GNSO PRIVACY & PROXY SERVICES ACCREDITATION ISSUES PDP WORKING GROUP

SUMMARY OF PRELIMINARY CONCLUSIONS[1] TO DATE AND QUESTIONS FOR THE ICANN COMMUNITY ON OUR WORK[2]

CATEGORY A QUESTION 2: Should ICANN distinguish between privacy and proxy services for the purpose of the accreditation process?
WG Preliminary Conclusion: Privacy and proxy services could potentially be treated the same way for the purpose of the accreditation process. Question for Community: Do you agree? Further, should ICANN Registrars be required to only use accredited P/P providers?

CATEGORY B QUESTION 1 - 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?
WG Preliminary Conclusion: Domain name registrations involving privacy/proxy service providers should be clearly labeled as such in Whois. There may be various ways to implement this recommendation in order to achieve this objective; the feasibility and effectiveness of these options should be further explored as part of the implementation process. As an example, it was suggested that P/P services could be required to provide the registration data in a uniform / standard format that would make it clear that the domain name registration involves a P/P service - e.g. entering in the field for registrant information 'Service Name, on behalf of customer' (in the case of a proxy service this could then include a number, customer #512, while in the case of a privacy service it would include the actual customer name). Following submission of this information to the registrar, this information would then be displayed in Whois making it clearly identifiable as a domain name registration involving a P/P service. The WG also agreed there should be no distinction between privacy and proxy services for this purpose. Question for Community: Do you agree?

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[1] These conclusions are considered preliminary as, following the WG's initial work on all the Charter questions, the WG will return to review each preliminary conclusion and, if necessary, update, add to or amend them.

[2] The WG charter, as approved by the GNSO Council, contains over 20 questions, which the WG divided into seven categories (Categories A-G).

CATEGORY B QUESTION 2 - Should ICANN-accredited privacy/proxy service providers be required to conduct periodic checks to ensure accuracy of customer contact information; and if so, how?

WG Preliminary Conclusion: The WG recommends[3] that proxy and privacy customer data be validated and verified in a manner consistent with the requirements outlined in the Whois Accuracy Specification of the 2013 RAA. Moreover, in the cases where validation and verification of the P/P customer data was carried out by the registrar, re-verification by the P/P service of the same, identical, information should not be required.

Similar to ICANN's Whois Data Reminder Policy, P/P providers should be required to inform the P/P customer annually of his/her requirement to provide accurate and up to date contact information to the P/P provider. If the P/P service has any information suggesting that the P/P customer information is incorrect (such as P/P service receiving a bounced email notification or non-delivery notification message in connection with compliance with data reminder notices or otherwise) for any P/P customer, the P/P provider must verify or re-verify, as applicable, the email address(es). If, within fifteen (15) calendar days after receiving any such information, P/P service does not receive an affirmative response from the P/P customer providing the required verification, the P/P service shall verify the applicable contact information manually.

Question for Community: Do you agree? Further, is there any reason to treat privacy and proxy services differently for this purpose?

CATEGORY B 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 apply?

WG Preliminary Conclusion: All rights, responsibilities and obligations for registrants as well as privacy/proxy providers would need to be clearly communicated in the privacy/proxy registration agreement, including any specific requirements applying to transfers and renewals (further details as to what minimum requirements for such rights, responsibilities and obligations to be discussed).

Specifically, in relation to transfers and renewals, the WG noted the common practice of terminating privacy/proxy protection as part of the transfer process and recommends that this be clearly disclosed to registrants (NOTE: a sub group was formed to explore

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[3] Some WG members are of the view that the minimum verification or validation standards for accredited services would need to exceed those applicable to non-proxy registrations, but this view could be affected by the outcome of discussions regarding relay and reveal requirements (e.g., re the speed of reveal). As such, this recommendation will be revisited upon the completion of the WG deliberations on the other charter questions.

practical ways to facilitate transfers without the need for termination).

The WG may explore the possibility of recommending that P/P providers report updates to Whois information within a certain time frame (e.g. modeled on Section 3.2.2 of the 2013 RAA).

The WG recommends that the following mandatory requirements form part of a P/P service accreditation program:

- All P/P services must relay to their customers any notices required under the RAA or an ICANN Consensus Policy.
- All P/P service registration agreements must state the customer's rights and responsibilities and the P/P service's obligations in managing those rights and responsibilities. Specifically, all P/P services must disclose to their customers the conditions under which the service may be terminated in the event of a transfer of the domain name.

