



April 24, 2009

Mr. Doug Brent
Chief Operating Officer
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Re: Circumvention of Registrar Accreditation Agreement Section 3.7.7.3

Dear Doug:

This follows up on our numerous conversations, beginning with your June 2, 2008 briefing of the IPC on the ICANN budget and operating plan, regarding Section 3.7.7.3 of the Registrar Accreditation Agreement (“RAA”), as it relates to proxy registration services. The IPC believes that numerous ICANN-accredited registrars regularly violate both the letter and spirit of Section 3.7.7.3. This letter more specifically outlines these concerns, and offers some recommendations, both for ICANN interpretation and enforcement of Section 3.7.7.3 as it now stands, and for ways in which that provision may be improved and clarified.

I. Section 3.7.7.3

Section 3.7.7.3 states that registrars shall require all Registered Name Holders to enter into an electronic or paper registration agreement that provides:

Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

Section 3.7.7.3 was intended to ensure that parties harmed by the registration and or use of domain names could seek redress by: (a) creating a strong incentive for domain name registrants who registered domain names on behalf of third parties to disclose the identity of the

third party or affirmatively accept liability for the harm caused; and (b) preventing registrants from avoiding liability for harm resulting from their registration and use of domain names by claiming the domain names were owned or licensed by third parties. Section 3.7.7.3 allows the licensing of domain name registrations, but recognizes that absent a disclosure requirement, licensing of domain names could abet illegal activity by making it much harder and more expensive to locate and bring to account parties engaged in illegal activities on the Internet.

II. Section 3.7.7.3 and Proxy Services: The Current Environment

While Section 3.7.7.3 also applies in other circumstances, this memorandum focuses on its use by proxy registration services, which act as registrants of domain names (and provide the service's contact details for the Whois database) and which also license use of the domain name to third parties. Under a proper implementation of Section 3.7.7.3, the proxy registration service, as licensor, is required, once presented with reasonable evidence of actionable harm, to either: a) promptly disclose the identity of the licensee or "beneficial owner" of a domain name to any party providing the proxy registration service with reasonable evidence of actionable harm; or b) respond by stating that it accepts liability for the harm, arguably making it possible to obtain redress without learning the licensee's identity. In reality, however, neither outcome usually occurs.

For example, trademark owners routinely contact proxy registration providers with reasonable evidence of trademark infringement, including copies of registration certificates for the infringed trademark, evidence that the domain name incorporates the trademark in its entirety or is a clear "typosquat" of the name, and printouts of clearly infringing content. Many times, the evidence presented would amount to an "open and shut" case under, at a minimum, the UDRP or the U.S. Anticybersquatting Consumer Protection Act. Our understanding is that precisely this kind of evidence was contemplated as "reasonable evidence of actionable harm" when the RAA was drafted. Yet presentation of this evidence to proxy service providers all too often does not result in either of the permissible outcomes summarized above.

Although many proxy services do not respond at all, others respond only to deny ownership of the domain name (thus explicitly rejecting liability for the harm caused by the wrongful use of the domain), while refusing to disclose the identity of the domain name licensee (or "beneficial owner") absent a subpoena. This breaches any registration agreement that properly incorporates Section 3.7.7.3, and appears to be common regardless of whether the proxy service is operated by a third party or by the registrar itself. Illustrating this pattern, the attached chart surveys the practices of the major proxy service providers.

IPC members were motivated to undertake this analysis because the state of adherence to Section 3.7.7.3 is not improving. In particular, in mid-2007, IPC members observed a change in the practices of the largest proxy registration service, GoDaddy-affiliated Domains by Proxy, Inc., which formerly would terminate proxy service upon presentation of reasonable evidence of

actionable harm.¹ During a period from mid-2007 through mid-2008, we became aware that Domains by Proxy was notifying complaining intellectual property owners that it would consider the matter closed unless it received a valid subpoena. This notable departure from adherence to Section 3.7.7.3 prompted the IPC to analyze proxy practices in greater detail.²

III. Violations of Section 3.7.7.3

Based on this analysis, we conclude that there are three main ways in which the current environment reflects violations of the letter and spirit of Section 3.7.7.3:

- (1) Some registrars are not including the required provision reflecting Section 3.7.7.3 in their registration agreements;
- (2) Where registrars include the provision, even companies whose primary business is providing proxy registration services, or who are affiliated with ICANN-accredited registrars, routinely breach it; and
- (3) Where registrars include the required provision in their registration agreements, the registrars are not enforcing it.

Furthermore, this analysis reveals areas where Section 3.7.7.3 and related RAA provisions should be updated in order to provide needed accountability and transparency to the domain name registration system.

1. Registrars Fail to Incorporate Section 3.7.7.3 in Their Registration Agreements

For a registrar to fail to mirror the language of Section 3.7.7.3 in its registration agreement is a clear violation of the plain language of Section 3.7.7.3, which unambiguously requires registration agreements to include the language specified in that section. As the attached chart shows, this breach of the Registrar Accreditation Agreement extends to the largest of registrars, and those affiliated with the largest of proxy registration services.³

¹ Although IPC members no doubt have little sympathy for those who have been credibly accused of infringement, it is notable that Domains by Proxy's former practice even went beyond the requirements of Section 3.7.7.3. Section 3.7.7.3 requires only that the owner's information be revealed to the aggrieved party. Terminating service resulted in a change of registrant to the beneficial owner, and thus the beneficial owner's information being revealed in the Whois database for all to see.

² At least one lawsuit also resulted from Domains by Proxy's change in policy. *See Dell Inc. v. Domains By Proxy, Inc.*, Case No. 1:07-cv-00895-SS (W.D. Tex. 2007). Whether related or not, anecdotal evidence in the attached chart suggests DBP revised its policy in mid-2008 to reveal the licensee's information to the complainant (while not terminating proxy service), at least where the licensee fails to contact the complainant after receiving a demand letter.

³ Another issue results from the current trend toward registrars themselves warehousing domain name registrations, which the drafters of the RAA at the time contemplated being restricted by consensus policy. See RAA Section 3.7.9. Where the proxy service is both the registrar and the registrant, it is not clear that the service is bound by the registration agreement at all. Generally, a party cannot be bound by a contract with itself.

