

Privacy and Proxy Service Provider Accreditation Policy Section II [IRT Discussion Draft v3]

- II. **Terms and Conditions of Accreditation Agreements:** Privacy and Proxy Service providers SHALL enter into and maintain in effect Accreditation Agreements with ICANN. The following is an outline of the general terms and conditions of accreditation, to be specified in greater detail in the Privacy and Proxy Service Provider Accreditation Agreement executed by ICANN and each Privacy and Proxy Service provider, in conformity with the following general termsⁱ:

Commented [AB1]: The IRT discussed on 24 January call the level of detail of Policy vs. PPAA. Agreed that we will consider this as we go along, particularly as we start working on the PPAA.

A. Contactability of Privacy and Proxy Service Providers

- i. Privacy and Proxy Service providers ~~SHOULD~~ SHALL be fully contactable through the publication of business contact details on their websites, as specified in the Privacy and Proxy Service Provider Accreditation Agreement.ⁱⁱ
- ii. Privacy and Proxy Service providers ~~SHOULD~~ SHALL declare their Affiliation with a registrar (if any), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.ⁱⁱⁱ

Commented [AB2]: Note to IRT: Changed to "SHALL" per discussion on 24 January IRT call

Commented [AB3]: Note to IRT: Changed to "SHALL" per discussion on 24 January IRT call

B. Labeling

Privacy and Proxy Service providers ~~SHOULD~~ SHALL ensure that domain name registrations utilizing their services are clearly labeled as such in WHOIS (including the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.^{iv}

Commented [AB4]: Note to IRT: Changed to "SHALL" per discussion on 24 January IRT call

C. Data Reminders

~~Privacy and Proxy Service providers SHALL comply with the requirements of the WHOIS Data Reminder Policy, as may be updated from time to time, to the extent that their Customers' information appears in WHOIS.~~

Commented [AB5]: Note to IRT: Deleted per discussion on 1.24 IRT call, indicating that requirement should only apply to underlying Customer data (any data in WHOIS covered by WDRP requirement for Rrs)

- i. Privacy and Proxy Service providers SHALL inform each Customer annually of the Customer's requirement to provide accurate and up-to-date contact information to the Privacy and/or Proxy Service provider.^v
- ii. ~~In cases where a Privacy and/or Proxy Service Provider is Affiliated with a registrar, and that Affiliated registrar has already informed the same Customer of that Customer's requirement to provide accurate and up-to-date contact information to the Privacy and/or Proxy Service provider, the Privacy and/or Proxy Service provider is not required send an identical annual notice to the Customer.~~

Commented [AB6]: Note to IRT: This text is proposed pursuant to discussion on 24 January IRT call.

D. Data Validation and Verification

- i. Privacy and Proxy Service providers SHALL validate and verify Customer data in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 Registrar Accreditation Agreement, as

specified in the Privacy and Proxy Service Provider Accreditation Agreement (as may be updated from time to time).^{vi}

ii. In cases where a Privacy and/or Proxy Service provider is Affiliated with a registrar, and that Affiliated registrar has carried out the required validation and verification of the customer data, re-verification by the Privacy and/or Proxy Service provider of the same, identical information is not required.^{vii}

E. Privacy and/or Proxy Service Terms ~~and Conditions of Service~~

- i. Privacy and Proxy Service Providers SHALL clearly communicate all Customer and registrant rights, responsibilities and obligations in the Privacy and/or Proxy Service Provider's ~~Registration Agreement~~ terms of service.^{viii}
 - (a) This disclosure SHALL include, at a minimum:
 - (b) The Privacy and/or Proxy Service Provider's obligations in managing customer rights and responsibilities;
 - (c) Any specific requirements applying to transfers of a domain name, including:
 1. The conditions under which the Privacy and/or Proxy Service may be terminated in the event of a transfer of the domain name; and
 2. How requests for transfers of a domain name are handled.
 - (d) Any specific requirements applying to renewals of a domain name.
- ii. Privacy and Proxy Service providers SHALL publish (e.g. on the Privacy and/or Proxy Service provider's website) terms of service that set forth, at a minimum, the processes and requirements for third-party requests for Relay, Publication and Disclosure.^{ix}
- iii. Privacy and Proxy Service providers SHALL indicate clearly in their terms of service when they are referring to Publication requests (and potential consequences) and when to Disclosure requests (and potential consequences).^x
- iv. Privacy and Proxy Service providers SHALL expressly include a provision in their terms of service explaining the meaning and consequences of Disclosure and Publication.^{xi}
- v. Privacy and Proxy Service provider terms of service SHALL indicate clearly the specific grounds upon which a Customer's details may be Disclosed or Published or service suspended or terminated, including Publication in the event of a Customer's initiation of a transfer of the underlying domain name.^{xii}
- vi. Privacy and Proxy Service provider terms of service SHOULD also include a link or other direction to the ICANN website where a person may look up the authoritative definitions and meanings of specific terms such as Disclosure or Publication.^{xiii}
- vii. Privacy and Proxy Service provider terms of service SHALL include pricing information.^{xiv}
- viii. Privacy and Proxy Service provider terms of service ~~shall~~ **SHALL** indicate clearly, including required timelines and processes, whether or not.^{xv}

