



## ICANN Privacy/Proxy Services Accreditation Program Explanatory Memorandum

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### Background—Privacy and Proxy Services ICANN Accreditation Program

The 2013 Registrar Accreditation Agreement (RAA) includes a [Specification on Privacy and Proxy Registrations](#) that contains requirements for privacy and proxy service registrations offered through Affiliates and Resellers of registrars accredited under the 2013 RAA.

These requirements will be replaced by the Privacy and Proxy Accreditation Program. ICANN is implementing this program based on [Final Recommendations](#) that were developed by the Generic Names Supporting Organization (GNSO) Privacy & Proxy Services Accreditation Issues PDP Working Group, [adopted](#) by the GNSO Council 21 January 2016 and [adopted 9 August 2016](#) by the ICANN Board.

ICANN published this explanatory memorandum to assist the global Internet community to further understand the projected processes, timeframes and budget required to implement the Privacy and Proxy Services Accreditation Program. Projections in this memorandum are based on a draft proposed accreditation framework that ICANN staff will present to the Implementation Review Team (IRT) for review. ICANN expects that these projections will evolve as ICANN consults with the IRT.

For current information, timelines and activities related to the implementation of the Privacy and Proxy Services ICANN Accreditation Program please visit <https://www.icann.org/resources/pages/ppsai-2016-08-18-en>.

## Summary of Key Points

- ICANN staff developed the proposed Privacy and Proxy Services Accreditation Program implementation framework in response to Final Recommendations<sup>1</sup> developed by the community through the Policy Development Process (PDP).
- The proposed framework is a simplified version of the contract-based accreditation model used for gTLD registrars.
- ICANN reviewed the potential costs, benefits and challenges of several possible accreditation frameworks. Based on this analysis, ICANN believes that the registrar model of accreditation best fulfills the intent of the Final Recommendations in light of the tradeoffs associated with each of the alternatives that were considered.<sup>2</sup>
- Staff believes that the proposed framework is the most logical mechanism to create an accreditation program for privacy and proxy service providers in light of the text of the Final Recommendations and discussions by the Working Group during the Policy Development Process.
- The implementation process will include three (3) phases: (1) buildout; (2) privacy and proxy service provider onboarding; and (3) program maintenance.
- ICANN and the Implementation Review Team must account for the implementation lifecycle to ensure conservative costs and ensure that program expenditures are logical, considering the scope of the program and services offered.
- The proposed implementation framework incorporates all elements included in the text of the Final Recommendations. Should additional implementation work be required based on any additional Policy recommendations, the projected timelines in this report will likely be extended.

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<sup>1</sup> The GNSO Privacy & Proxy Services Accreditation Issues PDP Working Group's Final Report and Recommendations is available at: <http://gns0.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf>.

<sup>2</sup> A detailed frameworks comparison document developed by ICANN staff is attached to this report as Annex 1.

## Introduction

The 2013 Registrar Accreditation Agreement (RAA) includes a [Specification on Privacy and Proxy Registrations](#) that contains requirements for privacy and proxy service registrations offered through Affiliates<sup>3</sup> and Resellers of registrars accredited under the 2013 RAA.

These requirements will be replaced by the Privacy and Proxy Services Accreditation Program. ICANN is implementing this program based on [Final Recommendations](#) that were developed by the GNSO Privacy & Proxy Services Accreditation Issues Policy Development Process (PDP) Working Group (WG). The GNSO Council [adopted the recommendations](#) on 21 January 2016; the Board [adopted the recommendations](#) on 9 August 2016.

ICANN's preparation for the implementation of this program began at the outset of the GNSO Privacy & Proxy Services Accreditation Issues PDP. ICANN Global Domains Division staff followed the deliberations of the Working Group and discussed implementation-related matters with the Working Group at multiple points during the PDP. This process aided ICANN's work in preparing to implement these Final Recommendations by ensuring that implementation-related matters were raised during the PDP and ensuring that staff responsible for implementing this program are closely familiar with the PDP recommendations and WG deliberations.

