



# Working Group Charter for a Policy Development Process to Address Privacy & Proxy Services Accreditation Issues arising under the 2013 Registrar Accreditation Agreement

<b>WG Name:</b>	RAA Privacy & Proxy Services Accreditation Issues PDP Working Group	
<b>Section I: Working Group Identification</b>		
<b>Chartering Organization(s):</b>	Generic Names Supporting Organization (GNSO) Council	
<b>Charter Approval Date:</b>	TBD	
<b>Name of WG Chair:</b>	TBD	
<b>Name(s) of Appointed Liaison(s):</b>	TBD	
<b>WG Workspace URL:</b>	TBD	
<b>WG Mailing List:</b>	TBD	
<b>GNSO Council Resolution:</b>	<b>Title:</b>	Motion to Approve the Charter for the 2013 Registrar Accreditation Agreement (RAA) Privacy & Proxy Services Accreditation Issues Policy Development Process (PDP) Working Group (WG)
	<b>Ref # &amp; Link:</b>	TBD
<b>Important Document Links:</b>	<ul style="list-style-type: none"> <li>•</li> </ul>	

## Section II: Mission, Purpose, and Deliverables

### Mission & Scope:

#### Background

At the ICANN Meeting in Dakar in October 2011 the ICANN Board adopted [Resolution 2011.10.18.32](#) regarding amendments to the Registrar Accreditation Agreement (Dakar RAA Resolution). The Dakar RAA Resolution directed negotiations on amending the 2009 Registrar Accreditation Agreement (RAA) to be commenced immediately, and requested the creation of an Issue Report to undertake a GNSO Policy Development Process (PDP) as quickly as possible to address any remaining items not covered by the negotiations and otherwise suited for a PDP. With the [Preliminary Issue Report on RAA Amendments](#) having been published in December 2011, the [Final GNSO Issue Report](#) on RAA Amendments was published, following from the Dakar RAA Resolution, on 6 March 2012. On 27 June 2013, the ICANN Board [approved](#) the [new 2013 Registrar Accreditation Agreement](#) (2013 RAA). Accordingly, the GNSO Council is now proceeding with the Board-requested PDP on the remaining issues identified in the RAA negotiations that were not addressed in the 2013 RAA; specifically, issues relating to the accreditation of Privacy & Proxy Services.

#### Mission and Scope

This RAA PDP Working Group (WG) is tasked to provide the GNSO Council with policy recommendations regarding the issues identified during the 2013 RAA negotiations, including recommendations made by law enforcement and GNSO working groups, that were not addressed during the 2013 RAA negotiations and otherwise suited for a PDP; specifically, issues relating to the accreditation of Privacy & Proxy Services.

As part of its deliberations on the matter, the RAA PDP WG should, at a minimum, consider those issues detailed in the [Staff Briefing Paper](#) published on 16 September 2013. These are:

- *What, if any, are the types of Standard Service Practices that should be adopted and published by ICANN-accredited privacy/proxy service providers?*
- *What, if any, are the baseline minimum standardized relay and reveal processes that should be adopted by ICANN-accredited privacy/proxy service providers?*
- *Should ICANN-accredited privacy/proxy service providers be required to reveal customer identities for this specific purpose?*
- *Should ICANN-accredited privacy/proxy service providers be required to forward on to the customer all allegations they receive of illegal activities relating to specific domain names of the customer?*
- *What forms of malicious conduct (if any) and what evidentiary standard would be sufficient to trigger such disclosure? What safeguards must be put in place to ensure adequate protections for privacy and freedom of expression?*

- *What specific violations, if any, would be sufficient to trigger such publication? What safeguards or remedies should there be for cases where publication is found to have been unwarranted?*
- *Should ICANN-accredited privacy/proxy service providers be required to conduct periodic checks to ensure accuracy of customer contact information; and if so, how?*
- *What are the contractual obligations (if any) that, if unfulfilled, would justify termination of customer access by ICANN-accredited privacy/proxy service providers?*
- *What rights and responsibilities should customers of privacy/proxy services have? What obligations should ICANN-accredited privacy/proxy service providers have in managing these rights and responsibilities? Clarify how transfers, renewals, and PEDNR policies should apply.*
- *Should ICANN-accredited privacy/proxy service providers be required to label WHOIS entries to clearly show when a registration is made through a privacy/proxy service?*
- *Should full WHOIS contact details for ICANN-accredited privacy/proxy service providers be required? What measures should be taken to ensure contactability and responsiveness of the providers?*
- *Should ICANN-accredited privacy/proxy service providers be required to maintain dedicated points of contact for reporting abuse? If so, should the terms be consistent with the requirements applicable to registrars under Section 3.18 of the RAA?*
- *What are the forms of malicious conduct (if any) that would be covered by a designated published point of contact at an ICANN-accredited privacy/proxy service provider?*
- *What circumstances, if any, would warrant access to registrant data by law enforcement agencies?*
- *What clear, workable, enforceable and standardized processes should be adopted by ICANN-accredited privacy/proxy services in order to regulate such access (if such access is warranted)?*
- *Should ICANN-accredited privacy/proxy service providers distinguish between domain names used for commercial vs. personal purposes? Specifically, is the use of privacy/proxy services appropriate when a domain name is registered for commercial purposes? Should there be a difference in the data fields to be displayed if the domain name is registered/ used for a commercial purpose or by a commercial entity instead of to a natural person?*
- *Should the use of privacy/proxy services be restricted only to registrants who are private individuals using the domain name for non-commercial purposes?*
- *What types of services should be covered, and what would be the forms of non-compliance that would trigger cancellation or suspension of registrations?*
- *Should ICANN distinguish between privacy and proxy services for the purpose of the accreditation process?*

