

PPSAI PDP Working Group

Review and Analysis for Question 1 (updated 31 August 2015)

Sub-team 2 for Section 1.3.3¹

This document is divided into the following sections:

- **Section 1** – Summary of the first 39 specific public comments received and reviewed by the Sub Team that directly addressed this Question 1 as phrased in the Initial Report: *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?*
- **Section 2** – Summary of the remaining 52 specific public comments received and reviewed by the Sub Team in respect of Question 1
- **Section 3** – Analysis of the comments summarized in Sections 1 & 2
- **Section 4** - Summary of the Sub Team’s approach and conclusions in respect of the approximately 11,000 public comments received through the Respect our Privacy website, the Save Domain Privacy petition (signed by 10,042 persons) and additional comments submitted along with the petition

SECTION 1 (responses #1-39 to Question 1):

Eleven (11) of the responses received were in support of prohibiting domain names associated with commercial activities and which are used for online financial transactions from using privacy and proxy services. Included in one of the affirmative responses is a commenter that believes privacy proxy services should be available to commercial entities, but not for domain names used for online financial transactions.

Specific comments and suggestions within the affirmative responses that should be noted by the Working Group, and considered for discussion, are as follows:

- The task is not to define what constitutes commercial activity itself, but to identify a subset of practices for which it is reasonable to insist on transparency; **Commenter: BC**

¹ For the full set of public comments reviewed for this and the other questions on the topic that were reviewed by this Sub Team as well as recordings and transcripts of all the Sub Team’s calls on the matter, see the Sub Team’s wiki page at <https://community.icann.org/x/OYZCAw>.

- Identify existing provider policies that ban some commercial usages as a best practice for service providers at a minimum; **Commenter: IPC**
- Develop an illustrative framework mechanism for how complaints that a particular domain name is being used to carry out online financial transactions for commercial purposes should be submitted, processed, evaluated, and acted upon; **Commenter: IPC**
- PP services should be available for commercial entities, but not for domain names used for online financial transactions; **Commenter: Int'l Trademark Association**
- Websites clearly offering counterfeit goods for sale should not be able to benefit from PP services on the basis of long-standing European and other International laws; **Commenter: Unifab**
- Should domain names simply running advertisements be disallowed use of domain privacy; and, **Commenter: Paul Hempshall**
- Would government services, health online professional services, security/para-military institutions, companies on stock exchanges be excluded? **Commenter: Julien T. (security professional)**

Twenty-seven (27) of the responses received were not in support of prohibiting domain names associated with commercial activities and which are used for online financial transactions from using, or continuing to use, privacy and proxy services.

Specific comments and suggestions within the negative responses that should be noted by the Working Group, and considered for discussion, are as follows:

- Registrars and/or privacy proxy providers should not be contractually required by ICANN to categorize the use of an Internet service or to determine how a registrant may or may not use their website; **Commenter: Google**
- It is not practical, operationally feasible, or reasonable to restrict privacy and proxy services to websites involved in commercial transactions; **Commenter: I2C Coalition & ISPCP Constituency**
- Providers should not have to evaluate eligibility based on use; **Commenter: Key Systems**
- Hopelessly broad definition of commercial transactions in initial report; **Commenter: Endurance Int'l Group**
- The proposed definition could be expended to include other types of activity such as running ads or posting affiliate links; **Commenter: (OAPI, a coalition of 45 organizations and 105 individuals)**
- It is for individual countries to pass laws, and this is appropriate government regulation; **Commenter: NCSG**
- A distinction must be made in order to prevent the exclusion of registrants from utilizing PP services who are in need of such services due to their at risk status, such as Kickstarter or IndieGoGo; **Commenter: Cyberinvasion (on behalf of 43 individuals, charities and 2 unincorporated associations)**

- What about small business owners? If I sell my books from my own website that also hosts my blog, do I have to disclose my home address; and, **Commenter: Shahed Ahmmed**
- Mandatory WHOIS publication would collide with national legislations on several points, as the required data can differ. **Commenter: Sebastien Broussier**

One (1) response, No. 29, was not included as an affirmative or negative response as a determination could not be made based upon the statement: If the site with no transactions supports commercial activity at another site it should be treated the same.

Three (3) additional negative responses related to Question 1 were identified in the responses to Question 2.

