

# GNSO Privacy/Proxy Services WG Initial Report

## Introduction & Background

The Registrar Accreditation Agreement (RAA) is the contract that governs the relationship between ICANN and its accredited registrars. Its provisions may also have an impact on registrants and other third parties involved in the domain name system. In June 2013, the ICANN Board approved a new 2013 RAA (available at <http://www.icann.org/en/resources/registrars/raa/approved-with-specs-27jun13-en.pdf>).

In initiating negotiations for the 2013 RAA between ICANN and the Registrars Stakeholder Group in October 2011, the ICANN Board had also requested an Issue Report from the GNSO that, upon the conclusion of the RAA negotiations, would start a GNSO Policy Development Process (PDP) to address remaining issues not dealt with in the RAA negotiations and suitable for a PDP. The GNSO Council chartered a Working Group to begin working on the PDP in October 2013.

The WG has now published its Initial Report for community input. To facilitate public comments, this survey has been created. It lists all the WG's preliminary conclusions as well as remaining open questions on which it is seeking community feedback. Please be sure to review the Initial Report before completing the survey.

Note that each survey item contains a box for written comments. Completing this survey does not preclude you from sending a separate public comment in the more traditional manner, by submission to the Public Comment Forum. It may, however, be helpful for you to complete the survey first before considering whether or not to submit a supplemental, or additional, comment. Thank you for your time and attention.

### \*1. What is your name?

### \*2. What is your affiliation (e.g. name of ICANN Supporting Organization, Advisory Committee, Stakeholder Group, Constituency, individual)

Affiliation

Please select from the drop-down menu

Other (please specify)

### 3. Are you completing this survey on behalf of your group? If yes, please specify which group if different from your listed affiliation.

Yes

No

If yes, please specify which group if different from your listed affiliation.

## WG Preliminary Recommendations: Definitions & General Recommendations

Here you may provide responses as to whether or not you (or the group you represent, as applicable) agree or disagree with the WG's preliminary recommendations on certain definitions it proposes be adopted by ICANN and on its general recommendations.

### 4. Please indicate if you agree or disagree with the WG's recommended definitions for the following terms: Disclosure, Publication, Person, Law Enforcement Authority, Relay, Requester

- Agree with all
- Agree with none
- Agree with some (please indicate which you agree and disagree with, and if possible, why, in the box below)

Additional Comments

### 5. Do you agree with the WG's recommendation that privacy and proxy services should be treated the same way for the purpose of the accreditation process?

- Yes
- No

Additional Comments

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## 6. Do you agree with the WG's recommendation that:

**(1) 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;**

**(2) privacy and proxy services should remain available to registrants irrespective of their status as commercial or non-commercial organizations or as individuals; and**

**(3) privacy and proxy registrations should not be limited to private individuals who use their domains for non-commercial purposes?**

- Agree with all three statements
- Agree with none of the statements
- Agree with some of the statements (please indicate in the box below the reasons for your answer)

Additional Comments

## 7. Do you agree with the WG's recommendation that domain names registered using a privacy or proxy service should be labeled as such in Whois?

- Yes
- No

Additional Comments

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**8. Do you agree with the WG's recommendation that:**

**(1) privacy/proxy customer data is to be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Specification of the 2013 RAA; and**

**(2) in the cases where a privacy/proxy service provider is Affiliated with a registrar (as defined by the 2013 RAA), and validation and verification of the customer data has been carried out by the registrar, re-verification by the privacy/proxy service provider of the same, identical, information should not be required?**

Yes

No

Additional Comments

## Mandatory Provisions to be Included in Accredited P/P Service Providers' Cu...

Here you may provide your views (or those of the group you represent, as applicable) on the WG's preliminary conclusions regarding certain mandatory provisions that an accredited privacy/proxy service provider must include in its customer Terms of Service.