The Final Recommendations of the GNSO Privacy & Proxy Services Accreditation Issues PDP Working Group did not specifically delineate the type of framework that ICANN should use to design the Privacy & Proxy Services Accreditation Program.

The Final Report said:

“The WG discussed whether the current registrar accreditation and de-accreditation model might be applicable as a framework for P/P service providers. The WG agreed that there are some significant distinctions between the registrar model and P/P services, e.g. cancellation/transfer of a domain name is not the same as cancellation/transfer of a P/P service, and domain name transfers are governed by the IRTP (an ICANN Consensus Policy). However, there are also many similarities. The WG has concluded that the registrar model with its multiple steps, governed by the RAA, may not be entirely appropriate for P/P services; however, it is a useful starting point from which relevant portions may be adapted to apply to P/P service providers.”

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<sup>3</sup> Capitalized terms such as “Affiliate,” “Reseller,” “Privacy Service” and “Proxy Service” are defined in the Registrar Accreditation Agreement, the Final Recommendations and/or other relevant documents.

ICANN discussed and solicited feedback from the WG during the PDP on three possible accreditation frameworks:

- (a) A “registrar” model (Final Recommendations would be implemented via the creation of (i) an Accreditation Policy; (ii) Accreditation Agreement; (iii) service screening and approval process; and (iv) a ICANN Compliance management function);
- (b) A “reseller”-type model (Final Recommendations would be implemented via new Policy and/or contractual requirements that would pass through requirements to privacy and proxy services via their agreements with ICANN-accredited registrars); and
- (c) A “third-party provider”-type model (similar to ICANN’s processes for approving gTLD registry and/or registrar data escrow service providers; the Final Recommendations could be implemented through the creation of required contractual provisions to be included in privacy and proxy services’ agreements with ICANN-accredited registrars and, likely, privacy and proxy service customer agreements; and where ICANN would have the authority to approve (and terminate approval of) providers of privacy and proxy services).

During the course of implementation planning, ICANN also considered a fourth possible implementation model: a “UDRP/URS provider”-type model, where a privacy/proxy service provider would be required to follow a Privacy and Proxy Services Accreditation Policy and implement related rules.<sup>4</sup>

Based on the feedback from the Working Group during the PDP, the text quoted above from the Final Report and ICANN’s further analysis of the implications of those frameworks, staff believes that an accreditation framework modeled after the registrar accreditation program (option (a) above)—with a governing Policy statement and Accreditation Agreement—strikes the most appropriate balance of all of the competing priorities associated with the implementation of this new accreditation program.

ICANN presents this proposed framework to the Implementation Review Team for discussion and feedback.

### Scope: Privacy and Proxy Services Accreditation Program

ICANN’s Privacy and Proxy Services Accreditation Program will permit any entity that offers privacy and proxy domain name registration services to apply for accreditation.

The Final Recommendations define a “Privacy Service” as:

a service by which a Registered Name is registered to its beneficial user as the Registered Name Holder, but for

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<sup>4</sup> A detailed frameworks comparison document developed by ICANN staff is attached to this report as Annex 1.

which alternative, reliable contact information is provided by the privacy or proxy service provider for display of the Registered Name Holder's contact information in the Registration Data Service (WHOIS) or equivalent services.

The Final Recommendations define a "Proxy Service" as:

a service through which a Registered Name Holder licenses use of a Registered Name to the privacy or proxy customer in order to provide the privacy or proxy customer use of the domain name, and the Registered Name Holder's contact information is displayed in the Registration Data Service (WHOIS) or equivalent services rather than the customer's contact information.

These definitions are broad. It is not expected that every conceivable use of alternative contact information for a registrant could (or should) be brought within the scope of this Accreditation Program.

