terms should clearly explain steps and timeline for notifications to Customers (if any) and steps and timeline for Customers to opt to cancel a registration (if the Provider offers that option).

Commented [AB15]: Question: Can/should we be more specific re: the meaning of "timely"?

Commented [AB16]: Note to IRT: Final Report states that "The WG recommends that a uniform set of minimum mandatory criteria for the purpose of submitting abuse reports and information requests be developed. Forms that may be required by individual P/P service providers for this purpose should also include space for free form text62. P/P service providers should also have the ability to "categorize" reports received, in order to facilitate responsiveness." (See p. 63)

Can the IRT provide additional information about what was intended here? This language seems to indicate that we will create:

>A uniform set of minimum mandatory criteria for the purpose of submitting abuse reports, and
>A uniform set of minimum mandatory criteria for the purpose of submitting information requests
>A list of standard categories of requests/abuse reports

ICANN is proposing to incorporate this into the "Abuse Reporting" section J, below and/or (for discussion) a separate section on "standard requests criteria"

Question: Should this deliverable also include standard criteria for other types of requests, such as relay (in addition to IP requests, which will be addressed in separate section of Policy).

Commented [AB17]: Note/Question to IRT: Should this be limited in any way (e.g. to the jurisdiction where the provider has its place of business?)

Commented [AB18]: Note to IRT: Should this be further defined here or in the PPAA?

Commented [AB19]: Question for IRT: The Final Report said "i.e." but was this intended to be an example (e.g.)? "ie" would limit this to only allegations of illegal activity

Proxy Service provider SHALL promptly notify the Requester of the Persistent Delivery Failure.[xxiii]

v. When a Privacy and/or Proxy Service provider becomes aware of a Persistent Delivery Failure, this awareness triggers the provider's obligation to perform a verification/re-verification (as applicable) of the Customer's email address(es), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.[xxiv]

vi. As part of an escalation process, and when a Privacy and/or Proxy Service provider has become aware of Persistent Delivery Failure, the Privacy and/or Proxy Service provider SHALL, upon request, Relay a further form of notice to its Customer.[xxv]

(a) The Privacy and/or Proxy Service provider SHALL have the discretion to select the most appropriate means of Relaying such a request to the Customer.

(b) The Privacy and/or Proxy Service provider SHALL have the right to impose reasonable limits on the number of such requests made by the same Requester for the same domain name.

vii. The requirements set forth above SHALL NOT preclude a Privacy and/or Proxy Service Provider from taking any additional action in the event of a Persistent Delivery Failure of Electronic Communications to a C~~c~~ustomer, in accordance with its published terms of service.[xxvi]

G. Reveal (Publication and Disclosure)

i. In deciding whether or not to comply with a Disclosure or Publication request, Privacy and Proxy Service providers SHALL NOT mandate that a Requester first make a Relay request.[xxvii]

ii. Privacy and Proxy Service providers SHALL notify a Requester in a timely manner of the Provider's decision:[xxviii]

(a) To notify its Customer of the request; and

~~(b)~~ Whether or not the provider agrees to comply with the request to Disclose or Publish.

iii. Nothing in this Policy should be read as being intended to alter the prevailing practice among Privacy and Proxy Service providers to review requests manually or to facilitate direct resolution of an issue between a Requester and a C~~c~~ustomer. Disclosure of at least some contact details of the Customer may in some cases be required in order to facilitate such direct resolution.[xxix]

H. Transfers

I. Designated Point of Contact to Receive and Respond to Reports of Abuse

Privacy and Proxy Service providers SHALL maintain a designated point of contact to receive and respond to reports of abuse involving Registered Names that are registered

Commented [AB20]: Question/Note to IRT: The definition of "persistent delivery failure" was discussed on Section 1/definitions call, and we said we would revisit.

The current definition is: 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.

Can the IRT provide guidance on additional specificity here, for inclusion in the more detailed provision in the PPAA?

Commented [AB21]: Question for IRT: Is this consistent with PDP intent? The Final report says this should be in the ToS, but proposing to include this to clarify that this is a requirement.