Commented [AB7]: Note to IRT: Updated per discussion on 24 January IRT call, indicating that this is part of a broader ToS requirement rather than indicating a requirement for a separate document.

Commented [AB8]: Note—Discussion on 24 January IRT call concluded here.

Commented [AB9]: Question to IRT: What was the intent re: the language on "consequences" here? Can we specify the minimum explanation here that is required?

Commented [AB10]: Question from Theo on-list (23 Jan): TG: How do we imagine this when we offer our services through resellers or other parties. I suggest we Registrars take a good look at this one and discuss this one in either a sub-group or amongst ourselves.

Note from Darcy on-list (1-24): per the footnote, the PDP did not indicate that the terms of service had to include pricing, but that the pricing had to be displayed to customers. This is also similar to Consensus Policies registrars must follow. I don't believe the intent was for the pricing to be a part of the terms of service.

Commented [AB11]: Note to IRT: Proposing to add to Final Recommendation to clarify that terms should clearly explain steps and timeline for notifications to Customers (if any) and steps and timeline for Customers to opt to cancel a registration (if the Provider offers that option).

- (a) A Customer will be notified when a provider receives a Publication or Disclosure request from a third party; and
- (b) A Customer may opt to cancel its domain registration prior to and in lieu of Publication.
- ix. Privacy and Proxy Service providers SHOULD indicate clearly, on their websites and in all Publication or Disclosure-related materials, that a Requester will be notified in a timely manner of the provider's decision:
 - (a) To notify its Customer of the request; and
 - (b) Whether or not the provider agrees to comply with the request to Disclose or Publish.^{xvi}
- x. Privacy and Proxy Service providers SHOULD include on their websites, and in all Publication or Disclosure-related policies and documents, a link to either:^{xvii}
 - (a) A request form containing a set of specific, minimum, mandatory criteria, or
 - (b) An equivalent list of such criteria that the provider requires in order to comply with such requests (including requests from Law Enforcement Authorities and/or intellectual property holders).
- xi. Privacy and Proxy Service providers SHALL state on any forms used for reporting and requesting purposes the applicable jurisdiction in which disputes (including disputes involving Law Enforcement Authorities and/or intellectual property holders) must be resolved.^{xviii}

F. Relay

- i. Privacy and Proxy Service providers SHALL Relay to their Customers any notices and/or communications required under the Registrar Accreditation Agreement or an ICANN Consensus Policy.^{xix}
- ii. For all other Electronic Communications, Privacy and Proxy Service providers MAY elect one of the following options:^{xx}
 - (a) Relay all Electronic Communications received (including those received via emails and web forms), but the Service provider MAY implement commercially reasonable safeguards (including CAPTCHA) to filter out spam and other forms of abusive communications; or
 - (b) Promptly Relay all Electronic Communications (including those received via emails and web forms) received from Law Enforcement Authorities and third parties containing allegations of domain name abuse (i.e. illegal activity).
- iii. Privacy and Proxy Service providers SHALL publish and maintain a mechanism (e.g. designated email point of contact) for Requesters to follow up on or escalate their original request.^{xxi}
- iv. When a Privacy and/or Proxy Service provider becomes aware of a Persistent Delivery Failure of Electronic Communications to a Customer, the Privacy and/or Proxy Service provider SHALL promptly notify the Requester of the Persistent Delivery Failure.^{xxii}

Commented [AB12]: Additional Questions for IRT: Is the notification to occur in written form (including electronic communication)? Are there any requirements as to content or form of the notice? Is it a requirement that the notification be delivered in advance of taking an action? Are any minimum notification requirements/periods contemplated?

