

II. Disclosure and Publication in relation to Requests by LEA and other Third Parties other than Trademark and Copyright Owners

(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? (Section 1.3.2)?

	Q1	Q2	Q3	Q4	Other/Comments
1.	Yes	Yes, if illegal activity established and to use responses in law and RAA	Yes, on a case by case basis possible compensation. ICANN compliance notified	N/A	Up to each provider to decide on contact requests
2.	Yes, if compliance with local law. If not addressed by law should be developed with LEA input	No – market controlled	No – market controlled	Yes, appendix E to serve as model for non-LEA requests in particular on malware	Policies need to be developed if not addressed by law in notifying registrant
3.	Yes, only if LEA request has been deemed valid	Yes, as critical for preventing abuse	Depends on reason for publication and contract law should provide sufficient remedies. Suggests complaints to ICANN and for ICANN to withdraw accreditation	N/A	
4.	No, important to define LEA request – should operate within local laws	N/A	N/A	N/A	Important to differentiate between LEA and non-LEA requests.

					Different laws in different jurisdictions regarding disclosure
5.	Maybe - disclosure to depend on local laws of requestor	N/A	N/A	No, non-LEA organisations should be treated as complainants and an independent adjudicator to determine claim	Different jurisdictions have different laws on LEA requests
6.	No, disclosure only if required by relevant/local law	N/A	N/A	No, any framework should be replaced with operating within the relevant law and other such processes already in place	A number of remedies are in place for IP holders including UDRP
7.	No, any issues LEA have should be resolved by government	N/A	N/A	No, polices should be established by using examples already in use e.g. CIRA	
8.	No, data should only be disclosed in exceptional circumstances, e.g. likelihood of abuse – allegations are not sufficient alone. Domain owners to be allowed to respond to claims	N/A	N/A	N/A	

9.	No, should be on a case by case basis	No	None	No, any process should be governed by local law	Difficulties with putting the same burden on providers as hosting companies. Not dealing with content. Provider may disclose anyway if thought to be held liable. Local law should always be taken into consideration
10.	No, only if complies with relevant legal process and court order. Privacy must be protected	N/A	N/A	N/A	Human rights issues. To protect privacy find the gaps between local law and human rights
11.	No, only if legal due process is followed. No right to grant any extended rights to LEAs	No, too much – P&P providers should agree to take reasonable steps to investigate and respond to complaints	N/A	No not necessary	
12.	Yes but local LEA requests to be treated differently to LEAs from other jurisdictions. Take language from RAA	No, follow local law in respect of publication; access only granted to LEAs in local jurisdiction in and ICANN's jurisdiction	N/A	N/A	Final recommendations must ensure that any allegation is not illegal in the jurisdiction and is supported by evidence

13.	No and disclosure only an exception to the rule and dealt with in compliance with local law	N/A	N/A	Yes but limit source of demands for disclosure and have strict safeguards dependent on whether LEA, IP owners or third parties	Privacy is key and disclosure must be subject to local laws in the applicable registry's jurisdiction
14.	No, disclosure should be provider's decision	N/A	N/A	No - third parties requests only accepted if served by local LEA	No automatic process
15.	No, providers to follow local law re notification not be compelled to do so. Disclosure only to LEAs in provider and ICANN's jurisdiction	N/A	N/A	Yes, local LEA requests to be treated differently to LEAs from other jurisdictions. Take language from RAA	Final recommendations must ensure that any allegation is not illegal in the jurisdiction and is supported by evidence. Violations of free speech and privacy
16.	No, unless gag order – up to LEA and provider	No, unless agreed by experts	Unsure – did have a few suggestions	Yes and requests to be agreed by experts	
17.	No, unless gag order. Customer deserves to know who wants his info. Must maintain privacy of registrant even against LEA	N/A	N/A	N/A	Privacy driven
18.	No	N/A	N/A	N/A	Interesting suggested process

19.	No	No	No	No to disclosure to copyright holders	
20.	No, only to keep confidential in matters of national security or with a court order	No, as not up to providers only the web host	No, no complaints procedure to be established with accreditation process. If publication unwarranted then provider could face a fine	No	Not sure how to providers will define national security or what is the highest legal proof?
21.	Maybe – dependent on jurisdiction and local law	N/A	N/A	N/A	
22.	Yes	Yes	No – a matter between the customer and the provider	Yes	
23.	No, unless allowed under local law	No disclosure can be made through the usual channels	N/A	No, existing process sufficient	
24.	Maybe – if site is hacked scenario – suggesting registrar changes name servers and then domain owner to remove malware.	N/A	N/A	N/A	Interesting scenario but not practical
25.	No, disclosure only under a court order and based on local law	N/A	No, as once published then no return.	N/A	
26.	No, only with a court order to allow	N/A	N/A	N/A	

	registrant to appeal				
27.	No, always notify registrant	No	Yes, provider to be penalised somehow	No, must be strict over request process	
28.	No	No	None	No	
29.	No, always notify registrant	No	No	No	Privacy to be guarded at all times
30.	No	No	N/A	No, IP holders not to make requests only through courts and local law	
31.	No	No	No	No	I think the point of question 3 was lost here
32.	Unsure	Unsure	Unsure	Unsure	Not clear on anything here
33.	N/A	N/A	N/A	No should not confuse trade marks and domain names	There are unregistered rights which are protected. Thanks for sharing
34.	N/A	N/A	N/A	N/A	Does not agree with LEA definition
35.	No	No	No	No	No regulation for providers and current legal remedies sufficient
36.	N/A	N/A	Yes, if published then registrant has all costs, including litigation and losses should be covered by ICANN	No	Should not have to provide personal info for a domain

