Final Report on

Proposals for Improvements to the

Registrar Accreditation Agreement

STATUS OF THIS DOCUMENT

This Final Report is submitted to the GNSO Council on 18 October 2010 from the Joint GNSO-ALAC RAA Drafting Team describing proposals related to the Registrar Accreditation Agreement.

SUMMARY

This report is submitted to the GNSO Council for its consideration in evaluating certain proposals related to Registrar Accreditation Agreement (RAA).   This Final Report describes the recommendations from the Joint GNSO-ALAC RAA Drafting Team for producing a Registrant Rights and Responsibilities Charter and for identifying topics for possible additional future amendments to the RAA.

1.   Executive Summary

1.1 Background

In 2009, the GNSO Council recommended to the ICANN Board that it approve a new form of Registrar Accreditation Agreement (RAA) negotiated between Staff and Registrars in consultation with others in the Community.[1]   However, in its resolution adopted 27-0 in March 2009, the GNSO Council conditioned its recommendation on the beginning of work on further RAA amendments.   As a result, the GNSO Council formed a joint drafting team with members of the At-Large Community (known as the RAA Drafting Team) to conduct further work related to proposals for improvements to the RAA.   This drafting team included ICANN staff and registrar representatives. The RAA Drafting Team was tasked with (a) drafting a charter comprised of registrant rights, and (b) developing a specific process and timeline to move forward with additional potential future amendments to the RAA. To accomplish these tasks, the RAA Drafting Team divided into two subteams, which worked independently to produce these recommendations.

This Final Report to the GNSO Council describes the recommendations endorsed by a consensus of the respective subteams on (i) the proposed form of a Registrant Rights and Responsibilities Charter, and (ii) describing the potential topics for additional amendments to the RAA, as well as a proposal for next steps for the GNSO Council to consider in determining whether to recommend a new form RAA to be adopted by the ICANN Board.

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[1] For more information on the process utilized by Staff to develop the 2009 RAA, please refer to: http://www.icann.org/en/topics/raa/

1.2 Preliminary Conclusions on the Registrant Rights and Responsibilities Charter

There is unanimous consensus among the members of SubTeam-A that ICANN should adopt a Registrant Rights and Responsibilities Charter substantially similar to the form described on **Annex D**.   This proposed Registrant Rights and Responsibilities Charter is intended to serve as a starting point for use by ICANN under Section 3.15 of the RAA, which states that:

> 3.15 In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

Since Section 3.15 specifies that the content is to be developed in consultation with registrars, SubTeam-A recommends that ICANN commence its consultation process with Registrars to finalize and publish a webpage that includes the content of the Registrant Rights and Responsibilities Charter, as such content may be modified following the consultation with registrars.

In addition, SubTeam-A acknowledges that additional work may be conducted by members from the At-Large Community relating to an "aspirational charter," which would reflect rights or principles reflecting rights that should be afforded to registrants in connection with the registration of domain names. To the extent that this work identifies principles that are not currently reflected in the RAA, SubTeam-A encourages the submission of those principles to be submitted as additional topics for consideration in future RAA amendment discussions.

1.3 Preliminary Conclusions on the Additional Amendments to the RAA

SubTeam-B recommends that the topics identified in Subsection 4.3 below be considered for potential amendments to the RAA, and that the next steps in this process be as summarized in subsection 5 below.

2. Background, Process, and Next Steps

2.1 Background

The Registrar Accreditation Agreement (RAA) is the contract that governs the relationship between ICANN and its accredited registrars (a directory of accredited registrars can be found at http://www.internic.net/regist.html). Its provisions also have significant impacts on registrants and other third parties involved in the domain name system.

Because the domain name market has undergone changes in recent years and the number of ICANN accredited registrars and domain name registrations have grown significantly, the community recognizes that amendments may need to be made to this important agreement from time to time.

In March 2007, Dr. Paul Twomey, President and CEO of ICANN, called for a comprehensive review of the RAA and the accreditation process.[2] The results of that review ultimately produced a new form of RAA (2009 RAA) which was approved by the GNSO Council and the At-Large Advisory Committee, and adopted by the ICANN Board on 21 May 2009.

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[2] See http://www.icann.org/en/announcements/announcement-21mar07.htm. As ICANN CEO Paul Twomey stated in this announcement, "What has happened to registrants with RegisterFly.com has made it clear there must be comprehensive review of the registrar accreditation process and the content of the RAA." For background on RegisterFly, see http://www.icann.org/en/announcements/factsheet-registerfly-registrars-26mar07.pdf.

The proposed form 2009 RAA was controversial, with some community members supporting it and others insisting that it had not gone far enough to address serious concerns.

Ultimately, the GNSO Council came together on a resolution that, while acknowledging that the proposed form 2009 RAA represented an improvement of the then-existing form of RAA, also recognized that additional amendments would be needed in the future. Because the proposed changes in the 2009 RAA included several important compliance and enforcement tools for ICANN, the GNSO Council recommended that the ICANN Board approve and implement them as quickly as possible. As part of the same resolution, however, the GNSO formed a joint drafting team with members of the At-Large Community, whose task would be to conduct further work related to improvements to the RAA. The RAA Drafting Team was asked to: (a) draft a charter identifying registrant rights and responsibilities; and (b) develop a specific process and timeline to identify additional potential amendments to the RAA on which further action may be desirable. The text of the GNSO Council Resolution appears in **Annex A**. This additional work to be conducted by the RAA Drafting Team received the support of the Registrar Constituency, which agreed to participate on a good faith basis on anticipated next steps for amending the RAA.

On 28 May 2010, the RAA Drafting Team published its Initial Report on Improvements to the RAA and opened a public comment period.[3] A summary of the public comments received on the Initial Report appears in **Annex I**. SubTeam A's response to the comments received pertaining to the Registrant Rights and Responsibilities Charter are included in **Annex J.** SubTeam B's response to the comments received pertaining to possible additional amendments to the RAA are included in **Annex K.**

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[3] For information on the Public Comment Forum on the Initial Report, please see:
http://www.icann.org/en/public-comment/public-comment-201007-en.htm#raa-improvements2010

This Final Report to the GNSO Council describes the work product of the RAA Drafting Team regarding (a) the recommended form of a Registrant Rights and Responsibilities Charter, and (b) identification of the potential RAA amendment topics and the recommended next steps for determining how to amend the RAA.

Several endorsements related to the Initial Report have been provided to the RAA Drafting Team. During their meeting of 25 May 2010, the At-Large Advisory Committee (ALAC) by consensus endorsed a draft version of the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement. In addition, the Government Advisory Committee (GAC) issued their endorsement of the law enforcement proposals for amendments to the RAA in their Brussels Communiqué. Specifically, the Brussels Communiqué states that:

"An absolute majority of GAC members made the following statement:

1. The GAC encourages the Board, the RAA Working Group and registrars to work with law enforcement agencies to address their concerns and implement necessary changes without delay.

2. Following from the GAC's Nairobi Communiqué, the GAC requests an update of progress on consideration of these proposals, including the Board's consideration of the due diligence recommendations.

3. Based on the deliberations in Brussels and the previous meetings, the GAC endorses the proposals from law enforcement agencies to address criminal misuse of the DNS, noting that implementation of these proposals must respect applicable law and respect all requirements concerning the processing of personal data, such as privacy, accuracy and relevance.

Some countries felt that further efforts need to be deployed to clarify these proposals."

2.2   Approach Taken by the RAA Drafting Team

The RAA Drafting Team operated under a charter approved by the GNSO Council on 3 September 2009 (see **Annex B**). Steve Metalitz and Beau Brendler served as Co-Coordinators of the RAA Drafting Team. The Drafting Team organized into two distinct

teams to accomplish the tasks required under the Charter. SubTeam-A was tasked with developing the recommended form of the Registrant Rights and Responsibilities Charter, and SubTeam-B was tasked with identifying the potential topics for additional amendments to the RAA and recommended next steps for the GNSO Council as it determines whether to recommend amendments to the RAA.

2.3   Members of the RAA Drafting Team

The RAA Drafting Team consisted of individuals representing a broad range of interests within the GNSO and At-Large Communities.

The RAA Drafting Team was comprised of the following individuals:

From the GNSO Community:

Name	Affiliation	SubTeam
Nacho Amadoz	RySG	A
Dev Anand	NCSG	B
David Cake	NCSG	B
Karen Banks	NCSG	A
Elisa Cooper	RrSG	B
Phil Corwin	CBUC, CSG	A, B
Paul Diaz	RrSG	A
Avri Doria	NCSG	A, B
William Drake	NCSG	A
Chuck Gomes	RySG	A, B
Statton Hammock	RrSG	B
Tatyana Khramtsova	RrSG	B
Adrian Kinderis	RrSG	A
Konstantinos Komaitis	NCSG	A
Phil Lodico	CBUC, CSG	A
Rebecca Mackinnon	NCSG	A
Steve Metalitz	IPC, CSG	B

Michele Neylon	RrSG	A, B
Mike Rodenbaugh	CBUC, CSG	B
Kristina Rosette	IPC, CSG	B
Wendy Seltzer	NCSG	A
Marc Trachtenberg	IPC, CSG	B
Tim Ruiz	RrSG	B
Stephane van Gelder	RrSG	A

From the At-Large Community:

Name	Affiliation	SubTeam
Sébastien Bachollet	At Large	A
Victorio Bertolo	At Large	A
Beau Brendler	At Large	A
Dharma Dailey	At Large	A
Hawa Diakite	At Large	A
Lutz Donnerhacke	At Large	A
Antonio Medina Gomez	At Large	A
Alan Greenberg	ALAC	A
Cheryl Langdon-Orr	ALAC, Chair	A, B
Evan Leibovitch	At Large	A
Daniel Monastersky	At Large	A
Shiva Muthusamy	At Large	B
Andrés Piazza	At Large	A
Holly Raiche	At Large	B
Sergio Saline	At Large	A
Carlton Samuels	At Large	A
Baudouin Schombe	At Large	A
Rudi van Snick	At Large	A
Danny Younger	At Large	B

Acronym Key:

CBUC-   Commercial Business Users Constituency
CSG-   Commercial Stakeholder Group

ALAC-   At-Large Advisory Committee
IPC-   Intellectual Property Constituency
NCSG-   Non-Commercial Stakeholder Group
RrSG-   Registrar Stakeholder Group
RySG-   Registry Stakeholder Group

The attendance sheet can be found in **Annex C.**

The email archives can be found at http://forum.icann.org/lists/gnso-raa-dt/, for the

RAA Drafting Team as a whole, http://forum.icann.org/lists/gnso-rrc-a/ for the SubTeam-A,

and http://forum.icann.org/lists/gnso-raa-b/ for the SubTeam-B.

2.4 Proposed Next Steps

The RAA Drafting Team recommends that the GNSO Council and the ALAC review and

evaluate and take action on the recommendations contained in this Final Report

With regard to the recommendations regarding the Registrant Rights and

Responsibilities Charter, the RAA Drafting Team recommends that ICANN proceed to the

next phase for implementing the Registrant Rights and Responsibilities Charter, which

includes commencement of the consultation process with Registrars to finalize the content

related to the Registrant Rights and Responsibilities Charter. Initiation of this process is

necessary to produce the webpage that Registrars would link to, based upon the initial work

of the RAA Drafting Team as described in this Report.

With regard to the work regarding the additional amendments to the RAA, SubTeam-B

recommends that the topics identified in Subsection 4.3 be accorded priority consideration

for possible amendments to the RAA, and that the process spelled out in Subsection 5 be

undertaken to carry this out.

3.   Development of the Registrant Rights and Responsibilities Charter

3.1 Deliberations of SubTeam-A

Initially, members SubTeam-A, which were assigned the task of developing a Registrant Rights and Responsibilities Charter, held differing opinions regarding the scope of the task assigned to the RAA Drafting Team.   Some members envisioned the Charter to be a document declaring basic rights that should be afforded to registrants by registrars in connection with domain name registrations.   Others viewed the Charter as an inventory of current obligations and responsibilities under the RAA related to registrants.

After review of the relevant sections of the RAA, the RAA Drafting Team determined that only existing rights and obligations as currently specified in the 2009 RAA related to registrants should be included in the Registrant Rights and Responsibilities Charter.

Nevertheless, SubTeam-A acknowledges the additional work being conducted by the At-Large Community relating to an "aspirational charter," which would reflect rights or principles reflecting rights that should be afforded to registrants in connection with the registration of domain names.   The Aspirational Charter is intended to be a "living document" that can be updated from time to time to reflect changes in the domain name industry that affecting registrants.

The current version of the Aspirational Charter appears below:

Aspirational Registrant Rights

Registrants should

1. have accurate, current and complete contact and locative information regarding their registrar
2. be the sole entity capable of asserting and changing ownership information for their domain
3. have ample opportunity to renew their existing domain(s) at the same rates as new domains
4. protect their trade name against unauthorized use
5. refuse the transfer of their personal information to unauthorized bodies
6. expect ICANN to enforce its agreements with registrars

It is important to note that SubTeam-A did not attempt to achieve a consensus that these proposed principles *should be* included into an aspirational charter, since this work is outside the drafting team's remit.   However, to the extent that the work conducted by the At-Large community to produce an Aspirational Charter identifies principles regarding rights that are not currently afforded to registrants, the RAA Drafting Team recommends that the GNSO Council authorize additional work to determine if these principles should be subject to analysis and future recommendations. For example, public comment could be solicited to determine if this list of principles is comprehensive or should otherwise be modified. A working group could be chartered to determine whether to include some of these principles as additional topics in future RAA amendment discussions, or whether a PDP should be initiated to create a consensus policy to establish rights reflected in the Aspirational Charter that may not be available to registrants today. SubTeam-A also recommends that the GNSO Council support and encourage participation in cross-community activities underway with the At-Large Community and with other groups that have formed since the Nairobi ICANN meeting to address consumer and end-user issues within ICANN.

3.2   Recommended Form of the Registrant Rights and Responsibilities Charter

There is consensus among the members of the RAA Drafting Team that ICANN should adopt a Registrant Rights and Responsibilities Charter in the form described on **Annex D.**

The text of the Registrant Rights and Responsibilities Charter is based in part on the Plain Language Guide to the RAA developed by Staff at the request of the ALAC.[4] The proposed Registrant Rights and Responsibilities Charter provides some "plain language" summarization of terms related to Registrant Rights and Responsibilities as set out in the

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[4] The Plain Language RAA is available for review at:
 . http://www.icann.org/en/registrars/non-lawyers-guide-to-ra-agreement-15feb10-en.htm

RAA, for posting on Registrar websites. While some of the terms included in the RAA do not specifically refer to registrants, those terms are included because of the potential import to understanding registrar/registrant relations. The proposed Registrant Rights and Responsibilities Charter also summarizes registrant rights and responsibilities that arise within ICANN Consensus Policies and specifications, as those policies and specifications are incorporated into the RAA.

The proposed Registrant Rights and Responsibilities Charter inventories the provisions in the 2009 RAA relating to registrants and is intended to serve as the origin of the document referred to in the Section 3.15 of the RAA, which states that:

> 3.15   In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

Since Section 3.15 specifies that the content is to be developed in consultation with registrars, the RAA Drafting Team recommends that ICANN commence its consultation process with registrars to finalize the content related to the Registrant Rights and Responsibilities Charter and publish the website for use by registrars.

4. Potential Topics for Additional Amendments to the RAA

4.1 Deliberations of SubTeam-B

This chapter provides an overview of the deliberations of SubTeam-B conducted both by conference call as well by as e-mail threads.

SubTeam-B's work focused on several areas of review and analysis. Initially, SubTeam-B solicited topics for possible RAA amendments from the ICANN community. This was accomplished through review of submissions solicited by members of the SubTeam-B and through a workshop conducted during the ICANN meeting in Seoul, Korea.[5]   During the solicitation process, several groups submitted amendment proposals for consideration, including suggestions from the law enforcement community, the Intellectual Property Constituency, Danny Younger, and ICANN staff, which presented its detailed proposal identifying additional suggestions for amendment topics to improve the RAA. David Giza, ICANN Senior Director of Contractual Compliance, participated in the SubTeam-B and provided explanations of how the Staff proposals could benefit ICANN's future compliance efforts and could streamline ICANN's processes related to the RAA.

The resulting compilation matrix, hereinafter referred to as the "RAA Matrix," yielded a list of 100+ separate amendment topics submitted for consideration. A copy of the complete compilation produced by SubTeam-B is included in **Annex E.** In addition, the substantive submissions delivered by the Intellectual Property Constituency, the law enforcement community, Danny Younger, and ICANN Staff are included in **Annex F**.