### 9. Do you agree with the WG's recommendation that:

**(1) all rights, responsibilities and obligations of registrants, privacy/proxy service customers and service providers need to be clearly communicated in the privacy/proxy 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; and**

**(2) all privacy/proxy service providers must disclose to their customers the conditions under which the service may be terminated in the event of a transfer of the domain name, and how requests for transfers of a domain name are handled?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

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**10. Do you agree with the WG's recommendation that 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 standardized request form or an equivalent list of specific 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?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

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**11. Do you agree that the following additional provisions regarding Disclosure and Publication should be included in the Terms of Service:**

**(1) clarification of when there is a reference to Publication requests (and their consequences) and when to Disclosure requests (and their consequences);**

**(2) explanation of the meaning and consequences of Publication;**

**(3) the specific grounds upon which a customer's details may be Disclosed or Published or service suspended or terminated; and**

**(4) clarification as to whether or not a customer:**

**(i) will be notified when a provider receives a Publication or Disclosure request from a third party; and**

**(ii) in the case of Publication, whether the customer may opt to cancel its domain registration prior to and in lieu of Publication or Disclosure?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- Yes to some (please indicate which you agree or disagree with, and why, in the box below)
- No

Additional Comments

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**12. Do you agree that the following should be recommended as "best practices" for P/P service providers:**

**(1) they should facilitate and not obstruct the transfer, renewal or restoration of a domain name by their customers, including without limitation a renewal during a Redemption Grace Period under the Expired Registration Recovery Policy and transfers to another registrar;**

**(2) they 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; and**

**(3) they should include in their terms of service a link or other direction to the ICANN website (or other ICANN-approved online location) where a person may look up the authoritative definitions and meanings of specific terms such as Disclosure or Publication?**

- Yes
- Yes, with conditions (please specify those conditions in the box below)
- Yes to some (please indicate which you agree or disagree with, and why, in the box below)
- No

Additional Comments



## Contactability & Responsiveness of P/P Service Providers

Here you may provide your views (or those of the group you represent, as applicable) on the WG's preliminary conclusions regarding provider contactability and responsiveness.

### 13. Do you agree with the WG's recommendation that:

**(1) ICANN should publish and maintain a publicly accessible list of all accredited P/P service providers, with all appropriate contact information;**

**(2) registrars should provide a web link to P/P services run by them or their Affiliates; and**

**(3) P/P service providers should declare their Affiliation with a registrar (if any) as a requirement of the accreditation program?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- Yes to some (please indicate which you agree or disagree with, and why, in the box below)
- No

Additional Comments

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**14. Do you agree that providing a “designated” rather than a “dedicated” point of contact will be sufficient for abuse reporting purposes, since the primary concern is to have one contact point that third parties can go to and expect a response from? Do you also agree that the designated point of contact should be capable and authorized to investigate and handle abuse reports and information requests received (a standard similar to that currently required for a Transfer Emergency Action Contact under the Inter Registrar Transfer Policy)?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- Yes, but not using the TEAC standard from the IRTP (please include alternative suggestions in the box below)
- No

Additional Comments

**15. Do you agree with the WG's recommendation that P/P service providers should be fully contactable, through the publication of contact details on their websites in a manner modelled after Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations?**

- Yes
- Yes, but in a different way from what the WG recommends (please provide further details in the box below)
- No

