

RDS-WHOIS2 RT Subgroup Report: Privacy/Proxy Services

DRAFT FOR SUBGROUP USE TO DOCUMENT DRAFT
FINDINGS AND RECOMMENDATIONS (IF ANY)

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TABLE OF CONTENTS

1	TOPIC	3
2	SUMMARY OF RELEVANT RESEARCH	4
3	ANALYSIS & FINDINGS	4
4	PROBLEM/ISSUE	6
5	RECOMMENDATIONS	7

1 Topic

Subgroup 1 - WHOIS1 Rec10 Privacy/Proxy Services is tasked with investigating, analyzing, and drafting recommendations (if needed) to address the following Review objective:

Consistent with ICANN's mission and Bylaws, Section 4.6(e)(iv), the Review Team will (a) evaluate the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps), (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS), and (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT's recommendations. This includes developing a framework to measure and assess the effectiveness of recommendations, and applying that approach to all areas of WHOIS originally assessed by the prior RT (as applicable).

The specific [WHOIS1 Recommendation](#) to be assessed by this subgroup appears below:

Recommendation 10 - Data Access -- Privacy and Proxy Services

The Review Team recommends that ICANN should initiate processes to regulate and oversee privacy and proxy service providers.

ICANN should develop these processes in consultation with all interested stakeholders.

This work should take note of the studies of existing practices used by proxy/privacy service providers now taking place within the GNSO.

The Review Team considers that one possible approach to achieving this would be to establish, through the appropriate means, an accreditation system for all proxy/privacy service providers. As part of this process, ICANN should consider the merits (if any) of establishing or maintaining a distinction between privacy and proxy services.

The goal of this process should be to provide clear, consistent and enforceable requirements for the operation of these services consistent with national laws, and to strike an appropriate balance between stakeholders with competing but legitimate interests. At a minimum, this would include privacy, data protection, law enforcement, the industry around law enforcement and the human rights community.

ICANN could, for example, use a mix of incentives and graduated sanctions to encourage proxy/privacy service providers to become accredited, and to ensure that registrars do not knowingly accept registrations from unaccredited providers.

ICANN could develop a graduated and enforceable series of penalties for proxy/privacy service providers who violate the requirements, with a clear path to de-accreditation for repeat, serial or otherwise serious breaches.

Noting that:

- ⦿ The 2013 RAA introduced a specification on privacy and proxy registrations requiring registrars to comply with certain requirements regarding such registrations through affiliated Privacy/Proxy Service Providers as a first step towards implementing this recommendation; and

- ⦿ The Privacy/Proxy Services Accreditation Issues (PPSAI) Implementation Review Team (IRT) is currently working on an implementation of this recommendation that will also include unaffiliated providers of such services.

The subgroup agreed that this review should encompass the work completed both through the RAA specification and the PPSAI PDP, and whether the agreed upon details adhere to WHOIS1 Recommendation #10.

2 Summary of Relevant Research

To conduct its research, all members of this subgroup reviewed the following background materials, posted on the [subgroup's wiki page](#):

- ⦿ [WHOIS Review Team \(WHOIS1\) Final Report](#) (2012) and [Action Plan](#)
- ⦿ [WHOIS Review Team \(WHOIS1\) Implementation Reports](#), including
 - ⦿ [Executive Summary of Implementation Report](#)
 - ⦿ [Detailed implementation Report](#)
- ⦿ WHOIS1 Implementation Briefings on Recommendations 5, 8, 10, 11: [PPT](#), [PDF](#)
- ⦿ [Answers to RDS-WHOIS2 Questions on Implementation Briefings](#)
- ⦿ Documents cited in briefing on Recommendation 10 include
 - ⦿ [2013 Registrar Accreditation Agreement](#) (RAA), including [RAA WHOIS requirements for Registrants](#)
 - ⦿ [Privacy & Proxy Services Accreditation Issues \(PPSAI\) PDP](#)
 - ⦿ [PDP Final Report](#)
 - ⦿ [GNSO approval of PDP Final Report](#)
 - ⦿ [Implementation Plan developed](#)
 - ⦿ [Board approval of Final Report Recommendations](#)
 - ⦿ [GAC Advice-Helsinki Communique: Actions and Updates](#)
 - ⦿ [Current PPAA draft](#) (20 March)

In addition, the subgroup requested additional materials and briefings from the ICANN Org

- ⦿ [Written answers provided by Registrar Services staff leading PP IRT \(20 March\)](#)
- ⦿ [Compliance staff input](#), includes:
 - ⦿ 20 March written answers to PP IRT related questions
 - ⦿ Metrics for P/P Spec in the 2013 RAA
- ⦿ [Written implementation briefing](#) (27 March)
- ⦿ [Responses from ICANN Compliance and Global Domains Division to Data Accuracy Subgroup Questions](#)

Finally, the subgroup applied the RDS-WHOIS2 review team's [agreed framework](#) to measure and assess the effectiveness of recommendations,

3 Analysis & Findings

[Provide overview of Review Team Findings (including materials of reference).