Recognizing the difficulty of working with a list of over 100+ amendments, SubTeam-B conducted further analysis to condense the list as reflected in the RAA Matrix. SubTeam-B Drafting Team filtered the list by categorizing the amendment topics into three levels of priority (high, medium, and low).   SubTeam-B also further condensed the RAA Matrix by identifying those topics that are currently under active consideration by another GNSO working group. In addition, members of the Sub Team-B

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[5] For more information on the RAA Drafting Team's meeting at the ICANN Seoul, Korea, please refer to: http://sel.icann.org/node/7372

were invited to mark topics which they believed should be more appropriately addressed through a PDP effort to develop a new Consensus Policy, rather than through an RAA amendment.   SubTeam-B further filtered the RAA Matrix by consolidating redundant and overlapping topics. Finally, Sub-team B winnowed its initial list of High Priority topics to produce the list of proposed topics for amendments contained in this Final Report.

4.2 Evaluation of the Law Enforcement Related RAA Proposals

RAA proposals from members of the law enforcement community received considerable interest from the Government Advisory Committee (GAC) as well as from the press.[6]   In its communiqué[7] to the ICANN Board during the Nairobi meeting (the "Nairobi Communiqué"), the GAC noted that the law enforcement proposals were favourably viewed by the high tech crime experts in the G8 and Interpol. The Nairobi Communiqué further stated that it hoped that the RAA Working Group would examine the proposals from law enforcement and take them into consideration during their work on the amendments.

In addition, Janis Karklins (GAC Chair) forwarded to the GNSO Council a GAC letter to the ICANN Board regarding the law enforcement recommendations. This GAC letter forwarded numerous letters of support for the law enforcement recommendations from the G8, Interpol, and Council of Europe Project on Cybercrime "Message from the Octopus Conference." Copies of these communications are included in **Annex G.**

SubTeam-B carefully considered the law enforcement proposals which were highlighted in the Seoul workshop session. These proposals were the subject of one of Sub-

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[6] See for example,
http://www.pcworld.com/article/191735/law_enforcement_push_for_stricter_domain_name_rules.html. The proposals, contained in Annex F, were endorsed by national law enforcement representatives from six countries.

[7] The GAC's Nairobi communiqué is posted at: http://gac.icann.org/communiques/gac-2010-communique-37.

Team-B's regular calls which was attended by a representative of the law enforcement team that developed them. While, for reasons explained below, the law enforcement recommendations were not incorporated unchanged into SubTeam-B's ultimate recommendations, the proposals were quite influential in the process to develop topics, and SubTeam-B appreciates the time and effort they represent on behalf of the law enforcement agencies involved.

4.3 Proposed List of Potential Topics for Additional Amendments to the RAA

The Chart below depicts the results of the SubTeam-B's analysis on topics for potential additional amendments to the RAA that merit further consideration, and which were assigned a "High Priority" Status.   Please note that the SubTeam-B was not asked, nor did it attempt, to achieve a consensus that these proposed amendment topics *should be* included in a new form RAA.   Instead, the list is intended to serve as a *starting point* for additional topics to be considered, debated, and either accepted or rejected through the next phase of the GNSO Council's deliberations as it determines whether to recommend a new form of RAA for consideration by the ICANN Board.

A few observations may be helpful in understanding what is, and what is not, included in the "High Priority" list:

First, the twelve topics on the list are not themselves presented in order of priority (i.e., the first one listed is not presented as the top priority, the second one listed as the second priority, etc.). SubTeam-B concluded that all twelve topics should be considered, as a matter of High Priority, for the next round of RAA amendments.

Second, a number of suggestions, including many in the law enforcement proposals, addressed the criteria for becoming an accredited registrar, and called for greater due diligence in vetting applicants wishing to become an accredited registrar. SubTeam-Beam fully agrees that improvements in the due diligence process are essential. However,

SubTeam-B saw its remit as limited to the RAA, that is, to the statement of responsibilities of registrars once they had become accredited. Accordingly, it omitted these suggestions from its High Priority list. Instead, it recommends that ICANN staff give these suggestions serious consideration as it works on improvements to the accreditation process so that only responsible applicants achieve accreditation. Staff informed SubTeam-B that the law enforcement proposals focused on due diligence issues were being taken into account in updating the registrar accreditation application. An updated application was released September 10, 2010. (See http://www.icann.org/en/announcements/announcement-10sep10-en.htm).

Third, as SubTeam-B debated a number of suggestions, it considered whether the suggested changes could be achieved through more vigorous compliance efforts by ICANN under the 2009 RAA. In this regard, SubTeam-B paid particular attention to the views of ICANN compliance staff, as well as the experiences of currently accredited registrars regarding compliance efforts. ICANN compliance staff noted that several suggested amendment topics may be better addressed through utilization of the enhanced tools included in the 2009 RAA rather than through further RAA amendments. Where it appeared from this discussion that a particular amendment might better be handled as a compliance matter, SubTeam-B sought to note that in the matrix, and excluded that suggestion from its High Priority list. However, SubTeam-B also recommended that these excluded suggestions be reviewed in a second phase of consideration of RAA improvements, in order to verify whether or not the compliance tools of the 2009 RAA text have proven adequate to achieve the goals which these proposed amendments sought to accomplish.

Finally, as directed by its charter, SubTeam-B sought to "flag any topics that may require further analysis as to impact on consensus policy." SubTeam-B identified a few examples of suggested topics that should be flagged in this way, and it excluded all of them

from its High Priority list. SubTeam-B recognized, however, that the decision to exclude a particular topic from negotiation as part of an RAA amendment process, on the ground that it should instead be diverted to the policy development process for creating consensus policies, is ultimately a decision beyond its remit.

The final version of the following List of High Priority Topics reflects limited changes to items 1, 3, 7, and 11 made by SubTeam-B in response to public comments. Other responses by SubTeam-B to these comments appear in **Annex K**.

List of High Priority Topics

Item No.	Description	Cross-reference (RAA matrix)	Comments
1	Prohibition on registrar cybersquatting	1.1 through 1.5; comment summary section VI(N)	May include accelerated termination
2	Malicious conduct – registrar duty to investigate	3.1 – 3.3; 3.6	"Duty of registrars to investigate and report to ICANN on actions taken in response to report received from credible third party demonstrating illegal malicious conduct involving DN"
3	Designation and publication of technically competent point of contact on malicious conduct issues, available on 24/7 basis	3.4; 3.5; 5.4	Requirement for registrars; possible requirement for resellers and proxy-privacy services
4	Registrar disclosure of privacy/proxy services made available in connection with registration; and responsibility of registrar for compliance by such services	5.2	Could also apply to such service made available by resellers. Includes, but not limited to, alter ego services
5	Obligations of privacy/proxy services made available in connection with registration re data escrow; Relay function; Reveal function	5.1; 5.3; 5.5; 5.6; 5.7; 5.10	See following item for privacy/proxy services not made available in connection with registration
6	Registrar responsibility for cancellation under appropriate circumstances of registrations made by other privacy/proxy services for noncompliance with Relay and Reveal	5.8; 5.10	This applies to proxy services not offered by the registrar in connection with registration, i.e., independent services. This is where Relay or Reveal function requirements for these services could be spelled out

7	Define circumstances under which registrar is required to cancel registration for false Whois data and set reasonable time limits for registrar action	6.1; 6.6; comment summary section VI(G)	Currently, registrar may cancel, but is not required to do so
8.	Require PCI compliance in registration process	6.9	Or similar pre-existing standard that would assist in verification of registrants
9	Define "reseller" and clarify registrar responsibility for reseller compliance	7.0; 7.1	
10	Require greater disclosure of registrar affiliates/multiple accreditations	9.1; 9.2	Could also apply to "major" resellers (if defined)
11	Require greater disclosure of registrar contact information, information on form of business organization, officers, etc.	9.3; 9.4; comment summary section VI(I)	Information to be verified and stamped with date of last verification
12	Clarification of registrar responsibilities in connection with UDRP proceedings	15.3	Focus is on timelines for registrar response both at beginning and at end of process

In addition, SubTeam-B identified the following topics which were assigned a "Medium Priority" for the GNSO Council to consider. Essentially, this list covers those topics that the sub-team, in preparing its matrix, initially assigned as "High Priority," but which were later culled in the process of condensing and focusing the topics list.   The "Medium Priority" List consists of the following:

1.   Spell out "verification" process registrars are required to undertake after receiving report of false Whois data (Matrix item 6.1)

2.   Require links to Whois Data Problem Reporting System on Whois results pages and on registrar home page (Matrix items 6.2, 6.3)

3.   Service Level Agreement on Whois availability (Matrix item 6.7)

4.   Registrar to disclose resellers and vice versa (Matrix items 7.2, 7.3)

5.   Expand scope of authority to terminate accreditation (Matrix items 8.1-8.4)

6.   Require registrars to report data breaches (Matrix item 10.3)

7.   Streamline arbitration process in cases of dis-accreditation (Matrix item 12.1-12.4)

8.   Streamline process of adding new gTLDs to accreditation (Matrix items 13.1-13.2)

9.   Registrar responsibilities for acts of affiliates (Matrix item 14.1)

10.   Staff to draft registrar code of conduct if registrars fail to do so by time certain (Matrix item 17.1)

5.   Recommended Next Steps for Evaluation of the Proposed RAA Amendment Topics

5.1   SubTeam-B's Deliberations on the Next Steps

SubTeam-B evaluated the options available to the GNSO Council in its further review and evaluation of the proposed RAA Amendment topics described in this Final Report. To assist the SubTeam-B in this phase of its work, ICANN Staff assisted the SubTeam-B in understanding implementation options and processes under the RAA to amend and develop a new form of RAA. These options are described in the Memorandum attached as **Annex H.** Some members of SubTeam-B do not agree with certain Staff opinions found in the Memorandum.

After considerable discussion, SubTeam-B was not able to arrive at a unanimous consensus position on next steps. As evaluated by the Chair, the discussion showed that there was strong support, among a range of SubTeam members, for the first proposed process listed below. There was significant opposition to this first proposed process, consisting primarily of registrar representatives participating in the SubTeam. These SubTeam-B members supported, instead, the second proposed process listed below. The main difference between the two proposed processes is how representatives of non-parties to the RAA contract should participate in the negotiations on amendments to the RAA. The first proposed process provides that representatives of affected third parties could participate as observers during direct negotiations and be consulted on the final terms decided by the contracting parties to the agreement (Registrars and ICANN). The negotiating parties and observers also would provide periodic reports on the progress of the negotiations. The second proposed process keeps the direct negotiations between the parties to the contract but also provides for reporting back to the community during the process.   Both processes provide for public comment for all proposed contract terms.

Several SubTeam-B members declined to support either proposed process, stating that representatives of registrants, commercial and non-commercial users and other affected ICANN Stakeholders should be full participants in the negotiation.

In the following subsection, the two proposed processes are set out, along with brief supporting statements.

5.2 Recommended Next Steps.

A. Strong Support

SubTeam-B recommends that the GNSO Council follow the process outlined below. This recommended process described below received the strong support of the members of SubTeam B.

Proposed Process A

1. Prioritized list of topics goes to GNSO council (i.e., final form of this report). Staff and council review may filter out topics that fall under consensus policy.
2. Negotiations begin with negotiation group consisting of Staff, the Registrars (as a whole, not individually), and certain observers representing the interests of affected non-parties to the agreement.
3. During negotiations, if Staff and Registrars agree, parties may vote to hold discussion on specified topics in executive session (excluding observers), then reporting back to the full negotiation group re progress.
4. Negotiating group reports [to GNSO and ALAC, or to the public] periodically (such as monthly) on status and progress. Negotiating group is expected to make bracketed text, and/or agreed items, available for public comment and feedback.
5. Negotiating group reviews comments and continues negotiations and repeat step 4 as necessary.
6. Staff and Registrars, after consultation with observers, determine when full final draft of new RAA is ready to be posted for public comment.
7. GNSO Council reviews and considers public comments and votes on approval of the RAA. GNSO Supermajority Vote to be obtained in favor of the new form.
8. If Council approves, the new RAA goes to Board for approval.

9.   If Council does not approve, goes back to negotiation team with appropriate feedback for reconsideration. Repeat from step 6.

STATEMENT IN SUPPORT:

The last round of amendments to the RAA was negotiated between ICANN staff and registrar representatives in a closed-door process from which all other entities with a stake in the outcome were excluded. This process produced an unsatisfactory result and must be improved to provide a greater level of transparency and accountability. A mechanism must be found to enable genuine dialogue, in the amendment-drafting process itself, among the formal parties to the agreement (ICANN staff and registrars) and the communities within GNSO and ALAC that will be significantly affected by the terms of the agreement. The mechanism must provide a timely and effective means for ensuring that the concerns of these communities are listened to and responded to, so that they can be reflected in the final agreement. The proposal supported by most of the SubTeam members stakes out a middle ground between full participation as negotiators, and the exclusion from the table that marked the previous process. As observers, the representatives of the interests of affected non-parties would be "in the room" for negotiations, and in a position to engage actively in the needed dialogue. Observers would not have the final decision on the content of the agreement, although they would be consulted on that final decision.   We believe this mechanism would significantly improve the process of developing the next set of needed amendments to the RAA.

B. Significant Opposition

The following proposed process received support from a minority of SubTeam-b members:

PROPOSED PROCESS B

1.   Prioritized list of topics goes to GNSO Council (i.e., the final form of this report). Staff and Council review and filter out topics that fall under consensus policy.
2.   Negotiations begin with negotiation group consisting of Staff and the Registrars (as a whole, not individually).
3.   Negotiating group reports periodically on status and progress. Negotiating group makes bracketed text, and/or agreed items available for public comment and feedback.
4.   Negotiating group reviews comments and continues negotiations and repeats Steps 3 and 4 as necessary.
5.   Staff and Registrars determine when full final draft of new RAA is ready to be posted for public comment.
6.   GNSO Council reviews and considers public comments and votes on approval of the RAA. GNSO Supermajority Vote to be obtained in favor of the new form.
7.   If Council approves, the new RAA goes to Board for approval.
8.   If Council does not approve, goes back to negotiation team with appropriate feedback for reconsideration. Repeat from Step 6.

STATEMENT OF SUPPORT:

GNSO's formation of RAA SubTeam-B, whose members represent all ICANN community stakeholder groups (see Section 2.3, including a large number of "At Large" representatives), has provided an opportunity for all such groups to provide valuable input regarding the RAA and the amendment process. However, extending that participation to actual direct negotiations between ICANN Staff and Registrars would be both inappropriate and unprecedented. The supporters of Proposed Process A claim that, as "affected parties," they are entitled to actively participate in negotiations and must be consulted on final decisions[8]. This is a highly unusual demand or expectation. Individuals, users, organizations and businesses are "affected" daily by hundreds of agreements to which they are not a contracted party. They do not enjoy, nor do they expect, an invitation to negotiate terms, rights and obligations to which they are not bound. The RAA is a contract between two

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[8] The supporters of Proposed Process A do not explain what they mean by "active participation" or being "consulted on final decisions" though the position of those in support of Proposed Process B is that their participation, regardless of the level, is inappropriate under these circumstances.

parties. The negotiation of legal terms is not a policy debate. There is a separate policy development process that should be utilized for any policy issues that the community would like to discuss. Accordingly, third party participation is inappropriate in this case.

Supporters of Proposed Process B do not wish our position to be unfairly viewed as advocating "secrecy" or a "non-transparent" process. To the contrary, the months-long previous and ongoing participation of all stakeholder groups in the work of SubTeam-B, coupled with the requirement for ICANN and Registrars to make contract terms available for periodic public review and comment, provides adequate transparency and insures that input from outside third parties is solicited and considered in the contract negotiation process.

Finally, while some member of SubTeam-B might hold the opinion that the result of the last round of sweeping changes were unsatisfactory, it should be pointed out that the registrar community has been applauded by others for agreeing to the most recent RAA contract replete with new ICANN enforcement tools, including audits, fines, suspensions, as well as many additional registrar obligations and liability risks.

Annex A

GNSO Council Resolution on the 2009 RAA

20090304-2

Registrar Accreditation Agreement (RAA) motion

Motion made by Tim Ruiz

Seconded by Kristina Rosette

Whereas, the Registrar Accreditation Agreement (RAA) has not been amended since May 2001, and ICANN has undertaken a lengthy consultative process related to amending the RAA, including several public comment periods and consultations;

Whereas, the proposed changes to the RAA include important compliance and enforcement tools for ICANN; The Council wishes to approve the set of proposed amendments as quickly as possible so that the ICANN Board may review them, and if approved then implement them as quickly as possible; and

Whereas,

The Council would like to proceed on the drafting of a charter identifying registrant rights that registrars would be obliged to link to, as contemplated in the set of amendments;

The Council would like a specific process and timeline to move forward with additional potential amendments to the RAA; and

The Registrar Constituency is supportive of these efforts and is willing to participate on a good faith basis on anticipated next steps.