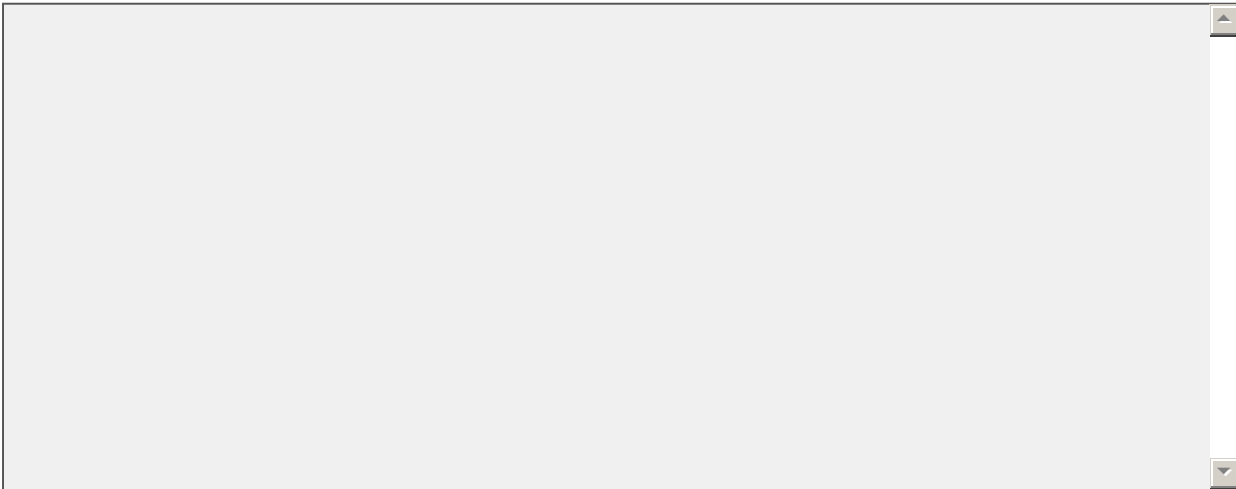
Additional Comments

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**16. Do you agree that a list of the forms of malicious conduct to be covered by a privacy/proxy service provider's designated published point of contact should be included? Do you also agree that these requirements should allow for enough flexibility to accommodate new types of malicious conduct, and that Section 3 of the Public Interest Commitments (PIC) Specification in the New gTLD Registry Agreement or Safeguard 2, Annex 1, of the GAC's Beijing Communique could serve as starting points for developing such a list?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- Yes, but disagree with using either the PIC Specification and/or GAC Safeguard 2, Annex 1 (please provide further details below)
- No

Additional Comments



## Standard Reporting/Request Forms and Handling of Relay Requests

Here you can provide your views (or those of the group you represent, as applicable) regarding the WG's recommendations and remaining open questions on standardized reporting/request forms, and the handling of relay requests received electronically.

**17. Do you agree with the WG's recommendation that a standardized form should be developed for the purpose of reporting abuse and submitting requests (including requests for Disclosure of customer information), to also include space for free form text? Do you also agree that privacy/proxy service providers should have the ability to “categorize” reports received, in order to facilitate responsiveness?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

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**18. Do you agree with the WG's recommendation concerning the relaying of electronic communications? Namely, that:**

**(1) All communications required by the RAA and ICANN Consensus Policies must be forwarded; and**

**(2) For all other electronic communications, P/P service providers may elect one of the following two options:**

**i. Option #1: Forward all electronic requests received (including those received via emails and via web forms), but the provider may implement commercially reasonable safeguards (including CAPTCHA) to filter out spam and other forms of abusive communications, or**  
**ii. Option #2: Forward all electronic requests received (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 activities)? Do you also agree that P/P service providers must publish and maintain a mechanism (e.g. designated email point of contact) for Requesters to contact to follow up on, or escalate, their original requests?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

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**19. Do you agree with the WG's recommendation that:**

**(1) all third party electronic requests alleging abuse by a P/P service customer will be promptly forwarded to the customer; and**

**(2) a Requester will be promptly notified of a persistent failure of delivery that a P/P service provider becomes aware of? [In answering this question, please feel free to provide additional guidance to the WG as to what would constitute a "persistent delivery failure" beyond what is stated in the Initial Report]**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- Yes to only one of the two recommendations (please specify which, and why, in the box below)
- No

Additional Comments

**20. The WG has not yet reached consensus on mandatory next steps for a privacy/proxy service provider regarding the escalation of relay requests. What should be the minimum mandatory requirements for escalation of relay requests in the event of a persistent delivery failure of an electronic communication? What is your view of the current language under consideration by the WG (see Section 1.3.2 of the Initial Report)?**

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**21. Do you agree with the WG's recommendation that when a P/P service provider becomes aware of a persistent delivery failure to a customer, that will trigger the provider's obligation to perform a verification/re-verification (as applicable) of the customer's email address(es), in accordance with the WG's recommendation that customer data be validated and verified in a manner consistent with the WHOIS Accuracy Specification of the 2013 RAA?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments



## Disclosure & Publication of Customer Identity or Contact Details

Here you can provide your views (or those of the group you represent, as applicable) on the WG's preliminary conclusions and remaining open questions regarding a provider's Disclosure or Publication (both previously and collectively referred to commonly as "reveal") of a customer's identity or contact details.