Commented [AB22]: Note to IRT: This is a placeholder, pending additional input from the Board w/r/t Transfer Policy. Any additional work will be initiated with subgroup and then discussed with full IRT for incorporation here.

Note—consider whether to incorporate a requirement that PP services should promptly report updates to RDS information as a result of transfers and/or renewals to the registrar.

through the Privacy and/or Proxy Service provider, as specified in the Privacy and Proxy Service Provider Accreditation Agreement.[xxx]

J. Standard Forms

Accredited Privacy and Proxy Service providers SHALL use standard forms and other mechanisms specified in the Privacy and Proxy Service Provider Accreditation Agreement (as may be updated from time to time) that would facilitate the prompt and accurate identification of Relay and other types of standardized request and reporting processes.[xxxi]

K. Data Retention and Escrow

L. UDRP Proceedings

Privacy and/or Proxy Service providers that permit customers to cancel a domain registration prior to and in lieu of Publication SHALL expressly prohibit cancellation of a domain name that is the subject of a UDRP proceeding.[xxxii]

Commented [AB23]: Note to IRT: This is an area where the proposed policy language is not as specific as the Final Report. ICANN org proposes to leave the specifics for the PPAA (to be reviewed by the IRT).

Would this fulfill the intent of the PDP WG?

Commented [AB24]: Question for IRT: The Final Recommendations indicate that the use of **standard forms and other mechanisms** that would facilitate the prompt and accurate identification of a Relay **request be explored during implementation** (e.g. drop-down menus in a provider's web-based forms or fields that would require the filling in of a Requester's contact details, specifying the type of request or other basic information).

We interpret this as a recommendation that we create standard processes for requests (ie, requirements for forms, categories for requests, etc). Is this interpretation accurate?

This section is being included as a placeholder for discussion; however, detailed requirements for these form(s) would ultimately be incorporated into other section(s) of the Policy and contractual requirements.

Can the IRT confirm that this implementation should include the creation of standard forms and other mechanisms to facilitate PP providers' handling of requests and abuse reports?

Commented [AB25]: Question to IRT: Neither data retention nor data escrow was addressed in the Final Report, but these requirements seemed to be contemplated based on the discussions surrounding de-accreditation/termination, transfers, etc.

Also, the fact that registrars are required to escrow the data underlying Privacy and Proxy registrations pursuant to the 2013 RAA. We also note that there is a data escrow requirement in the 2013 RAA's interim privacy/proxy specification.

Question to IRT: Did the PDP WG intend for data escrow requirements for PP Services to be a part of the requirements created through this implementation? What about data retention?

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[i] This Section is proposed as a complement to the structure of the Statement of Registrar Accreditation Policy (introductory text copied/appropriated from Rr Policy), https://www.icann.org/resources/pages/policy-statement-2012-02-25-en#II).

[ii] The Final Report states, at p. 12, number 12, that "P/P service providers should be fully contactable, through the publication of contact details on their websites in a manner modeled after Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations, as may be updated from time to time. Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations states that P/P Provider shall publish its business contact information on its website and/or Registrar's website.

[iii] The Final Report, page 11-12, item 10, states that P/P service providers should declare their Affiliation with a registrar (if any) as a requirement of the accreditation program. ICANN proposes for discussion the text presented in brackets [on their website and in all relevant governing materials] as a possible means to clarify where this declaration should appear.

[iv] See Final Report, page 9, item 4 "To the extent that this is feasible, domain name registrations involving P/P service providers should be clearly labelled as such in WHOIS." See also Final Report, footnote 15, page 10, "For clarity, references to WHOIS in this Final Report are to the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto."

[v] The Final Report, page 54, states that "Similar to ICANN's WHOIS Data Reminder Policy" P/P service providers should be required to inform the P/P service customer annually of his/her requirement to provide accurate and up-to-date contact information to the P/P service provider.

[vi] See note vi immediately above.

