ICANN|56 POLICY
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ICANN|GAC
Governmental Advisory Committee

GAC SESSION 9: Privacy and Proxy (P/P) Services Accreditation Issues

PRIVACY AND PROXY SERVICES ACCREDITATION ISSUES (PPS

GAC Agenda Item 9 | ICANN 56 | 28 June 2016

What is the DNS WHOIS?

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Domain Name: ICANN.ORG
Domain ID: D2347548-LROR
WHOIS Server:
Referral URL: http://www.godaddy.com
Updated Date: 2015-07-07T17:37:26Z
Creation Date: 1998-09-14T04:00:00Z
Registry Expiry Date: 2017-12-07T17:04:26Z
Sponsoring Registrar: GoDaddy.com, LLC
Sponsoring Registrar IANA ID: 146
Domain Status: clientDeleteProhibited https://www.icann.org/epp#clientDeleteProhibited
Domain Status: clientRenewProhibited https://www.icann.org/epp#clientRenewProhibited
Domain Status: clientTransferProhibited https://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited https://www.icann.org/epp#clientUpdateProhibited
Domain Status: serverDeleteProhibited https://www.icann.org/epp#serverDeleteProhibited
Domain Status: serverRenewProhibited https://www.icann.org/epp#serverRenewProhibited
Domain Status: serverTransferProhibited https://www.icann.org/epp#serverTransferProhibited
Domain Status: serverUpdateProhibited https://www.icann.org/epp#serverUpdateProhibited
Registrant ID: CR12376439
Registrant Name: Domain Administrator
Registrant Organization: ICANN
Registrant Street: 12025 Waterfront Drive
Registrant Street: Suite 300
Registrant City: Los Angeles
Registrant State/Province: California
Registrant Postal Code: 90094-2536
Registrant Country: US
Registrant Phone: +1.4242171313
Registrant Phone Ext:
Registrant Fax: +1.4242171313
Registrant Fax Ext:
Registrant Email: domain-admin@icann.org
Admin ID: CR12376441
Admin Name: Domain Administrator
Admin Organization: ICANN
Admin Street: 12025 Waterfront Drive
Admin Street: Suite 300
Admin City: Los Angeles
Admin State/Province: California
Admin Postal Code: 90094-2536
Admin Country: US
Admin Phone: +1.4242171313
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Contacts: Registrant, Admin Contact, Tech Contact, Billing Contact

- Postal address, email, phone, fax
- Timestamps, statuses, name servers
- Accuracy
- Validation, i.e. emails in RFC5322, phone numbers in ITU-T E.164, postal addresses in UPU or S42 format template
- Verification: Registrant or Account Holder email or telephone requiring affirmative response

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What is a PROXY / PRIVACY service?

Example: the WHOIS contact information for www.alice.com uses a PROXY service:

Registrant Contact
Name: Registration Private
Organization: Domains By Proxy, LLC
Mailing Address: DomainsByProxy.com, Scottsdale Arizona 85260 US
Phone: +1.4806242599
Ext:
Fax: +1.4806242598
Fax Ext:
Email:ALICE.COM@domainsbyproxy.com

Admin Contact
Name: Registration Private
Organization: Domains By Proxy, LLC
Mailing Address: DomainsByProxy.com, Scottsdale Arizona 85260 US
Phone: +1.4806242599
Ext:
Fax: +1.4806242598
Fax Ext:
Email:ALICE.COM@domainsbyproxy.com

Tech Contact
Name: Registration Private
Organization: Domains By Proxy, LLC
Mailing Address: DomainsByProxy.com, Scottsdale Arizona 85260 US
Phone: +1.4806242599
Ext:
Fax: +1.4806242598
Fax Ext:
Email:ALICE.COM@domainsbyproxy.com

⊙ **PROXY** service => WHOIS information does not show real registrant at all: shows name and contact information of proxy company.

⊙ **PRIVACY** service => WHOIS shows real registrant but privacy company contact.

⊙ **Roughly 1 in 5 domains use a P/P service** (of these, proxy used for 9 out of 10)

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What is the issue?

- ⊙ Fairly few ICANN rules or policies for these services to date => unpredictable outcomes.

- ⊙ The GNSO PDP Working Group on Privacy and Proxy Services Accreditation Issues (PPSAI) has issued **recommendations for ICANN to accredit privacy and proxy (P/P) services**. Approved by the GNSO Council, they are **now up for ICANN Board vote**.

- ⊙ The recommendations provide policy guidelines for ICANN to establish, accredit, operate and de-accredit P/P services e.g.:

    - ⊙ requirements for relay & reveal of requests for contact information
    - ⊙ obligations of service providers to respond to abuse complaints
    - ⊙ rights and responsibilities of P/P service customers.