2. Proxy Services Routinely Violate the Registration Agreement Requirements Addressed by Section 3.7.7.3

The attached chart amply demonstrates that proxy services' compliance with the practices dictated by Section 3.7.7.3 is the exception rather than the norm. At least one UDRP decision details a major proxy service's practice of refusing to reveal the identities of the licensees of domains it holds, while routinely trying to escape liability for harm caused by wrongful use of the domain name by terminating service upon the filing of suit or a UDRP proceeding.⁴ In the IPC's view, the RAA was sufficiently clear that, for example, in the trademark context, the kind of demand letter referred to above, when sufficiently substantiated with copies of trademark registration certificates and illustrations of the infringing content or domain name, was meant to constitute "reasonable evidence of actionable harm." If ICANN had intended to restrict the divulgence of the licensee's identity to situations where a subpoena or other legal process had been served, it could have done so, and the RAA could have said so.

Moreover, it is appropriate for the proxy service to be required to reveal the registrant's name without requiring the complaining party to institute a lawsuit. By doing so, the proxy service greatly aids the complainant's access to legal redress, but imposes no substantive loss of rights on the licensee. In other words, the licensee does not lose the use of or control over the domain name, but merely (to the extent of the contact data revealed) its anonymity, and then only with respect to the single complaining party, and no one else.

The IPC believes that proxy services' failure to honor the intent of Section 3.7.7.3 stems in great part from the registrars' failure to enforce the requirement, or even to include it in their registration agreements.

3. Registrars Routinely Fail to Enforce Required Terms in Their Contracts, Because ICANN Does Not Require Them To Do So.

Where a registrar abides by Section 3.7.7.3 and incorporates its provisions into the registration agreement, and the proxy service fails to comply with those requirements, the proxy service's breach entitles the registrar to cancel the domain registration. The related RAA Section 3.7.7.2 even goes so far as to make explicit that the registrant's failure to provide accurate information for the Whois database is "a material breach" and "a basis for cancellation." Registrars have an implied obligation to enforce the provisions of their registration agreements required by Section 3.7.7.3, and the drafters of the RAA no doubt intended that they would do so. Yet a breach of the registration agreement merely *allows* registrars to cancel the registration, and if registrars do not do so, it renders the mandatory language of Section 3.7.7.3 meaningless.

⁴ See *Baylor University v. Domains by Proxy, Inc.*, Case No. 1145651 (Nat. Arb. F. May 26, 2008) (holding that proxy service was the proper respondent in the case, and that "the practice of Registrars in permitting or themselves effecting changes to the WHOIS registration information after receiving a copy of the Complaint ... is not in keeping with the intent nor within the language of the [UDRP] Policy, [or] the [UDRP]Rules").

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As it currently stands, Registrars have a significant incentive to refuse to enforce the terms required by Section 3.7.7.3, as this potentially increases the number of registrations they can sell. This is particularly true where the registrar is also the proxy registration service provider, either directly or through a related company owned by the registrar. On the other hand, registrars have no incentive to enforce the contractual obligations required by Section 3.7.7.3, especially against themselves, when there is no risk of penalty for failure to do so. Accordingly, for Section 3.7.7.3 to have any meaning under the RAA as it currently exists, a registrar's failure to enforce Section 3.7.7.3 provisions incorporated in its registration agreement should be treated by ICANN's compliance department as a violation of the RAA.

IV. What ICANN Can Do Now

Based on the analysis above, we offer the following recommendations for immediate action by ICANN's Compliance Office:

1. All accredited registrars (beginning with those identified on the attached chart) should promptly be audited to ensure that they are including in their registration agreements the terms required by Section 3.7.7.3 (and indeed all of the terms required in Section 3.7.7).
2. When ICANN compliance staff are advised of situations in which proxy registration services fail to comply with the requirements contained in Section 3.7.7.3 after being presented with reasonable evidence of actionable harm, compliance staff should immediately investigate what steps the accredited registrar in question is taking with regard to this breach by the proxy service provider of its registration agreement, and should require the registrar to explain why it is not cancelling that registration and related registrations by the same proxy service provider.
3. ICANN has issued numerous advisories to accredited registrars to provide its interpretation and guidance concerning RAA provisions and its contract enforcement policies.⁵ It should employ this well-established authority with regard to Section 3.7.7.3 in at least four areas:
 - (a) A clearer definition of "reasonable evidence of actionable harm." ICANN should issue an advisory that provides clear guidelines for what constitutes reasonable evidence of actionable harm, at least to the extent of clarifying that it does not require service of a subpoena or other legal process. Such an advisory would be beneficial to right holders and other complainants, who will know better how to present their evidence; to proxy services, who will know better what is expected of them; and to accredited registrars, who will be better able to evaluate the evidence presented in determining whether to enforce Section 3.7.7.3 provisions in the registration agreement. ICANN should make clear that this interpretation will guide ICANN enforcement efforts. The advisory should also provide guidance on the time period within which the registrant (the proxy service) should reasonably make the determination whether to reveal the licensee's identity; should urge the registrant to state how the evidence was insufficient if the registrant does

⁵ See, e.g., <http://www.icann.org/en/announcements/advisory-10may02.htm>.

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not believe that the complaining party has presented reasonable evidence of actionable harm; and should encourage such registrants to identify a contact point for the presentation of reasonable evidence of actionable harm.⁶

(b) ICANN should provide guidance to registrars about the circumstances under which a proxy service provider's failure to comply with Section 3.7.7.3 should lead to cancellation of a registration for breach of the registration agreement.⁷

(c) ICANN should issue an advisory, consistent with numerous UDRP decisions, that makes clear that the registrant listed in the Whois results for a domain name is considered the Registered Name Holder of the domain for all purposes.⁸

(d) ICANN should provide guidance to registrars and UDRP Providers that, under Section 8(a) of the UDRP, a UDRP proceeding is "pending" (thus prohibiting transferring a domain name to another holder) when the proceeding is initiated by the filing of the complaint. The prohibition on transfers when a proceeding is "pending" is ambiguous because UDRP Rules paragraph 3(a) refers to the complainant's ability to "*initiate* an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN," while paragraph 4(c) of the Rules states, "the date of *commencement* of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) in connection with forwarding the Complaint to the Respondent." Making clear that ownership of a domain may not be changed after the initiation would allow complainants properly to investigate their claims and name the proper party to a UDRP proceeding ahead of time, without risk that the identity of the registered name holder would change because the registrar allows a proxy service (particularly one owned or operated by the

⁶ IPC proposed in 2007, and continues to believe, that the RAA should make identification of such a contact mandatory, particularly when the proxy service provider is related to the registrar.

⁷ Cf. the Advisory cited in fn. 5 (in the case of false Whois data, "if the registrar's investigation results in a determination that the registrant is in material breach of its registration agreement, then in the absence of extenuating circumstances the registrar should cancel the domain registration.")