Resolved:

The GNSO Council supports the RAA amendments as documented in

http://gnso.icann.org/drafts/current-list-proposed-raa-amendments-16dec08.pdf

and recommends to the Board that they be adopted at its meeting of March 6, 2009;

Within 30 days of Board approval of the set of amendments, representatives from the GNSO community and the ALAC shall be identified to participate in drafting a registrant rights charter, as contemplated by the amendments and the current GNSO Council discussions, with support from ICANN staff. A draft charter shall be completed no later than July 31 2009; and

Within 30 days of Board approval of the set of amendments, the GNSO Council will form a Drafting Team to discuss further amendments to the RAA and to identify those on which further action may be desirable. The Drafting Team should endeavor to provide its advice to the Council and ICANN staff no later than July 31, 2009.

Motion passed unanimously by roll call vote.

27 Votes in favour

Chuck Gomes, Jordi Iparraguirre, Edmon Chung (Registry constituency) Tim Ruiz, Stéphane van Gelder, Adrian Kinderis (Registrars) 2 votes each; Greg Ruth, Tony Harris, Tony Holmes (ISP); Mike Rodenbaugh, Philip Sheppard, Zahid Jamil (CBUC); Olga Cavalli, Avri Doria, Terry Davis -remote participation (NCA); Mary Wong, Carlos Souza, Bill Drake (NCUC) Kristina Rosette, Cyril Chua - remote (IPC) one vote each.

Absentee ballot: Ute Decker (IPC) one vote in favour.

http://gnso.icann.org/mailing-lists/archives/council/msg06402.html

Annex B

Charter for the Joint GNSO/ALAC RAA Drafting Team

BACKGROUND

This charter is based on the GNSO Council decision to create a GNSO-ALAC group to draft a registrant rights charter, and a Drafting Team to discuss further amendments to the Registrar Accreditation Agreement.

…

CHARTER

The Drafting Team shall consider the following questions:

(A) Registrant rights charter

A subgroup of volunteers from GNSO and ALAC will draft a descriptive list of rights of registrants, drawn from the current version of the RAA (see link below), and using the staff-generated document at http://forum.icann.org/lists/gnso-raa-dt/msg00018.html as a starting point.

(B) RAA amendments

(1) Identify topics on which further action in the form of amendments to the RAA may be desirable.

(2) From list (1), flag any topics that may require further analysis as to impact on consensus policy.

(3) Propose next steps for considering such topics.

The output of Charter section A, when completed, may be subject to revision upon the completion of Charter Section B3 and/or the next steps envisioned by that section.

DRAFTING TEAM PROCESSES:

The following guidelines will apply to this DT:

• The DT shall function on the basis of rough consensus, meaning all points of view will be discussed until the chair can ascertain that the point of view is understood and has been covered. Consensus views should include the names and affiliations of those in agreement with that view. Anyone with a minority view will be invited to include a discussion in the DT report. Minority report should include the names and affiliations of those contributing to the minority report.

• In producing the DT report, the chair will be responsible for designating each position as having one of the following designations:

  o Unanimous consensus position
  o Rough consensus position - a position where a small minority disagrees but most agree
  o Strong support but significant opposition
  o Minority viewpoint(s)
  o If several participants in a DT disagree with the designation given to a position by the chair or any other rough consensus call, their position and the reasons for the disagreement should be reflected in the DT report.

• The chair, in consultation with the GNSO Council liaison(s) is empowered to restrict the participation of someone who seriously disrupts the DT. Any such restriction will be reviewed by the GNSO Council. Generally the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances this requirement may be bypassed.

• The DT will have an archived mailing list. The mailing list will be open for reading by the community. All DT meetings will be recorded and all recordings will be available to the public. A GNSO RAA DT mailing list has been created xxxxx public archives are at: yyyyy

• A wiki will be provided for DT usage

• The Council liaison(s) to the DT will be asked to report on the DT status monthly to the Council.

MILESTONES (to be updated as needed upon charter approval):

• Immediately: begin task A, forward to Council upon completion

• T: Council approval of charter

• T + 30: Draft report of DT on task B posted for 21-day public comment

• T+ 80: Final report of DT on task B forwarded to Council

DT Chair: [tbd]

GNSO Council Liaison to DT: [tbd]
Staff Coordinator:
Staff to be assigned as needed.

Subject Matter References:

RAA (http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm)

Annex C

ATTENDANCE SHEET

This Annex includes attendance sheets for the RAA Drafting Team, SubTeam-A and SubTeam-B.

To review the Statements of Interest for the members of the RAA Drafting Team, please refer to:

http://gnso.icann.org/issues/raa/soi-raa-27may10-en.htm

Registrar Accreditation Agreement Drafting Team

	Members		9.06	3.08	17.08	30.09	Total Calls Attended
1	Alan Greenberg	ALAC	1	1	1	1	4
1	Carlton Samuels	ALAC	1	1	1		3
1	Cheryl Langdon-Orr	ALAC	0	1	0	1	2
1	Siva Muthusamy	ALAC					0
1	Beau Brendler	ALAC				1	1
1	Sebastien Bachollet	ALAC				1	1
1	Andres Piazza	At-Large				1	1
1	Lutz Donnacke	At-Large				1	1
1	Antonio Medina Gomez	At-Large				1	1
1	Vittorio Bertola	At-Large				1	1
1	Dharma Dailey	At-Large				1	1
1	Adam Peake	ALAC				1	1
1	Danny Younger	At-Large				1	1
1	Evan Leibovitch	At-Large	1			1	2
1	Holly Raiche	At-Large					0
1	Avri Doria	NCSG	1	1	1	1	4
16	Sub-Total...		4	4	3	13	
1	Philip Corwin	CBUC	1	0	1	0	2
1	Mike Rodenbaugh	CBUC	0	0	1	0	1
2	Sub-Total...		1	0	2		
1	Kristina Rosette	IPC	1	1	1	0	3
1	Marc Trachtenberg	IPC	1	1	0	0	2
1	Steve Metalitz	IPC	1	1	1	1	4
3	Sub-Total...		3	3	2	1	
0		ISPC					
1	Konstantinos Komaitis	NCUC	1	0		0	1
	Sub-Total...		1	0	0	0	
1	Stephane van Gelder	Registrar	1	1	0		2
1	Michele Neylon	Registrar				1	1
1	Tatyana Khramtsova	Registrar				1	1
1	Statton Hammock	Registrar					0
1	Elisa Cooper	Registrar					0
1	Paul Diaz	Registrar					0
1	Tim Ruiz	Registrar		1	1	1	3
7	Sub-Total...		1	2	1	3	
							0
1	Nacho Amadoz	Registries	1			0	1
1	Sub-Total...		1	0	0	0	
30	Total Participants		11	9	8	17	
	TOTAL RAA Calls		1	1	1		3
1	Glen de Saint Gery	Staff	1	1	1		3
1	Heidi Ullrich	Staff	1	1	1		3
1	Liz Gasster	Staff	1	0	1		2
1	Margie Milam	Staff	1	1	1		3
1	David Giza	Staff					
1	Marika Konings	Staff	1	0	1		2
6	Sub-Total...		5	3	5		13

Legend:
BLANK = absent, no apologies, no attendance
1 = attendance
0 = absent apologies

Resignations and No Attendance (Data Excluded)

			9.06	3.08	17.08	30.09	
1	William Drake	NCUC		0			0
1	Baudoin Schombe	NCUC					0
1	Karen Banks	NCUC					0
1	Rebecca MacKinnon	NCUC				0	0
1	Chuck Gomes	Registries					0
1	Adrian Kinderis	Registrar	0	0	0		0
1	Wendy Seltzer	ALAC					0
1	Daniel Monasterky	At-Large					0
1	Phil Lodico	CBUC					0

Registrar Accreditation Agreement Sub Team A

	Members		30.11.09	14.12.09	20.01.10	27.01.10	11.02.10	13.05.10	Total Calls Attended
1	Cheryl Langdon-Orr	ALAC	1	1	1	1	1	1	6
1	Holly Raiche	ALAC	1						1
1	Beau Brendler	At-Large	1	1	0	1	1	1	5
1	Evan Leibovitch	ALAC	1	1	1	1	1		5
1	Siva Muthusamy	At-Large			1	1	1		3
1	Dev Anand	ALAC							0
1	David Cake	NCSG							0
1	Avri Doria	NCSG	0					1	1
8	**Sub-Total...**		**4**	**3**	**3**	**4**	**4**	**3**	
1	Philip Corwin	CBUC	1	1				1	3
1	**Sub-Total...**		**1**	**1**	**0**	**0**	**0**	**1**	
0		IPC							
			0	**0**	**0**	**0**	**0**	**0**	
0		ISPC							0
1	Konstantinos Komaitis	NCUC		0	1				1
1	Michele Neylon	Registrar	1	1	1	1	1	1	6
1	Paul Diaz	Registrar	1	1	1	1	1	1	6
1	Elisa Cooper	Registrar		1	1	1	1		4
1	Tim Ruiz	Registrar	0	1					1
4	**Sub-Total...**		**2**	**4**	**3**	**3**	**3**	**2**	
0		Registries							0
14	**Total Participants**		**7**	**8**	**7**	**7**	**7**	**6**	
	TOTAL RAA Calls		1	1	1	1	1	1	**6**
1	David Giza	Staff		1					
1	Glen de Saint Gery	Staff	1		0		1		2
1	Heidi Ullrich	Staff	1	1	1	1	1	1	6
1	Liz Gasster	Staff	1	1	0	1	1	0	4
1	Margie Milam	Staff	1	1	0	1	1	1	5
1	Doug Brent	Staff							
1	Samantha Eisner	Staff			1	1			
1	Marika Konings	Staff	1	1	0		1		3
7	**Sub-Total...**		**5**	**4**	**2**	**4**	**5**	**2**	**20**

Legend:

BLANK = absent, no apologies, no attendance
1 = attendance
0 = absent apologies

Registrar Accreditation Agreement Sub Team B

	Members		19.10	18.11	3.12	14.12	2010	5.01	13.01	26.01	8.02	22.02	1.03	18.03	31.03	15.04	26.04	3.05	10.05	17.05	Total Calls Attended
1	Cheryl Langdon-Orr	ALAC	0	0	1	1		1	1	1	1	1	1	1	1	1	1	1	0	1	14
1	Siva Muthusamy	ALAC						1	1	1	1		1	1	1	1	1	0	1	1	11
1	Danny Younger	At-Large	1	1	1	1															4
1	Holly Raiche	At-Large	0	0	1			1	1	1	1	1	1		1		1	1	1	1	12
1	David Cake	NCSG																			0
1	Dev Anand	NCSG																			0
	Beau Brendler	ALAC (not on mailing list)				1															1
1	Avri Doria	NCSG	1	0	0	0													0	1	2
7	Sub-Total...		2	1	3	3		3	3	3	3	2	3	2	3	2	3	2	2	4	
1	Philip Corwin	CBUC		1		1		1				1	1		1	1	1	1	1	1	11
1	Mike Rodenbaugh	CBUC		1	1																2
2	Sub-Total...		0	2	1	1		1	0	0	0	1	1	0	1	1	1	1	1	1	
1	Kristina Rosette	IPC	1		1	1		1	1	0	1	1	1	1	0	1	1	1	1	0	13
1	Marc Trachtenberg	IPC	1	1	1	1		1		0	1		1	1				1		1	10
1	Steve Metalitz	IPC	1	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	17
3	Sub-Total...		3	2	3	3		3	2	1	3	2	3	3	1	2	2	3	2	2	
0		ISPC																			0
1	Heidi Alridge		1																		1
0		NCUC																			0
	Sub-Total...																				
1	Stephane van Gelder	Registrar																			0
1	Michele Neylon	Registrar	1	1	1	1		1	1	1	1	1	1	1	1	1	0	0	1	0	13
1	Tatyana Khramtsova	Registrar	1	1	1	1		1	1	1	1	1	1	1	1	1	1	1	0	1	16
1	Statton Hammock	Registrar	1	1		1		1	1		0	1		1	1	1	1	0	0	1	11
1	Elisa Cooper	Registrar				1		1	0		1	0	1	0		0					4
1	Paul Diaz	Registrar								1	1		0								2
1	Tim Ruiz	Registrar	0	0	1	1		0							1	0	1		1	1	6
7	Sub-Total...		3	3	3	5		4	3	3	4	3	3	3	4	3	3	1	2	3	
0		Registries																			0
19	Total Participants		8	8	10	12		11	8	7	10	8	10	8	9	8	9	7	7	10	
	TOTAL RAA Calls		1	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	17
1	Glen de Saint Gery	Staff			1	1		1	1		1	1	1	0	1	1	1	1	1	1	10
1	Heidi Ullrich	Staff	1	1	1	0		1	1	1	1	1		0	1	1	1	1	1	1	11
1	Liz Gasster	Staff		1	1	1		1	1	1	1	1	1	1	1	1	1	0	0	1	14
1	Margie Milam	Staff	1	1	1	1		1	1	1	1	1	1	1		1	1	1	1	1	13
1	David Giza	Staff		1	1	1		1	1	1	1	1	1	1	0		1	1	1	0	
1	Marika Konings	Staff	1	1		1			1		1	1	1	1	1	1	1	0	1	1	13
1	Dave Piscitello (not on mai	Staff		1		1			1		1				1						5
1	Ken Shui	Staff													1						1
8	Sub-Total...		3	6	5	6		5	7	4	7	6	5	4	4	5	6	4	5	5	

Legend:
BLANK = absent, no apologies, no attendance
1 = attendance
0 = absent apologies

Annex D

FORM OF REGISTRANT RIGHTS AND RESPONSIBILITIES CHARTER

Summary of Terms from RAA and ICANN Policies relating to Registrant Rights and Responsibilities

Introduction

This document provides some "plain language" summarization of terms related to Registrant Rights and Responsibilities as set out in the Registrar Accreditation Agreement (RAA), for posting on Registrar websites. While some of the terms included here do not specifically refer to registrants, those terms are included because of the potential import to understanding registrar/registrant relations. This document also summarizes registrant rights and responsibilities that arise within ICANN Consensus Policies and specifications, as those policies and specifications are incorporated into the RAA.

The summarization of terms within this document do not override or replace the terms set forth in the RAA or within those specifications or policy.

Preamble

In order to register a domain name, a Registered Name Holder (also known as a Registrant) has to use the services of an ICANN-accredited Registrar. In order to become an ICANN-accredited Registrar, the Registrar must enter into a contract with ICANN, referred to as the Registrar Accreditation Agreement or the RAA. The RAA sets out various rights and responsibilities for Registrants, and Registrants have additional rights and responsibilities

that are set forth in separate ICANN policies and specifications that the Registrars agree to follow.

The RAA and the related policies are drafted in very specific, often legal terminology. In order to help Registrants better understand the rights and responsibilities that come along with the registration of a domain name, these rights and responsibilities are being summarized and presented within a single document. The summaries provided here do not override or replace the actual terms as written in the RAA or the related policies and specifications.

RAA Terms of Interest

As the RAA is between ICANN and a Registrar, no one else – including a Registered Name Holder – may sue ICANN or the Registrar to claim a breach of the RAA.

Registrars may not make claims that they can provide registrants with superior access to any relevant TLD in comparison to other Registrars.

Some of the Registrar obligations are dependent upon Registered Name Holders fulfilling certain responsibilities, particularly as it relates to payment of registration fees, submission of required data points to the Registrars, and submission of accurate data and timely updates to that required data. Registrars also have specific items on which they must provide notice to Registered Name Holders, including notifications of the end of a registration term, use of Registered Name Holder's Personal Data, and notices regarding escrowing of data for domain names registered through privacy or proxy registration services, as well as the posting of fees for the recovery of registered names.

Registrar Submission of Data to Registry Operators

For each relevant TLD, Registrars must submit certain data points relating to each

Registered Name within a TLD:

- The name of the Registered Name being registered (3.2.1.1);
- The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name (3.2.1.2);
- The corresponding names of those nameservers (3.2.1.3);
- Unless automatically generated by the registry system, the identity of the Registrar (3.2.1.4);
- Unless automatically generated by the registry system, the expiration date of the registration (3.2.1.5); and
- Any other data the Registry Operator requires be submitted to it (3.2.1.6).

Registered Name Holders are normally required to provide the Registrar with information relating to nameservers (3.2.1.2 – 3), and there may be additional data required under Section 3.2.1.6 that the Registered Name Holder must provide. If the Registered Name Holder provides an update on these data points, the Registrar has five (5) days to provide the update to the Registry Operator.

Whois Data

Registrars are required to have an interactive web page and port 43 Whois service that is available to the public to query free of charge. The RAA specifies certain data points that must be provided in response to a query:

- The Registered Name (3.3.1.1);
- The names of the primary nameserver and secondary nameserver(s) for the Registered Name (3.3.1.2);
- The identity of Registrar (which may be provided through Registrar's website) (3.3.1.3);
- The original creation date of the registration (3.3.1.4);
- The expiration date of the registration (3.3.1.5);
- The name and postal address of the Registered Name Holder (3.3.1.6)
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name (3.3.1.7); and
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name

(3.3.1.8).

