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| Registration Directory Service (RDS-WHOIS2) Review |
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| Draft Report including F2F#3 agreements and action items  REC10 SUBGROUP REPORT - SECTION 3.7 ONLY FOR VOLKER TO PROVIDE REDLINED UPDATES |
| RDS-WHOIS2 Review Team |
| 30 July 2018 |
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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]

### 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](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) assessed by this subgroup appears below:

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| 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.

### Summary of Relevant Research

To conducts its research, all members of this subgroup reviewed the following background materials, posted on the [subgroup's wiki page](https://community.icann.org/pages/viewpage.action?pageId=71604717):

* [WHOIS Review Team (WHOIS1) Final Report](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) (2012) and [Action Plan](https://www.icann.org/en/system/files/files/implementation-action-08nov12-en.pdf)
* [WHOIS Review Team (WHOIS1) Implementation Reports](https://community.icann.org/display/WHO/WHOIS+Review+Implementation+Home), including

- [Executive Summary of Implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Recs%201_16%2030Sept2016.pdf)

- [Detailed implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Quarterly%20Summary%2031December2016.pdf)

* WHOIS1 Implementation Briefings on Recommendations 5, 8, 10, 11: [PPT](https://community.icann.org/download/attachments/63145823/WHOIS1-Implementation%20Briefings_final.docx?version=1&modificationDate=1510566466000&api=v2), [PDF](https://community.icann.org/download/attachments/69279139/WHOIS1%20Implementation%20briefings%205%208%2010%2011.pdf?version=1&modificationDate=1506504731000&api=v2)
* [Answers to RDS-WHOIS2 Questions on Implementation Briefings](https://community.icann.org/download/attachments/63145823/WHOIS1-Implementation%20Briefings_final.docx?version=1&modificationDate=1510566466000&api=v2)
* Documents cited in briefing on Recommendation 10 include

- [2013 Registrar Accreditation Agreement](https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en) (RAA), including [RAA WHOIS - requirements for Registrants](https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois)

- [Privacy & Proxy Services Accreditation Issues (PPSAI) PDP](https://community.icann.org/pages/viewpage.action?pageId=43983094)

- [PDP Final Report](http://gnso.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf)

- [GNSO approval of PDP Final Report](http://gnso.icann.org/en/council/resolutions#20160121-1)

- [Implementation Plan developed](https://www.icann.org/resources/pages/ppsai-2016-08-18-en)

- [Board approval of Final Report Recommendations](https://features.icann.org/gnso-policy-recommendations-privacy-proxy-services-accreditation)

- [GAC Advice-Helsinki Communique: Actions and Updates](https://www.icann.org/.../resolutions-helsinki56-gac-advice-scorecard-13dec16-en.pdf)

- [Current PPAA draft](https://community.icann.org/download/attachments/71604717/PPAA_28Feb_CleanIRTNotes.pdf?version=1&modificationDate=1521637772000&api=v2)(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)](https://community.icann.org/download/attachments/71604717/WHOISRT_Responses%5B1%5D.pdf?version=1&modificationDate=1521637733000&api=v2)
* [Compliance staff input](https://community.icann.org/download/attachments/71604717/ICANN%20Contractual%20Compliance%20response%20to%20RDS-WHOIS2%20requests.pdf?version=1&modificationDate=1521637746000&api=v2), includes:
* 20 March written answers to PP IRT related questions
* Metrics for P/P Spec in the 2013 RAA
* [Written implementation briefing](https://community.icann.org/download/attachments/71604717/Written%20Implementation%20Request%20for%20Recommendation%2010.pdf?version=1&modificationDate=1522132669000&api=v2) (27 March)
* [Responses from ICANN Compliance and Global Domains Division to Data Accuracy Subgroup Questions](https://community.icann.org/download/attachments/71604717/Data%20Accuracy%20Subgroup_Additional%20Questions_GDD%20response.pdf?version=1&modificationDate=1522441949000&api=v2)

[INSERT SUBGROUP'S METHODOLOGY HERE - MOVE TEXT FROM 4.7.1?]

Finally, the subgroup applied the RDS-WHOIS2 review team's [agreed framework](https://community.icann.org/download/attachments/71604697/FinalRDS-WHOISRT2Effectivenes.docx?version=1&modificationDate=1519138360000&api=v2) to measure and assess the effectiveness of recommendations,

### Analysis & Findings

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.

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| 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 | * Included in PPSAI working group report * Could this also be added to the Consistent Labeling and Display policy? |
| 1. Providing full WHOIS contact details for the privacy/proxy service provider, which are contactable and responsive | * 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. |
| 1. 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) | * 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. |
| 1. Registrars should disclose their relationship with any proxy/privacy service provider; | * Included in PPSAI working group report * Partially defined under 2.3 of the RAA spec |
| 1. Maintaining dedicated abuse points of contact for each provider | * Partially defined under 2.4.1 and 2.4.2 of the RAA spec * Already agreed by Implementation Review Team. |
| 1. Conducting periodic due diligence checks on customer contact information | * 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. |
| 1. Maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider | * Included in PPSAI working group report by mandating data escrow. * Partially defined under 2.5 of the RAA spec. |
| 1. 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. | * 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.   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.  The Proxy service provider assumes all liabilities of the domain name if they refuse to disclose the contact information.  If the Proxy service provider does disclose the contact information then the underlying registrant assumes all liabilities. |

### 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.

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, based on the status of PPSAI policy implementation as of July 2018. These issues are subject to update as implementation continues.

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Issue #1: The RT views with concern the current intent of ICANN to fund the privacy/proxy service accreditation program by charging providers accreditation and annual fees comparable to the fees payable by ICANN accredited registrars as such fees could have an effect counterproductive to the 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 GDPR is likely to cause low adoption of the accreditation program by providers.

Issue #2: As the temporary specification established by ICANN provides for many of the benefits currently provided by privacy or proxy protected registrations to registrants, it is expected 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.

Issue #3: The RT is currently not aware of any need to delay the implementation of the accreditation program due to the GDPR.

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 also discuss incentives, as the current focus of the program seems to solely rely on sanctions.

Issue #5: The RT addressed the issue of potential abuse of privacy and proxy services by RNHs, but was unable to determine whether domain names using such services had a higher propensity for abusive registrations. It may be beneficial that a future review to occur regarding the impact of pp services on abuse, however such a review should take into account any impact of the PPSA program on such abusive registrations. 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.

[LINK EACH ISSUE TO ANALYSIS IN SECTION 3.7.3 - HOW DID ANALYSIS LEAD IDENTIFICATION OF THESE PROBLEMS. IDENTIFY IMPACTED GROUPS.]

### Recommendations (if any)

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

Recommendation R10.1:

In the event that the PPSAI policy does not become operational by [timeframe], the ICANN Board should propose an amendment to the RAA that underlying customer information provided to affiliated Privacy/Proxy providers be verified and validated in the same way as other registration data.

Findings: To be provided

Rationale: To be provided

Impact of Recommendation: To be provided

Feasibility of Recommendation: To be provided

Implementation: To be provided

Priority: To be provided

Level of Consensus: TBD

Recommendation R10.2:

Reviewing the effectiveness of the implementation of WHOIS1 Recommendation #10 should be deferred and carried by the next RDS review team after PPSAI Policy is implemented.

Findings: To be provided

Rationale: To be provided

Impact of Recommendation: To be provided

Feasibility of Recommendation: To be provided

Implementation: To be provided

Priority: To be provided

Level of Consensus: No F2F3 objections

### Possible impact of GDPR and other applicable laws

[TO BE PROVIDED]