⁸ *Baylor University v. Domains by Proxy, Inc.*, Case No. 1145651 (Nat. Arb. F. May 26, 2008) (holding that proxy service was the proper respondent in the case); *The American Automobile Association, Inc. v. Zag Media Corp. c/o Whois Privacy Services*, Case No. 1226952 (Nat. Arb. F. Nov. 13, 2008) (proxy service Zag Media was proper respondent); *Baumer Holding AG v. Gee Whiz Domains Privacy Service, Domain, Admin, Nevis Domains*, Case No. D2008-1882 (WIPO Feb. 5, 2009) (two proxy services deemed correct respondent in case); *The John Hopkins Health System Corporation, The John Hopkins University v. Domain Administrator*, Case No. D2008-1958 (WIPO Feb. 27, 2009) ("it was appropriate for the Complainants to have proceeded against the proxy service company as the nominated respondent"); *Padberg v. Eurobox Ltd.*, Case No. D2007-1886 (WIPO Mar. 10, 2008) (the named respondent, who was the entity recorded in the WHOIS search results at the time the Complaint was filed, was the proper respondent); *Trustees of the Trust Number SR-1 v. Turnberry, Scotland Golf and Leisure*, Case No. 122224 (Nat. Arb. F. Nov. 3, 2002) ("The register maintained by an ICANN registrar must provide accurate information as to the identity of domain registrants. The human person or other legal entity shown as the registrant must be assumed to be such by third parties seeking to ascertain a registrant's identity by such means as a Whois search."); *Dr. Ing. h.c. F. Porsche AG v. Domains by Proxy, Inc and Sabatino Andreoni*, Case No. D2003-0230 (WIPO May 16, 2003) ("The Panel takes the view that the Complaint was properly launched against the First Respondent [Domains by Proxy]").

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registrar) to transfer the registration into the name of the proxy services' Licensee customer or other party after the registrar receives the request for registrar verification from the provider.⁹ It would also promote greater accountability on the part of proxy services and give them incentive to comply with RAA section 3.7.7.3 if they wish to avoid becoming the respondent to UDRP proceedings.

V. Proposed Amendments to the RAA

Beyond the compliance steps that ICANN could take immediately, IPC believes, based on its analysis, that at least two amendments to the RAA should be considered for implementation as soon as possible.¹⁰ The first of these was included in the redline of the RAA that IPA provided in September 2007, but was not incorporated in the package of amendments that ICANN staff presented last year.¹¹

First, Section 3.7.7.3 only covers Registered Name Holders who license the use of their names to beneficial owners. If the proxy service does not place its own name in the registrant field, it is not the "Registered Name Holder." Yet other services, most notably the privacy service offered by Network Solutions, nevertheless obscure all meaningful contact information. To ensure consistency and fairness between registrars, these other services, whether or not they follow the "licensing" model to which Section 3.7.7.3 applies, should be given strong incentives to disclose accurate contact data for registrants whose conduct has given rise to "reasonable evidence of actionable harm."¹²

⁹ Several of the cases cited in the previous footnote criticize this practice. *See, e.g., Baylor University v. Domains by Proxy, Inc.*, Case No. 1145651 (Nat. Arb. F. May 26, 2008) ("Having regard to the language of the Forum's Supplemental Rule 1(d), the correct interpretation of the words 'once the Registrar has verified the information' is that the information which the Registrar is required to verify is the WHOIS registration information at the time of the filing of the Complaint. This approach is supported by paragraph 8(a) of the Policy, which prohibits a 'transfer' of a domain name registration during a pending proceeding, i.e. a proceeding that has been initiated by the filing of a Complaint. . . . [T]he practice of Registrars in permitting or themselves effecting changes to the WHOIS registration information after receiving a copy of the Complaint at the time of its filing and purporting to 'verify' that information, rather than the information as at the time of the filing of the Complaint, is not in keeping with the intent nor within the language of the Policy, the Rules or the Forum's Supplemental Rule 1(d). . . . [I]t is respectfully suggested that ICANN consider making suitable amendments to the Policy and the Rules to accommodate and regulate proxy services so as to serve the legitimate interests of both trademark owners and domain name registrants.")

¹⁰ The following should not be construed as an exhaustive list of the RAA amendments that IPC advocates in general, or with respect to Section 3.7.7.3 in particular.

¹¹ IPC also recommended in September 2007 that the RAA be amended to clarify that the registrant (proxy service) must provide the licensee's contact information (as well as the licensee's identity) in response to notice of reasonable evidence of actionable harm. We understand that this change was included in the package of proposed amendments as ultimately presented to the GNSO Council, currently pending before the ICANN Board.

¹² The IPC proposed the following language in its September 2007 redline concerning RAA amendments :

[3.3.9. Registrar may by agreement with Registered Name Holder substitute for \[specified data elements listed in Section 3.3.1.6-8, but not including name of the Registered Name Holder\] corresponding data provided by Registrar, subject to the following conditions: \(a\) the substituted data must be adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name; \(b\) a Registrar providing this service shall accept liability for harm caused by wrongful use of the Registered](#)

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Second, the RAA should be amended to provide that registrars must (after the appropriate notice and cure period) cancel a registered name registration in the case of the registered name holder's breach of any its obligations dictated by RAA Section 3.7.7.¹³ Once notified of a potential breach, the registrar would be required to enforce the provisions of Section 3.7.7.3. This could be accomplished simply by amending RAA 3.7.7 as follows:

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions, and shall, upon receiving notice of a breach of any of the following provisions, and after providing appropriate notice to the Registered Name Holder, cancel the Registered Name registration:

The IPC greatly appreciates the opportunity to detail our concerns regarding the widespread circumvention of Section 3.7.7.3 of the ICANN Registrar Accreditation Agreement. If you have any questions on this subject, please feel free to contact either of the undersigned.

Steve Metalitz, IPC President
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Claudio DiGangi, IPC Vice President
cdigangi@inta.org.

cc: ICANN Contract Compliance staff

Name, unless it promptly discloses the data elements listed in Sections 3.3.1.6-8 to a party providing the Registrar with reasonable evidence of actionable harm; (c) the identity and current valid contact points for an agent of Registrar to which reasonable evidence of actionable harm may be presented is disclosed on the Registrar's website and provided to ICANN for posting on the Internic site.

3.7.7.3 Any Registered Name Holder (including but not limited to a Registered Name Holder that is an Affiliate of Registrar) that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity and current contact information of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm. Such a Registered Name Holder shall make available, on its website, the identity and current valid contact points for its agent to which reasonable evidence of actionable harm may be presented, and which has authority to disclose the identity and contact information of the licensee.

