



1730 M Street NW • Suite 1020 • Washington, DC 20036 • 202-223-6667 • iacc@iacc.org

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ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Via Email: comments-ppsai-initial-05may15@icann.org

RE: Privacy & Proxy Services Accreditation Issues Working Group

Dear Sir or Madame:

The International Anti-Counterfeiting Coalition (IACC) thanks ICANN for the opportunity to comment on the Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process (PPSAI).¹ While privacy and proxy services may serve an important function, use of the services can undermine consumer rights, concealing the identity of the origin/source of both legitimate and counterfeit goods and services. For example, criminal activity is often masked using privacy and proxy services.² In order to balance the competing interests at play, brand owners and law enforcement officials should have some standardized approach to engage in dialogue with registrants and service providers so that encountering a privacy or proxy registration doesn't necessarily frustrate efforts to enforce against criminal and malicious behavior online, and the IACC supports the work of the PPSAI Policy Development Working Group to achieve this goal.

The IACC supports the working group's efforts thus far to balance legitimate interests in protecting registrant information with the need for transparent, accessible and accurate Whois information. In particular:

- We support the efforts of the working group to establish clear guidelines for “*relaying*” communication to the registrant (Recommendations 16 & 17).³ The IACC notes that the best way to resolve most difficulties with potential or alleged infringers is open communication and dialogue directly with the alleged infringers, or through a privacy/proxy service provider, if necessary. Both options are an improvement over the status quo, and both options allow privacy and proxy providers to filter out abusive or spam communications to protect registrants' legitimate interest in avoiding this type of communication. The IACC prefers Option #1, which

¹ Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process, May 5, 2015 at <https://www.icann.org/public-comments/ppsai-initial-2015-05-05-en>.

² “A significant portion of the domain names used to conduct illegal or harmful activities are registered via privacy and proxy services to obscure the perpetrators identity.” Study on Whois Privacy Abuse, September 24, 2013 at <https://www.icann.org/public-comments/whois-pp-abuse-study-2013-09-24-en>.

³ p. 11, Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process, May 5, 2015 at <https://www.icann.org/public-comments/ppsai-initial-2015-05-05-en>.

would avoid any additional burden on the provider to act as an arbitrator to determine what constitutes “illegal activity.”

- We also support the efforts of the working group to clearly establish under what circumstances and through what process a third party could request “*disclosure*” of underlying registrant information (Recommendations 18 & 19⁴, Annex E⁵). The IACC notes that appropriate safeguards have been put into place to protect registrants in this regard, including requiring several representations from the requestor as to the good faith reasons for disclosure, the limitations as to use of the information, and attestation of authority to request the information in the first place. The IACC also notes that privacy and proxy providers *can deny requests for information with adequate, sufficient or compelling reasons to do so*⁶, which addresses many of the concerns that have been expressed in this public comment period. The IACC believes this is a well formulated disclosure template and supports it.
- With regard to the ongoing discussion regarding permissible use of privacy and proxy services, the IACC encourages the group to explore under what circumstances a website would be considered ineligible to retain privacy/proxy services by defining what constitutes “commercial” and “transactional,” using appropriate consumer protection and commercial speech laws as guidelines. The IACC notes that legitimate interests in concealing the identity of commercial actors is significantly weaker than those who are engaged in free speech. Appropriate safeguards and limitations to disclosure on these grounds could be put into place to limit the impact on websites with a remaining legitimate interest in privacy and proxy protection, even when soliciting sales or donations. The IACC encourages further work on this issue, as it seems to be an area in which there is significant interest, but is not yet appropriately developed for community consideration.

The IACC looks forward to the continued work of the PPSAI PDP Working Group on this important matter.

Sincerely,

Travis D. Johnson
Vice President – Legislative Affairs, Senior Counsel

⁴ *Id.* at p. 12.

⁵ *Id.* at p. 84.

⁶ The IACC supports a “compelling” reason to deny disclosure, and encourages the working group to establish a non-exhaustive understanding of that term for guidance and avoidance of doubt.