SECTION 2 (responses #40-91 to Question 1)

| Comment | Yes/No | Reason | Name | Company/Individual | Further Comments |
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| 40. | No | Small business owners working from home or as a side business so should have the right to privacy. | Michael Ho | Individual | |
| 41. | No | Home businesses and contractors would suffer. | Andrew Merenbach | Individual | |
| 42. | No | Owner of a small business which enables financial transactions and works from home and makes use of privacy service for protective purposes. | Anne Bouchard | Individual | States that in 2011 there were over 14m small businesses in US alone and these businesses would be vulnerable if their home addresses were exposed. |
| 43. | No | No restrictions | Aaron | Individual | |

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| | | at all on use of privacy/proxy services. | Dalton | | |
| 44. | No | There are already existing avenues for protecting financial information, avenues for financial redress and for chargebacks. Cannot justify removal of P/P Services. | Adam Creighton | Individual | |
| 45. | No | Privacy is a universal right and everyone should have that right. Gave examples of dissident journalist or women's shelter and donations on the websites. | Arthur Zonnenberg | Individual | |
| 46. | No | Any registrant should be able to use P/P Services for freedom of speech purposes. This may allow certain interested parties access to private information and may hamper or cause the closure of small businesses. | C. | Individual | |
| 47. | No | The online market grows quickly. A blanket rule to cover all financial transactions will | Noah Greenstein | Individual | |

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| | | block innovation and growth. | | | |
| 48. | No | All registrants have the right to P/P Services. Extremely important to protect privacy and allow the right of freedom of speech and privacy. | Anand S. | Individual | |
| 49. | No | All registrants have the right to P/P Services. Both natural and legal persons engage in financial transactions. Defining who can have privacy and who cannot would be a too broad and vague mandate. Commercial transactions are governed by local law and LEA have ability to pursue abuse cases. No need to forbid privacy to pre-empt illegal or infringing activities. | Jason Burns | Individual | It would also require substantial record keeping |
| 50. | No | All registrants have the right to P/P Services. Gave examples of home based businesses. | Lucas Stadler | Individual | ICANN have no right to decide on who deserves privacy |
| 51. | No | All registrants have the right to P/P Services. Gave examples of home based businesses. | Shane T. | Individual | |

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| | | Commercial activities is too broadly defined. Are ads on personal blogs classed as commercial activities? | | | |
| 52. | Yes | Privacy and proxy registrations should be eliminated in these applications. | Scott Jordan | Individual | |
| 53. | Yes | Corporations should be prohibited from using P/P Services. | Aaron Holmes | Individual | |
| 54. | No | No reason to prohibit this and is very broad. Asks if this restriction includes gaming servers taking donations? | Nick O'Dell | Individual | |
| 55. | No | We have no business in other people's business. | Charles | Individual | |
| 56. | No | Does not understand value of this approach. Websites change all the time and this is added red tape. Gave example of a blog selling products on the website. | Anonymous Turtle | Individual | |
| 57. | No | Commercial activity is vaguely defined and necessary for the | Private | Individual | |

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| | | functioning of many basic speech activities. | | | |
| 58. | No | Not in general or with a clear definition of (2). | Alex Xu | Individual | |
| 59. | No | Definition of commercial activities is too vague. Home business owner who does not want his address published. | Marty Dill | Individual | |
| 60. | No | P/P Services should be allowed for everyone. Gave examples of small and home businesses who deserve privacy protection. In case of abuse, the legal system can cover this. Worth the extra burden on LEA/victim to maintain privacy. | Cort Wee | Individual | |
| 61. | No | No prohibition of privacy for any reason. Website content is irrelevant. | Scott McClung | Individual | |
| 62. | No | P/P Services should be allowed for everyone. | Hugo Jobling | Individual | |
| 63. | No | | Christopher Smith | Individual | Free market will deal with the issues, not the unelected. |
| 64. | No | | R. Poss | Individual | |
| 65. | No | Everyone should have the same right to use P/P | Simon Kissane | Individual | |

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| | | Services – any other proposal would be stupid. | | | |
| 66. | No | Use of domain should not be a relevant factor and all domains should be able to use P/P Services. Sites that deal with online financial transactions may well need more protection and will be targets for phishing and hacking. | Not your business | Individual | |
| 67. | No | P/P Services should be available to everyone with no Whois disclosure necessary. Consumers have sufficient protection under legislation and payment processor protection. | | | Consumers are not stupid. |
| 68. | No | Sometimes it's nicer to know what no-one knows where something is than everyone and you know where something is located | Gabriel de Luca | Individual | I hope someone understood that! |
| 69. | No | | Sperry Russ | Individual | |
| 70. | No | It is the choice of the person/company to hide behind | Name withheld | Individual | |