¹³ This appears specifically to apply to 3.7.7.1 through 3.7.7.3, 3.7.7.5 and 3.7.7.6, and 3.7.7.9 through 3.7.7.12. The required terms in paragraphs 3.7.7.4, 3.7.7.7, and 3.7.7.8 impose obligations only on the registrar.

Survey of Major Proxy Registration Service Practices

Service Name:	Domains by Proxy	Web site:	domainsbyproxy.com	Registrar Affiliation:	GoDaddy (related company)
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	No	Is Service Listed as Registrant in Whois?	Yes		
Privacy Policy:	<p>Your privacy may be revealed:</p> <ul style="list-style-type: none"> to comply with any applicable laws, government rules or requirements, subpoenas, court orders or requests of law enforcement; to comply with ICANN's Dispute Resolution Policy; to avoid any financial loss or legal liability (civil or criminal) on the part of DBP, its parent companies, subsidiaries, affiliates, shareholders, agents, officers, directors and employees; if the domain name DBP registers on Your behalf violates or infringes a third party's trademark, trade name or other legal rights; 				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> You agree that DBP will review and forward communications addressed to your domain name that are received via email, certified or traceable courier mail, or first class U.S. postal mail. When You purchase a private domain registration, DBP creates a private email address for that domain, "<yourdomainname>@ domainsbyproxy.com". Thereafter, when messages are sent to Your private email address, DBP handles them according to the email preference You selected for that particular domain, (i) have all of the messages forwarded; (ii) have all of the messages filtered for Spam and then forwarded; or (iii) have none of the messages forwarded. When DBP receives certified or traceable courier mail or legal notices addressed to Your domain name, we will post an email message to Your DBP account. Our email message will identify the sender of the correspondence, the date we received it, and a brief description of its contents. You will have seventy-two (72) hours to decide whether to reject the correspondence or have it forwarded via overnight courier, facsimile (or both). In the event You do not respond to our email message, DBP will attempt to contact you via telephone. If you do not respond to our email or voice messages and/or the correspondence that DBP has received regarding Your domain name registration concerns a legal dispute or otherwise requires immediate forwarding and/or immediate disposition, DBP may immediately reveal Your identity and/or cancel our private registration service. 				
Case Law (if any):	<p><u>Baylor University v. Domains By Proxy, Inc., et.al.</u>, FA0802001145654 (Nat Arb. Forum Mar. 25, 2008) Name of Registrant at the time of filing of the Complaint was Domains By Proxy. After filing of Complaint, GoDaddy.com confirmed with the NAF that the various domain names were registered in the names of various different registrants. NAF requested that Complainant amend its Complaint to choose which Respondent and corresponding domain name to remove from the complaint. Complainant amended its Complaint, but Complainant contended that Domains by Proxy is the proper Respondent, and did eventually include them as one of the Respondents. There were facts in the record that indicated Domains By Proxy refused to give up the identities of the true registrants of the domain names even after formal requests by Complainant, and only did so after the UDRP was filed. As a result, the Panel in the proceeding found that Domains By Proxy <u>was</u> the proper Respondent in the case, since it was the Registrant named in the WHOIS registration information in relating to all of the disputed domains names when the Complaint was filed.</p>				
Anecdotal Experiences:	<p>DBP creates a private email address for the domain to relay communications to the licensee. In our experience, prior to mid-2007, DBP's general practice was that when DBP itself received a letter setting out reasonable evidence of actionable harm, it would give the licensee a short period of time in which to contact the complainant, and if the licensee did not, then DBP would terminate service to the licensee. This would result in a change of registrant in the registrar's Whois database, from DBP to the licensee, revealing the licensee's information publicly. Starting in mid-2007, if the licensee did not contact the complainant, DBP would send an e-mail noting that fact, but that it was considering the matter closed unless a subpoena was received. Since mid-2008, it has been our experience that when the registrant did not contact the complainant and the complainant had specifically noted DBP's obligation to accept liability per the requirements of 3.7.7.3, DBP revealed the licensee's contact information to the complainant without terminating service.</p> <p>-We have recently learned that DBP may provide expedited service to certain major brand owners and their counsel.</p>				

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Service Name:	Network Solutions	Web site:	networksolutions.com	Registrar Affiliation:	Network Solutions
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	Yes	Is Service Listed as Registrant in Whois?	No. Underlying registrant name appears, with NS postal address and anonymized re-mailer e-mail address that changes every 10 days.		
Privacy Policy:	<p>Your privacy may be revealed:</p> <ul style="list-style-type: none"> • if any third party claims that the domain name violates or infringes a third party's trademark, trade name or other legal rights, whether or not such claim is valid; • to comply with any applicable laws, government rules or requirements, ICANN policies or requirements, subpoenas, court orders, requests of law enforcement or government agencies; or • if any third party threatens legal action against Network Solutions that is related in any way, directly or indirectly, to the domain name, or claims that you are using the domain name registration in a manner that violates any law, rule or regulation, or is otherwise illegal or violative of a third party's legal rights 				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> • Your private registration e-mail address changes every 10 days. E-mail received at this address will be filtered for spam and forwarded to your designated e-mail account. • Messages received at the e-mail address posted in the public WHOIS database will be filtered for SPAM and forwarded to the e-mail address associated with your account for the applicable domain name. • Paper mail received via Certified Mail® or Express Mail™ will be opened and all such mail that can be scanned will be scanned and sent to you via the e-mail address associated with the account for the applicable domain name. You acknowledge that you will have five (5) days from the date such Certified Mail® or Express Mail™ is sent to you via e-mail to request in writing that a copy of such scanned mail be forwarded to you via postal mail at your expense. • Telephone Number. A telephone number that is answered by a Network Solutions answering service will be displayed in the public WHOIS database for the applicable domain name. Callers will be informed of how to contact you using the information displayed in the public WHOIS database. 				
Case Law (if any):	Could not locate any recent NAF or WIPO UDRP decisions in which Network Solutions is a named Respondent				
Anecdotal Experiences:	A first request from NSI was met with a generic response along the lines of "we are not the registrant, and we are not liable for actions by our registrants". They cited the NSI cases providing for registrar immunity. A strong response sent back to NSI pointing out Section 3.7.7.3 was met with NSI populating the WHIOS and providing some additional contact information from its records.				