In addition, the WG recommends the following as best practices:

- P/P services should facilitate and not hinder the transfer, renewal or restoration of a domain name by their customers, including without limitation a renewal during a Redemption Grace Period under the ERRP and transfers to another P/P service.
- P/P services should use commercially reasonable efforts to avoid the need to disclose underlying customer data in the process of renewing, transferring or restoring a domain name.

Question for Community: Do you see any practical or other problems with the WG's preliminary recommendations? Are there other mandatory requirements or best practices, related to this specific charter question, that the WG should consider?

CATEGORY C[4]:

"Threshold" Question: Currently, proxy/privacy services are available to companies, noncommercial organizations and individuals. Should there be any change to this aspect of the current system in the new accreditation standards[5]?

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[4] The WG agreed to first discuss a Threshold (i.e. baseline) Question for this Category. In the course of deliberations it became clear that likely responses to Questions C-1 & C-2 were closely linked to this Threshold Question. ***NOTE: The WG is still discussing the issue. As such, and unlike the other Preliminary Conclusions presented herein, the summary of the WG's current deliberations is here included in full (version as of 27 May 2014).***

[5] In agreeing to first discuss this threshold question for Category C, WG members noted also that answers to some questions in this category might be somewhat conditional, in that a Yes/No answer to one may obviate the need to answer others. The WG also noted that references to the "use" of a domain for specific purposes may also implicate content questions.

The WG discussed the practical difficulties created by the lack of clear definition as to what is "commercial" and what is "noncommercial". For instance, a distinction could be made on the basis of the individual or organization having a certain corporate form, or on the basis of the activities/transactions the individual or organization engages in regardless of corporate form. In addition, some commercial entities register and use domain names for noncommercial (e.g. charitable or experimental) purposes.

The WG agrees that the status of a registrant as a commercial organization, non-commercial organization, or individual should not be the driving factor in whether proxy/privacy services are available to the registrant. Fundamentally, p/p services should remain available to registrants irrespective of their status as commercial or non-commercial organizations or as individuals.

However, a minority of WG members is of the view that domain names being actively used for commercial transactions (e.g., the sale or exchange of goods or services) should not be able to use or continue using proxy/privacy services. Accordingly, Charter Question C-1 presents some distinctions that create a division within the WG.

CATEGORY C QUESTION 1 - 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?

As noted above, the WG agrees that the mere fact of a domain being registered by a commercial entity, or by anyone conducting commercial activity in other spheres, should not prevent the use of p/p services. In addition, a majority of WG members did not think it either necessary or practical to prohibit domain names being actively used for commercial activity from using p/p services.

However, a minority of WG members disagreed, noting that in the "offline world" businesses often are required to register with relevant authorities as well as disclose details about their identities and locations. These members expressed the view that it is both necessary and practical to distinguish between domains used for a commercial purpose (irrespective of whether the registrant is actually registered as a commercial entity anywhere) and those domains (which may be operated by commercial entity) that are used for a noncommercial purpose. However, domains that conduct financial transactions online must have openly available domain registration information for purposes of, for example, consumer self protection and law enforcement purposes. Accordingly, these members suggested that domains used for online financial transactions with a commercial purpose should be ineligible for privacy and proxy registrations.

Among the arguments in response, some WG members assert that in jurisdictions where similar legal requirements (e.g. business registration, disclosure of location) already exist for the "online world", such disclosures are generally made via a prominent link on the web site rather than in the WHOIS data. This is due apparently to the fact that, in the translation from the "offline world" to the "online world", legislators usually focus on the content available under the domain name, not the domain name registration itself. The majority view also holds that there may be valid reasons why domain name registrants using their domain names for commercial purposes may legitimately need the availability of such services (for example, for the exercise of political speech).

Question C-1 subparts (a) and (b), which the WG added early in our work to focus discussions, suggest defining "commercial" within the context of specific activities, and uses "trading" as an example. However, the WG discussion has focused on a broad term "commercial" and whether certain types of commercial activity mean that a domain is not eligible for P/P registration. For clarity as the WG moves forward, we will continue to use "commercial" in a broad sense and "transactional" to address issues raised by the position held by the minority group on the threshold question. The WG will develop a formal definition of "transactional" as needed for further discussion of the minority group's approach.