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| | | P/P Services. Gave examples of animal rights activists attacking the bank whose customer is a particular research company. Own choice to use that specific bank. | | | |
| 71. | No | | Aaron Mason | Individual | |
| 72. | No | Privacy is important for everyone. Only a court of law has the ability to require disclosure, not ICANN or anyone else. | Adrian Valeru Ispas | Individual | |
| 73. | No | No exceptions whether personal or commercial. Everyone has the right to use P/P services. Not based on use/activity. | Dan M. | Individual | |
| 74. | No | | Sam | Individual | |
| 75. | No | A registrant may start to receive abuse and spam which P/P services have effectively controlled. | Mike Fewings | Individual | |
| 76. | No with caveats | Concerns that financial transaction will be redefined to suit a specific situation. Only federally or internationally | Marc Schaubert | Individual | Believes these changes are being pushed by organisations who wish to outlaw privacy in the |

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| | | regulated industries like banking should be subject to this. | | | name of those utilising privacy |
| 77. | Yes | Thought it best if sites performing online financial transactions should be barred from using P/P services. | Dr. M. Klinefelter | Individual | |
| 78. | No | All commercial websites who take payment could be considered as taking financial transactions. Anyone with, for example, Paypal, would be associated. | | | It won't stop spammers and it is innocent domain owners who will suffer for this. |
| 79. | No | This will protect home business owners and questions the definition of commercial. Existing law sufficient to provide for relevant disclosure. Gave example of jurisdictions where businesses are required to publish contact information, Germany, it can be done through WHOIS or via a link on their website. Payment processors will have the information | Michael Ekstrand | Individual | Not sure he understands P/P services. |

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| | | from the business owner to handle fraud cases. Onerous burden on one-time users of e-commerce, for example, donations via Paypal. | | | |
| 80. | No | All registrants with websites with commercial activities should be allowed to use P/P services. | Roxana | Individual | |
| 81. | Yes | Registrants of domains associated with commercial activities and financial transactions should not be allowed to use P/P services. Consumers have a right to know who they are doing business with and any such requirement would allow this. Various examples of abusive sites were given, including gambling and child abuse where P/P services hide the identity of the website operator, who are likely involved in other instances of cybercrime. | Terri Stumme, LegitScript | Company | |

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| | | Legitimate businesses, including those of the bricks and mortar variety, should have no need to hide their identity. | | | |
| 82. | No | P/P services should be available to everyone | Misha Stevens | Individual | |
| 83. | No | Large corporations may be at less risk than small businesses and sole traders, including victims of domestic abuse, preventing those people from trading online and gaining financial independence. Not a good idea to have contact details readily available. Bloggers may also have issues and it may restrict freedom of speech. In James' own position, he has been threatened and would not like his details to be available publicly. | James | Individual | |
| 84. | No | P/P services should not be restricted based on commercial use. This is not an area where ICANN is in a | Reagan Lynch | Individual | ICANN to leave well alone as the divisions in the working group prove. |

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| | | position to make a decision as there are plenty of regulatory bodies already operating in these areas. | | | |
| 85. | No | Commercial definition too static and broad. | Michael Cariaso | Individual | Consumers are able to determine which domains do provide this information, and choose who to conduct business with. ICANN should be a 'Good Housekeeping Seal' not a police force. |
| 86. | No | Stated it was not clear on definition of financial transaction – a bank or transfer of money. Does not feel a transaction includes artists or photographers or other sole proprietors. Suggested revealing true name but keeping contact details safe to protect us all from criminals. | John Lawrence | Individual | |
| 87. | No | Everyone deserves the right to privacy regardless. | Liam | Individual | |
| 88. | | P/P services can | Web.com | | Opposes the |

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| | <p>be and are used to protect legitimate privacy interests for both commercial and non-commercial entities. Specifically, as it pertains to the use of domain privacy services, a registrant associated with a domain name that is currently being used for commercial transactions should have the same rights as a registrant that is using the domain for non-commercial transactions.</p> <p>The Report lacks supporting evidence as to why "domains used for online financial transactions for commercial purposes should be ineligible for privacy and proxy registrations."</p> <p>... Publication of a registrant's private information can result in spam, phishing, harassment, intimidation,</p> | | | <p>minority position.</p> <p>No grounds provided for proposing unequal treatment for domains.</p> <p>Notes problems with definition and enforcement.</p> |
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| | | <p>identity theft, and even jeopardize a registrant's personal safety. What would happen to the current rights of the hundreds of thousands of registrants that currently utilize P/P services if the minority position is adopted? How would ICANN define, monitor, and enforce this (still undefined) commercial vs. non-commercial definition across the millions of websites that are in operation today and the tens of thousands that come into existence every day? The minority position is untenable, would lead to inconsistent and arbitrary enforcement of its standard, and would have unintended consequences that could inhibit free expression and innovation on the Internet.</p> | | | |
| 89. | No | All parties | Kat Walsh | Individual | |