However, the Final Recommendations state that:

Registrars are not to knowingly<sup>5</sup> accept registrations from privacy or proxy service providers who are not accredited through the process developed by ICANN. For non-accredited entities registering names on behalf of third parties, the WG notes that the obligations for Registered Name Holders as outlined in section 3.7.7 of the 2013 RAA would apply.<sup>6</sup>

It is expected that entities who are marketing themselves as Privacy and/or Proxy Services and/or entities who are known by ICANN and/or ICANN-accredited registrars to offer these services will apply for accreditation. Registrars will be on official notice of all accredited Privacy and Proxy Services via a list to be maintained by ICANN on the ICANN website.

ICANN estimates that it could receive approximately 250 applications for Privacy and Proxy Services Accreditation when the program is launched.<sup>7</sup>

The Final Recommendations make clear that any unaccredited service that licenses use of a

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<sup>5</sup> The Final Recommendations added that, in this context, "'knowingly' refers to actual knowledge at the time that the registration is submitted to the registrar. As implementation guidance, this knowledge would normally be obtained through a report to the registrar from ICANN or a third party."

<sup>6</sup> The Final Recommendations added that "Section 3.7.7.3 of the 2013 RAA reads as follows: "Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name."

<sup>7</sup> This estimate is based on sampling of registrar responses to the 2013 RAA Registrar Information Specification, which requires registrars to list Privacy and Proxy Services with which they work, as well as consideration of vertically integrated and brand gTLD registries, which may be more likely to work with privacy and/or proxy services.

name to another entity is, for liability and compliance purposes, the Registered Name Holder. ICANN will discuss with the Implementation Review Team whether any additional implementation-related steps should be taken on this topic.

### Implementation Proposal: Baseline Assumptions

The following baseline assumptions were used by staff in drafting the proposed implementation plan, timelines and impact assessments set forth in this memorandum. Any modifications to the below could impact the time, costs and staff required to implement the Accreditation Program.

- (a) The Privacy and Proxy Services Accreditation Program will be modeled after the ICANN gTLD Registrar Accreditation Program.
- (b) ICANN anticipates drafting a governing Policy that is similar in structure and scope to the [Statement of Registrar Accreditation Policy](#).
- (c) Screening of Privacy and Proxy Service applicants that apply for ICANN accreditation will focus on background screening (and possibly other factors, including technical and/or financial factors); compliance status checks for contracted parties that are affiliated with or otherwise related to the applicants; and privacy and proxy services' agreement to comply with all relevant requirements.
- (d) Screening costs will be recovered to the extent practicable via Privacy and Proxy Service application fees (and possibly other fees). Background screening costs will be offset in some cases by prior background checks (within the past twelve (12) months) of Affiliated registry operators/registrars and previously-screened individuals associated with those contracted parties.
- (e) The Privacy and Proxy Services Accreditation Agreement will be a standardized contract between ICANN and the authorized Privacy and/or Proxy Service provider. Customers of the Privacy and Proxy Services must agree to the applicable terms and cannot modify them.
- (f) ICANN staff will draft the Privacy and Proxy Services Accreditation Agreement with input from the Implementation Review Team with respect to Policy-related matters.
- (g) ICANN should consider using the same language that it uses in other existing contracts where relevant (particularly in boilerplate that isn't relevant to the substance of the program and governs parties' overall relationship with/interaction with ICANN).
- (h) The Privacy and Proxy Services Accreditation Agreement will be posted for public comment before it is finalized.

### Implementation Phase 1: Design and Build

During the design and build phase, ICANN—in consultation with the IRT—will draft all required documents and agreements and develop the technical infrastructure required to run the Privacy and Proxy Services Accreditation Program.

### Projected Deliverables

- (a) Statement of Privacy and Proxy Services Accreditation Policy, likely including data escrow and WHOIS labeling requirements
- (b) Privacy and Proxy Services Accreditation Agreement
- (c) Privacy and Proxy Service accreditation application, screening, contracting and de-accreditation processes
- (d) Privacy and Proxy Service account management and customer service infrastructure
- (e) Privacy and Proxy Service Compliance Program

### Projected Timeline

Staff estimates that the above deliverables can be completed in approximately 20 months from the date when the Implementation Review Team convenes. This timeline could be extended if more detailed deliberations are required or if any additional Policy work or communication with the GNSO is required.