The following additional issues should also be considered by the WG:

- *What are the effects of the privacy & proxy service specification contained in the 2013 RAA? Have these new requirements improved Whois quality, registrant contactability and service usability?*
- *What should be the contractual obligations of ICANN accredited registrars with regard to accredited privacy/proxy service providers? Should registrars be permitted to knowingly accept registrations where the registrant is using unaccredited service providers that are however bound to the same standards as accredited service providers?*

The WG’s final recommendations do not need to be limited to formal Consensus Policy recommendations; it may, for example, make recommendations more appropriately covered by a code of conduct or best practices, or through other mechanisms (e.g. as indicated in the GNSO PDP Manual.) The WG should also bear in mind that this PDP is expected to inform ICANN’s proposed Action Plan to launch an accredited privacy/proxy program and further ICANN’s ongoing efforts to implement recommendations made by the WHOIS Review Team. In addition, the WG should take into account recommendations made by the WHOIS Review Team at as early a stage as possible, and the results of the Whois Privacy & Proxy Abuse Study commissioned by the GNSO Council and published for public comment on 24 September 2013: <http://www.icann.org/en/news/public-comment/whois-pp-abuse-study-24sep13-en.htm>

The WG may also wish to consider forming sub-groups to work on particular issues or sub-topics in order to streamline its work and discussions.

**Objectives & Goals:**

To develop, at a minimum, an Initial Report and a Final Report regarding the WG’s recommendations on issues relating to the accreditation of privacy & proxy services arising in relation to the 2013 RAA, to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the GNSO PDP Manual.

**Deliverables & Timeframes:**

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and the PDP Manual. As per the GNSO Working Group Guidelines, the WG shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in Annex A of the ICANN Bylaws and the PDP Manual, and shall submit this to the GNSO Council.

**Section III: Formation, Staffing, and Organization**

**Membership Criteria:**

The WG will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

**Group Formation, Dependencies, & Dissolution:**

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a ‘Call For Volunteers’ as widely as possible in order to ensure broad representation and participation in the WG, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and

- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees

#### **Working Group Roles, Functions, & Duties:**

The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.

Staff assignments to the Working Group:

- GNSO Secretariat
- ICANN policy staff members (Mary Wong)

The standard WG roles, functions & duties shall be those specified in Section 2.2 of the GNSO Working Group Guidelines.

#### **Statements of Interest (SOI) Guidelines:**

Each member of the WG is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

### **Section IV: Rules of Engagement**

#### **Decision-Making Methodologies:**

The Chair will be responsible for designating each position as having one of the following designations:

- **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus**.
- **Consensus** - a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP WG, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*
- **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there is a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) - a position where there is no strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to **Consensus**, **Strong support but significant opposition**, or **No Consensus**; or it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document variances in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare cases, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - o A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - o It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus views/positions. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire WG and, for this reason, should take place on the designated mailing list to ensure that all WG members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus has been reached and to announce this designation to the WG. WG member(s) should be able to challenge the designation of the Chair as part of the WG discussion. However, if disagreement persists, WG members may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the liaison(s) from the Chartering Organization (CO). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison(s). If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the liaison(s) disagrees with the Chair, the liaison(s) will forward the appeal to the CO.

Should the complainants disagree with the liaison(s)'s support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.

3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison(s) of their issue and the Chair and/or Liaison(s) will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initiate a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

#### **Status Reporting:**

As requested by the GNSO Council, taking into account the recommendation of the Council liaison(s) to the WG.

#### **Problem/Issue Escalation & Resolution Processes:**

The WG will adhere to [ICANN's Expected Standards of Behavior](#) as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison(s) and, if unsatisfactorily resolved, to the Chair of the CO or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN's Expected Standards of Behavior as referenced above.

The Chair, in consultation with the CO liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the CO. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the CO or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role

according to the criteria outlined in this Charter, the same appeals process may be invoked.

**Closure & Working Group Self-Assessment:**

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

**Section V: Charter Document History**

Version	Date	Description

<b>Staff Contact:</b>	Mary Wong	<b>Email:</b>	<a href="mailto:Policy-staff@icann.org">Policy-staff@icann.org</a>
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**Translations: If translations will be provided please indicate the languages below:**

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