Commented [AB13]: Question: Can/should we be more specific re: the meaning of "timely"?

Commented [AB14]: Note to WG: Theo (on-list) suggested we consult Spec 11 Framework WG re language here re: "timely"

Commented [AB15]: Note to IRT: On-list (23 January) Theo asked whether this might clash with UDRP?

I believe that the later section on UDRP clarifies this but we might need to make this more clear, or we could even move the UDRP provision here (no cancellation of names subject to UDRP proceedings).

Commented [AB16]: Note to IRT: Final Report states that "The WG recommends that a uniform set of minimum mandatory criteria for the purpose of submitting abuse reports and information requests be developed. Forms that may be required by individual P/P service providers for this purpose should also include space for free form text62. P/P service providers should also have the ability to "categorize" reports received, in order to facilitate responsiveness." (See p. 63)

Commented [AB17]: Note/Question to IRT: Should this be limited in any way (e.g. to the jurisdiction where the provider has its place of business?)

Commented [AB18]: Note to IRT: Should this be further defined here or in the PPAA?

Commented [AB19]: Question for IRT: Should be more explicit about required timelines for relay here?

Commented [AB20]: Question for IRT: Should the definition of "LEA" here be consistent with who is eligibility for the to-be-created LEA framework? Or should this be

Commented [AB21]: Question for IRT: The Final Report said "i.e." but was this intended to be an example (e.g.)? "ie" would limit this to only allegations of illegal activity

Commented [AB22]: Question/Note to IRT: The definition of "persistent delivery failure" was discussed on Section 1/definitions call, and we said we would revisit.

Commented [AB23]: Questions for IRT: Will the request be forwarded in its entirety to the customer or will the customer be given some form of summarized or transcribed

Commented [AB24]: Note to IRT: Theo suggested on list (23 Jan) that Rrs should dive into this one and scope the technical issues and perhaps suggest workable language

- v. When a Privacy and/or Proxy Service provider becomes aware of a Persistent Delivery Failure, this awareness triggers the provider’s obligation to perform a verification/re-verification (as applicable) of the Customer’s email address(es), as specified in the Privacy and Proxy Service Provider Accreditation Agreement.^{xxiii}
- vi. As part of an escalation process, and when a Privacy and/or Proxy Service provider has become aware of Persistent Delivery Failure, the Privacy and/or Proxy Service provider SHALL, upon request, Relay a further form of notice to its Customer.^{xxiv}
 - (a) The Privacy and/or Proxy Service provider SHALL have the discretion to select the most appropriate means of Relaying such a request to the Customer.
 - (b) The Privacy and/or Proxy Service 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.
- vii. The requirements set forth above SHALL NOT preclude a Privacy and/or Proxy 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.^{xxv}

G. Reveal (Publication and Disclosure)

- i. In deciding whether or not to comply with a Disclosure or Publication request, Privacy and Proxy Service providers SHALL NOT mandate that a Requester first make a Relay request.^{xxvi}
- ii. Privacy and Proxy Service providers SHALL notify a Requester in a timely manner of the Provider’s decision.^{xxvii}
 - (a) To notify its Customer of the request; and
 - ~~(b)~~ Whether or not the provider agrees to comply with the request to Disclose or Publish.
- iii. Nothing in this Policy should be read as being intended to alter the prevailing practice among Privacy and Proxy Service providers to review requests manually or to facilitate direct resolution of an issue between a Requester and a Customer. Disclosure of at least some contact details of the Customer may in some cases be required in order to facilitate such direct resolution.^{xxviii}

H. Transfers

- I. Designated Point of Contact to Receive and Respond to Reports of Abuse
Privacy and Proxy Service providers SHALL maintain a designated point of contact to receive and respond to reports of abuse involving Registered Names that are registered through the Privacy and/or Proxy Service provider, as specified in the Privacy and Proxy Service Provider Accreditation Agreement.^{xxix}

Commented [AB25]: Questions for IRT: What is a “further form of notice”? Can “Reasonable limits” be further defined?. Was lack of a more precise definition intentional, or was it to be addressed during implementation?