For this subgroup, relevant review objectives include:

- ⦿ Topic 1 (a) identify the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps),
- ⦿ Topic 1 (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS)]

WHOIS1 Recommendation 10 advises that consideration be given to several specific objectives, enumerated in the table below. The subgroup's initial findings for each objective are also given in the table below.

Recommendation 10 Objective	Subgroup's Initial Findings
1. Clearly labeling WHOIS entries to indicate that registrations have been made by a privacy or proxy service	<ul style="list-style-type: none"> ⦿ Included in PPSAI working group report ⦿ Could this also be added to the Consistent Labeling and Display policy?
2. Providing full WHOIS contact details for the privacy/proxy service provider, which are contactable and responsive	<ul style="list-style-type: none"> ⦿ Included in the PPSAI working group report. While details of the standard report process are still being debated, but there is consensus that providers must provide full data and be contactable and responsive within a reasonable timeframe.
3. Adopting agreed standardized relay and reveal processes and timeframes; (these should be clearly published, and proactively advised to potential users of these services so they can make informed choices based on their individual circumstances)	<ul style="list-style-type: none"> ⦿ Law enforcement relay and reveal processes are still being debated and how this would be implemented in a way that would not be burdensome for each side. ⦿ Final details of such processes are currently being debated, however the recommendation objective has already been met with the basis consensus model. The IP model has been agreed upon. ⦿ Partially defined under 2.4.5 of the RAA spec.
4. Registrars should disclose their relationship with any proxy/privacy service provider;	<ul style="list-style-type: none"> ⦿ Included in PPSAI working group report ⦿ Partially defined under 2.3 of the RAA spec
5. Maintaining dedicated abuse points of contact for each provider	<ul style="list-style-type: none"> ⦿ Partially defined under 2.4.1 and 2.4.2 of the RAA spec ⦿ Already agreed by Implementation Review Team.
6. Conducting periodic due diligence checks on customer contact information	<ul style="list-style-type: none"> ⦿ Review has shown no such checks are currently envisioned. Implementing such reviews may violate the reliance of the underlying registrants on the privacy of their data. DISAGREE with the above statement please see comment - ⦿ The current RT may want to look further into why this was not addressed in the working group or IRT as this is important element of the recommendation.
<p>Proposal from Volker</p> <p>Reply from Lili</p> <p>Reply from Volker</p> <p>Reply from Lili</p> <p>Reply from Volker</p> <p>Reply from Lili</p> <p>Reply from Volker</p> <p>Reply from Carlton</p> <p>Reply from Susan</p> <p>Reply from Erika</p> <p>Reply from Volker</p>	
<p>To read the full thread, visit:</p> <p>https://mm.icann.org/pipermail/rds-whois2-</p>	

Comment [LP1]: From Volker:
 Periodic checks are not envisioned, instead the same standards as in the RAA apply, where re-checks would only occur upon occurrence of certain trigger events.

To clarify, we may want to include a line along those lines: "Instead, the validation and verification requirements included in the 2013 RAA or its successor agreements will be applied in a consistent manner."

Comment [LP2]: From Lili:
 The Whois accuracy of domain names that utilize Privacy and Proxy Services is invisible... As such, I strongly support Susan's comments on "6 Conducting periodic due diligence checks on customer contact information" and "8 Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment."
 There is no reason for a customer who chose P/P service thus been protected from responsibilities.

Comment [LP3]: The question of reliability levels of data behind a privacy shield is very hard to measure, as no mechanism exists to properly conduct a study without violating the terms of the service. Possibly, an indication of reliability levels could be obtained from UDRP providers as they regularly deal with cases where (... [1])

Comment [LP4]: if it is very hard to measure, then we should point it out, for the common sense is that the reliable information is there, just being protected from public access. LEAs are required court order issued

Comment [LP5]: I have no issue with noting that while the contactability levels of privacy protected data (or of data redacted due to GDPR, for that matter) is difficult to measure, the obligation of privacy serv (... [2])

Comment [Office11]: WG Preliminary Conclusion: *customer data be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA. Moreover, in the cases where a P/P service provider (... [8])*

Comment [LP6]: From Volker:
 I do not support any attempt to introduce an obligation for service providers to violate the privacy of their customers simply for purposes of "checks". The (... [3])

Comment [LP7]: From Carlton:
 Under current rules, the accredited P/P provider is obliged to ensure contactability of customer of his service. That this is the case cannot be verified independently and some of us have argued from (... [4])

Comment [LP8]: From Susan:
 This recommendation is 6 years old so it would make sense that as an RT we would review the policy created by the PDP and (... [5])