- ⊙ **However, recommendations exclude important GAC recommendations of September 2015**, **on 3 issues**.

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GAC recommendations to PPSAI, Sep 2015

Rationale provided by the GAC:

Issue 1. P/P service providers should keep **LEA requests confidential** as required and/or permitted by local laws:

- ⊙ Notifying P/P customer who may be alleged criminal or violator could hinder investigations.
- ⊙ Laws in many countries mandate confidentiality of LEA requests.

Issue 2. Definition of LEA as governed by P/P provider jurisdiction raises concern that P/P providers not need to respond to **LEA requests from other jurisdictions**.

- ⊙ Malicious conduct often takes place across borders.
- ⊙ Investigations often involve LEAs from outside P/P service provider jurisdiction – cross-border co-operation key.

Issue 3. Commercial domains that **collect money for goods or services should not be able to use P/P services** and conceal WHOIS identity:

- ⊙ To protect consumers and their financial info, combat fraud and crime.
- ⊙ In line with disclosure obligations in many jurisdictions, e.g. EU.

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PPSAI recommendations, Jan 2016

Rationale provided by the PPSAI PDP WG:

<u>**Issue 1**</u>. P/P service providers **not required to keep LEA requests confidential**:
- ⊙ Reflects comments received.
- ⊙ WG did not develop an LEA Disclosure Framework, due to authorization and confidentiality issues as well as its relative lack of LEA expertise.

<u>**Issue 2**</u>. The definition of LEA in PPSAI recommendations is the **definition of the 2013 RAA**. If the LEA definition in the 2013 RAA is revised, the definition in the P/P accreditation agreement would also be revised.

<u>**Issue 3**</u>. The PDP WG thoroughly considered its policy decision to allow **domains used for commercial transactions** to continue to use P/P services. Stressed:
- ⊙ Difficult to define "commercial activity" & "online financial transactions".
- ⊙ Reflects large majority of public comments that cited privacy risks, need to protect home based/small businesses and enable political speech.
- ⊙ Laws require contact information disclosure on websites, not in WHOIS.
- ⊙ Laws and regulation deal with disclosure of names if courts require it.

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Could GAC concerns be addressed during implementation?

- ⊙ The recommendations are overall positive and establish an ICANN accreditation program where there was none.

- ⊙ Addressing concerns during implementation could be a constructive solution:
  - • GAC advice to the ICANN Board that conflicts with the outcome of a PDP process could create significant delays (e.g. IGO acronyms).
  - • The Final Report seems to contain the flexibility to enable some of this.

- ⊙ **Issue 1** (confidentiality of LEA requests): seems feasible ☑ via LEA disclosure framework

- ⊙ **Issue 2** (foreign LEA requests): may be feasible via LEA disclosure framework ☑ (or RAA could also be amended – though likely difficult and lengthy)

- ⊙ **Issue 3: (use of P/P by commercial domains) more difficult – the PDP WG made an explicit policy decision to allow commercial domains that process financial transactions to continue to use P/P services (!)**
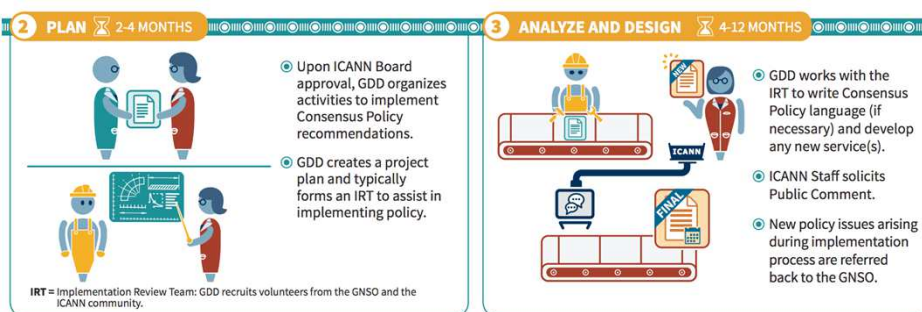
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Issue 3: Addressing use of P/P services by commercial domains

- The PDP WG made an explicit policy decision to **allow commercial domains that process financial transactions to continue to use P/P services.**

- Could NOT therefore prevent commercial domains from using P/P services without going against the PPSAI PDP WG recommendations.

However:

- Disclosure or publication for domain name users carrying out illegal or abusive commercial transactions could rely on **other accreditation standard provisions**.

- A **specific de-accreditation process** could discourage P/P service providers from concealing the identity of criminals or violators, e.g. grounds for de-accreditation could include evidence that P/P provider harbors criminals or does not respond to LEA requests.

- The IRT could look into the merit of differential disclosure treatment in **LEA disclosure framework** for domains that process financial transactions (noting though that it may not be possible to address definitional concerns).

