Illustrative example of disclosure standards for intellectual property
(trademark or copyright) requests

Policy Purposes

By facilitating direct communication among Requestors, Service Providers, and Customers, this policy serves the public interest and seeks to strike an appropriate balance among the interests of all parties concerned. It aims to provide requestors a higher degree of certainty and predictability as to if, when and how they could obtain what level of disclosure; to preserve for service providers a sufficient degree of flexibility and discretion in acting upon requests for disclosure; and to include reasonable safeguards and procedures to protect the legitimate interests of customers of accredited proxy/privacy service providers.

# Service Provider Process for Intake of Requests

## Service Provider will establish and publish a point of contact for submitting complaints that registration or use of a domain name for which the Service Provider provides privacy/proxy service infringes copyright or trademark rights of the Requestor. The point of contact shall enable all the following information (in II below) to be submitted electronically, whether via e-mail, through a web submission form, or similar means. Telephonic point of contact may also be provided.

## [Nothing in this document prevents a Service Provider from] [Service Provider is encouraged, but not required, to] implement measures to optimize or manage access to the Request submission process. This could include:

Requiring Requestors to register themselves and/or their organizations with Service Provider.

Authenticating complaint submissions as originating from a registered Requestor (e.g., log-in, use of pre-identified e-mail address).

[Assessing a standardized nominal cost-recovery fee for processing complaint submissions, or to maintain Requestor account so long as this does not serve as an unreasonable barrier to access to the process].

Qualifying requestors meeting certain reliable criteria as “trusted requesters” whose requests would be subject to a streamlined process.

Revoking or blocking Requestor access to the submission tool for egregious abuse of the tool or system, including submission of frivolous or harassing requests, or numerous requests that are identical, i.e., that concern the same domain name, the same intellectual property, and the same requestor.

## Nothing in this document prevents a Service Provider from adopting and implementing policies to publish contact details of Customers in Whois, or to terminate privacy and proxy service to a Customer, for breach of Service Provider’s published Terms of Service, or on other grounds stated in the published Terms of Service.

# Request templates

## **Where a domain name allegedly infringes a trademark**

Requestor provides to Service Provider:

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### Evidence of previous use of a relay function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer regarding the subject matter of the request, and of any responses thereto.

### Full name, email address, and telephone number of the trademark owner and/or authorized representative of the trademark owner

### The trademark, the trademark registration number, links to the national trademark register where the mark is registered (or a representative sample of such registers in the case of an internationally registered mark), showing that the registration is currently in force

### A good faith statement[, either] under penalty of perjury [or notarized or accompanied by sworn statement[[1]](#footnote-1) (“Versicherung an Eides statt”),] from either the trademark holder or an authorized representative of the trademark holder, that —:

#### provides a basis for reasonably believing that the use of the trademark by the alleged infringer in its domain name

##### infringes the trademark holder’s rights and

##### is not defensible;

#### states that Requestor will use Customer’s contact details only

##### to determine whether further action is warranted to resolve the issue;

##### to attempt to contact Customer regarding the issue; and/or

##### in a legal proceeding concerning the issue.

## **Domain name resolves to website where copyright is allegedly infringed**

Requestor provides to Service Provider:

### The exact URL where the allegedly infringing content is located

### Evidence of previous use of a relay function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer with regard to the subject matter of the request, and of any responses thereto. Evidence of previous attempts to contact the web host or the domain name registrar with regard to the subject matter of the request, and of any responses thereto (Requestors are encouraged but not required to attempt such contacts).

### Full name, email address, and telephone number of the copyright owner and/or authorized representative of the copyright owner

### Information reasonably sufficient to identify the copyrighted work, which may include, where applicable, the copyright registration number, and the country where the copyright is registered

### [The exact URL where the original content is located (if online content) or where the claim can be verified.]

### A good faith statement, under penalty of perjury, [either notarized or accompanied by sworn statement (“Versicherung an Eides statt”),][[2]](#footnote-2) from either the copyright holder or an authorized representative of the copyright holder —:

#### Providing a basis for reasonably believing that the use of the copyright content on the website (i) infringes the copyright holder’s rights and (ii) is not defensible;

#### Providing a basis for reasonably believing that the copyright protection extends to the locale the website targets; and

#### Stating that Requestor will use Customer’s contact details only (i) to determine whether further action is warranted to resolve the issue; (ii) to attempt to contact Customer regarding the issue; and/or (iii) in a legal proceeding concerning the issue.

## **Domain name resolves to website where trademark is allegedly infringed**

Requestor provides to Service Provider:

### The exact URL where the allegedly infringing content is located

### Evidence of previous use of a relay function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer with regard to the subject matter of the request, and of any responses thereto. Evidence of previous attempts to contact the web host or the domain name registrar with regard to the subject matter of the request, and of any responses thereto (Requestors are encouraged but not required to attempt such contacts).

