

# Recommendation 10: Privacy/Proxy

Implementation Briefing for RDS2 Review Team



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# RDS/WHOIS1 Review Team's Recommendation 10: Privacy/Proxy

## Recommendation 10

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.

In considering the process to regulate and oversee privacy/proxy service providers, consideration should be given to the following objectives:

- ⦿ Clearly labeling WHOIS entries to indicate that registrations have been made by a privacy or proxy service;
- ⦿ Providing full WHOIS contact details for the privacy/proxy service provider, which are contactable and responsive;
- ⦿ Adopting agreed standardized relay and reveal processes and timeframes (these should be clearly published, and pro-actively advised to potential users of these services so they can make informed choices based on their individual circumstances);
- ⦿ Registrars should disclose their relationship with any proxy/privacy service provider;
- ⦿ Maintaining dedicated abuse points of contact for each provider;
- ⦿ Conducting periodic due diligence checks on customer contact information;

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- ⦿ Maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider;
  - ⦿ 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.

## ICANN Board Action

- ⦿ The Board notes that staff has made the use and accreditation of privacy and proxy providers part of the RAA negotiations. The Board also notes that the GNSO has had discussions about a potential PDP relating to these issues.
- ⦿ 2The Board notes that staff has initiated community discussions on privacy and proxy “best practices” that will inform next steps.
- ⦿ 3As per (1) above, the Board will initiate a process to create a straw-man document on the purpose of collecting and maintaining gTLD registration data, and this will help guide further policy in this area.

## ICANN Board's Rationale for Board Action

- ⦿ ICANN will initiate a process to develop proposed accreditation requirements for proxy providers, and these will be subject to public comment. Aspects of these requirements that raise policy issues will be provided to the GNSO.
- ⦿ The list of objectives provided by the WHOIS review team will be provided as input into any development of accreditation requirements.
- ⦿ The Board notes that the development of clear policy around the purpose of collecting, maintaining and making available gTLD registration data, and related accuracy, data protection and access issues, will help guide future policies and implementations in this area.
- ⦿ The Board notes that the OECD has created a set of privacy guidelines that were originally adopted by the OECD in 1980 and have served as the basis for developing national privacy laws. These guidelines may assist in assessing the suitability of rules around privacy /proxy providers.

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# Privacy and Proxy Activities

Over the past several years, there have been a lot of work relating to Privacy and Proxy accreditation. This briefing document provides the Review Team with a summary of this work and links to additional detailed information.

## 2013 Registrar Accreditation Agreement (RAA)

ICANN engaged in negotiations with the Registrar Stakeholder Group for a new form of Registrar Accreditation Agreement (RAA) in October 2011. The 2013 Registrar Accreditation Agreement (RAA) includes a Specification on Privacy and Proxy Registrations that contains requirements for privacy and proxy service registrations offered through affiliates and resellers of registrars accredited under the 2013 RAA. This section was considered an interim solution, originally set to expire on 1 January 2017 and had been a compromise between Registrars and the LEA.

The lasting, and replacement solution is to be an accreditation program, and identified to come from the GNSO Privacy and Proxy Services Accreditation Issues PDP which was launched shortly after the conclusion of the 2013 RAA negotiations.

[Report on the Conclusion of the 2013 Registrar Accreditation Agreement](#) Negotiations by ICANN org includes the issues that would need to be addressed in the PDP.

## Privacy & Proxy Services Accreditation PDP

Concurrent with ICANN's negotiations for a new RAA, the ICANN Board also requested an Issue Report from the GNSO which would start a GNSO PDP to address remaining issues not dealt with in the RAA negotiations.

[Preliminary GNSO Issue Report on the Registrar Accreditation Agreement Amendments](#), published in December 2011 and the [Final Issue Report](#) published in March 2012 lead to the [GNSO's resolution](#), #20131031-3, to initiate the Privacy & Proxy PDP.

The GNSO Privacy & Proxy Services Accreditation Issues [PDP Working Group charter](#) informed the WG that the PDP was intended to implement recommendations made by the WHOIS Review Team. The Working Group was instructed to take the WHOIS Review Team's recommendations into account as early in the process as possible.

GNSO Privacy & Proxy Services Accreditation Issues PDP Working Final Recommendations were adopted by the GNSO Council in [January 2016](#). Taking into consideration the [Comment Report](#) from the Public Comment Period and the GAC's advice (see links in [Section e. GNSO Policy Recommendations on Privacy & Proxy Services Accreditation](#)), the final recommendations were adopted by the ICANN Board in January 2016.

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In accordance with the ICANN Bylaws, a [public comment period](#) was opened to facilitate public input on the adoption of the recommendations following which the PDP recommendations were forwarded to the Board for its review. On 15 May 2016, the Board resolved to consider action on the recommendations at the first Board meeting following ICANN56 in Helsinki, Finland, to enable the GAC to provide timely advice on public policy concerns raised by the PDP recommendations, if any. The GAC's advice in its Helsinki Communiqué was for the Board to direct that the GAC's concerns be effectively addressed to the greatest extent possible during the implementation phase of the PDP recommendations (see links to GAC advice in [Section e. GNSO Policy Recommendations on Privacy & Proxy Services Accreditation](#)). The Board [adopted the Recommendations](#) on 9 August 2016.