•

These data points are commonly referred to as Whois data. As discussed below, Registered Name Holders are required to provide a Registrar with timely updates to Whois data for a Registered Name. Upon receiving the update, a Registrar is to "promptly" update the Whois data. Registrars may contract out the maintenance of the public query function.

The RAA allows Registrars to provide bulk access to Whois data to third parties. When providing bulk access or access to the Whois data through the public query function, the Registrar is required to restrict access for high volume queries or other restrictions on uses of Whois data as specified in the RAA, including marketing activities and mass solicitations. If a Registrar contracts the public function query to an outside party, the Registrar must require any contractor providing the port 43 service to impose the same restrictions on access to and use of the Whois data.

Communications with Registered Name Holders

Registrars are required to maintain records of all communications with Registered Name Holders, as well as records of information provided to Registry Operators.

Escrow of Registered Name Holder Data

A Registrar is required to maintain a database of all Whois data for all Registered Names registered through the Registrar's accreditation, as well as all data the Registrar submits to the Registry Operator. In addition, the Registrar must include in the database the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact for each Registered Name.

In some instances, a registrant may choose to limit the amount of personal information that a Registrar makes available in a Whois query. To do so, the name may be registered through a privacy service (allowing a registrant to conceal personal identifying information

and often replacing it with the information of the privacy service). Customers may also choose to register names through a proxy service, where the proxy service is the Registered Name Holder, and the proxy service licenses the use of the domain name to the customer. In that situation, the proxy service, as the Registered Name Holder, has its information listed for most or all required data points.

When a Registered Name is registered through a privacy or proxy registration service, that affects the information that is placed in the database, and a Registrar must do one of two things: The Registrar must either (1) include in the database the name and postal address, e-mail address, and voice telephone number provided by the customer in connection with each registration, even when a privacy or proxy registration is used; or (2) at the time that a customer elects to use a privacy or proxy registration service, display a notice that the customer's data is not being escrowed. When a customer's data is not being escrowed, only the contact information associated with the privacy or proxy registration service will be escrowed. If a customer's data is not escrowed, and only the information of the proxy or privacy service is maintained in the database, in the event of Registrar or Registry failure future notices may only be sent to the contact information within the database.

Registrar Business Dealings with Registrants

The RAA imposes many requirements on a Registrar's business dealings, including its dealings with Registered Name Holders.

A registrar may not activate a Registered Name until it receives reasonable assurance from the Registered Name Holder that the registration fee will be paid.

The RAA sets forth actions the Registrar may take at the conclusion of the registration period if a Registered Name Holder has not provided consent to renew the registration, including the Registrar cancelling the registration at the end of the current registration term. If the Registered Name Holder did not consent to renewal, the Registrar must make

sure that a Registered Name is deleted from the Registry database within 45 days of the end of the registration term.

This right for the Registrar to cancel the registration and the obligation to the delete the domain name is not absolute. Section 3.7.5.1 of the RAA sets forth a list of potential "extenuating circumstances," that, if exist, allows the Registrar to renew the domain name even without the consent of the Registered Name Holder. These circumstances include the Registered Name being subject to a UDRP action, court order, bankruptcy proceeding, or billing dispute, among other items.   The Registrar must keep a record of reasons why the Registrar renewed a registration without the consent of a Registered Name Holder.

Registrars have to provide each new registrant with notice of the Registrar's deletion and auto-renewal policies. If the Registrar's deletion policy changes during the time of the registration agreement, the Registrar has to make efforts to inform the registrants of those policy changes. Details of the deletion and auto-renewal policies have to be displayed on any website the Registrar operates for domain name registration and renewal, and the Registrar should also state on those sites any fee that will be charged for the recovery of a domain name during the Redemption Grace Period (the 30 day period of time during which the name is in "Pending Delete" status with the Registry).[9]

If a Registered Name is the subject of a UDRP dispute at the time of deletion or expiration of the registration, the UDRP complainant has the right to renew (or restore, in the case of a deletion) the domain name. If the complainant renews or restores the name, the Registrar must place the name in a HOLD or LOCK status,[10] and must modify the Whois information to

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[9] A graphic representation of the life cycle of a typical gTLD Registered Name is located at http://www.icann.org/en/registrars/gtld-lifecycle.htm. This diagram may be useful to refer to for more information on the post-expiration status of domain names.

[10] There are formal technical names for domain name statuses, arising out of the community-based Internet draft Request for Comments. The statuses required here are set by the Registrar. When a registration is in one of these statuses, the domain cannot be deleted and the registration cannot be modified. The Registrar must alter the status in order for any modification to occur.

show that the name is subject to dispute. Section 3.7.5.7 of RAA also provides for a right for the original domain name registrant to recover or renew the name in the event the UDRP complaint is terminated without decision, or the UDRP complaint is decided in favor of the original domain name registrant.

The Registrar/Registered Name Holder Agreement

Registrars are required to enter into electronic or paper registration agreements with all Registered Name Holders. According to the RAA, the Registrar/Registered Name Holder Agreement must include – at minimum – the following items (as stated at Sections 3.7.7.1 – 12 of the RAA):

- The Registered Name Holder must provide "accurate and reliable contact details" *and* must "promptly correct and update them" during the registration term. The details required are stated in Section 3.7.7.1.: "the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8."

- If a Registered Name Holder intentionally provides inaccurate or unreliable information, intentionally fails to promptly update the information, or fails to respond over fifteen (15) days to Registrar inquiries about the accuracy of the contact details, the Registered Name Holder will be in material breach of the agreement and the registration may be cancelled.

- Whoever is listed as the Registered Name Holder must provide full contact information, and is the Registered Name Holder of record. Sometimes a Registered Name Holder may register a domain name and then allow another person to use the domain name (such as a website designer registering a domain name for a client). If this happens, and the person actually using the name did not enter into the Registrar/Registered Name Holder Agreement (referred to as a "third party" in the RAA), the Registered Name Holder could be accountable for wrongful use of the domain name by the third party. This will happen if the Registered Name Holder is provided with "reasonable evidence of actionable harm" from the third party's use of

the domain name. In that situation the Registered Name Holder will "accept liability for harm caused by wrongful use of the Registered Name," unless the Registered Name Holder discloses the user's identity and current contact information.

- The Registrar must provide notice of how it intends to use data provided by the Registered Name Holder and who will received the Registered Name Holder's data. The Registrar must also provide notice of how Registered Name Holders may access and update data. Additionally, the Registrar must identify which data points the Registered Name Holder must provide to the Registrar, and what information can be provided on a voluntary basis. The Registered Name Holder must consent to all of these data processing terms.

- If a Registered Name Holder provides the Registrar with Personal Data on behalf of any person who did not enter into the Registrar/Registered Name Holder Agreement (the "third party" discussed above), the Registered Name Holder must confirm that it (1) provided those third-party individuals with the same data processing notices that the Registrar provides, and (2) received the same consents from the third party regarding the Registrar's data processing terms.

- A Registrar may only process the Registered Name Holder's data as stated in the data processing notices described above.

- A Registrar has to agree that it will take reasonable precautions to protect the Registered Name Holder's data from "loss, misuse, unauthorized access or disclosure, alteration, or destruction."

- Registered Name Holders must represent that: "to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party." This means that the Registered Name Holder must represent to the Registrar that the domain name is not being registered for use in a way that would violate the legal rights of others. An example of this "infringement" could be a registration of a domain name that violates a trademark or copyright held by someone that is not the Registered Name Holder.[11]

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[11] There are many other potential ways to "infringe the legal rights" of others, and potential Registered Name Holders are encouraged to seek independent advice if they are concerned that the registration or use of a domain name may violate someone else's rights.

- If there is a dispute in connection with the use of the registered name, the Registered Name Holder must agree to jurisdiction of the courts in at least one of two places: where the Registrar is located (often stated on the website or in the Registrar/Registered Name Holder Agreement) or the "Registered Name Holder's domicile." "Domicile" is a word with legally-specific meaning, but typically will be the location the Registered Name Holder provides to the Registrar in the required Personal Data. Agreeing to jurisdiction means that the Registered Name Holder agrees that the courts in those locations have the power to decide these types of cases.[12]

- The Registered Name Holder must agree that its registration is subject to "suspension, cancellation, or transfer" for the reasons stated in Section 3.7.7.11. Those reasons include: if an ICANN adopted specification or policy requires it or if a registrar or registry procedure requires it "to correct mistakes by Registrar or the Registry Operator in registering the name or for the resolution of disputes concerning the Registered Name." For example, the UDRP is an ICANN adopted policy that specifies that an administrative panel hearing a domain name dispute could order that a domain name registration be suspended, transferred or cancelled, and the Registered Name Holder has to agree that this is a possibility.

- The Registered Name Holder shall "indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration." At its simplest, this means that if the Registry Operator (or its employees, etc.) for the registered name is sued because of the Registered Name Holder's domain name registration, the Registered Name Holder will pay the Registry Operator for all fees and expenses in defending against the suit as well as pay for any judgments or liabilities awarded. This "indemnification" is not solely limited to court cases.

Verification of contact information

As described in more detail below, there are specifications and policies that may be created and that apply to the Registrars. Some of the specifications or policies may address a

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[12] There could be other jurisdictions that are able to decide a dispute about the use of a registered name, but those additional jurisdictions are not specified in the RAA.

Registrar's obligation to verify the contact information supplied by the Registered Name Holder when the domain is first registered, as well as setting out requirements for periodic re-verification of contact information.

Registrars are also required to take "reasonable steps" to verify contact information in the event *any* person notifies the Registrar that contact information for a Registered Name is inaccurate. The Registrar also has obligations to act to correct inaccuracies in contact information that the Registrar becomes aware of, even if the inaccuracy was not reported by anyone.

The Registrar must also maintain proper contact information for itself, including a valid email and mailing address. This contact information should be posted on the Registrar's website.

Reseller arrangements

The RAA imposes obligations on Registrars working with third-party Resellers – persons or entities that the Registrar contracts with to provide Registrar Services. The RAA now requires Registrars to include specific items in the Registrar/Reseller Agreements, including: prohibiting the Reseller from making representations that it is accredited by ICANN; requiring that all Reseller registration agreements include all provisions that the Registrar is required to include in its Registrar/Registered Name Holder Agreement; requiring the posting of all links to all ICANN websites that the Registrar is obligated to post; and identification of the sponsoring registrar. The Reseller is also required to make sure that that if a customer is using a Reseller's privacy or proxy registration service for a domain name registration, the Reseller does one of the following three things: (1) deposit the identity and contact information of the customer with the Registrar; (2) deposit the identity and contact information in escrow; or (3) posts a notice to the customer that their contact information is not being escrowed.

The RAA also requires the Registrar to take compliance and enforcement action against a Reseller violating any of the required provisions.

Other Policies/Specifications

The Restored Names Accuracy Policy (http://www.icann.org/registrars/rnap.htm) requires that when a registrar restores a name (from the redemption grace period) that had been deleted on the basis of submission of false contact data or non-response to registrar inquiries, the name must be placed on Registrar Hold status until the registrant has provided updated and accurate Whois information.

In addition to the RAA requirement that a Registered Name Holder represent that to the best of its knowledge, the registration or use of the domain name does not infringe on the legal rights of others, the Uniform Domain Name Dispute Resolution Policy ("UDRP") requires that same representation to be made, as well as a representation that the domain name is not being registered for an unlawful purpose, and will not be used in violation of any applicable laws.

The UDRP also requires Registered Name Holders to submit to mandatory administrative proceedings to resolve disputes under the UDRP. These mandatory administrative proceedings, as described in the UDRP, are disputes that are filed before one of the ICANN approved UDRP dispute resolution providers (listed at http://www.icann.org/dndr/udrp/approved-providers.htm) and following the uniform Rules for UDRP administrative proceedings (set out at http://www.icann.org/en/dndr/udrp/uniform-rules.htm). The requirement for submission to mandatory administrative proceedings does not mean that Registered Name Holders cannot also have judicial proceedings filed against them for the same or similar conduct. Similar to the jurisdictional requirements set out in the RAA, the requirement to submit to a mandatory administrative proceeding means that the Registered Name Holder cannot

dispute the UDRP provider's ability to hear a dispute that is otherwise properly brought under the UDRP.

The [Policy on Transfers of Registrations between Registrars](#) provides that Registered Name Holders have the right to transfer domain name registrations among registrars. The transfer policy imposes time limits on when the Registrar must respond to a transfer request. The right to transfer is not absolute – there are ICANN and Registry policies that may set limits on the transfer right, including: limitations on when a domain name may be transferred (measured from dates of creation or earlier transfer); and the Registered Name Holder providing of required authorization and documentation for Registrar review. The Registrar of Record may only deny a transfer in the following instances:

- Evidence of fraud
- UDRP action
- Court order by a court of competent jurisdiction
- Reasonable dispute over the identity of the Registered Name Holder or Administrative Contact
- No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.
- Express written objection to the transfer from the Transfer Contact. (e.g. - email, fax, paper document or other processes by which the Transfer Contact has expressly and voluntarily objected through opt-in means)
- A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status.
- The transfer was requested within 60 days of the creation date as shown in the registry Whois record for the domain name.
- A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).

Annex E

The RAA Matrix

RAA Amendment Proposals						
No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
1	Cybersquatting					
1.1	Prohibition on Registrar Cybersquatting		Staff	Incorporate terms in the RAA that explicitly prohibit cybersquatting.	(1) Amend the RAA to specifically prohibit registrars and their affiliates from engaging in cybersquatting, including an evidentiary standard to determine breach of the prohibition against cybersquatting (e.g., evidence of bad faith intent to profit from infringing domains, knowingly take actions inconsistent with the UDRP, or a final court order, preliminary injunction, or arbitration decision based on a specific violation(s) of applicable national law or governmental regulations relating to cybersquatting).	Need to develop a definition of cybersquatting; suggestion to adopt the definitions developed by the RAP working group. Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
1.2		5.3.2	Staff		(2) Currently, the violation of RAA Section 3.7.2 entitled "applicable laws and government regulations" by registrars is a breach of the RAA. Under section 5.3.4 a registrar has fifteen working days after ICANN gives notice of a breach to cure. A violation of RAA Section 3.7.2 is the type of offense that should result in immediate termination of the RAA. Therefore, insert in RAA Section 5.3.2 the right to immediately terminate the RAA when a registrar violates RAA Section 3.7.2 or the prohibition against cybersquatting.	
1.3		3.7.1	Staff		(3) Adopt a Registrar Code of Conduct (RAA 3.7.1) that incorporates provisions to achieve similar results.	