Commented [AB26]: Question for IRT: Is this consistent with PDP intent? The Final report says this should be in the ToS, but proposing to include this to clarify that this is a requirement.

Commented [AB27]: Note to IRT: On-list, Theo suggested that perhaps the provider should describe the process with the predicted timelines to the requester (can we develop language that captures this?).

See the language in Section 2.E.viii. Do you think that language (emphasis added) adequately covers this?

viii. Privacy and Proxy Service provider terms of service SHALL indicate clearly, **including required timelines and processes**, whether or not:¹

- (a) A Customer will be notified when a provider receives a Publication or Disclosure request from a third party; and
- (b) A Customer may opt to cancel its domain registration prior to and in lieu of Publication.

Commented [AB28]: Note to IRT: This is a placeholder, pending additional input from the Board w/r/t Transfer Policy. Any additional work will be initiated with subgroup and then discussed with full IRT for incorporation here.

Question—Do we need to develop additional requirements/processes for PP-PP transfers, or leave this for the Change of Registrant policy?

Note—consider whether to incorporate a requirement that PP services should promptly report updates to RDS information as a result of transfers and/or renewals to the registrar.

Commented [AB29]: Note to IRT: This is an area where the proposed policy language is not as specific as the Final Report. ICANN org proposes to leave the specifics for the PPAA (to be reviewed by the IRT).

Would this fulfill the intent of the PDP WG?

Commented [AB30]: Comment from Darcy, on-list (24 January): I don’t think this is for reports of all abuse “involving Registered Names that are registered through the Privacy and/or Proxy provider.” Domains are registered with the registrar or registrar’s reseller and the registrar is responsible for investigating abuse. I think the PDP’s intent was for P/P providers to maintain a contact for abuse relating to the P/P services only.

J. Standard Forms

Accredited Privacy and Proxy Service providers SHALL use standard forms and other mechanisms specified in the Privacy and Proxy Service Provider Accreditation Agreement (as may be updated from time to time) that would facilitate the prompt and accurate identification of Relay and other types of standardized request and reporting processes.^{xxx}

K. Data Retention and Escrow

L. UDRP Proceedings

Privacy and/or Proxy Service providers that permit customers to cancel a domain registration prior to and in lieu of Publication SHALL expressly prohibit cancellation of a domain name that is the subject of a UDRP proceeding.^{xxxx}

ⁱ This Section is proposed as a complement to the structure of the Statement of Registrar Accreditation Policy (introductory text copied/appropriated from Rr Policy), <https://www.icann.org/resources/pages/policy-statement-2012-02-25-en#II>).

ⁱⁱ The Final Report states, at p. 12, number 12, that “P/P service providers should be fully contactable, through the publication of contact details on their websites in a manner modeled after Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations, as may be updated from time to time. Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations states that P/P Provider shall publish its business contact information on its website and/or Registrar’s website.

ⁱⁱⁱ The Final Report, page 11-12, item 10, states that P/P service providers should declare their Affiliation with a registrar (if any) as a requirement of the accreditation program. ICANN proposes for discussion the text presented in brackets [on their website and in all relevant governing materials] as a possible means to clarify where this declaration should appear.

^{iv} See Final Report, page 9, item 4 “To the extent that this is feasible, domain name registrations involving P/P service providers should be clearly labelled as such in WHOIS.” See also Final Report, footnote 15, page 10, “For clarity, references to WHOIS in this Final Report are to the current globally accessible gTLD Registration Directory Service as well as any successors or replacements thereto.”

^v See note vi immediately above.

^{vi} The Final Report, page 9, item 5, states that “P/P customer data is to be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA (as may be updated from time to time).”

^{vii} The Final Report, page 9, item 5, states that “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, reverification by the P/P service provider of the same, identical, information should not be required.”

^{viii} The Final Report, page 9, item 6, states that “All rights, responsibilities and obligations of registrants and P/P service customers as well as those of accredited P/P service providers need to be clearly communicated in the P/P service registration agreement, including a provider’s obligations in managing those rights and responsibilities and any specific requirements applying to transfers and renewals of a domain name.”

^{ix} The Final Report, page 10, item 8, states that “All accredited P/P service providers must publish their terms of service, including pricing (e.g. on their websites)...”

