ICANN 58
COMMUNITY FORUM

COPENHAGEN
11–16 March 2017

Agenda

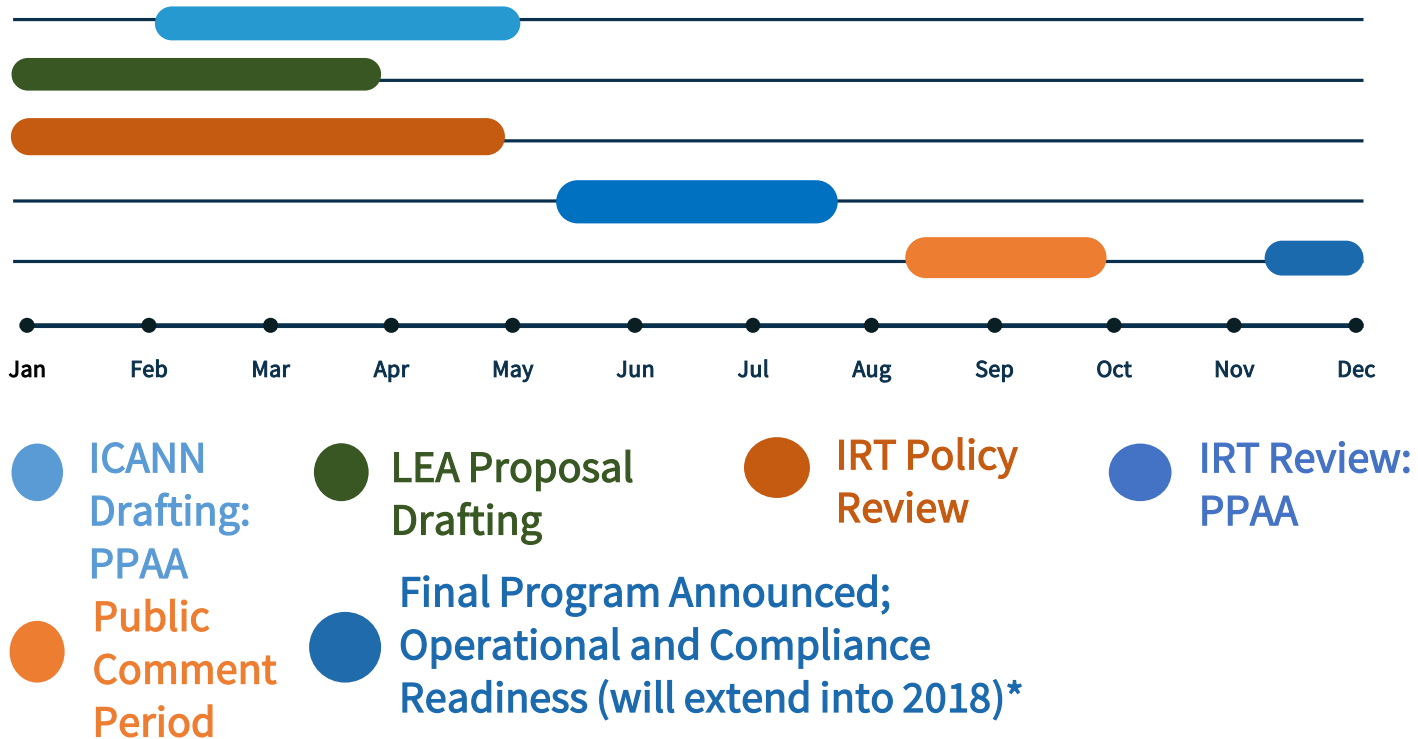|	
13:45-15:00 — Timeline Check; Policy Document Update; Third-Party Requests	**15:00-15:15** — Break	**15:15-16:45** — PSWG Discussion
16:45-17:00 — Break	**17:00-18:00** — Registrar Subteam Discussion	**18:00** — Wrap-up, Next Steps

Timeline Check

Project Timeline

- Originally projected Policy Effective Date: 1 January 2019

- Increased pace to better align with expiration of interim Registrar Accreditation Agreement specification (1 January 2018)

- Estimated posting of draft Policy and Contract for public comment: September 2017

- Final announcement date will depend on extent of changes needed based on public comments

- ICANN org will assess timeline status quarterly with IRT

Steps to Public Comment: Projected

March 2017 — Review of Policy Document

April 2017 — Policy Review; Contract Questions

May 2017 — LEA Framework; De-Accreditation/Transfers

June 2017 — Contract Review

July 2017 — Contract Review

August 2017 — Finalize Materials for Public Comment

Public Comment

Privacy/Proxy IRT Timeline (updated February 2017)

ICANN Drafting: PPAA

LEA Proposal Drafting

IRT Policy Review

IRT Review: PPAA

Public Comment Period

Final Program Announced; Operational and Compliance Readiness (will extend into 2018)*

* Timing could be impacted significantly by scope of work required after public comment period.

