

Registration Directory Service (RDS-WHOIS2) Review

Draft Report
REC10 SUBGROUP REPORT - SECTION 3.7 ONLY

RDS-WHOIS2 Review Team
10 August 2018



3 Objective 1: Assessment of WHOIS1 Recommendations Implementation

3.7 WHOIS1 Rec #10: Privacy/Proxy Services

[SUBSECTION NUMBERS WILL BE ADJUSTED WHEN ADDED BACK TO MASTER DOC]

1.1.1 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](#) assessed by this subgroup appears below:

WHOIS Recommendation #10: Privacy/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:

1. 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
2. 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.

1.1.2 Summary of Relevant Research

To conduct its research, all members of this subgroup reviewed the following background materials, posted on the :

- ⦿
- ⦿
- ⦿ [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:
- ⦿ Documents cited in briefing on Recommendation 10 include
 - (RAA), including [RAA WHOIS - requirements for Registrants-](#)
 - [GNSO approval of PDP Final Report](#) (20 March)
 - the email and audio archives of the PPSAI PDP WG deliberations.

In addition, the subgroup requested additional materials and briefings from the ICANN Org, in particular from ICANN Registrar Services Staff:

- ⦿ , includes:
- ⦿ 20 March written answers to PP IRT related questions
- ⦿ Metrics for P/P Spec in the 2013 RAA
- ⦿ (27 March)
- ⦿

The RT set up a subgroup to review the available materials, discuss observations and report back to the full RT for final review and discussion. In its work, the subgroup reviewed the materials listed above, requested further information from ICANN Registrar Services staff to better assess the ongoing implementation work and status and then deliberated the conclusions drawn from their review. The subgroup then deliberated whether there were

additional considerations not directly in relation to the original recommendations, the results of which deliberations are included in the “Issues” section below.

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

1.1.3 Analysis & Findings

For this subgroup, relevant review objectives include:

1. 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),
2. 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"> ⦿ This is a requirement that is included in PPSAI working group report ⦿ For the purpose of unity of policy, this requirement could also be included in the Consistent Labeling and Display policy, which would have to be amended accordingly.
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. Providers must provide full data and be contactable and responsive within a reasonable timeframe. Final details of the response timeframe for law enforcement requests are still under deliberation.
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"> ⦿ ⦿ The basis consensus relay and reveal process model included in the PDP final report meets this objective for both IP and law enforcement. ⦿ 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

<p>6. Conducting periodic due diligence checks on customer contact information</p>	<p>Review Team.</p> <ul style="list-style-type: none"> ⦿ Already addressed by PPSAI WG: “The WG recommends that P/P service customer data be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA (as updated from time to time). Moreover, in the cases where a P/P service provider is Affiliated with a registrar 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.” ⦿ Until implementation of the WG recommendations is complete a review of the effectiveness of this recommendation is not feasible. However, based on the positive effects of the WHOIS Accuracy Program Specification of the 2013 RAA on registration data quality and Registered Name Holder contactability, the RT expects that the adoption of its principles for Privacy Proxy services will meet this objective.
<p>7. 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>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.</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</i></p>

	<p><i>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>
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1.1.4 Problem/Issue

This section is based on the status quo of the PPSAI IRT as of July 2018 and is subject to updates as implementation work continues.

Between the changes included in RAA 2013 Specification on Privacy and Proxy Registrations and the GNSO-initiated policy work undertaken by the PDP WG on Privacy & Proxy Services Accreditation Issues and as approved by the GNSO council and the ICANN board, the original recommendation has been fully implemented even though the implementation work on the recommendations of the PDP is still ongoing.

The RT has found no evidence of any part of the original recommendations not having at least been deliberated by the PDP WG. Any issue raised by the original recommendation of RT1 that was not directly addressed by a recommendation of the PDP was therefore determined that it should not be included as a PDP recommendations by the community, the GNSO council and the board who all approved the PPSAI PDP Final Report.

The subgroup has therefore concluded that no new recommendations need to be proposed at this time specific to the prior RT's recommendation. However, as the IRT work has not concluded and seems to be delayed in its progress, the subgroup intends to track the progress of the PPSAI IRT and considers making one or more recommendation(s) if necessary. At this point, the subgroup has identified the following issues, based on the status of PPSAI policy implementation as of July 2018. These issues may be subject to updates as implementation continues.

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Issue #1: The recommendation of the previous RT suggests as non-binding options using a mix of incentives and sanctions to encourage adoption by service providers and enforce this policy once implemented. ICANN and the IRT should be encouraged to also discuss incentives, as the current focus of the envisioned implementation of the program seems to solely rely on sanctions and fees. The RT therefore views with concern the current intent of ICANN to fund the privacy/proxy service accreditation program solely by charging providers accreditation and annual fees comparable to the fees payable by ICANN accredited registrars. The RT considers that such fees

could have an effect counterproductive to the overall goal of the program. Creating a cost barrier next to the new policy requirements at a time that the use of such services is expected to decline due to the practical effects of GDPR is likely to cause low adoption of the accreditation program by providers.

