



March 16, 2016

Via Electronic Mail
comments-ppsai-recommendations-05feb16@icann.org

Re: GNSO Privacy and Proxy Services Accreditation Issues Policy Development Process Recommendations for ICANN Board Consideration

Google Inc. ("Google") commends the work undertaken by the Privacy and Proxy Services Accreditation Issues Working Group ("Working Group") to develop the Final Report on Privacy and Proxy Services Accreditation Issues ("Final Report"). We appreciate the effort undertaken by the Working Group to consider and reflect Google's prior recommendations on the Privacy and Proxy Services Accreditation Issues Initial Report. In particular, we are encouraged by the changes made with respect to the following:

- Affirming that privacy and proxy services should be available to all registrants, whether commercial or noncommercial;
- Modifying the proposed recommendations to ensure that they apply equally to privacy and proxy services provided by registrars and non-registrars;
- Allowing privacy and proxy service providers to develop their own policies for when to publish or disclose their customers' contact information, outside of the circumstances where it is required by applicable law;
- Protecting users of privacy and proxy services by requiring that the circumstances in which their contact data will be published or disclosed be clearly set forth in privacy and proxy service providers' terms of use; and
- Establishing that privacy and proxy service providers should not create impediments to transfers, renewals, or restorations of domain names and should prevent publication of customer contact information during these processes.

Regarding the foregoing recommendation, in the context of transfers, we note concerns around the possible interrelationship with the registrar requirements set forth in the Inter-Registrar Transfer (Change of Registrant) Process that will come into effect on August 16, 2016, pursuant to the recommendations of the Inter-Registrar Transfer Policy Part C Working Group. Specifically, publishing registrant contact data when a transfer is requested but before such transfer is complete could initiate a 60-day transfer hold window and ultimately prevent the transfer from being carried out. This could create an unreasonable barrier to outbound transfers, particularly if registrars do not clearly provide the option for registrants to opt out of the 60-day hold window. We urge ICANN to specifically address this situation in finalizing the policies for accrediting privacy and proxy service providers.

Additionally, we note that, in line with Google's prior comments, the recommendations include an additional requirement that privacy and proxy providers "maintain statistics on the number of Publication and Disclosure requests received and the number honored, and provide these statistics in aggregate form to ICANN for periodic publication." As the Working Group recommended that this be carried out by ICANN rather than individual providers, we offer a further clarification to this recommendation: that in implementing the policy ICANN publish aggregated statistics on a per-provider basis (removing potentially sensitive information about the particular domains, registrants, and complainants affected), rather than publishing a single statistic across all providers. Making information available at the provider level will better inform customers of how their contact information is being handled by their particular provider.

Lastly, we have concerns that the recommendations regarding privacy and proxy service providers' responsibilities to verify and validate customer data are explicitly tied to the 2013 Registrar Accreditation Agreement (RAA), a contract that is regularly renegotiated by ICANN and the Registrar Stakeholder Group. We believe that there is value in having these procedures align with those established for registrars at large and recommend that, when these policies are finalized, this requirement be modified to refer to the "2013 RAA or a subsequent form of the Agreement." This would allow these requirements to evolve without having to undertake an additional policy development process if registrar requirements in these areas change in the future.

With Google's prior concerns taken into account we believe that the recommendations of the Working Group present a generally reasonable framework of requirements for privacy and proxy service providers. However, we note with some concern the number of issues related to privacy and proxy accreditation that remain open, including procedures for accreditation, de-accreditation, and enforcement of the requirement to become accredited. These open areas will have significant impacts on the viability of the final policy framework. As such, it is critical that their development features significant input by the affected parties and opportunities for community review. However, it is equally imperative that opportunities for community input do not re-open those areas that were agreed by the Working Group in the Final Report.

We appreciate the Working Group's efforts to account for the previous comments by Google and other stakeholders in drafting its Final Report. We thank the ICANN board, staff, and implementation review team for considering these comments as the Final Report proceeds through approval and implementation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Duchesneau". The signature is written in a cursive, flowing style.

Stephanie Duchesneau
Domains Policy and Compliance