New accreditation program requirements will include:

- ⦿ Detailed frameworks for provider responses to requests from law enforcement authorities and intellectual property holders
- ⦿ Standardized requirements for providers' relay of communications from third parties to privacy and proxy service customers
- ⦿ Provider data escrow and data retention requirements
- ⦿ Required provider disclosures to privacy and proxy service customers and third-party requesters
- ⦿ A mandatory provider educational program.

The full list and scope of the final recommendations can be found in Annex A of the GNSO Council's [Recommendations Report](#) to the Board.

## Privacy & Proxy Services Accreditation Implementation

The [Privacy and Proxy Services Accreditation Program Implementation Review Team \(IRT\)](#) was convened in October 2016. Its purpose is to assist ICANN staff in implementing the GNSO's P/P PDP's Final Recommendations. The Privacy and Proxy Services Accreditation Program IRT operates in accordance with principles set forth in the GNSO Policy & Implementation Working Group's Final Report. The IRT is not a policymaking body. If any policy issues arise during the implementation of this program, these must be referred to the GNSO for resolution and/or input.

The IRT worked off an implementation/framework provided in October 2016 for the IRT's kick-off (link to document found on the [Implementation Project Status](#) page of icann.org).

On 13 Dec 2016, The Board adopted the scorecard, titled [GAC Advice-Helsinki Communiqué: Actions and Updates](#), which encourages the IRT to continue to work with the Governmental Advisory Committee's Public Safety Working Group in addressing the concerns expressed by the GAC regarding accreditation of Privacy and Proxy Service providers. The GAC Public

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Safety Working Group developed a draft proposed framework for Privacy and Proxy Service providers' responses to requests from law enforcement authorities. This draft framework is being refined within the Implementation Review Team to ensure consistency with the intent of the Final Recommendations.

The IRT is in the final stages of reviewing a [Privacy and Proxy Service Provider Accreditation Agreement draft](#) prepared in July 2017. Once the IRT completes its review of the Privacy and Proxy Service Provider Accreditation Agreement, it will revisit the draft Privacy and Proxy Service Provider Accreditation Policy and the Applicant Guide. When these materials are complete, these items will be published for public comment.

The IRT's most significant challenge was likely time. Implementing a completely new accreditation program, even with a much smaller expected reach than the registrar or registry program, requires consideration of broad and varied issues. This is taxing on community volunteers, particularly over an extended period of time. With respect to substance, there were some challenges related to incompleteness of the final PDP recommendations—particularly the lack of a law enforcement disclosure framework, but an implied expectation that one would be created during implementation. This created challenges—which we are still working through—trying to ascertain what the community may have intended to see in such a framework due to the lack of direction in the Final Report.

## Straw-man document on the purpose of collecting and maintaining gTLD registration data

This Board action will be discussed in the written briefing paper for Recommendation 1: Strategic Priority.

## Estimated ICANN Org Time Spent for Implementation

Implementation of recommendations 10 resulted in the work of the 2013 RAA implementation, the GNSO Privacy & Proxy Services Accreditation PDP and the current Privacy/Proxy Services Accreditation Implementation.

- ⦿ The 2013 RAA implementation took two (2) years and required 100% of two FTE's time.
- ⦿ The Privacy/Proxy PDP took 33% of a one (1) FTEs' time from December 2011 to Jan 2016, which was a five (5) year span.
  - The resulting IRT implementation began in October 2016 and is still on-going.

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# Useful Links

## RDS/WHOIS REVIEW TEAM 1

- ⦿ WHOIS Policy Review Team Final Report  
<https://www.icann.org/news/announcement-2015-08-24-en>
- ⦿ ICANN Action Plan For the WHOIS Policy Review Team Final Report  
<https://www.icann.org/en/system/files/files/implementation-action-08nov12-en.pdf>
- ⦿ Quarterly WHOIS recommendations implementations statuses updated quarterly and published on WHOIS Review Wiki page  
<https://community.icann.org/display/WHO/WHOIS+Review+Implementation+Home>

## 2013 RAA

- ⦿ 2013 Registrar Accreditation Agreement (2013 RAA)  
<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>
- ⦿ 2013 RAA: Specification on Privacy and Proxy Registrations  
<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#privacy-proxy>

## GNSO P/P PDP

- ⦿ PDP Privacy & Proxy Services Accreditation Issues Working Group  
<https://gns0.icann.org/en/group-activities/active/ppsa>
- ⦿ Privacy & Proxy Services Accreditation Issues PDP Working Group Home wiki  
<https://community.icann.org/pages/viewpage.action?pagelId=43983094>
- ⦿ Privacy & Proxy Services Accreditation Issues PDP's Final Report, December 2015  
<http://gns0.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf>
- ⦿ GNSO Council's Recommendations Report to the Board.  
<https://community.icann.org/pages/viewpage.action?pagelId=43983094>

## Privacy/Proxy Services Accreditation Implementation Review Team (IRT)

- ⦿ Privacy/Proxy Services Accreditation Implementation  
<https://www.icann.org/resources/pages/ppsai-2016-08-18-en>
- ⦿ Privacy and Proxy Services Accreditation Implementation wiki  
<https://community.icann.org/display/IRT/Privacy+and+Proxy+Services+Accreditation+Implementation>



