

PPSAI – Category B – Maintenance of Privacy / Proxy Services

Question 3 – *What rights and responsibilities should domain name registrants that use 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 apply¹.*

Updated 18 March 2014

Background information relevant to this question:

- Inter-Registrar Transfer Policy – see <http://www.icann.org/en/resources/registrars/transfers/policy-15mar09-en.htm>
- Expired Registration Recovery Policy - <http://www.icann.org/en/resources/registrars/consensus-policies/errp>

Whois Review Team Final Report:

- ICANN should ensure that the requirements for accurate WHOIS data are widely and pro-actively communicated, including to current and prospective Registrants, and should use all means available to progress WHOIS accuracy, including any internationalized WHOIS data, as an organizational objective. As part of this effort, ICANN should ensure that its Registrant Rights and Responsibilities document is pro-actively and prominently circulated to all new and renewing registrants.
- In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to the following objectives: (...)
 - Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment.

RAA Registrants Rights & Responsibilities (see also Annex A) - <http://www.icann.org/en/resources/registrars/registrant-rights/benefits>

¹ ICANN staff should provide updates on transfer, renewal, dispute and PEDNR policies.

What rights and responsibilities should domain name registrants that use 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?	Who	WG Response	Recommended Action (if any)
<p>Basic responsibility of customers should be to not use Privacy and Proxy Services to veil intellectual property infringement. Basic right of customers is to have their privacy protected and anonymity maintained for legitimate purposes of free commerce and speech. Privacy and Proxy Service Providers should preserve the privacy of their customers, subject to the RELAY and REVEAL procedures described in 2 above.</p>	<p>Jim Bikoff, David Heasley, Griffin Barnett, Valeriya Sherman / Silverberg, Goldman & Bikoff, LLP</p>		
<p>Private individual registrants should have the right to protected information that will not be shared without substantial evidence of a breach of contract, including violations of applicable law. Privacy and proxy service providers should have clear policies for reveals, unmasking, transfers, and renewals. Two separate forms of transfers may occur. The first would be a transfer of the registrar which may or may not be the privacy/proxy service provider. The second would be the transfer of information from one privacy/proxy service provider to another. Both forms of transfer should occur without revealing registrant data. If a registrant has pending</p>	<p>Emily Emanuel, John Horton, and Justin Macy. Representing LegitScript.</p>		

allegations or violations against them the domain and/or privacy/proxy service should not be transferable until the claims are resolved.			
for any privacy protected domain, no transfer should be allowed whilst enabled as this hinders future ICANN processes if required, for example transfer disputes.	Chris Pelling		
For customers, the same as any Registered Name Holder. For p/p services, the same as any accredited registrar. All other policies should apply just as they do for any other registrant or registrar.	Anonymous		
Partial response: Customers should have transparency regarding application of Standard Service Practices.	IPC		
<p>Customers/Registrants should have the rights and responsibilities as set out in their agreements with their proxy or privacy service providers. They should have the rights and protections of privacy and due process as afforded by national laws and incorporated into the Service Providers contract.</p> <p>Access: NCSG submits that in the gTLD system, p/p is a needed and legitimate service for noncommercial organizations, including public interest groups, religious groups, educational organization, charities, and hobby groups, as well as individuals, entrepreneurs and small businesses. We would like to see that right of access protected and ensured.</p>	NCSG		

<p>Due Process: NCSG submits that the p/p customer should be assured of the right to engage in a dialogue with the proxy/privacy service provider before contact data is released or published (when legally allowed), and given the opportunity to show if the request for contact data is intended to harm, harass, damage competition or diminish Freedom of Expression or Assembly rights. Further, the NSCG comments discussed (as reflected in the current template) the importance of allowing Registrars to follow their national laws and practices and incorporate the privacy, data protection and due process of their laws into their p/p contracts with customers. What is illegal in one country is not illegal in another country -- be it speech activities, religious activities, political activities or even comparative advertising (in which a particular product or service specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it). These robust differences must be taking into account when drafting a general set of accreditation principles for rights and responsibilities of Registrants.</p>			

	What rights and responsibilities should domain name registrants that use 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?
WG Preliminary Conclusion	
Should the same conclusion apply to proxy services & privacy services? If not, please explain why.	

Annex A – RAA Registrant's Benefits and Responsibilities

Domain Name Registrants' Rights:

1. Your domain name registration and any privacy/proxy services you may use in conjunction with it must be subject to a Registration Agreement with an ICANN Accredited Registrar.
 - You are entitled to review this Registration Agreement at any time, and download a copy for your records.
2. You are entitled to accurate and accessible information about:
 - The identity of your ICANN Accredited Registrar;
 - The identity of any proxy or privacy service provider affiliated with your Registrar;
 - Your Registrar's terms and conditions, including pricing information, applicable to domain name registrations;
 - The terms and conditions, including pricing information, applicable to any privacy services offered by your Registrar;
 - The customer support services offered by your Registrar and the privacy services provider, and how to access them;
 - How to raise concerns and resolve disputes with your Registrar and any privacy services offered by them; and
 - Instructions that explain your Registrar's processes for registering, managing, transferring, renewing, and restoring your domain name registrations, including through any proxy or privacy services made available by your Registrar.
3. You shall not be subject to false advertising or deceptive practices by your Registrar or through any proxy or privacy services made available by your Registrar. This includes deceptive notices, hidden fees, and any practices that are illegal under the consumer protection law of your residence.

Domain Name Registrants' Responsibilities:

1. You must comply with the terms and conditions posted by your Registrar, including applicable policies from your Registrar, the Registry and ICANN.
2. You must review your Registrar's current Registration Agreement, along with any updates.
3. You will assume sole responsibility for the registration and use of your domain name.
4. You must provide accurate information for publication in directories such as WHOIS, and promptly update this to reflect any changes.
5. You must respond to inquiries from your Registrar within fifteen (15) days, and keep your Registrar account data current. If you choose to have your domain name registration renew automatically, you must also keep your payment information current.