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
1.4			Staff		(4) Amend RAA to require Registrar to provide ICANN with list of pending litigation or claims alleging cybersquatting.	
1.5			Danny Younger	Termination of accreditation [for registrar cybersquatting]		
2	**Warehousing and Speculation**					
2.1	Prohibition of Front-Running		Danny Younger	Penalties for Front-Running • Registrars are prohibited from engaging in front-running; penalties.		Comments that this may not be a significant issue since domain tasting has been addressed; Priority: Low
2.2	Prohibition of Registrar warehousing or speculation		Danny Younger	Warehousing of or speculation in domain names by registrars • Prohibition on all such activities		Need to define what is considered warehousing or speculation; Not intended to cover domain names registered by a registrar for its principle business operations; Question whether it is more appropriate to address as a Consensus Policy rather than through an RAA amendment; Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
2.3	Registrar's responsibility for domain names registered to it		IPC WG	Registrars should be directly responsible to ICANN for fulfilment of duties of registrants whenever registrar registers in its own name or that of an affiliate, parent, subsidiary, or entity under common control, regardless of whether registrar holds, uses or licenses names to a third party.		Although the RAA 2009 included additional language in this regard, concerns that new language is not sufficiently broad to apply to affiliates, parents, subsidiaries, etc. Priority: Medium
3	**Malicious Conduct**					
3.1	Malicious Conduct- Registrar Duty to Investigate		Staff	Incorporate a provision in the RAA establishing a duty of registrars to investigate and report to ICANN on actions the registrar has taken in response to reports received from a credible third-party demonstrating illegal malicious conduct involving domain names.	(1) Insert language in the RAA requiring registrars to investigate within a time certain, any report demonstrating harm from illegal malicious use of a domain received by registrar from ICANN or other credible sources such as law enforcement agencies, security professionals, trademark owners, attorneys or consumer protection agencies.	Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
3.2			Staff		(2) An automatic email response by registrars would not be considered sufficient investigation and response. The registrar should state how it has responded or will respond to the inquiry, or in the alternative, why it believes a response is not required.	Priority: High
3.3		3.7.1	Staff		(3) Adopt a Registrar Code of Conduct (RAA 3.7.1) that incorporates provisions to achieve similar results.	Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
3.4			Law Enforcement Agencies	Registrar must provide abuse contact information, including the SSAC SAC 038 recommendations below: • Registrars must prominently publish abuse contact information on their website and WHOIS. 1. The registrar identified in the sponsoring registrar field of a Whois entry should have an abuse contact listed prominently on its web page. To assist the community in locating this page, registrars should use uniform naming convention to facilitate (automated and rapid) discovery of this page, i.e., http://www.<registar>.<TLD>/abuse.html. 2. Registrars should provide ICANN with their abuse contact information and ICANN should publish this information at http://www.internic.net/regist.html.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
3.4		3.16	Law Enforcement Agencies	The information a registrar publishes for the abuse point of contact should be consistent with contact details currently proposed as an amendment to Section 3.16 of the RAA. Each contact method (telephone, email, postal address) should reach an individual at the Registrar who will be able to promptly and competently attend to an abuse claim; for example, no contact should intentionally reject postal or email submissions.		Priority: High
3.4			Danny Younger	Registrars must be required to prominently post their abuse desk contact information.		Priority: High
3.5	Malicious Conduct- Resellers to provide point of contact	3.12.7	Staff		(3) Include a new RAA Section 3.12.7 requiring resellers to provide and maintain complete and accurate contact information for a point of contact for malicious conduct, including allegations of fraud and domain name abuse (e.g., recommended by SSAC 38).	Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
3.6	Registrars to use an auditable tracking system for complaints		Law Enforcement Agencies	Registrars should provide complainants with a well-defined, auditable way to track abuse complaints (e.g. a ticketing or similar tracking system).		Priority: High
4	**Compliance**					
4.1	Contract Compliance- Registrar to Provide Point of Contact		Staff		Registrars to provide and maintain complete and accurate contact information for a point of contact for contractual compliance matters.	Priority: High
4.1			Law Enforcement Agencies	ICANN should conduct WHOIS compliance audits, at least once a year, and publish results on: i. Port 43 ii. WHOIS accuracy		ICANN Compliance Dept. perspective is that Section 3.14 of the new RAA already provides the right to conduct these audits. Priority: Medium
4.2	Registrar Audit/Due Diligence		IPC WG	General ICANN right to audit to determine compliance with RAA, at ICANN's discretion and for reasonable cause.		ICANN Compliance Dept. perspective is that Section 3.14 of the new RAA already provides the right to conduct these audits. Priority: Medium

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
4.2			Law Enforcement Agencies	a. ICANN to conduct enhanced due diligence on all Registrars and Registries (including but not limited to owners, officers, board of directors) ICANN accredits, or has accredited, to include, but not limited to: • criminal checks; • credit checks; • financial history and solvency; • corporate or company structure and ownership. For example: Dunn and Bradstreet, Lexis-Nexis, Clear, World-Check, etc. b. Such due diligence shall be documented by ICANN, in detail, in a written report that can be provided upon request to appropriate auditors.		ICANN Compliance Dept. perspective is that this is more of an operational issue related to the accreditation process that is currently being updated Priority: Low
4.3	Audit Right Upon Change of Control		IPC WG	Specific right to audit after a change of control to determine new registrar is in compliance.		ICANN Compliance Dept. perspective is that Section 3.14 of the new RAA already provides the right to conduct these audits. Priority: Medium

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
4.4	ICANN to provide tracking system for registrar complaints		Law Enforcement Agencies	ICANN should provide complainants with well-defined and auditable way to track complaints against Registrars and Registries. ICANN should publish annual detailed reports of reported complaints.		ICANN Compliance Dept perspective is that this is an operational issue instead of a contract issue; Priority: Medium
5	**Privacy/Proxy Services**					
5.1	Privacy/Proxy Services- Escrow Requirements and additional disclosure obligations and Resellers	3.4.1	Staff	Insert provisions in the RAA that require a registrar and its resellers to escrow privacy or proxy registration data, and at a minimum, disclose the points of contact for privacy or proxy service providers and a description of the privacy or proxy services offered to their customers.	Develop and implement the program in RAA Section 3.12.4 of the RAA giving ICANN the ability to establish or "make available a program granting recognition to resellers that escrow privacy or proxy registration data". Create a similar contractual provision in RAA Section 3.4.1 for registrars.	Escrow/data collection and preservation; Priority: High
5.1			IPC WG	Explicit requirement for all proxy and private registration services to escrow contact data on beneficial registrant/licensee.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.1		3.4.1	Danny Younger	Conspicuous Notice- "display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed." -- eliminate this clause		Priority: High
5.2	Registrars to list privacy/proxy services offered and description of services	3.4.1	Staff		Require registrars on an annual basis to provide a list of privacy or proxy registration services, including points of contact for privacy or proxy service providers and a description of the services provided or made available by a registrar to its customers. This information could be provided either directly to ICANN or published by a registrar on its web site. This requirement would assist ICANN in determining compliance with RAA Section 3.4.1 related to escrow of Whois information.	Priority: High (disclosure obligation)

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.3	Proxy/Privacy Services to forward correspondence		Staff	(2) Insert in RAA Section 3.7.7.3 provisions that require privacy or proxy services to forward allegations of malicious conduct, cybersquatting, and other illegal activities to privacy or proxy service customers.	(1) Require privacy/proxy registration services to forward correspondence to its customer related to specific disputes or alleged disputes involving the domain name.	RELAY function – Priority: High
5.4	Proxy/Privacy Services to provide Point of Contact for malicious conduct		Staff		(2) Require privacy/proxy registration services to provide to ICANN, upon its request, "point of contact" for any privacy or proxy registration services offered or made available to registrar's customers that are responsible for investigating and responding to malicious conduct complaints.	Priority: High (see 5.2)
5.5	Clarify "Reasonable Evidence of Actionable Harm" Language	3.7.7.3	Staff		(3) Develop contract language and/or advisories that clarify the language of RAA Section 3.7.7.3, including the definition of "reasonable evidence of actionable harm" with input from registrars and non-contracted parties.	REVEAL function – Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.6	Proxy/Privacy Services to reveal data		Staff		(4) The GNSO could discuss what forms of illegal malicious conduct and what standard of evidence should result in a requirement to reveal the contact information of customers of privacy or proxy services, consistent with procedures designed to respect any applicable protections for privacy and freedom of expression.	REVEAL function – Priority: High
5.6			IPC WG	Specify circumstances under which proxy registration services are required to disclose actual contact data of beneficial registrants and licensees, and apply the same standards to private registration services.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.6			Law Enforcement Agencies	Registrants using privacy/proxy registration services will have authentic WHOIS information immediately published by the Registrar when registrant is found to be violating terms of service, including but not limited to the use of false data, fraudulent use, spamming and/or criminal activity.		Priority: High
5.7	Registrars to collect customer data for Proxy/Privacy Services		IPC WG	Require registrars to collect and preserve contact data for beneficial registrant/licensee even when registration is channelled through proxy or privacy service made available in connection with the registration process.		Priority: High (see 5.1)
5.8	ICANN to accredit proxy/privacy services		IPC WG	ICANN to accredit all proxy or privacy registration services, and registrars prohibited from accepting registrations from unaccredited services.		Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.8			Law Enforcement Agencies	If proxy/privacy registrations are allowed, registrars are to accept proxy/privacy registrations only from ICANN accredited Proxy Registration Services. ICANN to implement accreditation system for Proxy Services using the same stringent checks and assurances as provided in these points, to ensure that all proxy services used are traceable and can supply correct details of registrant to relevant authorities.		LE: Need to explore how the registrar would be able to identify whether a third party proxy service has been used by registrants. Need to also consider how the registrar would be able to access the underlying information for registrants for proxy/privacy services that are offered by third parties.\n\nPriority: Low
5.8	Registrars responsible for proxy/privacy service compliance with RAA obligations		IPC WG	Make registrars responsible for compliance with all RAA obligations by providers of proxy or private registration services that are made available in connection with the registrar's registration process.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.9	RAA should not condone or encourage Proxy/Privacy Services		Law Enforcement Agencies	The RAA should not explicitly condone or encourage the use of Proxy Registrations or Privacy Services, as it appears in paragraphs 3.4.1 and 3.12.4. This goes directly against the Joint Project Agreement (JPA) ICANN signed with the United States Department of Commerce on September 25, 2006 which specifically states "ICANN shall continue to enforce existing (Whois) policy", i.e., totally open and public WHOIS, and the September 30, 2009, Affirmation of Commitments, paragraph 9.3.1 which states "ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information." Lastly, proxy and privacy registrations contravene the 2007 GAC Principles on WHOIS.		Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
5.10	Required time to disclose identity of Licensee	3.7.7.3	Staff	Incorporate in RAA Section 3.7.7.3 a provision that clarifies the period of time in which a Registered Name Holder must disclose the current identity and contact information of a licensee when a Registered Name Holder does not intend to accept liability for harm caused by the wrongful use of a Registered Name.	Amend the language in RAA Section 3.7.7.3 as follows: "A Registered Name Holder licensing use of a Registered Name accepts liability for harm caused by wrongful use of the Registered Name, unless it promptly (i.e. within five business days) discloses the current contact information provided by the licensee and the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm."	REVEAL function – Priority: High
5.11	Restrict Proxy/Privacy Services to only non-commercial purposes		Law Enforcement Agencies	If proxy/privacy registrations are allowed, the proxy/privacy registrant is a private individual using the domain name for non-commercial purposes only.		Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6	**WHOIS**					
6.1	Registrars to terminate registrations for inaccurate WHOIS		IPC WG	Require registrars to terminate registrations of registrants who violate RAA provisions relating to disclosure of accurate contact information in appropriate circumstances.		Priority: High - clarify to what extend (if any) there is proactive requirement)
6.1	WHOIS Accuracy -Define Reasonable Steps to Verify WHOIS	3.7.7.2	Staff	Incorporate additional terms in RAA requiring registrars to take reasonable steps to "verify" Registered Name Holder WHOIS data when inaccuracies are detected.	(1) Clarify the existing registrar obligation to take reasonable steps to verify or correct Whois data in response to reported inaccuracies. At a minimum, "reasonable steps" to investigate a reported inaccuracy should include promptly transmitting to the registrant the "inquiries" concerning the accuracy of the data that are suggested by RAA Subsection 3.7.7.2. The inquiries should be conducted by any commercially practicable means available to the registrar: by telephone, e-mail, or postal mail. A registrar should	Priority: High

					also report to ICANN what action, if any, was taken in response to the reported inaccuracy. If the registrant has materially breached the registration agreement (by either failing to respond to registrar's inquiries or by wilfully providing inaccurate information), then the registrar should either suspend or delete the domain registration.	
6.1		3.7.1	Staff		(2) Adopt a Registrar Code of Conduct (RAA 3.7.1) that incorporates provisions to achieve similar results.	Priority: High
6.2	Registrars to link to WHOIS Data Problem Reporting Page		IPC WG	Registrar's Whois service must include with query results a link or referral to the Whois Data Problem Reporting System or its successor on Internic page.		Priority: High
6.3	Registrars should Link to WHOIS from Homepage		IPC WG	Requirement that registrars publish an effective hyperlink to their publicly accessible WHOIS database on their homepage and that the link be in some universally recognized or agreed upon format.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.4	Additional Information to be collected related to registrations		Law Enforcement Agencies	Registrars and all associated third-party beneficiaries to Registrars are required to collect and securely maintain the following data: (i) Source IP address (ii) HTTP Request Headers (a) From (b) Accept (c) Accept-Encoding (d) Accept-Language (e) User-Agent (f) Referrer (g) Authorization (h) Charge-To (i) If-Modified-Since		Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.4			Law Enforcement Agencies	Registrars and all associated third-party beneficiaries to Registrars are required to collect and securely maintain the following data: (iii) Collect and store the following data from registrants: (a) First Name: (b) Last Name: (c) E-mail Address: (d) Alternate E-mail address (e) Company Name: (f) Position: (g) Address 1: (h) Address 2: (i) City: (j) Country: (k) State: (l) Enter State: (m) Zip: (n) Phone Number: (o) Additional Phone: (p) Fax: (q) Alternative Contact First Name: (r) Alternative Contact Last Name: (s) Alternative Contact E-mail: (t) Alternative Contact Phone:		Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.4			Law Enforcement Agencies	Registrars and all associated third-party beneficiaries to Registrars are required to collect and securely maintain the following data: (iv) Collect data on all additional add-on services purchased during the registration process. (v) All financial transactions, including, but not limited to credit card, payment information.		Priority: Low
6.5	Disclosure of WHOIS to law enforcement		Law Enforcement Agencies	Information from the WHOIS database can be provided to law enforcement authorities when the information will assist in the prevention, detection, investigation prosecution or punishment of criminal offences or breaches of laws imposing penalties, or when authorized or required by law.		Not clear how this would be reflected in RAA
6.6	Registration to be cancelled if inaccurate WHOIS data is not corrected		Danny Younger	WDPRS Require registrars to cancel a registration if inaccurate or unreliable WHOIS information is not corrected.		Priority: High (see comment on 6.1)

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.7	WHOIS SLA		Greg Aaron	SLA on WHOIS Availability		Priority: High
6.7			Law Enforcement Agencies	ICANN should require Registrars to have a Service Level Agreement for their Port 43 servers.		Priority: High
6.7			Mike Rodenbaugh	It certainly seems reasonable to me that the RAA contain an SLA provision re WHOIS, just like the registry contracts do.		Priority: High
6.8	Examination of Registration Data	3.4.3	Staff	Incorporate an additional requirement in RAA Section 3.4.3 requiring registrars to produce and send copies of records directly to ICANN when requested.	Amend the language of RAA Section 3.4.3 as follows: "During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN, or if requested by ICANN shall transmit to ICANN either electronically or by mail a copy any such records relating to a particular compliance investigation."	Compliance matter Priority: Low, as assessed by Staff

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.9	Validation of WHOIS		Law Enforcement Agencies	Each registrar is required to validate the following data upon receipt from a registrant: (1) Technical Data (a) IP addresses used to register domain names. (b) E-mail Address (i) Verify that registration e-mail address(es) are valid. (2) Billing Data (a) Validate billing data based on the payment card industry (PCI standards), at a minimum, the latest version of the PCI Data Security Standard (DSS).		LE: Might consider possibility of looking at the information already being collected for credit card validation for this purpose, such as the info needed to be PCI compliant Priority: High as to PCI compliance?

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
6.9			Law Enforcement Agencies	Each registrar is required to validate the following data upon receipt from a registrant: (3) Contact Data (a) Validate data is being provided by a human by using some anti-automatic form submission technology (such as dynamic imaging) to ensure registrations are done by humans. (b) Validate current address WHOIS data and correlate with in-house fraudulent data for domain contact information and registrant's IP address. (4) Phone Numbers (i) Confirm that point of contact phone numbers are valid using an automated system. (ii) Cross validate the phone number area code with the provided address and credit card billing address.		
6.9			Danny Younger	Registrars are to be required to avail themselves of commercially available identity verification systems that will provide for time-of-registration validations.		

