Illustrative example of Disclosure standards: recommended procedures for intellectual property
(trademark or copyright) requests

# Policy Purpose:

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 and legal rights of customers of accredited proxy/privacy service providers.

# Policy Scope:

The following procedures were developed by the Working Group to apply to requests made by intellectual property rights-holders or their authorized representatives. The WG has not developed a similarly detailed process for other types of requestors, e.g. law enforcement authorities or consumer protection agencies, due in part to likely differences with how these requestors would handle certain issues such as those related to authorization and confidentiality. The WG therefore invites public comments on the feasibility of this type of framework for non-IP requestors.

# 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 Service Providers from sharing information with each other regarding Requestors who have been revoked or blocked from their systems or who have engaged in misconduct of this system, including frivolous or harassing requests.

## Nothing in this document prevents a Service Provider from adopting and implementing policies to publish the 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, even if the criteria outlined in this document for a Request have not been met.

# Request templates

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

Requestor provides to Service Provider:

### The domain name that allegedly infringes the trademark

### 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, physical address, email address, and telephone number of the trademark owner, and for legal entities, the country where incorporated or organized;

### Authorized legal contact for trademark owner and his/her name, title, [law firm, if outside counsel], physical address, email address and telephone number for contact purposes;

### 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 in the domain name

##### allegedly 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.

##### c) Where the signatory is not the rights holder, he/she must attest that he/she is an authorized representative of the rights holder, capable and qualified to evaluate and address the matters involved in this request, and having the authority to make the representations and claims on behalf of the rights holder in the request including to bind the rights holder to the limitations on the data once revealed[[2]](#footnote-2).

d) Where the signatory is not the rights holder, an officer of the rights holder (if a corporate entity) or an attorney of the rights holder, the signatory shall agree to provide a copy of its agency agreement (or equivalent thereof) to the Provider if requested.[[3]](#footnote-3)

## **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, physical address, email address, and telephone number of the copyright owner; and for legal entities, the country where incorporated or organized;

### Authorized legal contact for copyright owner and his/her name, [law firm, if outside counsel], physical address, email address and telephone number for contact purposes;

### 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”),][[4]](#footnote-4) 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;

#### 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; and

##### d) Where the signatory is not the rights holder, he/she must attest that he/she is an authorized representative of the rights holder, capable and qualified to evaluate and address the matters involved in this request, and having the authority to make the representations and claims on behalf of the rights holder in the request.

## **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, physical address, email address, and telephone number of the trademark owner; and for legal entities, the country where incorporated or organized;

### Authorized legal contact for trademark owner and his/her name, [law firm, if outside counsel], physical address, email address and telephone number for contact purposes;

### 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”),][[5]](#footnote-5) 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.

##### c) Where the signatory is not the rights holder, he/she must attest that he/she is an authorized representative of the rights holder, capable and qualified to evaluate and address the matters involved in this request, and having the authority to make the representations and claims on behalf of the rights holder in the request.

# 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 15 calendar days. Provider shall advise the Customer that if the Customer believes there are legitimate reason(s) to object to disclosure, the Customer must disclose 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, for reasons consistent with the general policy stated herein, including, but not limited to any of the following:

### the Service Provider has already published Customer contact details in Whois as the result of termination of privacy and proxy service;

### the Customer has objected to the disclosure and has provided [adequate] reasons against disclosure, including without limitation a reasonable defense for its use of the trademark or copyrighted content in question;

### the Provider has found [adequate] reasons against disclosure,

### the Customer has surrendered its domain name registration in lieu of disclosure, if the Service Provider offers its Customers this option.

### that the Customer has provided, or the Provider has found, specific ~~evidence demonstrating that the Requestor’s trademark or copyright request is a pretext for obtaining the Customer’s contact details for the purpose of contravening the Customer’s human rights~~ [facts and circumstances] [information, facts and/or circumstances] showing that the Requestor’s trademark or copyright complaint is a pretextual means of obtaining the Customer’s contact details [solely] [mainly] for the purpose of contravening the Customer’s [human rights (e.g., freedom of expression)] [privacy].

## [Disclosure cannot be refused solely for lack of any of the following: (i) a court order; (ii) a subpoena; (iii) a pending civil action; or (iv) a UDRP or URS proceeding; nor can refusal be 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,[[6]](#footnote-6) as appropriately limited to exceptional cases, and not to be used for every refusal; and which should be similarly accessible to the Customer for purposes of an appeal.

In the event that a Provider is alleged to have made a wrongful disclosure based on a Requestor having provided false information, the Provider and Requestor shall participate in an ICANN-approved dispute resolution process. A framework for such a review and dispute resolution process is outlined in Annex 1, below.]

Given the balance that this policy attempts to strike~~s~~, evidence of the use of high volume, automated electronic processes that send queries or data (in the absence of human review) to the systems of any of the parties involved (Requestors, Service Providers, or Customers) by any other party in performing any of the steps in the processes outlined herein shall create a rebuttable presumption of non-compliance with this policy.

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. An example of such an attestation: “I attest that I am the rights holder / authorized representative of the rights holder, capable and qualified to evaluate and address the matters involved in this request, and have the authority to make the representations and claims in this request.” The same attestation statement can also be used in situations arising under Section II.B(7)(d) and Section II.C(6)(c), below. [↑](#footnote-ref-2)
3. With similar changes to be made to II.B and II.C below. [↑](#footnote-ref-3)
4. TO BE DETERMINED: Method of resolving provider claims of false statements/misrepresentations. [Options include: jurisdictional provision, arbitration, etc.] [See Annex] [↑](#footnote-ref-4)
5. See above re dispute resolution method [↑](#footnote-ref-5)
6. 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. This Provider shall have extensive expertise in human rights law, including freedom of expression principles, as well as intellectual property, including principles concerning fair use and fair dealing. [↑](#footnote-ref-6)