### Cost Considerations

Costs incurred during the design and build phase will likely include staffing, technical development and possibly other costs. The costs incurred during this phase are largely fixed, in that drafting and development work will be required regardless of the complexity of the screening process and contractual requirements. Costs will be more variable in subsequent phases, as noted below.

The ICANN FY17 Budget has resources specifically allocated to this project. The design and build phase of the project will likely run through the end of FY18, and possibly beyond that date. This project will be factored into future ICANN budgets.

ICANN is working to estimate possible costs and staffing requirements associated with implementing the Privacy and Proxy Services Accreditation Program using the model identified above. Cost estimates will become more concrete as this project proceeds, in collaboration with the IRT, impacted ICANN departments and outside vendors.

At all stages of this implementation process, care must be taken to ensure that related expenditures are reasonable in light of the scope of the services to be covered by this Accreditation Program, and the reality that many, if not the majority of, accredited Privacy and Proxy Services are expected to be affiliated with an existing Contracted Party.

It is expected that some of these costs can be recovered through application and other fees, as noted below.

## Implementation Phase 2: Program Deployment; Privacy and Proxy Service Onboarding

Costs expected during this phase represent the incremental costs necessary to (a) complete the implementation of the application evaluation processes and systems, including hiring and training additional staff; (b) the global communication campaign; (c) processing of approximately 250 applications for accreditation expected at program launch, background screening, and so on; and (d) creating a new Privacy and Proxy Services Accreditation Compliance Program.

### **Cost Considerations**

At this stage of planning, costs are largely uncertain because the level of detail required for service screening has not yet been decided. ICANN is developing preliminary estimates of projected costs and headcount required to implement this program, to be shared with the community at a later date.

There are three significant factors that will impact costs incurred during this period:

- The depth and complexity of the application and screening process;
- The complexity of the Accreditation Agreement; and
- Whether infrastructure required to manage this program can be incorporated or added onto existing ICANN development projects.

Another important factor in determining costs and staffing required for this stage is a determination of how ICANN will onboard existing Privacy and Proxy Services into the Accreditation Program. If all applications are received within a short timeframe and must be processed within a very short window (e.g. 6 months), this could exponentially increase costs and staff resources required.

Staff is exploring the possibility of phased onboarding of Privacy and Proxy Services into the Accreditation Program and other mechanisms to control onboarding costs.

The launch of a new ICANN Compliance function will also be a significant expense during this phase. This cost is quite uncertain at this early stage, and can be projected more precisely as the Accreditation Agreement is drafted, in consultation with the IRT.

### **Projected Timeline**

ICANN announces the implementation of new Policy requirements at least six months before those requirements go into effect, to give impacted parties adequate time to come into compliance. Depending on the complexity of the requirements, sometimes this preparation period is longer.

ICANN has built approximately six months' notice into the draft implementation plan between



the final announcement of the implementation and the Policy Effective Date. Onboarding all expected Privacy and Proxy Service accreditation applicants onto the program could take as long as 12-36 months, depending on the complexity and depth of the application screening process. ICANN is exploring how it could reduce the costs and headcount necessary to onboard a large volume of Privacy and Proxy Services during a short window, while at the same time ensuring that Privacy and Proxy Services are screened, accredited and subject to ICANN Compliance oversight as quickly as practicable.

### Implementation Phase 3: Program Maintenance

Costs expected during this phase represent the costs of maintaining the Privacy and Proxy Services Accreditation Program after the initial influx of applications has been processed. Operational costs during this phase will be more limited, when the application volume is expected to be quite low, and will be related to (a) account management and customer service; (b) maintenance of the Privacy and Proxy Services directory; (c) processing renewals, changes and terminations of privacy and proxy service accreditations.

Compliance management will likely be the most significant source of costs during the program maintenance phase. These costs will be more specifically estimated as the implementation work progresses and the scope of the Accreditation Agreement and other requirements are clearly defined.