Comment [LP9]: From Erika:
 I tend to agree with Susan (and Lili). I believe it's important to make a recommendation with regard to accuracy of datda. That part of data is not going (... [6])

Comment [LP10]: From Volker:
 If we can agree on the original intent and replace the word accuracy with contactability, I could support this. (... [7])

rt/2018-June/000612.html https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000632.html	
<p>6. Maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider</p>	<ul style="list-style-type: none"> ⊙ Included in PPSAI working group report by mandating data escrow. ⊙ Partially defined under 2.5 of the RAA spec.
<p>7. Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment.</p>	<ul style="list-style-type: none"> ⊙ Partially defined under 2.4.4, 2.4.5 and 2.4.6 of the RAA spec. ⊙ How effective are these rights and responsibility regarding the effectiveness of proxy registrations and the protection of rights of others. ⊙ The 2013 RAA is fairly clear on the rights and responsibilities of the registered name holders. <p><i>3.7.7.3 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. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm.</i></p> <p><i>The Proxy service provider assumes all liabilities of the domain name if they refuse to disclose the contact information.</i></p> <p><i>If the Proxy service provider does disclose the contact information then the underlying registrant assumes all liabilities.</i></p>

4 Problem/Issue



Between the RAA 2013 Spec and this policy, the original recommendation seems to have been addressed. Anything not addressed was clearly not deemed to be important for inclusion by the community, the GNSO and the board who all approved the PPSAI PDP Final Report.

Deleted: [What observed fact-based issue is the recommendation intending to solve? What is the "problem statement"? - ... [9]

Comment [LP12]: Text inserted at the suggestion of Volker via email 25 May

The subgroup proposes no new recommendations at this time specific to the prior RT's recommendation. However, the subgroup intends to track the progress of the PPSAI IRT and consider recommendation(s) if necessary. At this point, the subgroup has identified the following issues:

Issue #1: Current funding proposals for accreditation program create concerns of ICANN failing the goal of onboarding all providers of such services due to inflation of costs. ICANN Org staff seems to be unable to justify proposed accreditation fees, which may endanger the entire program.

Issue #2: Impact of GDPR data redaction requirements on privacy services are yet unknown, but significant impact is expected as personal data becomes hidden by default without use of privacy services.

Issue #3: The implementation should not be delayed due to the GDPR this process is needed more than ever immediately.

Issue #4: The recommendation suggests using a mix of incentives and sanctions to encourage and enforce this policy once implemented. The IRT should be encouraged to discuss incentives, compliance actions have been discussed.

Additional issues in comments from Lili:

2) There is no indication about the legacy domain names that utilize P/P Services before the provider been accredited. Will it be a similar situation as Grandfathered domains?

3) If there is not enough regulation and overseeing in place, P/P service is very likely to be abused.

Refer to the following threads for dialog on these additional issues:
<https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000612.html>
<https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000632.html>

5 Recommendations

[To be completed for each recommendation - if any - suggested by the subgroup]

Recommendation:

Findings: [what are the findings that support the recommendation]

Rationale:

[What is Intent of recommendation and envisioned outcome?

How did the finding lead to this recommendation?

How significant would impact be if recommendation not addressed?

Is it aligned with ICANN's Strategic Plan and Mission?

Is it in compliance with scope Review Team set?]

Impact of Recommendation: [What are the impacted areas, e.g. security, transparency, legitimacy, efficiency, diversity etc. Which group/audience will be impacted by this recommendation]

Feasibility of Recommendation: [Document feasibility of recommendation]

Implementation:

Comment [LP13]: Text inserted to reflect F2F agreement: "No recommendations at this time specific to Rec 10, but the RT should track the progress of the IRT and consider recommendation(s) related to compliance if necessary."

Comment [LP14]: : From Volker:
Issue #1 is directed at the current discussions in the PPSAI IRT regarding the fee structure proposed by ICANN for such service providers. ICANN currently proposes fees to be charged by ICANN to service providers for the accreditation that are comparable to the annual fees payable by accredited registrars, minus the variable component. As many providers are offering this service for free or nominal fees, any cost increase would significantly impact their ability to continue to provide the service, more so than any of the formal or practice requirements. Contracted parties have argued that this program provides no actual benefit to the providers and is essentially only an additional set of obligations. Adding additional costs on top of that may cause unaffiliated providers to attempt to circumvent the policy by various means, rendering the policy useless. It was argued that it is in the best interest of the ICANN community to ensure broad adoption of the program by providers and as its benefits solely the community, it should be the ICANN community, not the service providers that pick up the bill, by means of the ICANN budget.

Additionally ICANN has continually claimed that these fees were on a cost recovery basis, yet has failed to provide any itemized details on how that figure has been arrived at, especially considering statements from ICANN compliance that no additional personnel is expected to be needed for this program and statements from ICANN that these costs would remain the same regardless of whether only one or one million providers sought accreditation.