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Service Name:	EnCirca	Web site:	encirca.com	Registrar Affiliation:	EnCirca
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	Yes	Is Service Listed as Registrant in Whois?	Yes		
Privacy Policy:	Your privacy may be revealed: <ul style="list-style-type: none"> • when required by law. 				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> • EnCirca shall accept written complaints from third parties regarding false and/or inaccurate Whois data of Registrants • No later than thirty (30) days after receipt of a written complaint, EnCirca shall conduct an initial investigation into the veracity and accuracy of the contact details. • If EnCirca determines that the information is false, inaccurate or not up to date, EnCirca shall issue a letter to the Registrant via e-mail and regular first-class mail, stating that the information contained in the Registrant's Whois record may be false, inaccurate or not up to date. • The Registrant must update its contact information no later than thirty (30) calendar days 				
Case Law (if any):	Could not locate any NAF or WIPO UDRP decisions in which EnCirca is a named Respondent				
Anecdotal Experiences:					

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Service Name:	Moniker Privacy Services	Web site:	moniker.com	Registrar Affiliation:	Moniker
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	Yes. However, although language is included in the Moniker's Registrar Service Agreement, it is not clear that the language is binding on Moniker as a Registrant.	Is Service Listed as Registrant in Whois?		Yes	
Privacy Policy:	Your privacy may be revealed: <ul style="list-style-type: none"> • for inspection by law enforcement officials (including in the case of potential criminal activity); • to respond to criminal and civil subpoenas and court orders that reasonably appear to be valid; • to enforce or apply the terms of this Privacy Policy or any other agreement between us; and • to protect the rights, property, or safety of Moniker, our users, or others, whether during or after the term of your use of our service. 				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> • If, within thirty (30) days, Registrant can either (i) show that it has not provided false or inaccurate contact information or (ii) provide the updated Whois information, then the registrant will be allowed to maintain the domain name registration. If, however, after thirty (30) days, the registrant either does not respond to Registrar's notice or is unable to provide true and accurate contact information, the registrant shall be deemed to have breached its registration agreement and the registrar shall be required to delete the registration. • Email legal@moniker.com – The email will be forwarded on to owner. If the owner does not respond, Moniker will compel owner to release information <u>after</u> a case is filed. (phone conversation with Moniker on 6.16.08). 				
Case Law (if any):	<p><i>WWF v. Moniker Online Services LLC and Gregory Ricks</i> – WIPO Case. No. D2006-0957 (November 1, 2006) Name of Registrant at the time of filing of the Complaint was Moniker. WIPO sought particulars and was advised by Moniker that Gregory Ricks was the registrant. Complaint objected, but then complied with WIPO's request that it list both Moniker and Ricks as Respondents. Moniker then demanded to WIPO that it name be discharged, relying on 3.7.7.3. Interestingly, WIPO was not "satisfied that the above clause covers the proxy phenomenon. It seems to refer to the licensing of the use of a domain name in much the same way as to the licensing of the use of a trademark." However, Panel stated that Moniker, upon receipt of the Complaint, should not have changed the publicly available Whois information as to the identity of the registrant. The Panel noted that "(Moniker) has taken on the responsibility of the registration of domain names on behalf of another...one such consequence . . . is that during the pendency of a UDRP proceeding the Proxy as registrant cannot change the domain name registration or transfer it to the beneficial owner for whom the registration had been made." No transfer should have been made because of paragraph UDRP ¶ 8(a). WIPO held that both parties would remain as respondents, although Moniker would be a <i>pro forma</i> respondent</p>				
Anecdotal Experiences:	Numerous anecdotal reports suggest that Moniker consistently forwards e-mail communications licensees, but rarely acknowledges receipt of communications or says that it is forwarding them on. Moniker consistently reveals licensee information upon filing of a UDRP complaint, but we are aware of no case in which Moniker revealed registrant information prior to the filing of a UDRP or other legal action. Specifically: <p>A)</p> <ol style="list-style-type: none"> 1. Cease and desist letter sent on March 3, 2008 to Moniker via the email address listed on the WHOIS, FedEx, and Moniker's legal contact email address, legal@moniker.com. Complainant received no confirmation of receipt of its cease and desist letter nor an indication that the cease and desist letter had 				

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been forwarded to the private registrant.

2. A second misspelled domain name was registered March 12, 2008, owner shown as Moniker.
3. On March 31, 2008, Complainant resent the cease and desist letter, including, after contacting Moniker's customer service for better contact information, to legal@corp.moniker.com. Complainant again did not receive any response to its follow up letter.
4. On April 16, 2008, Complainant forwarded the cease and desist letter a third time, using additional email addresses found on Moniker's website and listing Moniker's named contact on the ICANN website. Complainant also indicated that if it did not hear from Moniker, a complaint may be filed with the Better Business Bureau and/or International Consumer Protection and Enforcement Network. Still no response received
5. April 27, 2008, Complainant filed a complaint with the Better Business Bureau responsible for the area in Florida where Respondent is located regarding the unresponsiveness of the Respondent and lack of adequate contact information.
6. UDRP filed for the two domain names, and immediately Moniker revealed the private owners.

B)

1. Cease and desist letter sent on April 7, 2008, to Moniker via the email address listed on the WHOIS database and via UPS to Moniker's physical address listed on the WHOIS database.
2. Complainant received neither confirmation of receipt of its cease and desist letter, nor any indication that the cease and desist letter had been forwarded to the private registrant.
3. The infringing content was removed.

C)

1. Cease and desist letter sent on January 23, 2008 to Moniker via the email address listed on the WHOIS database, support@moniker.com, via UPS to Moniker's physical address listed on the WHOIS database and via Moniker's legal contact email address, legal@moniker.com. Complaint received an email response stating that Moniker.com "is the registrar and is not the owner of this domain name" and that Moniker had forwarded the email and attachment to the Registrant.
2. On January 31, 2008 Moniker sent an email to counsel for Complainant stating that it would not remove a privacy shield until a legal proceeding was actually filed regarding the domain name.
3. Complainant filed a UDRP complaint, naming Moniker as the respondent. Moniker then immediately revealed the private owner of the registration. Complainant had to file an amended complaint.

D)

1. ICANN-complaint filed with WIPO without naming the registrant since it was not disclosed in the Who-Is. Domain name consisted of well-known trademark.
2. Received e-mail from an alleged counsel of MDNH, Inc. (sponsoring the infringing links on the webpage) with an e-mail address @marchex.com. He explained that the domain had been bought in a bulk agreement. Due to the ICANN proceeding, the registrar would now not transfer the domain. A stay of proceedings should be requested to have the domain transferred.
3. WIPO informs of the registrant to finalize complaint at the same time.
4. WIPO proceedings stayed. WIPO secured that domain would only be transferred to complainant. Transfer was conducted.