37.	No, only if provided for by local law	No, unless in accordance with local law	N/A	N/A	For changes in law, lobby government
38.	No, only if provided for by local law	N/A	N/A	N/A	
39.	N/A	N/A	N/A	N/A	Not strictly relevant but one for you Alex??? Sausages???
40.	No	No	No, only if provided for under local law	No	
41.	No	No	No	No	
42.	No, only if provided for under local law	N/A	N/A	N/A No framework for LEA or IP holders[1]	No framework for LEA or IP holders. Otherwise an abuse of privacy
43.	No	No	N/A	No	
44.	No, for freedom of speech reasons	No or would affect file sharing sites	Yes and revocation of accreditation	Yes	Questions illegal activity and jurisdiction
45.	No, already have court order process in place	No	No	No	
46.	No, must inform registrant regardless	No, for privacy reasons	Yes, against ICANN and the publisher of the data	No	Large mandatory fines in the remedies
47.	No, notify customers	No, providers should protect the privacy of registrants	N/A	No and inform registrant of any non-LEA requests	
48.	No, questioning which LEA and jurisdiction	Yes	None	No, providers should protect privacy against third parties	
49.	Yes, only if LEA request is deemed	Yes, to prevent abuse and harm	Maybe – depends upon reasons for	Yes, to prevent and stop cybercrime.	Concerns about cybercrime and

	valid	those using privacy services for legitimate reasons	publication, e.g. negligence. Breach of contract remedies are already available and complaints to be lodged with ICANN, with loss of accreditation to follow.	Not always LEAs who have an interest in doing so	repeat offending. Auditing of providers and publication of errors would ensure accountability. See ICANN study. The provider's T&Cs should be clear on breaches
50.	Yes	Yes	N/A	Yes	
51.	No, providing no tip offs and no abuse by LEAs.	Yes, if registrant is made fully aware of all issues	N/A	N/A	ICANN oversees the world??
52.	No, providers should abide by local law	N/A	N/A	No, unnecessary for anyone including LEAs	ICANN should not create new rights which are not in law
53.	No, disclosure only on court order <sup>[2]</sup>	N/A	N/A	N/A	Succinct
54.	Yes	No, as problematic	Not sure	No	Needs to think of remedies
55.	No	No	No	No	LEA and IP holders concerns not sufficient to affect privacy
56.	No	N/A	N/A	N/A	
57.	No, registrant to be able to seek court order to block disclosure	N/A	N/A	N/A	Registrant to be able to request information on requester
58.	No, if only request, yes if court order	No	Yes, compensation	No, should only apply to LEA	Privacy concerns
59.	No, providers should	No, as contact	No. only if	No should only	



	only act in accordance with local law	details may well be fake	requested to do so by LEA as no return once published	apply to LEA	
60.	Yes	Yes	N/A	Good idea	
61.	N/A	N/A	Local law takes precedence and if multi-national issues, involve the State Department	N/A	
62.	No, always notify the customer	No, in case of hacking	Yes, compensation by provider and/or ICANN and any other recourse allowed by law	N/A	
63.	No, unless provided with a court order otherwise registrant should be notified	No, due to constant change in malware	N/A	N/A	
64.	No, must notify registrant in all cases	No, not without consent of registrant, who should notify LEA	No remedies as no return. Seems a bit frustrated by the question	I will take that as a no. Suggests lessening the amount of personal data collected	Concerns about transparency and privacy. Issues with this being Internet Policing
65.	N/A	N/A	N/A	N/A	Kill it, this is so inappropriate – interesting stance
66.	No	No	No	No	Concerns about giving LEAs more rights and privacy issues
67.	No	No	N/A	No	Concerns about being spammed and personal data being

					available
68.	No	No	Yes, a refund	No, beyond our scope	Function of WG to find a balance between a valid request and the expectation of privacy
69.	N/A	N/A	No	No, as already legal avenues for IP infringement. Proposed changes go beyond this. No need for further framework	
70.	No, only if mandated by law	No only if mandated by law	No only by law	No, unnecessary	
71.	N/A	N/A	N/A	No, unnecessary, it will remove any protection under current laws and presume registrants to be guilty	Privacy concerns
72.	No	No	No	No	Erosion of privacy concerns
73.	No, provider is subject to local laws and LEA can act only on authority under those laws	No, there is no return after publication and may be the result of hacking. Publication may make this worse	No, should be in the contract between provider and registrant and/or loss of accreditation	No, any legitimate complaints can be filed through LEA	
74.	No, concerns about abuse by LEA	No	N/A	No – no-one should have this right, not even LEAs	Concerns about privacy and the laws governing privacy