Status Check: Updated Policy Document

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Overview: Updated Policy Document

- Draft proposed outline distributed to IRT in November

- Discussed high-level questions about draft Policy sections in January/February

- Structure modified based on IRT discussions

- Draft v2 significantly shorter than v1

- Many detailed requirements will be saved for contract

- IRT will review text in coming weeks

Third-Party Requests

Third-Party Requests

- Final Report included recommendations related to third-party:
    - o   Abuse Reports
    - o   Relay Requests
    - o   Intellectual Property-Related Requests
    - o   Reveal Requests (ToS recommendations only)

- Final Report recommended, *"A uniform set of minimum mandatory criteria that must be followed for the purpose of reporting abuse and submitting requests (including requests for the Disclosure of customer information) should be developed."*

Third-Party Requests

- <u>Step 1</u>: Compile all known requirements for each type of request from Final Report

- <u>Step 2</u>: IRT to identify gaps, considering:
  - o Who can submit a request?
  - o What does request need to include?
  - o Required Provider actions in response to request?

- <u>Step 3</u>: Jointly develop solutions based on other known requirements (registrar) and industry best practices and known provider practices

Known Requirements for All Third-Party Requests/Reports

- Receiving Reports
    - Providers should have ability to categorize reports
    - Reporting forms should include space for free-form text
    - Providers shall publish link to request form containing minimum mandatory criteria

- Escalation of Requests
    - Providers must publish and maintain mechanism for requesters to follow up on or escalate request

- Terms of Service

  - ToS shall indicate clearly the grounds upon which Customer details may be Disclosed or Published or service suspended or terminated

  - ToS shall indicate clearly that requester will be notified in a timely manner of the Provider's decision to (a) notify Customer of the request and (b) whether or not the Provider agrees to comply with the request

Abuse Reports (Non-LEA)

- Who can report?
  - No eligibility restrictions

- How to report?
  - **Question to IRT:** Can abuse reporting option be a form, or is email address required (mirroring RAA requirement)?

  - **Final Report:** The WG noted with approval a recommendation that we "consider alternative abuse report options other than publishing an email address on a website and in WHOIS output (to address increasing volumes of spam)."

Abuse Reports (Non-LEA): How to Define Abuse?

- Abuse Report Criteria:

  o Report must allege abuse

  o **Question to IRT:** How to define abuse?

  o **Final Report** (p. 12) suggested starting with new gTLD Registry Agreement PIC Specification and Beijing GAC Communique

- Lists of "abusive" activity referenced in Final Report are nearly identical (difference noted in red):
    - **Beijing Communique:** distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law
    - **PICs Specification:** distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law

- **Proposed Definition of Abuse:** distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law

Question to IRT: Is this definition of abuse consistent with the intent of the PDP Working Group?

Question to IRT: Do you see other gaps where minimum criteria are needed for abuse reports?

Abuse Reports (Non-LEA): Required Response

- Provider Actions Required in Response to Abuse Reports

  o **Requirement From Final Report:** Maintain designated point of contact that is capable and authorized to investigate and handle requests (p. 12-13)

  o **Question for IRT:** Where Final Report is silent on required Provider actions after receiving an abuse report, did WG intend for requirements to mirror RAA?

- Provider Actions Required in Response to Abuse Reports

  - **Proposed Requirement 1 Based on RAA Section 3.18.1:** Provider SHALL take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse

  - **Question to IRT:** Is this consistent with PDP WG intent?

  - **Question to IRT:** Did WG intend any greater specificity here beyond RAA requirement?

Abuse Reports (Non-LEA): Required Response

- Provider Actions Required in Response to Abuse Reports
    - **Proposed Requirement 2 Based on RAA Section 3.18.3:** Provider SHALL publish on its website a description of its procedures for the receipt, handling and tracking of abuse reports. The Provider SHALL document its receipt of and response to all such reports. The Provider shall maintain the records related to such reports for the shorter of two (2) years or the longest period permitted by applicable law, and during such period, SHALL provide such records to ICANN upon reasonable notice.

    - **Question to IRT:** Is this consistent with PDP WG intent?

Relay Requests

- Who can request relay?
  - No restrictions

- How to request relay?
  - **<u>Final Report:</u>** Relay electronic requests received including via email and web forms (p. 14)

Relay Requests

- Required Provider actions in response to Relay requests:

  1. Relay all communications required by the Registrar Accreditation Agreement and ICANN Consensus Policies; and either:

  2. Relay all electronic requests received (may implement safeguards to filter spam and abusive communications); or

  3. Relay all electronic requests received from LEA and third parties containing allegations of domain name abuse.

Relay Requests

- **<u>Question to IRT</u>:** For option 2, should "abuse" be defined consistently with the definition used for abuse reporting?