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
7	**Reseller Related Obligations**					
7.0	Definition of Reseller		SubTeam-B	Clearer definition of reseller needed for evaluation of all topics in this section.		High
7.1	Reseller to comply with RAA		IPC WG	Require registrars to guarantee reseller compliance with RAA and indemnify ICANN for breaches by resellers that are not remediated within a reasonable time.		Priority: High
7.1			Law Enforcement Agencies	Resellers must be held completely accountable to ALL provisions of the RAA. Registrars must contractually obligate all its Resellers to comply and enforce all RAA provisions. The Registrar will be held directly liable for any breach of the RAA a Reseller commits in which the Registrar does not remediate immediately. All Registrar resellers and third-party beneficiaries should be listed and reported to ICANN who shall maintain accurate and updated records.		Priority: High
7.2	Registrars to disclose of all authorized resellers		IPC WG	Require registrars to disclose all authorized resellers to ICANN and to the public.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
7.3	Reseller Contact information		IPC WG	Require resellers to disclose to all registrants the identity and contact information of the registrar sponsoring a particular registration.		Priority: High
7.3			Danny Younger	ICANN to be provided with contact data for all reseller (subcontractor) entities.		Priority: High
7.4	Resellers obligations re Proxy/Privacy Services to comply with any Registrar obligations		IPC WG	Require resellers to meet same obligations as registrars regarding proxy or private registration services that they make available in connection with registration.		Priority: High (see 5.8)
7.5	Registrar to terminate reseller in event of breach	3.12.6	Danny Younger	Mere notification that Registrar has the right to terminate the reseller agreement is an insufficient response to a circumstance of breach. Stronger requirements must be established.		Priority: High
7.6	Reseller due Diligence		Law Enforcement Agencies	ICANN should require all domain name resellers and all third party beneficiaries to be held to the same terms and conditions and due diligence requirements as Registrars and Registries.		Priority: Low (due to number of resellers)

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
8	**RAA Termination**					
8.1	For knowingly or negligent permitting criminal activities	5.3.2.1	Law Enforcement Agencies	To RAA paragraph 5.3.2.1, language should be added to the effect "or knowingly and/or through gross negligence permit criminal activity in the registration of domain names or provision of domain name WHOIS information…"		Priority: High
8.2	For abandonment and fundamental and material breach	5.3.7	Staff	Incorporate two provisions in RAA Section 5.3 that establish ICANN's right to immediately terminate the RAA when a Registrar either: (1) abandons or ceases to conduct business as a registrar; or (2) repeatedly and wilfully has been in fundamental and material breach of its obligations at least three times within any twelve month period.	(1) Amend the language of RAA Section 5.3.7 to allow ICANN to immediately terminate a registrar's accreditation when it abandons its business as a registrar.	Priority: High
8.2		5.3.8	Staff		(2) Insert a new RAA Section 5.3.8 as follows: "Registrar repeatedly and wilfully has been in fundamental and material breach of its obligations at least three times within any twelve month period."	Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
8.2		2.1	Danny Younger	Three Times is an excessive threshold • "or (ii) Registrar shall have been repeatedly and wilfully in fundamental and material breach of its obligations at least three (3) times within any twelve (12) month period."		Priority: High
8.3		5.3.2.1	Danny Younger	Clause 5.3.2.1 is at the mercy of lengthy appeals processes which place the registrant community at risk while legal dramas unfold – intermediate measures are required.		Priority: High
8.4	Registrar Disqualification Procedures	5.3	Danny Younger	The Draft Registrar Disqualification Procedure contains language that potentially could be incorporated into the RAA at section 5.3.		Disqualification procedures still under review by Staff

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
9	**Registrar Information**					
9.1	Additional Information on Registrars and Affiliates		Staff	Additional Information regarding registrars, their affiliates and resellers will facilitate the identification of any actors that might be actively complicit in allowing malicious conduct to occur.	(1) Insert a new section in the RAA requiring registrars to submit, on an annual basis, additional information to ICANN, for use in vetting and verifying the identity of the registrar and its affiliates. Such categories of information could include: additional details on the registrar's officers and directors (e.g., names, postal addresses and contact information); names, postal addresses and contact information of affiliated entities that engage in domain related services; the identity and ownership of registrar's parent corporations, if applicable; names, postal addresses and contact information for significant resellers (e.g. resellers registering more than 50,000 or 5% of its domain	Need to include a clear definition of "reseller." Suggestions include: instances where a discount is given, a contract is signed with the registrar, or is referred to as a channel partner or similar designation. Priority: High

					names under management); and names, postal addresses and contact information for any privacy/proxy services offered or made available by registrar or its affiliates.	
9.1			IPC WG	Registrars to specify to ICANN any parent, subsidiary, affiliate, or entity under common control which is also an accredited registrar, and to keep this information current.		Query how much information is provided through ICANN's RADAR system regarding registrars & their affiliates, and how much information is voluntary versus mandatory.

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
9.1			Law Enforcement Agencies	ICANN should require all registrars, registries, proxy services, resellers and all third party beneficiaries of any contracts, policies of ICANN to publicly display ownership, parent companies, subsidiaries and business associations.		
9.1		5.9	Danny Younger	All data requested on the original accreditation application must be re-submitted.		
9.2	Registrars to Identify Multiple Accreditations		Law Enforcement Agencies	Registrars with multiple accreditations must disclose and publicly display on their website parent ownership or corporate relationship, i.e., identify controlling interests.		Priority: High
9.2			Danny Younger	Families of registrars Shell corporations created primarily to game the aftermarket are to be prohibited		

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
9.3	Registrar Operational Information to be posted		IPC WG	Registrars to provide to ICANN (and keep current) their operational and office locations, full address, phone and fax numbers, for posting on the Internic website, and to post the same information on their own website.		Consider building in flexibility into the agreement to allow ICANN to change the types of information that it needs from registrars, or registries, perhaps through an exhibit or appendix that gets updated from time to time by the ICANN Compliance department.
9.3			Law Enforcement Agencies	All Accredited Registrars must submit to ICANN accurate and verifiable contact details of their main operational and physical office location, including country, phone number (with international prefix), street address, city, and region, to be publicly disclosed in ICANN web directory. Address must also be posted clearly on the Registrar's main website. Post Office boxes, incorporation addresses, mail-drop, and mail-forwarding locations will not be acceptable. In addition, Registrar must submit URL and location of Port 43 WHOIS server.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
9.4	Registrar Legal Information to be provided		IPC WG	Registrars to specify to ICANN their form of business organization, jurisdiction under which organized, and agent for service of legal process, and to keep this information current.		Need to clarify what is meant by country of operation; Priority: High
9.4			Law Enforcement Agencies	Registrar should be legal entity within the country of operation, and should provide ICANN with official certification of business registration or license.		Priority: High; LE: Not intended to be location of registrant but the origin of the registration business
9.4			Law Enforcement Agencies	Registrar must notify ICANN immediately of the following and concurrently update Registrar website: a. any and all changes to a Registrar's location; b. changes to presiding officer(s); c. bankruptcy filing; d. change of ownership; e. criminal convictions ; f. legal/civil actions		These items should be limited only to matters that relate to domain registration services; Priority: High
9.5	Registrar Officer Information to be provided		IPC WG	Registrars to specify to ICANN the names and contact information of their CEO and other principal officers and to keep this information current.		Need to specify where such information would be posted; Suggestion to post it at internic.org; Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
9.5			Law Enforcement Agencies	Registrars must publicly display of the name of CEO, President, and/or other responsible officer(s).		
9.5			Danny Younger	Registrar to be required to publicly list the names of its officers and directors.		
9.6	Due Diligence and Transparency		IPC WG	Registrar required to provide ICANN with its current registration agreement, if any, and to keep it current.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
10	**Business Dealings with Registered Names Holders**					
10.1	Require Uniformity in Grace Periods	3.7.5	Danny Younger			This issue is currently being addressed by the PEDNR working group; Priority: Low
10.2	Prohibit transfer of registrant to registrar	3.7.7??	Danny Younger	Direct Transfer Clauses Prohibition on registrar use of "direct transfer clauses" or their equivalents in registrar Terms of Service agreements; these clauses have the effect of forcing a registrant to transfer a registration to either the registrar or to a registrar-associated third-party for auction purposes instead of allowing the registration to expire and to be returned to the pool of available names.		This issue is currently being addressed by the PEDNR working group; Priority: Low

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
10.3	Privacy and Security of Registrant Records		Staff	Amend the RAA to require a registrar to promptly notify: (1) ICANN of any security breaches affecting the registrar or any part of its systems; and (2) affected registrants when there is reasonable evidence of unauthorized access to their accounts.	(1) Insert language in the RAA defining a security breach as "the unauthorized access to or disclosure of registrant account data".	Priority: High
10.3			Staff		(2) Insert language in the RAA requiring a registrar to promptly disclose, to ICANN and affected registrants, any security breach of registrar's IT network affecting its domain management systems after the discovery or notification of a security breach.	Priority: High
10.3			Staff		(3) Insert language in the RAA defining promptly disclose by the registrar as "action taken in the most expedient timeframe possible and without unreasonable delay". Action(s) taken by a registrar should be consistent with the legitimate	Priority: High

					needs of law enforcement, as applicable, or any other measures a registrar determines are necessary to define the scope of the breach and restore the reasonable integrity of the data system.	

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
10.4	Registrar obligation to Terminate registration if registrant is in breach	3.7.7	IPC WG	Provide that registrar must, upon receiving notice of a breach of any of the terms required to be included in their registration agreements (i.e. all RAA 3.7.7 terms), and after providing appropriate notice to the Registered Name Holder, cancel the registration.		May need to clarify circumstances where cancellation may not be appropriate, or where an opportunity to cure should be made available; Priority: High
10.5	Redemption Grace Period Services		Danny Younger	Registrars should be required to offer this service.		This issue is currently being addressed by the PEDNR working group; Priority: Low
11	**Consensus Policies and Advisories**					
11.1	New and Revised Specifications and Policies	4.3.1(b)	Staff	Amend RAA Section 4.3.1 (b) to clarify that the demonstration of consensus requires a GNSO Council Supermajority vote instead of a two-thirds vote of the Council.	Amend the language in RAA Section 4.3.1 (b) as follows: "(b) a recommendation, adopted by a supermajority vote determined in accordance with the ICANN Bylaws of the Council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and"	High Priority

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
11.2	Consideration of issues identified in SSAC Advisories		Holly Raiche	Possible topics for consideration from the following SSAC advisories: **SAC41** - recommending against new TLDs (both g and cc) not use DNS redirection and synthesized DNS responses (wildcarding). This issue is also addressed in SAC 032 and SAC 006) **SAC040** - recommends steps/security measures registrars can take **SAC 038** – calling for a registrar abuse point of contact that has someone with the technical competence to respond on a 24/7 basis **SAC 033 and 025**- about the accuracy of WHOIS data - this is already in the RAA so maybe the provisions just need strengthening **SAC028** - recommends how registrars can reduce phishing attacks **SAC 024 and 022**- against Domain Name Front Running.		High Priority; Need to determine which SSAC advisories are appropriate for inclusion in the RAA

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
11.3	Registrars Not to Circumvent Consensus Policies		Danny Younger	No registrar may take any action by way of electronic or paper registration agreements with Registered Name Holders that serves to thwart the intent of ICANN's Consensus Policies.		Priority: Low; Need more information on this suggestion;
12	**Arbitration & Appeal**					
12.1	Number of Arbitrators	5.6	Staff	Amend the RAA to reduce the number of arbitrators from three to one.	Insert the following language in RAA Section 5.6: "There shall be one arbitrator agreed by the parties from a list of AAA arbitrators, or if the parties cannot agree within fifteen calendar days of the AAA request that the parties designate an arbitrator, the AAA shall choose and appoint an arbitrator, paying due regard to the arbitrator's knowledge relating to the domain name system.	Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
12.2	Stay During Arbitration		Staff	Amend the RAA to clarify that even if a registrar initiates arbitration challenging termination of its RAA, no stay of termination shall be available if ICANN determines the registrar's conduct is harming registered name holders.	Add limiting language to the RAA making clear that a stay pending arbitration shall not be available if ICANN determines, in its sole discretion that the Registrar's conduct is harming registrants.	Priority: High
12.2			Staff	Amend the RAA to allow ICANN to terminate or suspend a registrar's accreditation if a stay has not been ordered within ten business days after the filing of the arbitration.	Add limiting language stating that unless the arbitrator grants a stay within ten business days of the filing of the arbitration, ICANN may terminate registrar or suspend registrar's accreditation.	Priority: High
12.3	Appeal	5.3.2.1	Holly Raiche	Look at the lengthy appeals process in Clause 5.3.2.1 – does the cost/time discourage registrant community action.		Priority: High

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
13	**Administration of Contracts**					
13.1	Incorporation of Trademark Appendix		Staff	Revise the RAA to streamline the procedure for adding accreditation in additional TLDs.	(1) The trademark related license terms could be incorporated as a separate section within the body of the RAA, eliminating the need for a separate appendix.	Priority: High
13.2	Elimination of Appendixes for addition of new gTLDs		Staff		(2) The ability to add new gTLDs can be managed more efficiently. Rather than require the execution of individual appendices for each new gTLD, ICANN can create an electronic process that allows Registrars in good standing (i.e., not subject to an outstanding breach notice) to request the right to carry additional gTLDS, and ICANN will electronically submit the names to the registries of those registrars authorized by ICANN to carry their TLD. Any additional terms and conditions necessary for the TLD can be incorporated into	Priority: High

					the terms of the Registry-Registrar Agreement.	
14	**Group Liability**					
14.1	Registrars responsible for actions of affiliates		IPC WG	Registrar A should be subject to sanctions under RAA for directing or assisting registrar B (under common control) in serious violations.		Priority: High Suggestion to reword "under RAA for knowingly directing or assisting…."; Too broad as written, need to narrow scope of language.

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
15	**UDRP**					
15.1	Require Registrar response when WHOIS is inaccurate in a UDRP		IPC WG	Requirement that, where WHOIS data is inaccurate or incomplete such that an "amendment" of UDRP petitions is required, the registrar supply ICANN with a copy of the accurate WHOIS information along with an explanation why the published information was inaccurate or incomplete at the time a petitioner submits a UDRP petition.		Priority: High

Questions on how to determine accuracy;

Need to revise to clarify what would be required of registrars (such as a standardized response) |
| 15.2 | Penalties for failure to properly implement UDRP transfer decisions | | Danny Younger | Sliding scale leading up to termination. | | Priority: Low;

Question whether already covered under recent 2009 amendments; |
| 15.3 | Additional UDRP Related Requirements | | IPC WG | Establishment of firm and enforceable deadlines for registrars (a) to respond to dispute resolution provider's requests for information in connection with registrar verification processes at the inception of a UDRP proceeding; and (b) to provide for transfer of the domain name to the petitioner pursuant to standard and (preferably) | | Priority: High |

				simplified processes.		
16	**Sanctions for Registrar violations**					
16.1	Fines exceeding cost of enforcement		IPC WG	Ability of ICANN to impose fines exceeding cost of enforcement anytime after first violation.		Priority: Low; Compliance Staff would like time to evaluate effectiveness of 2009 amendments to determine if additional fines/sanctions are needed
16.2	Curative Measures in excess of RAA requirements		IPC WG	Ability of ICANN to impose as sanction for violations of particular RAA provisions curative measures going beyond standard RAA requirements. For example, a registrar found to have breached obligations regarding responsiveness to reports of false Whois data could be required to validate registrant contact data at the time of registration or to implement an enhanced tracking system for Whois complaints.		Priority: Low; Compliance Staff would like time to evaluate effectiveness of 2009 amendments to determine if additional fines/sanctions are needed

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
16.3	Increase Sanction amounts	5.7	Danny Younger	Sanction dollar amounts too low: "Registrar shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement." This language should be replaced by that which we had in the registry agreements: "Sanctions of up to US$10,000 for each violation may be assessed for each minor violation found and sanctions of up to US$100,000 for each violation may be assessed for each major violation found."		Priority: Low; Compliance Staff would like time to evaluate effectiveness of 2009 amendments to determine if additional fines/sanctions are needed
16.4	Sanctions for AuthInfo violations		Danny Younger	Penalties for failure to timely provide AuthInfo codes- Provisions exist requiring registrars to release this code to a name holder upon request; however, procedures for doing this vary across registrars – an element of uniformity is required with		Priority: Low; Compliance Staff would like time to evaluate effectiveness of 2009 amendments to determine if additional fines/sanctions are needed

				penalties for registrar failure to abide in a timely fashion.		
16.5	Sanctions for Consensus Policy Violations		Danny Younger	Penalties for violations of Consensus Policies- Registrars must be fined substantially for consensus policy violations.		Priority: Low; Compliance Staff believes already covered under 2009 amendments
16.6	Sanctions for Unauthorized Change to Registration Record		Danny Younger	Penalties for Unauthorized Change to Registration Record- An ample number of complaints emerged in the wake of the RegisterFly meltdown to the effect that a registrar could unilaterally change administrative and other contact details for a domain without either authorization from or notice to the registrant (in effect, an unauthorized transfer).		Priority: Low; Additional information needed from Staff on whether this is a violation of current RAA
16.7	Sanctions for Failure to Renew		Danny Younger	Penalties for failure to renew- The RegisterFly debacle demonstrated that registrars can pocket registrant funds without putting through the paid-for renewals. Such egregious actions must be punished severely.		Priority: Low; Additional information needed from Staff on whether this is a violation of current RAA

No.	Issue	RAA Section	Stakeholder Input	Stakeholder Recommendation	Implementation Options	Notes
17	**Registrar Code of Conduct**					
17.1	ICANN should Establish a Code of Conduct	3.7.1	Danny Younger	A decade with no code of conduct – it's time to have Staff establish such a Code and require registrar compliance.		Priority: High
17.1		3.7.1	Holly Raiche	Will a breach of a Registrar Code of Practice (if developed) be enforceable or have sanctions attached?		Priority: High; Suggestion to give Registrars a limited time to develop and if it is not developed, Staff should take leadership role and develop
17.1			Holly Raiche	If a Registrar Code of Practice is developed, some issues for possible inclusion: • Requirement on registrars to cancel a registration if inaccurate or unreliable WHOIS information is not corrected • Prominently display contact information. ICANN SAC also recently advised that Registrars should have a 24/7 contact number that connects to a person technically able to deal with abuse notification • Use commercially available verification systems to provide time of		Priority: High to develop Code of Practice

				registration validations • Prohibitions (or stronger prohibitions) on front running, cyber squatting • Have stronger action by registrars on breaches by resellers		
18	**Privity of Contract**					
18.1	Privity of Contract/3rd party beneficiaries	5.10	Danny Younger	The clear trend in common law jurisdictions to permit third parties to enforce contracts made for their benefit calls for a re-visitation of the "No Third Party Beneficiaries" clause.		Priority: Low; ICANN Staff to review and report back to working group
19	**Leasing Registrar Accreditations**					
19.1	Leasing Registrar Accreditations		Danny Younger	Some registrars have inappropriately lent their access to registries to third-party proxies; penalties for such actions are advised.		Priority: Medium; ICANN Staff to report back to working group on whether this violates current RAA

Annex F

Substantive Proposals Received from the Community

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TOPICS for RAA Amendments

Provisional List for IPC RAA Working Group

Submitted November 9, 2009

1. Due Diligence and Transparency

    A. Registrar required to provide ICANN with its current standard registration agreement, if any, and to keep it current

    B. Registrars to provide to ICANN (and keep current) their operational and office locations, full address, phone and fax numbers, for posting on the Internic website, and to post the same information on their own website

    C. Registrars to specify to ICANN their form of business organization, jurisdiction under which organized, and agent for service of legal process, and to keep this information current

    D. Registrars to specify to ICANN the names and contact information of their CEO and other principal officers and to keep this information current

    E. Registrars to specify to ICANN any parent, subsidiary, affiliate, or entity under common control which is also an accredited registrar, and to keep this information current

2. Registrations by registrars

    A. Registrars should be directly responsible to ICANN for fulfillment of duties of registrants whenever registrar registers in its own name or that of an affiliate, parent, subsidiary, or entity under common control, regardless of whether registrar holds, uses or licenses names to a third party

3. Group liability

    A.   Registrar A should be subject to sanctions under RAA for directing or assisting registrar B (under common control) in serious violations .