Comment [Office15]: I would delete this section as this issue should be resolved soon. We may want to recommend that the IRT resolves the costs differences with incentives to service providers that become accredited within a specific time frame.. For example, within the 1st 6 months/

Comment [LP16]: From Volker:
Issue #2 revolves around the expectation that GDPR compliance would take care of many of the reasons why registrants opt for privacy services in the first place. This is expected to cause an industry-wide drop in the use of these services as many of its functions would now be available "for free" as the default. Many have questioned the need for the continued existence of such services after May 25. As a result, the recommendation may have outlived its usefulness. I am sure this impact will not be fully visible by the time we finalize our report, but we should be cognizant in it of the ongoing changes and their potential impacts.

Comment [Office17]: The GDPR may impact how many registrants rely on

[Who are responsible parties that need to be involved in implementation? Community/ICANN org/combo]

What is the target for a successful implementation?

Is related work already underway and how will that dovetail with recommendation?

What is the envisioned implementation timeline? Within 6 months/12 months/more than 12 months]

Priority: [If only 5 recommendations could be implemented due to community bandwidth and other resource constraints, would this recommendation be one of the top 5? Why or why not?]

Level of Consensus

Page 5: [1] Commented LP 6/13/18 8:32:00 PM

The question of reliability levels of data behind a privacy shield is very hard to measure, as no mechanism exists to properly conduct a study without violating the terms of the service. Possibly, an indication of reliability levels could be obtained from UDRP providers as they regularly deal with cases where the privacy service removes itself on the occurrence of a complaint, and therefore might have data on the reliability of the revealed data, however even then this sample would be skewed as most domains using whois privacy services are unlikely to be targets in a UDRP.

Page 5: [2] Commented LP 6/13/18 8:32:00 PM

I have no issue with noting that while the contactability levels of privacy protected data (or of data redacted due to GDPR, for that matter) is difficult to measure, the obligation of privacy service providers to validate certain data fields and to verify one other field in the same manner as required by registrars adequately ensures sufficient contactability is maintained, provided there obligations are adhered to, which we should expect.

Page 5: [3] Commented LP 6/13/18 8:32:00 PM

From Volker:
I do not support any attempt to introduce an obligation for service providers to violate the privacy of their customers simply for purposes of "checks". The PPSAI WG has made very specific decisions regarding the obligations of service providers regarding data quality.

Page 5: [4] Commented LP 6/13/18 8:32:00 PM

From Carlton:
Under current rules, the accredited P/P provider is obliged to ensure contactability of customer of his service. That this is the case cannot be verified independently and some of us have argued from inception this is a major hole in the agreement. We have alternately argued that there should be graded penalties for this violation after the fact.

Page 5: [5] Commented LP 6/13/18 8:32:00 PM

From Susan:
This recommendation is 6 years old so it would make sense that as an RT we would review the policy created by the PDP and make a recommendation in view of what has transpired in the last 6 years.

The Temp Spec addresses accuracy of data. What is being recommended is that a registrar treat the underlying registrant data the same way it is required to validate registrant data now. A registrar knows who their customer is and can ensure that the data under the PP is accurate without disclosing that to the world.

Page 5: [6] Commented LP 6/13/18 8:32:00 PM

From Erika:
I tend to agree with Susan (and Lili). I believe it's important to make a recommendation with regard to accuracy of data. That part of data is not going to be visible in the future (maybe even only for EU-data sets) makes it even more important to say that data must be accurate. There's no need to go further and to include obligations that are premature but ICANN must ensure that there's a clear understanding that accuracy is key.

Page 5: [7] Commented LP 6/13/18 8:32:00 PM

From Volker:
If we can agree on the original intent and replace the word accuracy with contactability, I could support this.

I still feel this is premature. Even if the rec is 6 years old, the PDP recommendations are still very fresh not even implemented yet. The GNSO council has approved them as has the board and a broad community consensus.

I also have an issue with your assumption that we know who our customer is. We don't... All we can ensure is that the data meets a certain format (validation) and either email or phone number (usually email) works at the time the domain is registered (verification).

Page 5: [8] Commented

Microsoft Office User

6/13/18 8:32:00 PM

WG Preliminary Conclusion: ***customer data be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA. Moreover, in the cases where a P/P service provider is Affiliated with a registrar (as defined by the 2013 RAA) and that Affiliated registrar has carried out validation and verification of the P/P customer data, re-verification by the P/P service provider of the same, identical, information should not be required.***

Page 6: [9] Deleted

LP

6/5/18 10:05:00 PM

[What observed fact-based issue is the recommendation intending to solve? What is the "problem statement"?

For this subgroup, relevant steps from review objectives include:

Topic 1 (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT's recommendations]

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