[vii] The Final Report, page 9, item 5, states that "P/P customer data is to be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA (as may be updated from time to time)."

[viii] The Final Report, page 9, item 5, states that "In the cases where a P/P service provider is Affiliated with a registrar and that Affiliated registrar has carried out validation and verification of the P/P customer data, reverification by the P/P service provider of the same, identical, information should not be required."

[ix] The Final Report, page 9, item 6, states that "All rights, responsibilities and obligations of registrants and P/P service customers as well as those of accredited P/P service providers need to be clearly communicated in the P/P

service registration agreement, including a provider's obligations in managing those rights and responsibilities and any specific requirements applying to transfers and renewals of a domain name."

[x] The Final Report, page 10, item 8, states that "All accredited P/P service providers must publish their terms of service, including pricing (e.g. on their websites)…"

[xi] The Final Report states at p. 10, item 8, bullet 1, "In addition to other mandatory provisions recommended by the WG, the terms should at a minimum include the following elements in relation to Disclosure and Publication: Clarification of when those terms refer to Publication requests (and their consequences) and when they refer to Disclosure requests (and their consequences)."

[xii] See note xv immediately above.

[xiii] The Final Report, page 10, item 8, bullet 8 states that the following should be disclosed in the ToS, "The specific grounds upon which a customer's details may be Disclosed or Published or service suspended or terminated, including Publication in the event of a customer's initiation of a transfer of the underlying domain name [footnote omitted]."

[xiv] The Final Report, page 11, item 9, bullet 3, states that P/P service providers should include (as a best practice) in their terms of service a link or other direction to the ICANN website (or other ICANN-approved location) where a person may look up the authoritative definitions and meanings of specific terms such as Disclosure and Publication.

[xv] Final Report, page 10, item 8 states that "All accredited P/P service providers must publish their terms of service, including pricing (e.g. on their websites)."

[xvi] See Final Report, page 10, item 8, bullet 3.

[xvii] See Final Report, page 70, recommendation VI.

[xviii] See Final Report, page 10, item 7 (and elsewhere) "All accredited P/P service providers must include on their websites, and in all Publication and Disclosure-related policies and documents, a link to either a request form containing a set of specific, minimum, mandatory criteria, or an equivalent list of such criteria, that the provider requires in order to determine whether or not to comply with third party requests, such as for the Disclosure or Publication of customer identity or contact details."

[xix] See Final Report, page 71, paragraph 2.

[xx] See Final Report, page 13, item 16, All communications required by the RAA and ICANN Consensus Policies must be Relayed.

[xxi] See Final Report, page 13, item 16.

[xxii] See Final Report, page 14, first bullet.

[xxiii] See Final Report, page 14, item 17.

[xxiv] See Final Report page 14, item 17, fourth bullet.

[xxv] See Final Report, page 14, item 17, third bullet.

[xxvi] See Final Report, page 15, last bullet.

[xxvii] See Final Report, page 69.

[xxviii] The Final Report states, at page 11, first paragraph, that the ToS should clarify that a Requester will be notified in a timely manner of the provider's decision: (1) to notify its customer of the request; and (2) whether or not the provider agrees to comply with the request to Disclose or Publish. This should also be clearly indicated in all Disclosure or Publication related materials.

[xxix] See Final Report, item 18, page 15.

[xxx] The Final Report, item 11, page 12, states that "P/P service providers must maintain a point of contact for abuse reporting purposes. In this regard, a "designated" rather than a "dedicated" point of contact will be sufficient, since the primary concern is to have one contact point that third parties can go to and expect a response from."

[xxxi] The Final Report, in various places (see, example p. 64, referring to a drop-down menu in a web-based form), suggests that implementation will include the creation of standard request processes, such as a standard form for all PP services. ICANN included this text for discussion with the IRT and proposes that, if this understanding is correct, that we discuss this process at a future meeting and then incorporate requirements here.

[xxxii] See Final Report, p. 10, "accredited P/P service providers … should nevertheless expressly prohibit cancellation of a domain name that is the subject of a UDRP proceeding."