4. UDRP-related requirements

    A. Establishment of firm and enforceable deadlines for registrars (a) to respond to dispute resolution provider's requests for information in connection with registrar verification processes at the inception of a UDRP proceeding; and (b) to provide for transfer of the domain name to the petitioner pursuant to standard and (preferably) simplified processes.

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B.　　Requirement that, where WHOIS data is inaccurate or incomplete such that an "amendment" of UDRP petitions are required, the registrar supply ICANN with a copy of the accurate WHOIS information along with an explanation why the published information was inaccurate or incomplete at the time a petitioner submits a UDRP petition.

5.　　Private or proxy registrations

A.　Require registrars to collect and preserve contact data for beneficial registrant/licensee even when registration is channeled through proxy or privacy service made available in connection with the registration process

B.　Explicit requirement for all proxy and private registration services to escrow contact data on beneficial registrant/licensee

C.　ICANN to accredit all proxy or privacy registration services, and registrars prohibited from accepting registrations from unaccredited services

D.　Specify circumstances under which proxy registration services are required to disclose actual contact data of beneficial registrants/licensees, and apply the same standards to private registration services.

E.　Require registrars to terminate registrations of registrants who violate RAA provisions relating to disclosure of accurate contact information in appropriate circumstances

F.　Make registrars responsible for compliance with all RAA obligations by providers of proxy or private registration services that are made available in connection with the registrar's registration process

6.　　Reseller Relationships

A.　Require registrars to guarantee reseller compliance with RAA and indemnify ICANN for breaches by resellers that are not remediated within a reasonable time.

B.　Require registrars to disclose all authorized resellers to ICANN and to the public

C.　Require resellers to disclose to all registrants the identity and contact information of the registrar sponsoring a particular registration

D.　Require resellers to meet same obligations as registrars regarding proxy or private registration services that they make available in connection with registration

7.　　Whois-related requirements

A.　Registrar's Whois service must include with query results a link or referral to the Whois Data Problem Reporting System or its successor on Internic page

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B. Requirement that registrars publish an effective hyperlink to their publicly accessible WHOIS database on their homepage and that the link be in some universally recognized or agreed upon format.

8.   Registrant Breach of Required Provisions

A. Provide that registrar <u>must</u>, upon receiving notice of a breach of any of the terms required to be included in their registration agreements (i.e. all RAA 3.7.7 terms), and after providing appropriate notice to the Registered Name Holder, cancel the registration.

9. Registrar Audit Provisions

A. General ICANN right to audit to determine compliance with RAA, at ICANN's discretion and for reasonable cause.

B.   Specific right to audit after a change of control to determine new registrar is in compliance.

10.   Sanctions for violations

A. Ability of ICANN to impose fines exceeding cost of enforcement anytime after first violation.

B. Ability of ICANN to impose as sanction for violations of particular RAA provisions curative measures going beyond standard RAA requirements. For example, a registrar found to have breached obligations regarding responsiveness to reports of false Whois data could be required to validate registrant contact data at the time of registration or to implement an enhanced tracking system for Whois complaints.

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RAA Proposal received from Danny Younger:

Topics:

1. **Privity of Contract and Third Party Beneficiaries**
   - The clear trend in common law jurisdictions to permit third parties to enforce contracts made for their benefit calls for a re-visitation of the "No Third Party Beneficiaries" clause.
2. **Direct Transfer Clauses**
   - Prohibition on registrar use of "direct transfer clauses" or their equivalents in registrar Terms of Service agreements; these clauses have the effect of forcing a registrant to transfer a registration to either the registrar or to a registrar-associated third-party for auction purposes instead of allowing the registration to expire and to be returned to the pool of available names.
3. **Warehousing of or speculation in domain names by registrars**
   - Prohibition on all such activities
4. **Penalties for failure to renew**
   - The RegisterFly debacle demonstrated that registrars can pocket registrant funds without putting through the paid-for renewals. Such egregious actions must be punished severely.
5. **Penalties for Unauthorized Change to Registration Record**
   - An ample number of complaints emerged in the wake of the RegisterFly meltdown to the effect that a registrar could unilaterally change administrative and other contact details for a domain without either authorization from or notice to the registrant (in effect, an unauthorized transfer).
6. **Penalties for violations of Consensus Policies**
   - Registrars must be fined substantially for consensus policy violations
7. **WDPRS**
   - Require registrars to cancel a registration if inaccurate or unreliable WHOIS information is not corrected
8. **Appeals & the Termination of Agreement by ICANN clause**
   - Clause 5.3.2.1 is at the mercy of lengthy appeals processes which place the registrant community at risk while legal dramas unfold – intermediate measures are required.
9. **Abuse Contact**
   - Registrars must be required to prominently post their abuse desk contact information
10. **Time-of-Registration Identity Verification**
    - Registrars are to be required to avail themselves of commercially available identity verification systems that will provide for time-of-registration validations
11. **Uniform Expiry Period**

- Grace periods after expiry range from zero to 45 days – the lack of term uniformity promotes unnecessary registrant confusion – just as the UDRP is "uniform", so too should expiry provisions be uniform.

12. **Penalties for Front-Running**
    - Registrars are prohibited from engaging in front-running; penalties.

13. **Penalties for failure to timely provide AuthInfo codes**
    - Provisions exist requiring registrars to release this code to a name holder upon request; however, procedures for doing this vary across registrars – an element of uniformity is required with penalties for registrar failure to abide in a timely fashion.

14. **Registrar Officer or Director Malfeasance**
    - Registrar to be required to publicly list the names of its officers and directors

15. **Leasing Registrar Accreditations**
    - Some registrars have inappropriately lent their access to registries to third-party proxies; penalties for such actions are advised.

16. **Families of registrars**
    - Shell corporations created primarily to game the aftermarket are to be prohibited

17. **Reseller Registration**
    - ICANN to be provided with contact data for all reseller (subcontractor) entities

18. **Penalties for Registrar Cybersquatting**
    - Termination of accreditation

19. **Penalties for failure to properly implement UDRP transfer decisions**
    - Sliding scale leading up to termination.

20. **Registrar Code of Conduct**
    - A decade with no code of conduct – it's time to have Staff establish such a Code and require registrar compliance

21. **Redemption Grace Period Services**
    - Registrars should be required to offer this service.

22. **Breach by Reseller**
    - Mere notification that Registrar has the right to terminate the reseller agreement is an insufficient response to a circumstance of breach. Stronger requirements must be established.

23. **Assignment; Change of Ownership or Management.**
    - All data requested on the original accreditation application must be re-submitted.

24. **Conspicuous Notice**
    - "display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed." -- eliminate this clause

25. **Three Times is an excessive threshold**

- 2.1 "or (ii) Registrar shall have been repeatedly and willfully in fundamental and material breach of its obligations at least three (3) times within any twelve (12) month period."

26. **Sanction Dollar amounts too low**
    - "Registrar shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement." This language should be replaced by that which we had in the registry agreements: "Sanctions of up to US$10,000 for each violation may be assessed for each minor violation found and sanctions of up to US$100,000 for each violation may be assessed for each major violation found."

Staff Notes

Registrar Accreditation Agreement

Additional Amendments

14 October 2009

Status of the Document

Notes to the ICANN community prepared by ICANN Staff.

Summary

This document identifies considerations arising from the GNSO Council's Resolution 3 September 2009, resolving that additional work on further amendments to the Registrar Accreditation Agreement (RAA) be conducted, and to identify those on which further action may be desirable. The additional work is intended to build on the 2009 RAA as approved by the ICANN Board at its 21 May 2009 meeting. This document discusses ICANN's compliance activities related to the RAA, and identifies specific subjects to be considered as the ICANN community begins to discuss possible additional amendments to the RAA.

Table of Contents

Introduction

The purpose of this document is to provide suggestions to be considered by the Council in its efforts to identify additional changes to the RAA. As a party to the RAA, ICANN is responsible for enforcing its terms. This document is intended as guidance to assist the ICANN community in understanding issues that have been the subject of RAA related complaints to ICANN, and provides suggestions for amendments that could improve agreement clarity and enhance compliance activities.

An ICANN cross-functional team produced the attached list of possible RAA amendment topics for consideration by the GNSO Working Group. The list is divided into two categories. Category One describes recommended RAA amendments to address Internet community DNS concerns that have been forwarded to ICANN. These include: registrar cybersquatting, malicious conduct involving the DNS, privacy/proxy services and resellers, and additional information on registrars and their affiliates.

Category Two describes possible RAA amendments to improve agreement clarity and promote registrar compliance with existing RAA obligations, including the subjects of: handling WHOIS inaccuracy claims, facilitation of examination registrar records by ICANN, conditions for termination of the RAA by ICANN, defining the time in which a registered name holder must disclose the licensee identity to avoid liability, manner of establishment of new and revised specifications and policies in a restructured GNSO, insurance requirements, arbitration details, and streamlining registry accreditation.

Within the categories, each possible RAA Amendment is explored through a three-step process: a description of the issue, a concise proposal or recommendation, and a review of potential options available to the GNSO Working Group.

Background

In March 2009, the GNSO Council approved a set of amendments to the RAA developed by ICANN staff and Registrars, taking into account substantial input from the community. On 21 May 2009, ICANN's Board of Directors approved the RAA amendments and directed staff to implement the amendments.

Since the May 2009 approval by the ICANN Board, ICANN staff has been working to implement the 2009 RAA. As a result of incentives and registrar/ICANN cooperation, registrars representing over 87.3% of all gTLD registrations have signed or requested the 2009 RAA as of

10 October 2009. All ICANN accredited registrars will operate under the 2009 RAA within five years.

Using tools provided in the adopted amendments, ICANN will continue to explore ways to identify registrar noncompliance early, take action swiftly to identify and cure breaches and, if indicated, terminate agreements with those registrars that violate the agreement.

In developing the implementation details for the launch of the New gTLD Program, ICANN has produced a number of suggested revisions to the Base Registry Agreement that are similar in nature to the recent amendments to the RAA. Likewise, this document imports some of the concepts and community discussions that have occurred concerning the new gTLD program and suggests similar possible improvements to the RAA. Many of the principles identified in the new gTLD program, such as those addressing malicious conduct, cybersquatting, and enhanced verification, are equally applicable to the RAA.

The contractual framework that governs ICANN's relationships with its registrars has been improved by the 2009 RAA amendments. The ICANN community has achieved measurable success in registrant protections, and the GNSO has resolved to continue to improve and innovate in the area of registrant protections and the RAA. The potential RAA amendments presented in this document are intended to enhance ICANN's and registrar's ability to attain compliance with the contract.

Category 1: Potential New RAA Obligations to Address Internet Community Concerns about the DNS

1.1. Prohibition of Registrar Cybersquatting

Statement of Problem:

ICANN has received complaints about registrars who are allegedly engaged in cybersquatting either directly or through affiliates. The RAA does not explicitly identify cybersquatting as a basis for terminating the RAA. In many countries, including the United States, laws exist to address cybersquatting, spamming, and other malicious activity that can result in harm to Internet users, trademark holders and others.

Recommendation:

Incorporate terms in the RAA that explicitly prohibit cybersquatting.

Implementation Options:

1. Amend the RAA to specifically prohibit registrars and their affiliates from engaging in cybersquatting, including an evidentiary standard to determine breach of the prohibition against cybersquatting (e.g., evidence of bad faith intent to profit from infringing domains, knowingly take actions inconsistent with the UDRP, or a final court order, preliminary injunction, or arbitration decision based on a specific violation(s) of applicable national law or governmental regulations relating to cybersquatting).

2. Currently, the violation of RAA Section 3.7.2 entitled "applicable laws and government regulations" by registrars is a breach of the RAA. Under section 5.3.4 a registrar has fifteen working days after ICANN gives notice of a breach to cure. A violation of RAA Section 3.7.2 is the type of offense that should result in immediate termination of the RAA. Therefore, insert in RAA Section 5.3.2 the right to immediately terminate the RAA when a registrar violates RAA Section 3.7.2 or the prohibition against cybersquatting.

3. Adopt a Registrar Code of Conduct (RAA, Section 3.7.1) that incorporates provisions to achieve similar results.

4. Amend the RAA to require a registrar to provide to ICANN a list of pending litigation, UDRP proceedings and arbitrations alleging cybersquatting or other domain registration-related complaints in cases where the registrar or its affiliates is the registered name holder) within sixty days after registrar receives notice of the complaint.

1.2. Malicious Conduct Involving the DNS

Statement of Problem:

The Internet community frequently voices concern to ICANN about malicious conduct and, in particular, the extent to which these attacks take advantage of domain registration and name resolution services. Consumers, law enforcement, representatives from government and others are asking ICANN, its registries and registrars to monitor the increasing levels of malicious conduct and, when appropriate, take reasonable steps to detect, block and mitigate such conduct. ICANN and its registrars are often viewed by the public as the key to successfully resolving malicious conduct because of ICANN's contractual relationships with registrars and registrars' direct customer relationships with certain registrants who misuse the DNS. It would be difficult to define precise rules to govern what actions all registrars should have to take in response to every complaint about malicious conduct involving use of a domain name, but as a first step registrars could be required to be responsible for investigating and reporting back on its handling of credible reports about malicious conduct.

Recommendation:

Incorporate a provision in the RAA establishing a duty of registrars to investigate and report back to ICANN on what actions the registrar has taken in response to reports received from a credible third-party demonstrating illegal malicious conduct involving domain names.

Implementation Options:

1. Insert language in the RAA requiring registrars to investigate within a time certain, any report demonstrating harm from illegal malicious use of a domain received by registrar from ICANN or other credible sources such as law enforcement agencies, security professionals, trademark owners, attorneys or consumer protection agencies.

2. An automatic email response by registrars would not be considered sufficient investigation and response. The registrar should state how it has responded or will respond to the inquiry, or in the alternative, why it believes a response is not required.

3. Adopt a Registrar Code of Conduct (RAA, Section 3.7.1) that incorporates provisions to achieve similar results.

4. Registrars to provide and maintain complete and accurate contact information for a point of contact for contractual compliance matters.

5.   Registrars to provide and maintain complete and accurate contact information for a point of contact for malicious conduct, including allegations of fraud and domain name abuse (as recommended by SSAC 38 <http://www.icann.org/committees/security/sac038.pdf>).

1.3. Privacy/Proxy Services and Resellers

Statement of Problem:

1.3.1. RAA Section 3.4.1 does not require a registrar to escrow privacy or proxy registration data. For example, a registrar can display a conspicuous notice to its customers advising them that in the event the customer/registered name holder chooses to use a privacy or proxy service when registering a domain name, that the registrar will not escrow their data. Likewise, under RAA Section 3.12.4, a reseller can also voluntarily choose not to escrow privacy or proxy registration data by providing a conspicuous notice to its customers at the time the customers elects to utilize a privacy or proxy service. Failure to escrow privacy or proxy registration data can result in harm to the users of privacy and proxy services.

1.3.2. RAA section 3.7.7.3 requires that "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 current contact information provided by the licensee and the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm." These provisions are intended to ensure that the contact data listed in a Registrar's Whois output is "adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name." ICANN has received numerous complaints regarding difficulties with the "timely resolution of any problems" in cases where the registrant of record has licensed the use of the domain to a third party (i.e., where the registrant is a "proxy" that has licensed the use of the name to the customer of the proxy service). In order to further the goal of facilitating timely resolution of problems that arise in connection with domain registrations, the RAA could be amended to try to avoid cases where a proxy registrant might hinder the resolution of problems by failing to diligently respond to reported problems or forward such reports to the registrant's licensee, or both.

Recommendation:

1.3.1. Insert provisions in the RAA that require a registrar and its resellers to escrow privacy or proxy registration data, and at a minimum, disclose the points of contact for privacy or proxy service providers and a description of the privacy or proxy services offered to their customers.

