GNSO Council PPSAI Small Team Strawpeople

Threshold Question A: Policy Questions

The concepts of "privacy services" and "proxy services" as defined in the Final Report are not consistently reflected in the services operating in the marketplace today. For example, ICANN is aware that services may operate using the word "proxy" but appear to provide services that would be defined as "privacy" under the Final Report definition, and vice-versa. While this could appear to merely be an issue of terminology, the distinction is important because there are significant legal and contractual differences between proxy and privacy services.

STRAWPERSON ISSUE 1:
The GNSO Council PPSAI Small Team notes that the definitions in the PPSAI Final Report match the definitions in the RAA Specification on Privacy and Proxy Services.[1] This policy has been adopted by the Board and these definitions should be used in implementation. While there may be confusion in the market as "privacy" services often use the word "proxy" in their title and vice versa, the Small Team understands that the entity would ultimately be responsible for compliance with the type of service it provides irrespective of its name.

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In other cases, a registrant may be registering names in a manner that would fit within the definition of a "proxy" service, but that registrant is not approved or authorized by a registrar to do so (such as law offices registering domain names on behalf of their clients, etc.). As discussed at length with the prior PPSAI IRT, this raises implementation challenges because it may be difficult or impossible in some cases for a registrar to know at the time of registration if a registration involves a privacy or proxy service that falls within the scope of the policy requirements. This also raises questions about how to create a bright-line rule, as a matter of ICANN Consensus Policy, defining when a registration is considered to be one involving a "proxy service" (subject to the policy requirements) versus some other arrangement between the Registered Name Holder and the beneficial user of a domain name that is outside the scope of the policy requirements (but may be subject to other requirements under Section 3.7.7.3 of the RAA).

STRAWPERSON ISSUE 2:
The GNSO Council PPSAI Small Team notes that this is not a new question and existed during the PDP process and prior to the pause of the IRT. The Final Report does make the distinction between affiliated and unaffiliated Privacy and Proxy service providers. Discussion within this Small Team indicated that this policy could most feasibly apply to Privacy and Proxy services that are affiliated with registrars. The possible/probable scenarios of – e.g. someone registering a domain for a friend, or a lawyer for a client – are unaffiliated and are outside of the scope of this requirement as long as the registrar does not *knowingly* do business with unaffiliated Privacy or Proxy services. The Small Team reiterates the Final Report that: "Registrars are not

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[1] Definitions from the "Final Report on the Privacy and Proxy Services Accreditation Issues Policy Development Process," *ICANN org*, 7 December 2015, pp. 6-8.
https://gnso.icann.org/sites/default/files/filefield_48305/ppsai-final-07dec15-en.pdf

to knowingly accept registrations from privacy or proxy service providers who are not accredited through the process developed by ICANN. The Small Team notes that the obligations for Registered Name Holders as outlined in section 3.7.7 of the 2013 RAA applies to all Registered Name Holders, including non-accredited entities registering names on behalf of third parties."

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In light of this, should the concepts be revisited as a matter of policy to align with current market practices, or should these concepts be hard-coded into the policy requirements as originally recommended in the Final Report? If the former, should this occur (a) through a GNSO process (such as a PDP, EPDP, or GGP) because they are part of the approved policy recommendations, or (b) through ICANN org's work with the IRT and with updates confirmed by the GNSO Council as appropriate?

STRAWPERSON ISSUE 3:
While the GNSO Council PPSAI Small Team believes that the definitions in the Policy as adopted by the Board and the RAA must remain stable for purposes of the implementation work of the IRT, the Small Team also recognizes that these definitions may be evolved over time by the community through an appropriate mechanism such as such as a PDP, EPDP, or GGP. The Small Team reminds the Council that they could consider such work in the next such available mechanism that is considering possible revisions to Policy addressing registrant data.

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The definitions in the Final Report contain words and phrases within them that are, themselves, not consistently understood. Can and should ICANN, in consultation with the IRT, proceed to define these terms, so that the final policy language is commonly understood? For example, in prior work with the IRT, ICANN developed draft language in consultation with the IRT that defined the privacy or proxy service "Customer" as "the licensee or beneficial owner of a registered domain name." If the final policy defines these additional terms, does the GNSO need to be consulted on these definitions prior to the implementation of the final policy-related materials to ensure consistency with the intention of the Final Report recommendations?

