

James and I had several discussions about proxy services and came to the realization that we need to define the terms and then agree to a recommendation.

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I could not find a definition of Privacy or Proxy service in the NORC study and it references the service as “proxy/privacy” suggesting they are identical in nature. I reviewed over 20 proxy services that have incorporated the term Privacy into their service name. This adds to the general confusion as to the service they are providing. In most cases, a service that calls themselves a privacy service is in reality a proxy service.

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These two definitions are currently in the report

Privacy services limit certain user details from WHOIS by offering alternate contact information and mail forwarding services, while not actually shielding the user’s identity.

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Proxy services have a third-party register domain names on the user’s behalf and then license the use of the domain name so that a third-party’s contact information (and not the licensee’s) is published in WHOIS.

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James brought to my attention that Affiliate is somewhat defined in the RAA and it may be best to utilize similar language although it leaves out the relationship in which the registrar has a contract with a third party to endorse or recommend a proxy service at the time of registration. In this scenario I would assume the registrar is receiving a portion of the proxy service fee in exchange for recommending the third party service.

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1.20 "Affiliated Registrar" is another ICANN accredited registrar that operates under a common controlling interest.

Definitions

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Affiliate retail proxy service provider is an entity that operates under a common controlling interest of a registrar. “

Retail proxy service provider – provides a proxy service with little or no knowledge of the entity or individual requesting the service beyond their ability to pay and their agreement to the general terms and conditions.

Limited proxy service provider – provides a proxy service for an entity or individual in which there is an ongoing business relationship bound by a contract that is specific to the relationship.

In our discussions it became clear that we need to make a clear distinction between the proxy service provider that is easily accessible and has little barrier to use in comparison to the

relationship provided by a proxy service in which there is a deep relationship with terms and conditions specific to that relationship. A law firm is a good example or a registrar may have high value clients that they provide an extensive array of services to.

A registrar that owns or manages a subsidiary that provides a proxy service or enters into a partnership or recommends a proxy service at the time of registration has knowledge of the contractual agreement between the proxy service provider and registrant. Both the proxy service provider and registrar should be held responsible for engaging in best practices outlined below.

1) a registrar is required to disclose their relationship with a proxy service provider to ICANN. If the relationship is one of a subsidiary, partnership or recommended by the registrar and the registrar collects fees associated with the proxy registration the registrar's accreditation will extend to the service and they will be governed by the RAA.

2) As a condition of providing the proxy service in conjunction with a registrar relationship the providers should be required to comply with best practice guidelines. These should provide for:

- a. standardised relay and reveal processes and timeframes;
 - a.1) establish a standardized process for requesting contact information for a proxy registration
 - a.2) 24 hour response to provide requested contact information when requested by Law Enforcement;
 - a.3) 5 day business response when requested by a non LE third party
- b. guidance on the appropriate level of publicly available information on the registrant;
- c. maintenance of a dedicated and available abuse point of contact;
- d. public disclosure of contact details and the physical address of the privacy service provider; and
- e. proxy service providers to validate registrant contact information.

3) As a condition of providing the proxy service in conjunction with a registrar relationship, the proxy and privacy providers shall be required to very clearly disclose to the Registrant at the time of registration:

- a. their relationship with the registrar;
- b. a clear explanation of the meaning of the proxy or privacy service (depending on what is being offered);

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c. a very clear understanding of what registrant data will be published in the globally-available Whois database, and particularly whether the domain name;

d. Registrant's name is published in the global Whois directory [yes for privacy services; no for proxy services]; and
a very clear explanation of who will “own” the domain name if the Registration chooses the privacy or proxy service, pursuant to then-adopted ICANN rules.

2. Now 4? The best practice guidelines should be developed in close consultation with the GAC, privacy advocates, law enforcement, and other interested stakeholders.

3. Now 5? ICANN should develop a graduated and enforceable series of penalties for proxy providers and registrars who violate the terms of the RAA.

Kathy Kleiman 11/22/11 6:02 PM

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