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| | | <p>should be entitled to the use of privacy services, but a particular consideration is that the line between private activity and commercial activity online is often blurry. Meanwhile, many "noncommercial" activities, such as large charities, are run by nonprofits with resources and legal infrastructure comparable to large corporations, and the impact of their activity online is also no different.</p> | | | |
| 90. | Yes | <p>This service is currently being abused by spammers operating as, "marketing companies," who are then impossible to trace in order to report to authorities. Rule of thumb - persons name, allow the option to be protected. Business name, not protected.</p> | Michelle Knight | Individual | |
| 91. | Yes | <p>Although there are many valid</p> | Alan Greenberg | Individual | Notes that this does not equal asking |

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| | | <p>reasons why an entity (individual or company) would want to use a P/P service, this should not be allowed if the entity will be selling to consumers. A consumer should have the right to know who they are buying something from.</p> | | | <p>that a registrar VERIFY what someone is doing with their domain name, just that the registrant declare that the domain name will not be used for commercial transactions as described above, and that violation of this is grounds for loss of the registration, which registrars WOULD have to honor if a complaint is made.</p> |
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SECTION 3 (summary of all specific responses reviewed to Question 1):

Based upon review of the first 39 responses to Question 1, a majority of the community responses are not in favor of prohibiting use of privacy/proxy services for domain names associated with commercial activities, and which are used for online financial transactions.

Based upon general review of the remaining responses to Question 1, the general feeling was that all registrants are to be allowed the right to use and to continue to use, privacy and proxy services. Out of the 52 comments in this second part of the analysis of Question 1, there were only 6 comments (and 2 with caveats, i.e. only heavily regulated industries, e.g. financial) which stated that those using financial transactions or commercial activities should be prohibited from using privacy and proxy services. The majority of these comments were made by individuals (as far as the information provided, 49 comments out of 52).

Most comments were vehemently opposed to any distinction between the commercial and non-commercial and felt that any change would be seen as an erosion of privacy, a lack of protection for home based/small businesses and to inhibit freedom of speech. Many also felt there was sufficient law and regulation in place to deal with disclosure of names if required by the courts.

Commenters in favour of prohibiting the use of privacy and proxy services by those with commercial or financial activities based this opinion on the prevention and investigation of crime.

SECTION 4 (approach to Respect our Privacy and Save Domain Privacy comments):

In addition to the comments summarized above, the Working Group also received a petition from the Save Domain Privacy coalition that was signed by 10,042 persons as well as approximately 11,000 submissions that were based on a template email provided by the Respect Our Privacy website. The Save Domain Privacy petition contains a statement that the signatories support *“the use of privacy services by all, for all legal purposes, regardless of whether the website is “commercial”.*” The template statement from Respect Our Privacy includes the following language: *“Everyone deserves the right to privacy” and “private information should be kept private”.*

The Sub Team agreed that these statements are highly and directly relevant to its consideration of Question 1, and that it is important to note the very large number of supporters of each statement. The Sub Team also agreed that an overwhelming number of these commenters believe that protecting one’s privacy should be a paramount consideration, and that privacy services should not be restricted based solely on the commercial (or otherwise) nature of a website.

Nevertheless, the Sub Team noted that these statements did not provide any additional insight into or direct responses to the specific considerations and legal issues highlighted by the Working Group in its Initial Report. Preliminary analysis of the additional comments submitted by some petition signatories seems to indicate also that some commenters are concerned with broader online privacy issues than the specific proposal under consideration by the Working Group. In consequence, the Sub Team could not agree on whether or not it would be appropriate to attempt to infer any additional conclusions from these statements.

Overall, the Sub Team believes that all the comments, petitions and statements point to an unqualified wave of support for the principle that policy must not unduly restrict the use of privacy or proxy services at the expense of fundamental rights. The Sub Team therefore recommends that this Question 1 be more fully discussed by the Working Group, taking into account all the input

received, including the specific suggestions relating to the need to first develop (if possible) workable, clear definitions (see the Sub Team's analysis for Question 2) and other possible avenues of research suggested by some commenters.
