



7 July 2015

To: [comments-ppsai-initial-05may15@icann.org](mailto:comments-ppsai-initial-05may15@icann.org)

**Re: Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process**

The Endurance International Group, Inc. (“Endurance”), appreciates the opportunity to submit a public comment to the Initial Report on the Privacy & Proxy Services Accreditation Issues Policy Development Process (“[Initial Report](#)”). We recognize and appreciate the tremendous effort of the working group.

Endurance supports the concept of an accreditation program and believes that establishing minimum standards of conduct strengthens the industry by providing a consistent experience for registrants and third parties that need to contact registrants. We do not believe, however, an accreditation program should abridge the privacy rights of registrants or allow third parties to circumvent existing due process to obtain private registrant information.

PRIVACY RIGHTS & DUE PROCESS. Privacy services safeguard personal information, guard against identity theft, and can even protect personal safety. Prohibiting the use of privacy services for domain names used for “commercial purposes,” a term with a hopelessly broad definition in the Initial Report, will have a devastating impact on these protections. There are countless *legitimate* uses for privacy/proxy services: home-based businesses; mental health professionals; advocacy groups and other writers addressing controversial political, racial, religious, and social issues; political activists who fear government reprisals; and non-profit organizations that provide services to victims of rape and domestic violence, to name just a few. Denying these services to commercial users provides little or no benefit to the public and potentially exposes registrants to harassment, intimidation, stalking, violence, spamming, and doxing. We maintain that all registrants should be allowed to utilize whois privacy services to maintain these protections.

Second, the framework for processing intellectual property complaints set out in Annex E is concerning because it allows for the circumvention of existing due process. For example, in the United States, the Digital

Millennium Copyright Act provides a framework for copyright owners to request the removal of infringing material via an Internet service provider; this may or may not result in the publication or disclosure of private registrant information. The proposed framework would essentially allow a copyright owner to bypass existing DMCA processes to obtain private registrant information. Establishing an accreditation program that allows any one party (i.e., intellectual property owners) to bypass due process opens the door for other parties to do the same (e.g., law enforcement agencies).

Further, the proposed framework ignores existing jurisdictional and legal rights applicable to registrants and privacy providers around the world. For example, while an individual/company may have rights to a particular trademark in the United States, that does not necessarily preclude another individual/company from holding similar trademark rights in another country. If the trademark owner in the U.S. is requesting enforcement of U.S. trademark law against a foreign trademark owner/registrant using a foreign privacy provider, allegations of infringement alone should not force any sort of disclosure of private registrant information. Instead, appropriate due process should be followed to verify the infringement and determine the best course of action under the applicable law.

Finally, paragraph III(F) of Annex E discusses an ICANN-approved review process in the event a Requester disputes a Provider's refusal to disclose private registrant information. This generic reference to a to-be-developed review process is concerning because it fails to define "exceptional cases" and seems to provide intellectual property holders an additional method of circumventing existing due process to obtain private registrant information. If the working group intends to include this provision in the accreditation program, it seems prudent for the working group to define what it believes to be "exceptional cases" in order to provide appropriate guidance for the resulting PDP and to limit the cases for which existing due process may be bypassed.

The net effect of the proposals discussed above would be a disconcerting erosion of registrants' privacy rights and due process. Although Endurance supports the concept of an accreditation program, we do not support a program that violates registrants' rights to privacy, removes safeguards that ensure personal safety and protect against identify theft, or results in the disclosure of registrants' personal information to third parties without following applicable due process. Endurance encourages the Privacy & Proxy Services Accreditation Working Group to carefully consider the effect any accreditation program may have on the right to privacy and due process

of registrants around the world. At a minimum, the working group should revise the proposed accreditation program to ensure privacy/proxy services are available to *all* registrants and that disclosure of private registrant information does not violate registrants' right to privacy and due process.

RELAY. Regarding the relay options presented on page 53 of the Initial Report, we support Option #2. Establishing a minimum standard of forwarding all electronic requests does not represent a *minimum* standard that allows providers to be responsive and flexible to industry development and changes nor does it serve the best interest of registrants.

LEA REQUESTS. Regarding the questions presented on page 59 of the Initial Report regarding LEA requests, if applicable due process allows an LEA to require a request be kept confidential, then a privacy provider should comply with such a request. It is inappropriate for any accreditation program to provide rights to LEAs that do not already exist within an LEA's jurisdiction. The second and fourth questions suggest far more than a minimum standard expected of an accreditation program. A more appropriate minimum standard should be that providers must be take reasonable and prompt steps to investigate reports of abuse and respond appropriately. Unwarranted Publication should be at a minimum if the program establishes minimum standards and providers operate within those standards.

Thank you in advance for your consideration.

Sincerely,

The Endurance International Group, Inc.

[PDR Ltd.](#) | [Domain.com, LLC](#) | [Fastdomain Inc.](#) | [BigRock Solutions Ltd.](#) | [LaunchPad Inc.](#)