- **<u>Question to IRT</u>:** Do you see any gaps in required Provider actions on Relay where additional criteria may be needed?

- Possible gap 1: Ensuring Relayed communications reach Customers

  - **<u>Question to IRT</u>:** Should Providers be required to test email forwarding to Customers to ensure forwarding is working properly?

- Possible gap 2: Timing of Relay

  - **Final Report:** All third party electronic requests alleging abuse by a P/P service customer will be promptly Relayed to the customer. A Requester will be promptly notified of a persistent failure of delivery that a P/P service provider becomes aware of.

  - **Question to IRT:** Should there be a required timeframe for the mandatory Relay?

Reveal Requests

- Very few requirements for Reveal in Final Report

- Who can request?
  - No restrictions

- How to request?
  - No restrictions; Final Report seemed to imply that a form-based option could be used

  - **Question to IRT:** Do you see any gaps where minimum mandatory criteria should be developed?
  - **Question to IRT:** Should there be target service level commitments for request responses?

Reveal Requests

- Terms of Service Requirements

  - ToS shall indicate clearly the grounds upon which Customer details may be Disclosed or Published or service suspended or terminated

  - ToS shall indicate clearly that requester will be notified in a timely manner of the Provider's decision to (a) notify Customer of the request and (b) whether or not the Provider agrees to comply with the request

Break: We Will Resume at 15:15

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Public Safety Working Group Discussion

PSWG Discussion: Background

- Final Report did not include a Law Enforcement Authority disclosure framework, but said that:

  - Accredited Providers must, upon LEA request, relay all communications that contain allegations of abuse;

  - Accredited Providers should comply with express requests from LEA to keep a request confidential where this is required by applicable law; and

  - Any future LEA framework should require certain minimum requirements.

PSWG Discussion: Background

- Minimum requirements for any future LEA framework:

  o Requester must agree to comply with all applicable data protection laws and to use any information disclosed to it solely to determine whether further action is warranted, to contact the customer, or in a legal proceeding;

  o Framework should exempt disclosure where the customer has provided or Provider has found, specific information, facts or circumstances showing Disclosure would endanger Customer's safety.

PSWG Discussion: Background

- In December, Board directed ICANN org to encourage dialogue between IRT and PSWG to address GAC concerns during implementation

- IRT "LEA issues" subteam convened (16 members)

- Request sent to PSWG (in January) to develop strawman proposal for LEA framework to be developed with the subteam before presentation to the full IRT

Drafting of LEA Disclosure Framework

- Current Status
    - ICANN GDD requested that PSWG draft a proposal in consultation with IRT
    - Nick Shorey (UK) issued a call for volunteers to GAC and PSWG in Dec. 2016
    - A PSWG Task Force of 7 members was formed in Jan. 2017 and has started meeting and deliberating issues

Drafting of LEA Disclosure Framework

- Key Questions
  - o Definition of a Law Enforcement Authority and issue of jurisdiction
  - o Definition of requirements for acceptable disclosure request
  - o Processing and prioritization of requests
  - o Notification of registrant

- Next Steps
  - o Further drafting, PSWG and GAC briefings during ICANN 58 and securing GAC endorsement of Draft Framework when appropriate

Break: We Will Resume At 17:00

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Registrar Subteam Discussion

Registrar Subteam Question 1

- **<u>Final Report</u>**: "Registrars are not to knowingly accept registrations from privacy or proxy service providers who are not accredited through the process developed by ICANN." (p. 7)

- **<u>Question to IRT/Subteam</u>**: How do you envision registration lifecycle when Provider is not Affiliated with Registrar?
  - This could impact labeling and other requirements

- **<u>Question to IRT/Subteam</u>**: Should there be a mechanism to authenticate unaffiliated providers?

- **<u>Final Report</u>:** "Registrars are not to knowingly 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."

- <u>Discussion Question (first raised 10 Jan)</u>: What should a registrar be required to do when it becomes aware of a registration involving an unaccredited provider?

Registrar Subteam Question

- Alternatives Previously Raised for Discussion
  - Registrar could treat situation as a WHOIS accuracy issue and verify/re-verify the email address (this may not reach root issue because email may be working).

  - Registrar could be required to notify unaccredited Provider of the requirement that Providers maintain ICANN accreditation, and provide Provider/Customer a period of time to remedy the situation before suspending the registration.

  - In all cases, should allow significant period for onboarding before enforcing this requirement.

Wrap-Up, Action Items and Next Steps

Engage with ICANN

Thank You and Questions

Email: amy.bivins@icann.org

IRT wiki:
https://community.icann.org/display/IRT/Privacy+and+Proxy+Services+Accreditation+Implementation

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