

**IFPI and RIAA Comments  
on the Initial Report of the Privacy and Proxy Service Accreditation Issues  
Working Group**

**July 7, 2015**

The International Federation of the Phonographic Industry (IFPI) represents the recording industry worldwide, and has some 1,300 record company members in 66 countries around the world. IFPI has affiliated industry organisations in 55 countries. Part of our work is to act on behalf of record producers in matters involving the protection of their intellectual property rights on the Internet. Our membership includes the major international recording companies (Universal, Sony and Warner music groups) and hundreds of independent record companies of all sizes throughout the world.

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. In support of this mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conduct consumer, industry and technical research; and monitor and review state and federal laws, regulations and policies. As such, we and our members are key stakeholders in the digital ecosystem.

The members of IFPI and RIAA have a substantial interest in ensuring that the digital marketplace evolves into a mature, innovative and safe environment for the legitimate creation and dissemination of music. Global music revenues are increasingly derived from digital music services, which generate over 50% of recording industry revenues in many major markets.

Unfortunately, the digital ecosystem has also been awash with piracy, and online copyright infringement of our members' works is widespread. IFPI and RIAA firmly believe that it is the responsibility of all participants in the digital society, including the multi-stakeholder community at ICANN, to take the steps necessary to develop a safe, stable, and secure Internet supported by the rule of law, consistent with international norms and the principles of a free and democratic society.

One such step is ensuring that those infringing our members' rights, very often on a massive scale, are not able to evade the rule of law by hiding behind privacy/proxy services.

At present over **50% of the most egregious infringing websites monitored by IFPI are hosted on privacy/proxy services. In 2014 and 2015, IFPI identified over two million infringing copies of our members' sound recordings on these websites.** While we recognise there are legitimate uses of privacy/proxy services, adequate safeguards must be put in place and enforced to prevent such services operating to conceal the identities of those engaging in unlawful activities.

IFPI AND RIAA support the Intellectual Property Constituency's comments on the initial report of the Privacy and Proxy Service Accreditation Issues Working Group (the "Initial Report"). We also wish to make the following comments:

**Section II. B of Annex E to the Initial Report:**

This section of the Initial Report concerns the information that Requester should provide to a Service Provider when seeking disclosure. We wish to comment on the following proposals, using the numbering of Section II. B of Annex E:

*"1. The exact URL where the allegedly infringing content is located;"*

This requirement should be removed or revised for the following reasons. Very often numerous copies of the same infringing work appear on one site. It is also common for sites to use dynamic URLs, meaning that providing a URL as a means of identifying the location of an infringing copy of a work is meaningless. It should be sufficient for the Requester to identify the infringing work, as envisaged by point 5 (i.e. by providing *“Information reasonably sufficient to identify the copyrighted work, which may include, where applicable, the copyright registration number, and the country where the copyright is registered”*). Alternatively, this requirement should allow some flexibility, such as by stating *“The exact URL where the allegedly infringing work or infringing activity is located, or a representative sample of where such work or activity is located.”*

*“2. Evidence of previous use of a relay function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer with regard to the subject matter of the request, and of any responses thereto...”*

This point should be amended to clarify that there is no requirement for a Requester to use the relay function. The existing text could be misconstrued as requiring a Requester to use the relay function, which would frustrate the Requester’s ability to take action in respect of the infringement. We propose amending point 2 to include the following words after the existing text: *“For the avoidance of doubt, a Requester is not required to use the relay function before making a Disclosure request.”*

*“6. The exact URL where the original content is located (if online content) or where the claim can be verified.”*

This requirement should be removed for the following reasons. The original content, even if online, may not be located at a URL (e.g. in the case of a sound recording a licensed copy of the original may be available from the iTunes store, but it may not be possible to provide a URL to that copy). In any event, the information provided under point 5 (see above) and point 7 (the good faith statement) would be sufficient to verify a claim.

#### Section III. D of Annex E to the Initial Report:

We wish to express our support for Section III. D of the Initial Report, which states:

*“Disclosure cannot be refused solely for lack of any of the following: (i) a court order; (ii) a subpoena; (iii) a pending civil action; or (iv) a UDRP or URS proceeding; nor can refusal to disclose be solely based on the fact that the request is founded on alleged intellectual property infringement in content on a website associated with the domain name.”*

This is crucial for rightholders. Without this clear statement, rightholders’ ability to take action in respect of infringements of their protected works could be seriously hampered.

---

IFPI and RIAA look forward to working further with ICANN to achieve a clear, balanced and enforceable set of standards for proxy and privacy registrations.

Respectfully Submitted,

Patrick Charnley, International Federation of the Phonographic Industry

Victoria Sheckler, Recording Industry Association of America