-Anecdotal experience suggests that in many instances where Moniker is listed as the registrant, Moniker is in fact the true registrant of the domain name and there is no third party independent licensee. Thus, Moniker is not acting as a privacy service for an independent third party to shield the identity of the third party. Rather, Moniker is the true registrant and is using its "proxy" status as a cover for hoarding domain names.

-In addition, recently there have been rumors that Moniker Privacy may be set up as a free-standing entity and that it would be revising its privacy practices. There does not appear to be any current evidence that this has been effectuated yet.

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Service Name:	Whois Privacy Protection Service, Inc. (Bellevue, WA)	Web site:	http://www.enom.com/privacy-protection/domain-name-whois-privacy.asp	Registrar Affiliation:	eNom
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	No. In eNom's Registrar Service Agreement, language is not included.	Is Service Listed as Registrant in Whois?		Yes	
Privacy Policy:	Your privacy may be revealed: <ul style="list-style-type: none"> • to comply with the law; • enforce or apply their Services Agreement and other agreements; • or protect the rights, property, or safety of eNom, our users, or others. 				
Service's Reported Disclosure Policy:	To report a violation email legal@enom.com				
Case Law (if any):	<p><u>Davis + Henderson, Limited Partnership v. Whois Privacy Protection Service, Inc./Demand Domains Inc.</u> WIPO Case No. D2008-1162. A Complaint was filed on July 30, 2008. On July 31, 2008, the Center transmitted by email to the Registrar for registrar verification in connection with the Domain Name. On July 31, 2008, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 6, 2008 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 8, 2008. The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 12, 2008. In accordance with the Rules, paragraph 5(a), the due date for Response was September 1, 2008. The Response was filed with the Center on August 29, 2008. When the original Complaint was filed the Domain Name was registered in the name of Whois Privacy Protection Service, Inc. When the Center sought from the Registrar verification of the registrant details in respect of the Domain Name, the Registrar identified the registrant as being Demand Domains Inc. For the purposes of this administrative proceeding the Panel proposes to treat Whois Privacy Protection Service, Inc. and Demand Domains Inc. as being one and the same and will refer to them together as "the Respondent". Aside from the proxy service connection, the case is interesting on another level because the Respondent wanted to transfer the domain name without a finding of bad faith, whereas Complainant insisted on a decision speaking to each of the elements of the UDRP test.</p> <p><u>AXA SA v. Whois Privacy Prot. Svc., Inc. and Demand Domains, Inc.</u>, WIPO Case No. D2007-1382 (January 29, 2008). Complaint identified Whois Privacy Protection Service, Inc.. Following confirmation from the Registrar that the registrant-in-fact was Demand Domains, Inc., the Complaint was additionally amended to specify Demand Domains, Inc. as the proper Respondent. The Panelist noted prior Panels have been prepared to include a privacy service as a named Respondent, citing to WIPO Case No. D2007-0674. The Panelist adhered to the precedent set forth in this decision and held that Whois Privacy Protection Service, Inc. should remain included as a named Respondent <u>in addition</u> to Demand Domains, Inc. However, the Panelist emphasized that references to the activities of "the Respondent" in the Panelist's decision were references to Demand Domains, Inc. <u>only</u>, and <u>not</u> Whois Privacy Protection Service, Inc.</p>				

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	<p>While the proxy service remained a named Respondent, it was not ultimately held accountable for the bad faith registration and use of the domain name when it subsequently released the registrant's true identity after a UDRP complaint was filed.</p> <p><u>California Closet Co., Inc. v. TMPCapital LLC and Whois Privacy Prot. Svc., Inc.</u>, WIPO Case No. D2006-1359 (January 17, 2007). A search conducted by the Complainant before the filing of the UDRP Complaint identified Whois Privacy Protection Service, Inc. as the registrant of the disputed domain name. However, when the Center contacted the Registrar, eNom, to verify, eNom responded that the domain name was in fact registered to TMPCapital LLC. The Center decided to include both Whois Privacy Protection Service, Inc. and TMPCapital LLC as named Respondents, although it did not discuss its reasons for doing so.</p> <p><u>Port Aventura, S.A. v. Demand Domains, Inc.</u>, WIPO Case No. D2008-0176 (April 1, 2008). In direct contrast with the WIPO decisions discussed above, Whois Privacy Protection Service, Inc. was <u>not</u> a named Respondent in this proceeding after it released the registrant's true identity after a UDRP Complaint was filed with WIPO. The Complaint was filed on February 4, 2008 naming Whois Privacy Protection Service, Inc. as the Respondent. On February 5, 2008 eNom, Inc. transmitted by email to the Center its verification response disclosing the registrant and stating that contact information for the registrant was now available in the publicly accessible Whois record. The Center then sent an email communication to the Complainant providing the registrant and contact information displayed in the Whois record and invited the Complainant to submit an amendment to the Complaint. Complainant entered an amended Complaint which identified only Demand Domains, Inc. as the Respondent.</p> <p>There are numerous WIPO and NAF UDRP decisions in which Whois Privacy Protection Service, Inc. failed to file a Response to a UDRP Complaint in which it was a named Respondent, including: <u>Medco Health Solutions, Inc. v. Whois Privacy Prot. Svc., Inc.</u>, WIPO Case No. D2004-0453 (August 25, 2004) <u>TMG Technologie Mgmt. Gruppe v. Whois Privacy Prot. Svc., Inc.</u>, WIPO Case No. D2005-0161 (May 9, 2005) <u>TAG HEUER v. Whois Privacy Prot. Svc., Inc.</u>, WIPO Case No. D2005-0133 (March 31, 2005) <u>Forest Labs., Inc. v. Whois Privacy Prot. Svc., Inc.</u>, WIPO Case No. D2007-0150 (September 11, 2007) <u>Fluke Corp. v. Whois Agent and Whois Privacy Prot. Svc., Inc.</u>, FA0407000304306 (Nat. Arb. Forum September 9, 2004) <u>Yahoo! Inc. v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0501000412705 (Nat. Arb. Forum March 17, 2005) <u>Wilson v. Whois Privacy Prot. Svc., Inc. a/ka/ Whois Agent</u>, FA0502000417186 (Nat. Arb. Forum March 29, 2005) <u>American Heart Ass'n, Inc. v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0504000463122 (Nat. Arb. Forum May 31, 2005) <u>Disney Enters., Inc. v. Whois Privacy Prot. Svc., Inc. a/ka Whois Agent</u>, FA0506000506742 (Nat. Arb. Forum August 17, 2005) <u>Kohler Co. v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0510000571955 (Nat. Arb. Forum November 18, 2005) <u>Zander Ins. Agency, Inc. v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0510000578631 (Nat. Arb. Forum December 5, 2005) <u>Bank of Am. Corp. v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0512000604717 (Nat. Arb. Forum January 27, 2006) <u>Sharapova v. Whois Privacy Prot. Svc., Inc. c/o Whois Agent</u>, FA0601000621125 (Nat. Arb. Forum February 17, 2006) <u>Interflora, Inc. v. Whois Privacy Prot. Svc., Inc.</u>, FA0609000796384 (Nat. Arb. Forum November 1, 2006) <u>Bank of Am. Corp. v. Whois Privacy Prot. Svc., Inc.</u>, FA0801001141937 (Nat. Arb. Forum March 25, 2008)</p>
<p>Anecdotal Experiences:</p>	<p>A)</p> <ol style="list-style-type: none"> 1. Cease and desist letter sent on February 13, 2008, to Whois Privacy Protection Service, Inc. ("WPPS") via the forwarding email address listed on the WHOIS database, and via UPS to WPPS's physical address. 2. Complainant received email response on February 14, 2008 from "Chip Chip," the licensee of the domain name, who promised to immediately transfer the disputed domain name to Complainant. Licensee failed to authorize transfer, and then told Complainant on March 12, 2008, that the domain name had been