^x The Final Report states at p. 10, item 8, bullet 1, “In addition to other mandatory provisions recommended by the WG, the terms should at a minimum include the following elements in relation to Disclosure and Publication:

Commented [AB31]: Question for IRT: The Final Recommendations indicate that the use of **standard forms and other mechanisms** that would facilitate the prompt and accurate identification of a Relay **request be explored during implementation** (e.g. drop-down menus in a provider’s web-based forms or fields that would require the filling in of a Requester’s contact details, specifying the type of request or other basic information).

We interpret this as a recommendation that we create standard processes for requests (ie, requirements for forms, categories for requests, etc). Is this interpretation accurate?

This section is being included as a placeholder for discussion; however, detailed requirements for these form(s) would ultimately be incorporated into other section(s) of the Policy and contractual requirements.

Can the IRT confirm that this implementation should include the creation of standard forms and other mechanisms to facilitate PP providers’ handling of requests and abuse reports?

Commented [AB32]: Note: Pursuant to discussion on 24 January IRT call, ICANN org is drafting a proposal for this requirement for discussion with the IRT in the coming weeks. This will include proposed requirements that will ensure that underlying data must be retained and escrowed where the requirement does not already exist as a result of the PP’s Affiliation with an ICANN-accredited registrar.

Commented [AB33]: Question to IRT: What about URS proceedings?

Clarification of when those terms refer to Publication requests (and their consequences) and when they refer to Disclosure requests (and their consequences)."

^{xi} See note xv immediately above.

^{xii} The Final Report, page 10, item 8, bullet 8 states that the following should be disclosed in the ToS, "The specific grounds upon which a customer's details may be Disclosed or Published or service suspended or terminated, including Publication in the event of a customer's initiation of a transfer of the underlying domain name [footnote omitted]."

^{xiii} The Final Report, page 11, item 9, bullet 3, states that P/P service providers should include (as a best practice) in their terms of service a link or other direction to the ICANN website (or other ICANN-approved location) where a person may look up the authoritative definitions and meanings of specific terms such as Disclosure and Publication.

^{xiv} Final Report, page 10, item 8 states that "All accredited P/P service providers must publish their terms of service, including pricing (e.g. on their websites)."

^{xv} See Final Report, page 10, item 8, bullet 3.

^{xvi} See Final Report, page 70, recommendation VI.

^{xvii} See Final Report, page 10, item 7 (and elsewhere) "All accredited P/P service providers must include on their websites, and in all Publication and Disclosure-related policies and documents, a link to either a request form containing a set of specific, minimum, mandatory criteria, or an equivalent list of such criteria, that the provider requires in order to determine whether or not to comply with third party requests, such as for the Disclosure or Publication of customer identity or contact details."

^{xviii} See Final Report, page 71, paragraph 2.

^{xix} See Final Report, page 13, item 16, All communications required by the RAA and ICANN Consensus Policies must be Relayed.

^{xx} See Final Report, page 13, item 16.

^{xxi} See Final Report, page 14, first bullet.

^{xxii} See Final Report, page 14, item 17.

^{xxiii} See Final Report page 14, item 17, fourth bullet.

^{xxiv} See Final Report, page 14, item 17, third bullet.

^{xxv} See Final Report, page 15, last bullet.

^{xxvi} See Final Report, page 69.

^{xxvii} The Final Report states, at page 11, first paragraph, that the ToS should clarify that a Requester will be notified in a timely manner of the provider's decision: (1) to notify its customer of the request; and (2) whether or not the provider agrees to comply with the request to Disclose or Publish. This should also be clearly indicated in all Disclosure or Publication related materials.

^{xxviii} See Final Report, item 18, page 15.

^{xxix} The Final Report, item 11, page 12, states that "P/P service providers must maintain a point of contact for abuse reporting purposes. In this regard, a "designated" rather than a "dedicated" point of contact will be sufficient, since the primary concern is to have one contact point that third parties can go to and expect a response from."

^{xxx} The Final Report, in various places (see, example p. 64, referring to a drop-down menu in a web-based form), suggests that implementation will include the creation of standard request processes, such as a standard form for all PP services. ICANN included this text for discussion with the IRT and proposes that, if this understanding is correct, that we discuss this process at a future meeting and then incorporate requirements here.

^{xxxi} See Final Report, p. 10, "accredited P/P service providers ... should nevertheless expressly prohibit cancellation of a domain name that is the subject of a UDRP proceeding."