**22. What are your views on the WG's recommended illustrative Disclosure Framework (Annex E of the Initial Report) for IP rights-holders? Note that the proposal contains some alternative language formulations not yet finalized by the WG.**

**23. The WG's illustrative Disclosure Framework currently applies only to IP (i.e. trademark or copyright) rights-holders. Please provide your views on the applicability of a similar framework or policy to other types of requesters. In particular, please provide your views on the following specific questions:**

**(1) Should it be mandatory for accredited P/P service providers to comply with express requests from LEA in the provider's jurisdiction not to notify a customer?**

**(2) Should there be mandatory Publication for certain types of activity e.g. malware/viruses or violation of terms of service relating to illegal activity?**

**(3) What (if any) should the remedies be for unwarranted Publication?**

**(4) Should a similar framework and/or considerations apply to requests made by third parties other than LEA and intellectual property rights-holders?**



## De-accreditation

Here you can provide your views (or those of the group you represent, as appropriate) on the WG's preliminary conclusions regarding the de-accreditation of privacy/proxy service providers.

**24. Do you agree that privacy/proxy service customers should be notified prior to de-accreditation of a P/P service provider, to enable them to make alternative arrangements? If so, should this be when Compliance sends breach notices to the provider, as customers would then be put on notice (as is done for registrar de-accreditation)?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

**25. Do you agree that other P/P service providers should also be notified, to enable interested providers to indicate if they wish to become the gaining P/P provider (as is done for registrar de-accreditation)? If so, should all notification(s) be published on the ICANN website (as is done for registrar de-accreditation)?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

**26. Do you agree that a de-accredited P/P service provider should have the opportunity to find a gaining provider to work with (as sometimes occurs with registrar de-accreditation)?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

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**27. Do you agree that a “graduated response” approach to de-accreditation should be explored, i.e. a set series of breach notices (e.g. up to three) with escalating sanctions, with the final recourse being de-accreditation?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

**28. Do you agree that, where feasible, a customer should be able to choose its new P/P service provider in the event of de-accreditation of its existing provider?**

- Yes
- Yes, with conditions (please specify what those conditions are in the box below)
- No

Additional Comments

**29. Do you agree that the next review of the IRTP should include an analysis of the impact on P/P service customers, to ensure that adequate safeguards are in place as regards P/P service protection when domain names are transferred pursuant to an IRTP process?**

- Yes
- No

Additional Comments

**30. Please provide any suggestions you may have on a possible compliance framework that may facilitate the effectiveness of the de-accreditation process.**

## Domain Names used for Commercial (Transactional) Purposes

Please provide your views (or those of the group you represent) on this issue, on which there is no consensus within the WG and for which certain Additional Statements were included in the Initial Report, filed by various WG members.

**31. Before answering this question, please review the WG's deliberations on the issue of whether registrants of domain names associated with online financial transactions should be permitted to use privacy/proxy services (including the Additional Statements in the Final Report). What is your view on the following questions:**

**(1) Should registrants of domain names associated with commercial activities and which are used for online financial transactions be prohibited from using, or continuing to use, privacy and proxy services? If so, why, and if not, why not?**

**(2) If you agree with this position, do you think it would be useful to adopt a definition of “commercial” or “transactional” to define those domains for which P/P service registrations should be disallowed? If so, what should the definition(s) be?**

**(3) Would it be necessary to make a distinction in the WHOIS data fields to be displayed as a result of distinguishing between domain names used for online financial transactions and domain names that are not?**

## General Comments

**32. Please include any additional comments or suggestions for the WG here.**