STRAWPERSON ISSUE 4:
The GNSO Council PPSAI Small Team notes that ICANN org should follow the definitions as defined in the PPSAI Final Report matching the RAA Specification on Privacy and Proxy Services. For clarity, ICANN org in consultation with the IRT is not prohibited from adding contextual language to Board-adopted Policy Recommendations to form a consensus policy with improved readability and understanding.

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Threshold Question B: Accreditation Model

The GNSO Council is invited to reflect upon whether the policy recommendations would preclude any (if at all) of the three models from being feasible accreditation models when it comes to implementation of this policy.

Additional question of proposed Model 4 of "No Accreditation" or Accreditation by Association™

STRAWPERSON TQ B:
The GNSO Council PPSAI Small Team recommends that Council confirm that none of the 3 original accreditation models be precluded as infeasible. The Small Team would like Council to offer some non-binding guidance based on the Small Team's discussions on the practicalities of each model. Consensus emerged that there would be no foreseeable issues with model 2 or model 3 as written as they comply with the policy recommendations as written. Model 4 calls for no accreditation program and is inconsistent with the policy and is not fit for purpose. Model 1 received mixed reviews amongst the Small Team as some were adamantly opposed to it, while others recognized perhaps its future utility for a possible unaffiliated P/P provider business model to arise that could need policy work. Implementing model 1 over models 2 or 3 seems less efficient and the IRT could reasonably favor those models over model 1.

Threshold Question C: Disclosure Frameworks

Requested guidance from the GNSO Council: Can the GNSO Council provide guidance on if:
(a) The Illustrative Disclosure Framework is policy, and the IRT is expected to implement it as is; or
(b) The Illustrative Disclosure Framework is meant to be akin to implementation guidance, which would mean the IRT has some flexibility in how to implement this into the policy, and there could be changes, but changes to it are to be communicated transparently; or
(c) The Illustrative Disclosure Framework is an example, but does not amount to policy or implementation guidance, and the IRT has the option of not including it in any form in the final policy or of changing it substantially, so long as the omission or changes are communicated transparently?

STRAWPERSON TQ C:
This model is not a binding policy to be implemented verbatim, but it also not merely an example and should be implemented as faithfully as practical with any variations to be communicated transparently and well documented. The IRT should review the later-adopted Registration Data Policy to ensure fidelity to ICANN's current policy. The Small Team encourages the IRT to have the finalized disclosure framework a) reviewed by ICANN legal staff for legal compliance and compliance with ICANN policies and b) to

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work with the NCSG to conduct a Human Rights Impact Assessment of the decided framework.

Threshold Question K: Alignment With Related Work
As a matter of policy (particularly considering that there was no agreement in the former PPSAI IRT about what the appropriate timeline for 13 PPSAI IRT Threshold Question Responses for the Attention of the GNSO Council | 30 July 2025 high priority requests should be), it may be helpful for the PPSAI implementation to align with the approach for Urgent Requests in the Registration Data Policy, if one is developed. Would the GNSO Council have any concerns about this?

STRAWPERSON TQ K:
Alignment is worthwhile as long as it does not hold up the implementation work. Since this is a policy that has been adopted by the Board, it can set the precedent for the policies that: a) have yet to be adopted or b) are adopted but not yet fully implemented. This policy should align with existing policies, including policies like the Registration Data Policy that took effect after the PPSAI recommendations were adopted. Any subsequent Board approved policy which disagrees with this policy would supersede this policy. The Small Team suggests that Council advise the IRT to continue forward with the IRT's best approach, take on information from the other sources noted above, but do not wait for the other policy work to complete prior to finalizing its work.

In considering this question, does the GNSO Council have any additional guidance on how coordination or alignment on overlapping areas among PPSAI implementation and the RDRS, SSAD, and/or successor system might occur?

IRT should follow a logical approach to align with other policies and aim to not get in the way of them. However it is best to proceed with implementation trying to see how best to harmonize with a recognition that the other policy work currently taking place is not a dependency on this implementation work.