CATEGORY C QUESTION 2 - Should the use of privacy/proxy services be restricted only to registrants who are private individuals using the domain name for non-commercial purposes?

Given the foregoing discussion, the WG does not believe that privacy/proxy registrations should be limited to private individuals who use their domains for non-commercial purposes.

Issues discussed likely will arise with respect to matters that the WG will address later. In addition, the WG may consider requesting community feedback on this question as it continues its deliberations on the questions contained in its charter. The WG did note that per its preliminary agreement on question B-1 that 'domain name registrations involving privacy/proxy service providers should be clearly labeled as such in Whois. The WG observes that there may be various ways to implement this recommendation in order to achieve this objective and suggests that the feasibility and effectiveness of these options is further explored as part of the implementation process. As an example, it was suggested that P/P services could be required to provide the registration data in a uniform / standard format that would make it clear that the domain name registration involves a P/P service such as entering in the field for registrant information 'Service Name, on behalf of customer' (in the case of a proxy service this could then include a number, customer #512, while in the case of a privacy service it would include the actual customer name). Following submission of this information to the registrar, this

information would then be displayed in Whois making it clearly identifiable as a domain name registration involving a P/P service'.

Question for Community: What is your view on the Threshold Question, and Questions C-1 & C-2?

CATEGORY C QUESTION 3 - Should there be a difference in the data fields to be displayed if the domain name is registered or used for a commercial purpose, or by a commercial entity instead of a natural person?

WG Preliminary Conclusion: A majority of WG members are of the view that it is neither desirable nor feasible to make a distinction in the data fields to be displayed.

Question for Community: Do you agree? Should there be additional Whois data fields, either mandatory or optional?

CATEGORY D QUESTION 1- What measures should be taken to ensure contactability and responsiveness of the providers?

WG Preliminary Conclusion: ICANN should publish and maintain a publicly accessible list of all accredited p/p providers, with all appropriate contact information. Registrars should provide a web link to p/p services run by them or their Affiliates, and p/p providers should declare their Affiliation with a Registrar (if any) as a requirement of the accreditation program. The WG noted that responsiveness is a separate and necessary part of the accreditation program, but has not finalized agreement on the appropriate form and level of responsiveness to be required of accredited p/p providers.

Question for Community: Do you have any other suggestions for ensuring contactability?

CATEGORY D – QUESTION 2: 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?

WG Preliminary Conclusion: The WG agreed that a "designated" rather than a "dedicated" point of contact will be sufficient for abuse reporting purposes, noting that the primary concern is to have one contact point that third parties can go to and expect a response from. In this regard, the WG noted that the TEAC language of "capable and authorized" could be helpful as a possible standard for a designated contact.

On responsiveness, the WG agreed to further discuss the sufficiency of a "reasonable and prompt" standard (per Section 3.18 of the 2013 RAA) under the Relay and Reveal

categories.

The WG noted with approval the following recommendations from ICANN's Compliance Department (whose input the WG had sought in relation to the practical workings of Section 3.18 to date), and agreed they may be helpful in its further review of this question: (i) provide guidance to an abuse report requirement as to the types of abuse complaints allowed and types of actions P/P providers should take about these reports; and (ii) consider alternative abuse report options other than publishing an email address on a website and in Whois output (to address increasing volumes of spam).

Question for Community: Do you agree with the recommendation for a capable and authorized designated point of contact? What standard should apply for responsiveness (e.g. "reasonable and prompt" per Section 3.18 of the RAA or another)?

CATEGORY D QUESTION 3 - Should full WHOIS contact details for ICANN-accredited privacy/proxy service providers be required?

WG Preliminary Conclusion: The WG agreed that p/p providers should be fully contactable; it has yet to reach agreement on whether adopting Section 2.3 (from the 2013 RAA Temp Spec) will be sufficient, noting that this WG is making other recommendations in response to Charter questions that may affect the matter (e.g. the WG recommendation for ICANN to publish a publicly-accessible list of accredited providers (see WG Preliminary Conclusion for D-1), and for Whois entries to be clearly labeled if they are those of a P/P provider (see WG Preliminary Conclusion for B-1).)

Question for Community: This question is based on a recommendation from the Whois Review Team Final Report; given that there is no accepted definition for "full Whois contact details", what is your view on adopting Section 2.3 of the 2013 RAA p/p specification?