  ⇒ **The main question today seems to be whether this types of implementation measure could mitigate GAC concerns on commercial domains using P/P services.**

  ⇒ Any new policy issues arising during implementation would be **referred back to GNSO**

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More information on implementation of gTLD policies

2 PLAN ⏳ 2-4 MONTHS

- Upon ICANN Board approval, GDD organizes activities to implement Consensus Policy recommendations.
- GDD creates a project plan and typically forms an IRT to assist in implementing policy.

IRT = Implementation Review Team: GDD recruits volunteers from the GNSO and the ICANN community.

3 ANALYZE AND DESIGN ⏳ 4-12 MONTHS

- GDD works with the IRT to write Consensus Policy language (if necessary) and develop any new service(s).
- ICANN Staff solicits Public Comment.
- New policy issues arising during implementation process are referred back to the GNSO.

- The implementation process is 1 to 2 1/2 years.

- Once Board approves consensus gTLD policies, **GDD plans implementation**.

- An **Implementation Review Team** (IRT) with volunteers from GNSO and ICANN Community helps GDD implement policy – now mandatory.

- **IRT could include GAC / PSWG members**, at least for relevant recommendations.

- Any new policy issues arising during implementation are **referred back to GNSO**.

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Goal of cross-community session

Bring together GAC, PPSAI PDP WG Co-Chairs, and relevant members of the ICANN Board and the GNSO Council to discuss next steps**.**

Objective of the session:

=> to start to discuss whether it would be possible to address the GAC public policy concerns with the PPSAI recommendations in a satisfactory manner in the implementation phase.

Possible next steps for GAC consideration:

⊙ Agree to try to have GAC concerns addressed via implementation.

⊙ Agree to other meetings to discuss in more detail.

⊙ Recommend that the ICANN Board:

- call for an Implementation Review Team (IRT) on which GAC and PSWG are represented to try to address GAC concerns in implementation phase.

- ensure that if the GAC concerns cannot be satisfactorily addressed, the IRT will refer policy issues back to the GNSO for review.

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Possible GAC advice to the ICANN Board on PPSAI

The GAC advises the ICANN Board that:

The recommendations set forth by the GNSO PDP Working Group on Privacy and Proxy Services Accreditation Issues (PPSAI) raise public policy issues highlighted by the GAC in its comments on the PPSAI's Initial Report.

The Board should ensure that the **dialogue** on constructive and effective ways to address GAC concerns is continued.

If the Board resolves to adopt the PPSAI recommendations, it should direct the **Implementation Review Team (IRT) to ensure that the GAC concerns are effectively addressed** in the implementation phase.

GAC and LEA input and feedback should be sought out as necessary in developing a proposed implementation plan.

If in the course of the implementation discussions it becomes clear that the GAC's concerns cannot be addressed without a policy change, the relevant PPSAI **recommendations should be sent back to the GNSO**.

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Rationale for GAC advice (1/2)

- In its comments on the PPSAI PDP WG Initial Report, the GAC highlighted public policy concerns raised by the PPSAI Working Group's recommendations, notably that:

  1. Law enforcement and consumer protection authority requests for information from privacy and proxy service providers call for confidentiality as required and/or permitted by local laws;

  2. The PPSAI's definition of "Law Enforcement Authority" as governed by the jurisdiction of the privacy or proxy service provider might imply that P/P service providers need only respond to law enforcement requests from within their own jurisdiction while many investigations are cross-border, and;

  3. Privacy and proxy services should not be available for domains actively engaged in the collection of money for a good or service.

- In the Marrakech Communiqué, the GAC advised the ICANN Board to allow sufficient time for GAC consideration of these issues and to meet with the GAC prior to considering adoption of the Privacy Proxy Services Accreditation Issues PDP Final Report, at ICANN 56.

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Rationale for GAC advice (2/2)

- At ICANN 56, the GAC met with pertinent members of the ICANN Board, the GNSO Council, Co-Chairs of the PPSAI Working Group stakeholders and began constructive discussions on how GAC concerns with the PPSAI recommendations could best be addressed, notably whether they could be addressed during the implementation of the Working Group recommendations, so as to avoid the Board receiving conflicting recommendations from different SOs/Acs.

- The discussion stressed that it may be possible to try to address most of the GAC concerns during the process of implementation. Specific measures that were discussed include:

  1. An LEA Disclosure Framework that could detail the appropriate authorization and confidentiality requirements for LEA requests linked to ongoing investigations. Such a disclosure framework could also possibly address processes for P/P service providers to respond to requests from other jurisdictions than their own.

  2. A de-accreditation process that could provide the means to revoke the accreditation of P/P providers that harbor actors engaged in deceptive, unfair, or fraudulent conduct or repeatedly do not respond to LEA requests.

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Thank you !

Questions?

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