Issue #2: As the requirements of the temporary specification for contracted parties as established by ICANN with respect to the GDPR seem to deliver many of the benefits currently provided by privacy or proxy protected registrations to registrants, it is likely that the market for such services will start to shrink. The RT is however unable to assess the exact impact of GDPR data redaction requirements on privacy services at this time. Further study may be required.

Issue #3: The RT is currently not aware of any need beyond the completion of the legal review of the proposed recommendation as mandated by the PDP recommendations to delay the implementation of the accreditation program due to the GDPR. The RT notes that the legal review is currently delayed due to unknown factors not currently explained by ICANN staff. The results of the legal review may impact the deployment of the policy.

Issue #4: The RT was unable to determine whether domain names using privacy or proxy services had a higher propensity for abusive registrations as the reviewed studies did not provide a consistent picture in this regard. It may be beneficial that a future review be undertaken regarding the relationship – if any – between the use of such services and abusive use of domain names. Such a review should also take into account any impact of the PPSA program – once implemented - on abusive registrations using such services. Such a review would depend on the proper collection of data to track over time any trends of abusive use of domain names using privacy services.

There is no direct link between these issues and the information in 3.7.3 as they reference issues not included in any of the binding recommendations

1.1.5 Recommendations (if any)

Default:

The RT declines to make any recommendations regarding privacy services as it considers Recommendation 10 as fully implemented.

Optional, triggered by failure or PPSAI IRT to conclude its work.

While the RT considers Recommendation 10 as fully implemented, it notes that the failure of the PPSAI IRT to complete its work in a timely manner may result in a delay or potentially even a frustration of the completion of a policy as envisioned by the first RT. The RT therefore proposes the following recommendation, which would become obsolete once the IRT completes its work.

Recommendation R10.1:

The Board should monitor the implementation of the PPSAI. In the event that the PPSAI policy does not become operational by [timeframe] – implementation timeframes

nonwithstanding - , the ICANN Board should propose an amendment to the RAA that affiliated Privacy/Proxy providers shall verify and validate underlying customer information provided to them in the same way as registrars are required to verify and validate other registration data.

Findings: The PPSAI PDP recommendations are expected to ensure the verification and validation requirements are expanded to also encompass the underlying registration details of privacy and proxy service providers. It is understood from review by the RT of existing registrar practices that registrars often already include such processes even though there is no such requirement but this is not known to be a standard practice employed by all accredited registrars.

Rationale: In case the IRT does not result in policy, the policy loophole to the verification and validation of registration data would remain for registrations through such registrars that do not act in this manner and while ICANN would have no ability to enforce any such ability against non-affiliated, non-accredited providers, the addition of such a requirement to the RAA could eliminate this issue for a large number of services.

Impact of Recommendation: Ensure better data quality and contactability of the underlying contact owner for registrations using privacy services. Would require amending the RAA.

Feasibility of Recommendation: Amendment process of RAA is envisioned in the RAA itself. Would merely expand already existing practices to all registrations using registrar-affiliated privacy services.

Implementation: Use of the RAA amendment process by mutual agreement between ICANN and accredited registrars.

Priority: Low

Level of Consensus: Full consensus?

The RT also provides the following potential further recommendation for public comment.

Recommendation R10.2:

Reviewing the effectiveness of the implementation of WHOIS1 Recommendation #10 should be deferred. The ICANN Board should recommend that review be carried out by the next RDS review team after PPSAI Policy is implemented.

Findings: The PDP process has completed its work and the policy is now in its implementation stage.

Rationale: As no review of the effectiveness of a policy is possible prior to its implementation, this work should be deferred.

Impact of Recommendation: Allow better assessment of the effective results of the policy.

Feasibility of Recommendation: Easy

Implementation: When next RDS RT is constituted

Priority: Low

Level of Consensus: No F2F3 objections

1.1.6 Possible impact of GDPR and other applicable laws

The RT is currently unable to assess the impact of GDPR on the use and availability of PP services as there is not yet sufficient data available to make a determination. The RT notes that in the current implementation of privacy considerations under the Temporary Specification [REFERENCE], GDPR and similar privacy regimes seem to confer many of the benefits of such services to the affected registrants already, thereby reducing the apparent need for additional services that prevent the open disclosure of private information, which could conceivably render the entire program obsolete. However such impacts would have to be assessed in concert with any future review of the effectiveness of this policy. .