75.	No, against civil rights	N/A	N/A	N/A	Concerns about civil rights and privacy
76.	No unless required to do so by law	No	None	No	
77.	No, it is a threat to privacy	No	No	No	Concerns about privacy and right to own opinion
78.	No	No	No	No	Existing legal systems are sufficient
79.	No, unless by court order	Yes but with a dispute period	No, once published then no return allowing all publications to be opposed	Yes, registrant to have right of appeal in case of unwarranted publishing	Providers not required to monitor content of websites. T&Cs to be specific
80.	No, only with court order	N/A	N/A	N/A	

## Summary

### II. Disclosure and Publication in relation to Requests by LEA and other Third Parties other than Trademark and Copyright Owners

#### **(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?**

In general, most of the comments ~~agreed-are that~~ it should not be mandatory to comply with express requests from law enforcement ~~but-unless required to~~ ~~abide~~ by the applicable law (of either the requestor or the registrant) or if the LEA request was deemed valid. ~~It should also be the Privacy and Proxy~~

~~provider's decision on whether or not to comply with LEA requests.~~ There was one suggestion that if this is not addressed by local law then a policy should be developed with LEA input. There was great support for registrants to always be notified but this was caveated that it may be possible in some instances, e.g. abuse allegations. A few responses suggested the registrant should be notified regardless of request and to be able to defend or block the request in court. Another suggestion was to differentiate between local LEA requests and those from other jurisdictions. A key concern was the erosion of privacy, with a few concerns about civil rights and freedom of speech.

### **(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?**

The general feeling is that there should not be mandatory publication for these activities for a variety of reasons including but not limited to the fast rate of change in malware, it could affect privacy, contact details may be fake, that privacy and proxy providers should agree to take reasonable steps to investigate, and [that](#) any publication should be in accordance with local law. A few comments ~~did~~ advocate publishing if illegal activity is established as it would be critical in helping prevent abuse and protecting those using privacy and proxy services for legitimate purposes. [ALAC for example observed that it would be appropriate when misuse of the DNS under the terms of the service and illegal activity is established, and also that P/P Provider actions do not preclude other likely and more severe responses allowed by the RAA or in law.](#) [\[There should be an appropriate penalty to be agreed.\]](#)<sup>[3]</sup>

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

There are mixed comments on this question but in the main there should be no extra remedies – several comments suggested that once publication has occurred there is no way to unpublish and therefore no penalty ~~could be agreed~~ [would suffice and-or that](#) there are sufficient remedies under contract law. [Many noted that](#) ~~T~~his should be a matter between the privacy and proxy provider and registrant and dealt with in either the terms and conditions or under local law. Other comments stated that there should be a penalty, including but not limited to compensation (from publisher and ICANN), ~~ICANN to cover all the registrants' costs,~~ loss of accreditation, a refund [of the service fees.](#) [One noted that and-involving](#) the state department [or equivalent should be involved.](#) Others ~~comments~~ seemed unsure as to remedies.

### **(4) Should a similar framework and/or considerations apply to requests made by third parties other than LEA and intellectual property rights-holders? (Section 1.3.2)?**

The majority of comments were not in favour of a new framework for requests from third parties [other than LEA and intellectual property rights-holders](#) from a privacy perspective. Many thought that the processes and any applicable local law already in place ~~was-are~~ sufficient in this respect, the framework would be unnecessary, ~~not just for third parties but also for IP holders,~~ that third parties should be treated as complainants and should go through LEA, any policy to be established should use examples already in use. Many thought the framework in place for LEA requests was sufficient but some thought this was unnecessary too. [Some believe that](#) ~~L~~ocal LEA requests should be treated differently to LEAs in other jurisdictions. A couple of comments stated IP holders should not be allowed disclosure [should not be allowed](#) unless through a court order/local courts/[independent adjudicator](#) and that there are

already legal avenues for IP infringement [\(such as going through LEA\)](#). [But some stated that disclosure may be permitted, subject to stricter procedures and safeguards.](#) The registrant should also be informed of any non-LEA requests.

Some thought Appendix E could serve as a model for non-LEA requests, [while others proposed that any](#) complaints ~~would~~ go to ICANN. [Others noted that ,](#) any form of disclosure in this respect would have to be heavily safeguarded and would depend on [whether the request was coming from](#) ~~whether it was~~ LEA, IP holders or third parties, [and](#) ~~requesting would depend~~ on what was to be revealed. [Some argued that Any](#) requests would need be agreed by experts. It was also thought the framework would help prevent and stop cybercrime.