

PPSAI Comment Review Subgroup 1.3.2

Analysis and Report of Section 1.3.2 Question 1 (Relay)

DRAFT FOR WG CIRCULATION/DISCUSSION (5 SEPTEMBER)

Introduction

All raw data based on the Review Tool provided by ICANN staff can be viewed at the following Google Docs Link.

<https://docs.google.com/spreadsheets/d/1I2VsM45uvKA69HKLKXDI8XUZpHkrIAnzkaWInfl3ZUA/edit?usp=sharing>

NOTE: Row 18 of the original Review Tool has been removed after confirming with Mary that this row was data associated with a question in Section 1.3.1.

Analysis Overview

For each comment received we determined how the commenter responded to the following questions posed in the Initial Report.

On Escalation in the event of a persistent delivery failure, providers -

- 1) SHOULD upon request forward a further form of notice to its customer
- 2) MUST upon request forward a further form of notice to its customer

Regarding Cost

- 1) Providers SHOULD NOT have the discretion to charge a reasonable fee
- 2) Providers SHOULD have the discretion to charge a reasonable fee
- 3) Who should bear the cost

Each of these questions are represented by an additional column in the review tool. Additional comments, not covered by these questions, were also tracked in the "Other" column.

When there was a clear indication the commenter agreed with the question a 1 was placed in the column, non-support resulted in a 0.

When the commenter did not directly answer one of the questions a n/a was placed in the column.

Analysis

A total of 62 responses were received and analyzed.

As for the question regarding escalation

- 7 thought providers SHOULD forward a further form of notice to the customer
- 7 thought providers MUST forward a further form of notice to the customer
- 45 did not provide a response

As for the question regarding charging a reasonable fee for escalation

- 6 thought that providers SHOULD NOT have the discretion to charge a reasonable fee
- 12 thought that providers SHOULD have the discretion to charge a reasonable fee
- 43 did not provide a response

As for who should bear the cost

- 6 thought cost should be born by the P/P Service Provider
- 12 thought the cost should be born by the Requestor

Comments not associated with Questions Asked

Comments not related or associated with the specific questions asked in the report were varied.

- Several stated that there should be no mandatory minimum requirements for relay. In fact, several respondents suggested that relay should [not](#) happen without a court order or probable cause from an LEA.
- Several suggested parameters around how a persistent delivery should be determined. (Note this is an implementation issue)
- Several suggested that persistent failure should trigger re-verification of info (Per the 2013 RAA), a recommendation already agreed to by the working group.
- Several suggested that providers should be able to limit repeated requests for abuse purposes, however one stated that providers must not have the ability to limit the number of requests from a single trademark owner for different domain names.
- (There were others single comments that are not listed here)

Recommendations

Unlike the other draft recommendations on which public feedback was sought, section 1.3.2 concerns issues on which no agreement was reached within the WG. Therefore, we asked whether public comment would provide any strong guidance one way or another. Based on an analysis of the comments received the subgroup finds that the answer is no, and so there is still no clear consensus on the issue of requiring providers to forward a further form of notice to the customer when a persistent delivery failure has been found (7 for, 7 against, 45 no response). As for the question regarding a provider's ability to charge a reasonable fee, and who should bear that fee, if there is no consensus on the previous issue the question of who should pay would no longer be relevant.

As such, the subgroup recommends that the working group discuss the mandatory forwarding of a further form of notice to see if any consensus can be reached. If not, the following modification to the following recommendation (Page 54 of the Initial draft report) would be appropriate.

II. Regarding Further Provider Actions When There Is A Repeated Failure of Electronic Communications

- ***All third party electronic requests alleging abuse by a P/P service customer will be promptly forwarded to the customer. A Requester will be promptly notified of a persistent failure of delivery⁵³ that a P/P service provider becomes aware of.***
- ***The WG considers that a “persistent delivery failure” will have occurred when an electronic communications system abandons or otherwise stops attempting to deliver an electronic communication to a customer after [a certain number of] repeated or duplicate delivery attempts within [a reasonable period of time]. The WG emphasizes that such persistent delivery failure, in and of itself, is not sufficient to trigger further provider obligation or action under this Category E unless the provider also becomes aware of the persistent delivery failure.***
- ***~~As part of an escalation process, and when the above-mentioned requirements concerning a persistent delivery failure of an electronic communication have been met, the provider should~~ ~~[should] [must]~~ **should** upon request forward a further form of notice to its customer. A provider should have the discretion to select the most appropriate means of forwarding such a request ~~[and to charge a reasonable fee on a cost-recovery basis]. [Any such reasonable fee is to be borne by the customer and not the Requester].~~ A provider shall have the right to impose reasonable limits on the number of such requests made by the same Requester **for the same domain name.*****
- ***When a P/P service provider becomes aware of a persistent delivery failure to a customer as described herein, that will trigger the provider’s obligation to perform a verification/reverification (as applicable) of the customer’s email address(es), in accordance with the recommendation of this WG under Category B, Question 2.***
- ***These recommendations shall not preclude a P/P service provider from taking any additional action in the event of a persistent delivery failure of electronic communications to a customer, in accordance with its published terms of service.***