### Full name, email address, and telephone number of the trademark owner and/or authorized representative of the trademark owner.

### The trademark, the trademark registration number, links to the national trademark register where the mark is registered (or a representative sample of such registers in the case of an internationally registered mark), showing that the registration is currently in force

### A good faith statement[, either] under penalty of perjury [or notarized or accompanied by sworn statement (“Versicherung an Eides statt”),][[3]](#footnote-3) from either the trademark holder or an authorized representative of the trademark holder —:

#### Providing a reasonable basis for believing that the use of the trademark on the website

##### infringes the trademark holder’s rights and

##### is not defensible;

#### Stating that Requestor will use customer’s contact details only

##### to determine whether further action is warranted to resolve the issue;

##### to attempt to contact Customer regarding the issue; and/or

##### in a legal proceeding concerning the issue.

# Service Provider Action on Request

Upon receipt of the information set forth above in writing, Service Provider will take reasonable and prompt steps to investigate and respond appropriately to request for disclosure, as follows:

## Promptly notify the Customer about the complaint and disclosure request and request that the Customer respond to Service Provider within x calendar days. Provider shall advise the Customer that if the Customer believes there are legitimate reason(s) to object to disclosure, the Customer must disclosre these reasons to the Provider and authorize the Provider to communicate such reason(s) to the Requestor; and

## Within x calendar days after receiving the Customer’s response, or after the time for Customer’s response has passed, Service Provider shall take one of the following actions:

### disclose to Requestor the contact information it has for Customer that would ordinarily appear in the publicly accessible Whois for non-proxy/privacy registration; or

### state to Requestor in writing or by electronic communication its reasons for refusing to disclose.

### In exceptional circumstances, if Provider requires additional time to respond to the Requestor, Provider shall inform the Requestor of the cause of the delay, and state a new date by which it will provide its response under this Section.

## Disclosure can be reasonably refused, consistent with the general policy stated herein, including, for example, the reason that the Service Provider has already published Customer contact details in Whois as the result of termination of privacy and proxy service; that the Customer has objected to the disclosure and has provided [substantive] [detailed] [adequate] reasons against disclosure; or that the Customer has surrendered its domain name registration in lieu of disclosure, if the Service Provider offers its Customers this option.

## [Disclosure cannot be refused solely for lack of a court order, lack of a subpoena, or lack of a pending civil action, UDRP or URS proceeding, nor solely based on the fact that the request is founded on alleged intellectual property infringement in content on a website associated with the domain name.]

## If refusal to disclose is based on objection to disclosure by the Customer, Requestor must be informed of the reasons for objection.

## For all refusals made in accordance with the policy and requirements herein, Service Provider must accept and give due consideration to Requestor’s requests for reconsideration of the refusal to disclose. [In the event of a final refusal to disclose by the Provider, Provider must participate in an ICANN-approved review process for determining whether the reason for refusal to disclose complies with the general policy stated above.[[4]](#footnote-4)]

ANNEX: some options for resolving disputes arising from alleged false statements leading to improper disclosures

Arbitration:

Any controversy, claim or dispute arising between the Service Provider and the Requestor as a result of alleged wrongful disclosure of Customer’s contact information shall be referred to and finally determined by a dispute-resolution service provider approved by ICANN, in accordance with standards established by ICANN.

Under these standards, disclosure is in bad faith and wrongful only when it is effected by the Requestor having made knowingly false representations to the Provider with the intent to deceive. Disclosure is not wrongful if the Requestor had a good faith basis for seeking disclosure at the time the Request was submitted to the Provider.

Judgment on an award rendered by the arbitrator(s) may be entered in any court having competent jurisdiction over the Requestor.

[Jurisdiction

In making submission, Requester agrees to be bound by jurisdiction at seat of the Service Provider for disputes arising from alleged improper disclosures caused by false statements.]

[“Trusted sender”

Include arbitration or jurisdiction in list of permissible request submission management criteria (under I(B)).]

1. TO BE DETERMINED: Method of resolving provider claims of false statements/misrepresentations. [Options include: jurisdictional provision, arbitration, etc.] [See Annex] [↑](#footnote-ref-1)
2. TO BE DETERMINED: Method of resolving provider claims of false statements/misrepresentations. [Options include: jurisdictional provision, arbitration, etc.] [See Annex] [↑](#footnote-ref-2)
3. See above re dispute resolution method [↑](#footnote-ref-3)
4. The ICANN-approved dispute resolution provider will provide a neutral and impartial panelist who, after providing due notice to and opportunity to be heard by the Requestor, the Service Provider, and the Customer, will determine promptly and confidentially, at minimal expense, whether disclosure should be made. In accordance with the general policy stated above, the dispute resolution provider shall order that disclosure be made if there is a reasonable basis for believing that the Customer has, as alleged, infringed upon the Requestor’s claimed rights in a manner that is not defensible. [↑](#footnote-ref-4)