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	<p>transferred to a new registrant. On March 12, 2008, the registrant information listed for the domain name in the WHOIS database was "PrivacyProtect.org."</p> <p>3. Complainant filed "Abuse Complaint" on March 17, 2008, with PrivacyProtect.org, upon which PrivacyProtect.org disabled its privacy protection service. On March 24, 2008, that registrant information listed for the domain name in the WHOIS database was "Private Whois Escrow Domains Private Limited."</p> <p>4. Cease and desist letter sent on March 24, 2008, to Private Whois Escrow Domains Private Limited via the email address listed on the WHOIS database, 02P26030308@privatewhois.in and via UPS. Complainant received neither confirmation of receipt of its cease and desist letter, nor an indication that the cease and desist letter had been forwarded to the private registrant.</p> <p>5. Complainant filed complaint under UDRP on April 30, 2008, naming Private Whois Escrow Domains Private Limited as the respondent. UDRP Case Manager notified Complainant on May 9, 2008, that the registrar for the domain name (Lead Networks Domains Pvt. Ltd.) had not responded to WIPO's repeated requests for registrar verification.</p> <p>6. Complainant received email on May 13, 2008, from Chip Chip, who again promised to immediately transfer the domain name to Complainant.</p> <p>7. Complainant received notice on May 16, 2008, from UDRP Case Manager that Lead Networks Domains Pvt. Ltd. had released the true identify of the registrant of the domain name and that Complainant had to amend its UDRP complaint to name the true registrant as the respondent.</p> <p>8. On May 20, 2008, the domain name was transferred to Complainant.</p> <p>B) Conversations with legal department have indicated that they will not deactivate any privacy unless and until a UDRP or civil action is filed.</p> <p>-Anecdotal experience suggests that WPPS does not reveal the identity of the true registrant and information pertaining thereto unless a UDRP or other legal action has been filed by the Complainant.</p> <p>-Demand Domains Inc. is, like the WPPSI proxy service, also an affiliate of the registrar eNom.</p>
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Service Name:	Contactprivacy.com/Whois Privacy Service	Web site:	contactprivacy.com	Registrar Affiliation:	Tucows, Inc.
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	Yes – it is incorporated in the WSM Domains Registration Agreement. WSM Domains is an affiliate of Tucows.	Is Service Listed as Registrant in Whois?		Yes	
Privacy Policy:	<ul style="list-style-type: none"> Right to Suspend and Disable. Tucows shall have the right, at its sole discretion and without liability to Reseller, its Registrant and any Contacts, to reveal Registrant and Contact Whois Information when required by law, in the good faith belief that disclosure is necessary to further determination of an alleged breach of a law, to comply with a legal process served upon Tucows, to resolve any and all third party claims including but not limited to ICANN's or a Registry's dispute resolution policy; to avoid financial loss or legal liability or if Tucows believes that the Registrant is using the Whois Privacy Service to conceal its involvement with illegal, illicit, objectionable or harmful activities or to transmit SPAM, viruses, worms or other harmful computer programs. 				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> In the event that Tucows receives a formal complaint, notice of claim or UDRP, Tucows will have the right to disable the Whois Privacy Service pending final disposition of the matter. 				
Case Law (if any):	<p><u>Siemens AG v. Joseph Wunsch/Contactprivacy.com</u>, WIPO Case No. D2006-1248 (December 6, 2006) Initial complaint named Contactprivacy.com as the Respondent, based on the Whois record at the time. Registrar, Tucows, Inc. indicated that the Respondent was not the current registrant of the domain name and proceeded to provide the contact details for the individual Joseph Wunsch. WIPO notified the Complainant to file an Amended Complaint listing both the privacy services provider and the individual as the Respondent. Before filing the complaint with WIPO, the Complainant sent a warning letter to the Respondent (Contactprivacy.com) requesting that the domain name be cancelled/transferred. Contactprivacy.com did not answer the letter. A second warning letter was sent by the Complainant to Contractprivacy.com and was forwarded by Contactprivacy.com to Joseph Wunsch. The second warning letter was also ignored. Only after the UDRP was filed were the contact details provided to the Complainant. The Panel found that it was appropriate that both Contactprivacy.com and Joseph Wunsch were both named as the Respondent.</p>				

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Service Name:	Nameview	Web site:	Nameview.com	Registrar Affiliation:	Nameview, Inc.
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	No	Is Service Listed as Registrant in Whois?	Yes		
Privacy Policy:	<p>Your privacy may be revealed to:</p> <ul style="list-style-type: none"> (a) comply with legal process; (b) enforce this Registration Agreement; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Nameview, Inc., its users and the public. 				
Service's Reported Disclosure Policy:	<p>-We do not get involved in IP disputes outside of the UDRP process.</p> <p>- Requests for domain ownership information outside of what is provided by Whois will be processed with a court order from a British Columbia, Canada court, only, or to an ICANN-approved UDRP arbitrator if required as part of an ongoing UDRP dispute. If you believe your domain was transferred to Nameview, Inc. improperly, please have your old registrar contact us directly.</p>				
Case Law (if any):	Could not locate any recent NAF or WIPO UDRP decisions in which Nameview, Inc. is a named Respondent				
Anecdotal Experiences:	<p>A) 5/17/07 C&D letter sent to NameView for infringing domain registered under NameView privacy protection. We received no response and the domain was dropped.</p> <p>B) 8/22/07 C&D letter sent to NameView for infringing domain registered under NameView privacy protection. We received no response and the domain was dropped.</p> <p>C) 9/28/07 C&D sent to NameView for 7 infringing domains listed under NameView privacy protection. All but one domain was dropped subsequent to our letter. After follow up with NameView about the remaining infringing domain registration, we received a response from NameView support noting "according to the whois, it looks like you own most of these domain names as of early November." We continue to inquire about the remaining infringement (and others).</p> <p>If domain clearly reflects third party brand, Nameview will delete domain name without notice to Complainant. Complainant needs to send additional demand to restore domain name. Nameview will then restore the domain name for \$300.00. The onus is on the Complainant to go back and get the domain name restored.</p> <p>Won't reveal registrant without UDRP or court order.</p>				

