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MPAA Comments on the Privacy and Proxy Service Accreditation Issues (PPSAI) Working Group Initial Draft Report

The Motion Picture Association of America¹ appreciates the opportunity to comment on the initial draft report of the Privacy and Proxy Service Accreditation Issues (PPSAI) Working Group Initial Draft Report. We wish to thank the PPSAI working group, of which MPAA was an active participant, for the extensive time and effort put into completing this comprehensive initial report outlining a draft set of clear and balanced minimum accreditation requirements for privacy and proxy (P/P) services.

The focus of our comments are on the important and central topics of relay and disclosure.

Relay

When matters of abuse arise, the MPAA believes that the best course of action lies in our ability to communicate directly and openly with registered name holders, including those using privacy and proxy services. Our intent is to resolve any issues directly with the registrant, without the need to involve third parties such as P/P service providers or registrars, unless absolutely necessary.

The MPAA generally agrees that recommendations 16 and 17 outline a balanced and enforceable set of minimum standards associated with the relay of third party requests, but would like to highlight several issues:

- Regarding the handling of electronic requests described in Option #1 of Recommendation 16 (p. 11), the accreditation standard must ensure safeguards that may filter out legitimate reports of abuse should not be

¹ The Motion Picture Association of America, Inc. (MPAA) serves as the voice and advocate of the American motion picture, home video and television industries from its offices in Los Angeles and Washington, D.C. Its members include: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

considered commercially reasonable.

- The recommendations outlined in 17 (pp. 11-12) are critical to the accurate and timely relay of communication to the privacy and proxy customer from third parties. While we agree that the technical failure of electronic communications should not be equated with the failure of a customer to respond to a request, it is important that requesters be promptly notified of a persistent delivery failure when a P/P service provider becomes aware of it. This results in full transparency and ensures that data validation obligations as outlined in the WHOIS accuracy specification of the 2013 RAA are enforced.
- Regarding the escalation of relay requests that result in a delivery failure, which the working group has not yet finalized its preliminary conclusions (p. 14), the MPAA believes that in this circumstance the escalation path should be mandatory. i.e. “...*the provider MUST upon request forward a further form of notice to its customer.*” This further supports our goal, stated above, to resolve any issues with the registrant directly.
- Finally, we oppose the imposition of any fees on the requester to enable this escalation and believe the cost of handling this escalation should be treated as a cost of doing business to the P/P provider.

Disclosure

In situations where clear and verifiable cases of abuse are found and direct communication with the customer of a P/P service is not possible, an effective and predictable framework to obtain contact details of the customer is required. The MPAA believes the illustrative framework, specific to intellectual property rights-holders, described in Annex E represents a balanced and predictable process for requestors while allowing a sufficient degree of flexibility and safeguards to P/P service providers and their customers, with the following caveats:

- We do not agree with Section I.B.iii (p. 84), that suggests assessing a nominal cost-recovery fee on requesters to process complaint submissions, and request that it be removed. ICANN, as the accreditor and compliance enforcer, should not be in the business of standardizing and/or approving fees.
- The MPAA would like to highlight the importance of Section III.C.D (p. 91) stating that disclosure cannot be refused solely for the lack court order, subpoena, etc. Without such a clause the whole disclosure framework would be ineffectual.

Permissible Use of Privacy and Proxy Services

The working group spent many hours debating the topic of permissible use of a P/P service. Specifically, if a domain name registered by a commercial entity or by an entity conducting “commercial activity” should be precluded from using such services. As noted in the draft report, the working group did not come to a consensus position on this topic.

While much of the debate in the working group focused on the privacy of the P/P customer, the MPAA believes it is equally important to consider the privacy interests and rights of Internet users who interact with web sites, many using P/P services, on a daily basis. Users right to know the identity of commercial entities with whom they are transacting, is a foundational principle in consumer protection law. This includes sites that may collect user data such as browsing history, IP addresses and similar user metadata associated with their interaction with the site.

The MPAA believes that the working group should not consider a requirement that creates an outright ban on the use of P/P services to registrants who intend to use their registration for the purposes of “commercial activity”. However, we would support ongoing discussions on the evolution of policy surrounding the differences between commercial, personal, political and governmental use of the Internet as long as these discussions are secondary to the core topics of relay, disclosure, compliance and accountability.

Compliance and Accountability

The definition of clear, balanced and enforceable policy that result in an effective and predictable system for both the relay of communications to a P/P service customer and a framework for disclosure is crucial to the ultimate success of the ICANN P/P services accreditation scheme. This scheme, however, must be built on a strong and robust contractual compliance enforcement system where P/P service providers are held accountable for the implementation of the consensus policies set by the PPSAI working group. To be effective when necessary these accountability measures should include remedies including but not limited to revocation of accreditation.

Thank you again for the opportunity to comment.

Respectfully Submitted,

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