The ICANN GNSO "Business Constituency"

Comment on GNSO Privacy & Proxy Services Accreditation Issues PDP Recommendation

Status: FINAL

Version: 3

16-Mar-2016

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment

The BC has long supported Accreditation for Privacy & Proxy Services as a critical element in further evolving trust and security across the registration landscape. The BC continues to support the adoption of the proposals in the Final Report. They are important steps towards effectively addressing problems contributing to the use of Privacy & Proxy services to perpetrate illegal activities.

BC urges an expeditious implementation phase for the Accreditation. Given the broad agreement of its benefits and the Full Consensus received on the Final recommendations, timely implementation should be achievable.

Like all accreditation frameworks, its success depends on the creation of effective processes to ensure compliance with the policies outlined in the Final Report.

- ICANN must significantly enhance its compliance capabilities to ensure adherence to these policies. There are simple and straightforward requirements placed on Privacy & Proxy Services and ICANN must develop processes, and resource their execution by contractual or other binding mechanisms to ensure they are being followed. For example, providers must publish terms of service with all the required elements. They must maintain a designated contact point for abuse reporting purposes, and such contact point must be capable and authorized to investigate and handle abuse reports. ICANN must develop a program, and provide adequate staff and financial resources, to check that accredited providers are following these requirements.

- There must be clear consequences for failure to meet the requirements of accreditation, including de-accreditation. The BC urges swift development of a de-accreditation process, which should include a way to continue serving the privacy/proxy needs of registrants already enrolled.

- Input from law enforcement agencies and consumer protection agencies should be solicited. Several areas of implementation will benefit from input from law enforcement and consumer protection agencies. Clearly frameworks specifically designed for law enforcement agency requests will benefit from the input of law enforcement. In addition, consumer protection agencies will have important insight into the development of procedures that adequately protect the rights of those involved in allegations related to consumer fraud.

- ICANN should develop and resource an outreach and education program that will reach all entities in the supply chain – registrars and privacy & proxy service providers – as well as customers and potential customers and inform each of their rights and responsibilities.

- The BC continues to believe that implementation phase should address permissible uses of privacy and proxy by domains used for commercial purposes. As the BC noted in our Jul-2015 comments on the initial working group report:[1]

> **The BC believes that consultation with consumer protection authorities and privacy advocates with experience in these issues can be particularly helpful. The BC agrees that the task is not to define what constitutes commercial activity itself, but identify a subset of practices for which it is a reasonable to insist on transparency.**
>
> **The BC notes that it is a longstanding principle of consumer protection that consumers have a right to know with whom they are doing business. For example, the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999)* require businesses to provide accurate, clear and easily accessible information about themselves to identify the business, allow for dispute resolution, allow for service of legal process and allow law enforcement and regulatory officials to determine the location of the business. Similar requirements can be found in the OECD Consumer Protection Guidelines, the EU's E-Commerce Directive (Article 5), the Draft Resolution on Consumer Protection currently before the UN General Assembly and a variety of other national consumer protection statutes as outlined in the FWD Strategies and LegitScript analysis. Privacy laws have similar requirements so that data subjects may know who is collecting data about them. It should be noted that such requirements do not always require identification of specific individual and related personal contact information. Identification of a corporate contact point is often sufficient and should be accommodated in any consensus proposal. This same principle applied online will serve to create an enabling environment for consumer trust.**
>
> **As explained above, the BC believes further work is necessary to define types of activities which may be ineligible for P/P Services, thereby enabling the protection of consumers while maintaining privacy protections. The BC also believes that consultation with consumer protection authorities and privacy advocates with experience in these definitional issues can be particularly helpful. The BC agrees that the task is not to define what constitutes commercial activity itself, but identify a subset of practices for which it is a reasonable to insist on transparency.**

--

These comments were drafted by Ellen Blackler with assistance from several BC members.

It was approved in accordance with the BC charter.

[1] Jul-2015 BC Comment on Privacy & Proxy Services Accreditation Issues WG Initial Report , at http://www.bizconst.org/wp-content/uploads/2015/07/BC-comment-on-Privacy-Proxy-Accreditation-initial-report.pdf