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Service Name:	Oneandone Private Registration	Web site:	1&1.com	Registrar Affiliation:	Schlund + Partner AG or (see anecdotes section) 1+1 Internet AG (related companies)
Does Registrar's Registration Agreement Incorporate RAA 3.7.7.3?	No. ^{1 2} There may be other RAA violations; see below.	Is Service Listed as Registrant in Whois?	Yes		
Privacy Policy:	Privacy policy appears to relate only to 1and1.com web site, and contains no language relevant to domain registration or Whois information.				
Service's Reported Disclosure Policy:	<ul style="list-style-type: none"> • 3.4. You acknowledge and agree that 1&1 has the absolute right and power, as it deems necessary in its sole discretion, without providing notice and without any liability to you whatsoever, to (1) reveal to third parties the contact information provided by you to 1&1 in connection with the account for the applicable domain name, (2) populate the public WHOIS database with your name, primary postal address, e-mail address and/or telephone number as provided by you to 1&1, or (3) terminate your subscription to the Services: <ul style="list-style-type: none"> ○ 3.4.1 if, in 1&1's sole discretion, you violate the terms of the 1&1 GT&C; ○ 3.4.2 if any third party claims that the domain name violates or infringes a third party's trademark, trade name or other legal rights, whether or not such claim is valid; ○ 3.4.3 to comply with ICANN policies or requirements, including but not limited to the Uniform Domain Name Dispute Resolution Policy (UDRP) ○ 3.4.3 to comply with any applicable laws, government rules or requirements, subpoenas, court orders, requests of law enforcement or government agencies; or ○ 3.4.4 if any third party threatens legal action against 1&1 that is related in any way, directly or indirectly, to the domain name, or claims that you are using the domain name registration in a manner that violates any law, rule or regulation, or is otherwise illegal or violative of a third party's legal rights. 				
Case Law (if any):	<p><u>Optima, Inc. v. Hwang</u>, FA0708001067632 (Nat Arb. Forum Oct. 9, 2007). <u>Kohler Co. v. Curley</u>, FA0701000890812 (Nat Arb. Forum Mar. 5, 2007). <u>Mayflower Transit, LLC v. Elbaz</u>, D2007-1720 (WIPO Feb. 22, 2008). <u>BEI Industrial Encoders v. Phillips</u>, D2007-0702 (WIPO Aug. 3, 2007) <u>Port Aventura, S.A. v. McCaw</u>, D2008-0177 (Apr. 1, 2008)</p> <p>In each of these cases, it appears that the complaint was filed naming Oneandone Private Registration as the respondent, but the provider required the Complainant to amend the complaint after Schlund+Partner responded to the registrar verification request by stating that the ultimately-listed respondent was the registrant, suggesting that the Whois information was changed only after filing of the UDRP complaint.</p>				
Anecdotal Experiences:	<p>The service provides a forwarding e-mail address and will receive postal mail, scan it, and forward it by e-mail, with the ability to request a hard copy of the scanned mail. Although the cases above suggest that in some instances 1&1 may not reveal the identity of the licensee until the filing of a UDRP complaint (or, presumably, receipt of a subpoena), we are aware of at least one instance, in a case involving alleged financial fraud, where 1&1 terminated private registration service, revealing the licensee's information in the Whois, upon receipt of a letter setting out reasonable evidence of actionable harm.</p> <p>It is also worth noting that, in addition to the registrar's Registration Agreement (aka "Additional terms and conditions for the registration of .com and .net domains (Registration Agreement)") not incorporating 3.7.7.3, 1&1's site obscures the identity of its registrar in ways that arguably violate other provisions of the RAA. 1&1 solicits domain registrations through its web hosting business 1and1.com, and the related sites 1and1.co.uk, 1and1.fr, 1et1.fr, 1and1.es, 1y1.es, 1und1.de, 1und1.at, the differences in which we have not</p>				

¹ https://order.1and1.com/xml/order/terms?_sendingdata=1&terms.Partname=terms.html_terms.com

² <https://order.1and1.com/xml/order/Gtc>

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examined in detail. None of these sites, for example, comply with RAA 3.3.1 by providing free web-based Whois service concerning all active Registered Names sponsored by 1&1. Only examining the registration agreement, during the process of registration, does one learn that "All .com and .net domains under these conditions are registered by 1&1 Internet AG as accredited registrar." It appears that 1&1 Internet AG (which is also the entity that appears in Internic's Accredited Registrar Directory) does not, under such name, have its own web site (and therefore does not comply with RAA 3.3.1). The Internic contact information page for 1&1 Internet AG (<http://www.internic.net/registrars/registrar-83.html>) lists an e-mail address at the domain 1und1.de (which, as mentioned above, lacks a web-based Whois service). So far as we are aware, one can locate the web site of 1&1's registrar business in two ways, neither of which would be obvious to consumers: 1) the 1&1 logo on the Internic contact information page for 1&1 Internet AG hyperlinks to the site (<http://registrar.schlund.info/>), and 2) a registry-level Whois query on Internic's site (but apparently not in port 43 query results delivered by 1&1's Whois server to third-party sites) lists: "Whois Server: whois.schlund.info" and "Referral URL: http://REGISTRAR.SCHLUND.INFO." <http://registrar.schlund.info/>, appears to be the site of Schlund+Partner AG, apparently a separate legal entity from 1+1 Internet AG. It is only at the Schlund+Partner AG site that one will find a web-based Whois service.

We could locate no page on 1&1's site that provides instructions for contacting the private registration service to provide reasonable evidence of actionable harm, although we are aware of 1&1 responding to correspondence sent to the contact information on the "Subpoena and Copyright Policy" page (<http://order.1and1.com/xml/order/SubpoenaPolicy>) in the Terms & Conditions section of the site.