1.3.2. Insert in RAA Section 3.7.7.3 provisions that require privacy or proxy services to forward allegations of malicious conduct, cybersquatting, and other illegal activities to privacy or proxy service customers.

Implementation Options:

1.3.1.1. Develop and implement the program in RAA Section 3.12.4 of the RAA giving ICANN the ability to establish or "make available a program granting recognition to resellers that escrow privacy or proxy registration data". Create a similar contractual provision in RAA Section 3.4.1 for registrars.

1.3.1.2. Require registrars on an annual basis to provide a list of privacy or proxy registration services, including points of contact for privacy or proxy service providers and a description of the services provided or made available by a registrar to its customers. This information could be provided either directly to ICANN or published by a registrar on its web site. This requirement would assist ICANN in determining compliance with RAA Section 3.4.1 related to escrow of Whois information.

1.3.2.1. Require privacy/proxy registration services to forward correspondence to its customer related to specific disputes or alleged disputes involving the domain name.

1.3.2.2. Require privacy/proxy registration services to provide to ICANN, upon its request, "point of contact" for any privacy or proxy registration services offered or made available to registrar's customers that are responsible for investigating and responding to malicious conduct complaints.

1.3.2.3. Develop contract language and/or advisories that clarify the language of RAA Section 3.7.7.3, including the definition of "reasonable evidence of actionable harm" with input from registrars and non-contracted parties.

1.3.2.4. The GNSO could discuss what forms of illegal malicious conduct and what standard of evidence should result in a requirement to reveal the contact information of customers of privacy or proxy services, consistent with procedures designed to respect any applicable protections for privacy and freedom of expression.

1.4 Additional Information on Registrars and their Affiliates

Statement of the Problem:

The recently adopted 2009 RAA includes additional requirements that apply to a Registrar's affiliates, resellers and proxy services.   These include the following new terms: (a) RAA Section 3.11, that allows ICANN, under certain conditions, to terminate a registrar's accreditation in the event that one of its affiliates is in breach of its obligations to ICANN, and (b) RAA Section 3.12, that includes specific requirements for the reseller agreement and the registration agreements with the registrant, such as specific requirements related to consensus policies. Compliance with these new provisions would be facilitated by receipt of additional information from registrars regarding their ownership, their affiliates involved in domain name related services, their resellers, and the proxy services they provide or make available.

In addition, the law enforcement and the security community has been requesting ICANN to conduct additional inquiry on registrars, resellers, and proxy/privacy service providers that may be facilitating, enabling or are actively complicit in allowing malicious conduct to occur. For new gTLDS, ICANN has proposed a model of background checks and investigation of applicant registry operators that includes a vetting and verification process. It is reasonable that such solutions may be applied to registrars also.

Recommendation:

Additional Information regarding registrars, their affiliates and resellers will facilitate the identification of any actors that might be actively complicit in allowing malicious conduct to occur.

Implementation Options:

1. Insert a new section in the RAA requiring registrars to submit, on an annual basis, additional information to ICANN, for use in vetting and verifying the identity of the registrar and its affiliates.   Such categories of information could include: additional details on the registrar's officers and directors (e.g., names, postal addresses and contact information); names, postal addresses and contact information of affiliated entities that engage in domain related services; the identity and ownership of registrar's parent corporations, if applicable; names, postal addresses and contact information for significant resellers (e.g. resellers registering more than 50,000 or 5% of its domain names under management); and names, postal addresses and contact information for any privacy/proxy services offered or made available by registrar or its affiliates.

2. In the event that ICANN receives information that a registrar, its affiliates, parent entity, officers or directors, resellers, privacy or proxy services are alleged to have engaged in illegal, fraudulent or malicious conduct, the registrar would agree to cooperate with ICANN in its investigation.

3. Include a new RAA Section 3.12.7 requiring resellers to provide and maintain complete and accurate contact information for a point of contact for malicious conduct, including allegations of fraud and domain name abuse (e.g., recommended by SSAC 38).

Category 2: Amendments to RAA to Improve Agreement Clarity and Promote Registrar Compliance with Existing RAA Obligations

2.1. WHOIS Inaccuracy Claims

Statement of Problem:

Current RAA Section 3.7.8 provides, that "Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy."
<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm#3.7.8>

ICANN has issued advisories that attempt to explain and clarify this requirement to registrars <http://www.icann.org/en/announcements/advisory-03apr03.htm>, and <http://www.icann.org/en/announcements/advisory-10may02.htm>, but this continues to be a problem area in terms of clarity, compliance and public perception.

ICANN continues to receive many complaints about inaccurate and incomplete Whois data. The current RAA requires registrars to take "reasonable steps" to verify or correct Whois data in response to reported inaccuracies, but the RAA does not include a clear definition of the minimal required actions that registrars are expected to take.

Recommendation:

Incorporate additional terms in RAA requiring registrars to take reasonable steps to "verify" Registered Name Holder WHOIS data when inaccuracies are detected.

Implementation Options:

1. Clarify the existing registrar obligation to take reasonable steps to verify or correct Whois data in response to reported inaccuracies. At a minimum, "reasonable steps" to investigate a reported inaccuracy should include promptly transmitting to the registrant the "inquiries" concerning the accuracy of the data that are suggested by RAA Subsection 3.7.7.2. The inquiries should be conducted by any commercially practicable means available to the registrar: by telephone, e-mail, or postal mail. A registrar should also report to ICANN what action, if any, was taken in response to the reported inaccuracy. If the registrant has materially breached the registration agreement (by either failing to respond to registrar's

inquiries or by wilfully providing inaccurate information), then the registrar should either suspend or delete the domain registration.

2. Adopt a Registrar Code of Conduct (RAA, Section 3.7.1) that incorporates provisions to achieve similar results.

2.2. Examination by ICANN of Registered Name Holder Registration Data

Statement of Problem:

RAA Section 3.4.3 requires a registrar to make records available for inspection and copying by ICANN upon reasonable notice. The overall efficiency of ICANN's compliance investigation processes will be enhanced by giving ICANN the option to request that registrar records be transmitted to ICANN via postal mail, courier, fax or email instead of simply being "made available" at the registrar's business office.

Recommendation:

Incorporate an additional requirement in RAA Section 3.4.3 requiring registrars to produce and send copies of records directly to ICANN when requested.

Implementation Options:

Amend the language of RAA Section 3.4.3 as follows: "During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN, or if requested by ICANN shall transmit to ICANN either electronically or by mail a copy any such records relating to a particular compliance investigation."

2.3. Termination of RAA by ICANN

Statement of Problem:

2.3.1 In recent months, ICANN observed two registrars who appeared to abandon their businesses. ICANN was successful in finding other RAA violations that allowed ICANN to terminate the registrars in those cases and transfer the data to a successor registrar. If, however, other grounds for termination were not present, ICANN would not have been able to take immediate action to protect registrants. When a registrar effectively abandons its business, registrants' domain name rights and domain name operations are severely impacted and ICANN should have the right to immediately terminate the RAA.

2.3.2 Certain registrars engage in repeated and willful business conduct that rises to the level of a "fundamental and material breach" of their obligations under the RAA. In these instances, a registrar relies on its right to cure repeated breaches within fifteen working days after ICANN gives the registrar notice of a breach. Registrars who intentionally or willfully abuse the "right to cure" provisions in the RAA harm registrants' domain name rights through this continuing questionable business conduct and effectively abuse the "right to cure" provisions granted to them under the RAA by ICANN.

Recommendation:

Incorporate two provisions in RAA Section 5.3 that establish ICANN's right to immediately terminate the RAA when a Registrar either: (1) abandons or ceases to conduct business as a registrar; or (2) repeatedly and willfully has been in fundamental and material breach of its obligations at least three times within any twelve month period.

Implementation Options:

2.3.1 Amend the language of RAA Section 5.3.7 to allow ICANN to immediately terminate a registrar's accreditation when it abandons its business as a registrar.

2.3.2 Insert a new RAA Section 5.3.8 as follows: "Registrar repeatedly and willfully has been in fundamental and material breach of its obligations at least three times within any twelve month period."

2.4. Business Dealings with Registered Name Holders

Statement of Problem:

A Registered Name Holder licensing use of a Registered Name accepts liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the current identity and contact information of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm. The term "promptly" has been interpreted inconsistently. The period of time in which a Registered Name Holder has to disclose identity and contact information of the licensee should be clearly established in the RAA and accordingly in the registration agreement.

Recommendation:

Incorporate in RAA Section 3.7.7.3 a provision that clarifies the period of time in which a Registered Name Holder must disclose the current identity and contact information of a licensee when a Registered Name Holder does not intend to accept liability for harm caused by the wrongful use of a Registered Name.

Implementation Options:

Amend the language in RAA Section 3.7.7.3 as follows: "A Registered Name Holder licensing use of a Registered Name accepts liability for harm caused by wrongful use of the Registered Name, unless it promptly (i.e. within five business days) discloses the current contact information provided by the licensee and the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm."

2.5. Manner of Establishment of New and Revised Specifications and Policies

Statement of Problem:

The GNSO Council recently changed the voting requirements necessary to support the establishment of Consensus Policies within ICANN. Since the current language of the RAA refers to a voting structure that is no longer applicable, the RAA should be updated to be consistent with the bicameral house structure indentified in the Bylaws.

Recommendation:

Amend RAA Section 4.3.1 (b) to clarify that the demonstration of consensus requires a GNSO Council Supermajority vote instead of a two-thirds vote of the Council.

Implementation Options:

Amend the language in RAA Section 4.3.1 (b) as follows:

"(b) a recommendation, adopted by **a supermajority** vote **determined in accordance with the ICANN Bylaws** of the Council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and"

2.6. Insurance

Statement of Problem:

RAA Section 3.10 requires a registrar to maintain Commercial General Liability (CGL) insurance to cover liabilities arising from registrar's business operations.   Section II.A.3 of ICANN's Statement of Registrar Accreditation Policy (SRAP) <http://www.icann.org/en/registrars/policy_statement.html> states that ICANN's primary purpose in requiring a registrar to maintain insurance is to provide domain-name holders reasonable compensation for losses caused by the registrar's wrongful covered acts. According to various insurers' available information, a CGL policy includes three basic areas of coverage: bodily injury; property damage, personal and advertising injury; and medical payments coverage. The language of Section II.A.3 of the SRAP seems to indicate that professional liability type-coverage might be an appropriate form of coverage for a registrar to maintain.

Recommendation:

Revise the insurance coverage a registrar is required to maintain.

Implementation Options:

Amend RAA Section 3.10 to allow registrars to maintain appropriate (TBD) insurance coverage to protect domain-name holders against losses caused by the applicant's wrongful covered acts.

2.7. Arbitration

Statement of Problem:

RAA Section 5.6 requires three arbitrators. The process to select three arbitrators is time consuming and expensive for all parties. The parties may be better served by the selection or appointment of one arbitrator.

Currently, the RAA includes the following two statements: (1) "This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen (15) days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement." (RAA, Section 5.3); and (2) "In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN or suspension of Registrar's ability to create new Registered Names or initiate inbound transfers of Registered Names under Section 2.1 above, Registrar may at the same time request that the arbitration panel stay the termination or suspension until the arbitration decision is rendered." (RAA, Section 5.6). These provisions have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling.

Recommendation:

Amend the RAA to reduce the number of arbitrators from three to one.

Amend the RAA to clarify that even if a registrar initiates arbitration challenging termination of its RAA, no stay of termination shall be available if ICANN determines the registrar's conduct is harming registered name holders.

Amend the RAA to allow ICANN to terminate or suspend a registrar's accreditation if a stay has not been ordered within ten business days after the filing of the arbitration.

Implementation Options:

1. Insert the following language in RAA Section 5.6: "There shall be one arbitrator agreed by the parties from a list of AAA arbitrators, or if the parties cannot agree within fifteen calendar days of the AAA request that the parties designate an arbitrator, the AAA shall choose and appoint an arbitrator, paying due regard to the arbitrator's knowledge relating to the domain name system.

2.   Add limiting language to the RAA making clear that a stay pending arbitration shall not be available if ICANN determines, in its sole discretion that the Registrar's conduct is harming registrants.

3.   Add limiting language stating that unless the arbitrator grants a stay within ten business days of the filing of the arbitration, ICANN may terminate registrar or suspend registrar's accreditation.

2.8. Administration of Contracts

Statement of Problem:

Current practice requires registrars to sign and deliver multiple appendices with ICANN for each TLD that it intends to carry, as well as an appendix containing the terms of the trademark license for the ICANN logo. With over 800+ registrars and potentially hundreds or thousands of new registries in the future, requiring each registrar to sign a separate appendix for the right to sell new gTLDs creates unnecessary paperwork and introduces delays in the process. The administrative costs of managing and storing these documents can be avoided if this process is streamlined.

Recommendation:

Revise the RAA to streamline the procedure for adding accreditation in additional TLDs.

Implementation Options:

1. The trademark related license terms could be incorporated as a separate section within the body of the RAA, eliminating the need for a separate appendix.

2. The ability to add new gTLDs can be managed more efficiently. Rather than require the execution of individual appendices for each new gTLD, ICANN can create an electronic process that allows Registrars in good standing (i.e., not subject to an outstanding breach notice) to request the right to carry additional gTLDS, and ICANN will electronically submit the names to the registries of those registrars authorized by ICANN to carry their TLD. Any additional terms and conditions necessary for the TLD can be incorporated into the terms of the Registry-Registrar Agreement.

2.9. *Privacy and Security of Registrant Account Records*

Statement of Problem:

The unauthorized access to registrant account data maintained by registrars has resulted in malicious activity such as unauthorized changes to DNS records and redirection of traffic to a domain. When unauthorized access or a breach of privacy of registrant data has been discovered, a registrar currently has no obligation to notify ICANN and the affected registrants. The RAA should be amended to require timely notification to ICANN and the affected registrants in these circumstances.

Recommendation:

Amend the RAA to require a registrar to promptly notify: (1) ICANN of any security breaches affecting the registrar or any part of its systems; and (2) affected registrants when there is reasonable evidence of unauthorized access to their accounts.

Implementation Options:

Insert language in the RAA defining a *security breach* as "the unauthorized access to or disclosure of registrant account data".

Insert language in the RAA requiring a registrar to promptly disclose, to ICANN and affected registrants, any security breach of registrar's IT network affecting its domain management systems after the discovery or notification of a security breach.

Insert language in the RAA defining *promptly disclose* by the registrar as "action taken in the most expedient timeframe possible and without unreasonable delay". Action(s) taken by a registrar should be consistent with the legitimate needs of law enforcement, as applicable, or any other measures a registrar determines are necessary to define the scope of the breach and restore the reasonable integrity of the data system.

Annex G

Communications Received Regarding the Law Enforcement RAA Proposals
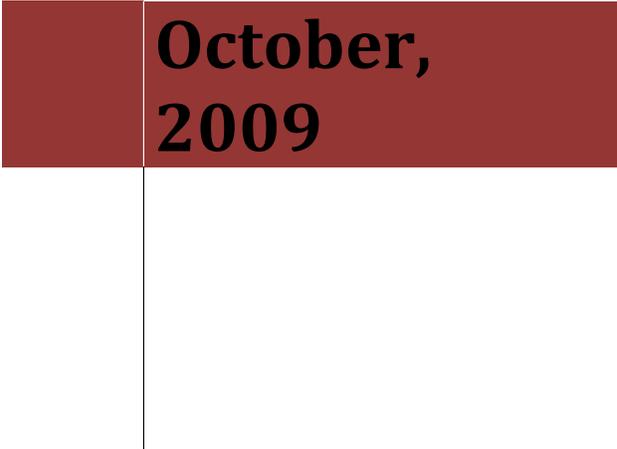
October, 2009

LAW ENFORCEMENT DUE DILIGENCE RECOMMENDATIONS FOR ICANN - SEOUL

Summary of due diligence recommendations for ICANN to adopt in accrediting registrars and registries and proposed amendments to the RAA, supported by international law enforcement.

Introduction: Below is a summary of due diligence recommendations for ICANN to adopt in accrediting registrars and registries and proposed amendments to the Registrar Accreditation Agreement (RAA), supported by the following international law enforcement agencies:

- Australian Federal Police;
- Department of Justice (US);
- Federal Bureau of Investigation (US);
- New Zealand Police;
- Royal Canadian Mounted Police;
- Serious Organised Crime Agency (UK)

The recommendations are considered to be required in order to aid the prevention and disruption of efforts to exploit domain registration procedures by Criminal Groups for criminal purposes. The proposed amendments take account of existing EU, US, Canadian and Australian legislation and those countries commitment to preserving the individual's rights to privacy.

1) Due Diligence

    a.   ICANN should perform due diligence investigations on all Registrars and Registries upon accreditation and periodically thereafter;

    b.   The RAA should require Registrars to collect accurate and complete data of all Registrants upon domain name registration and periodically thereafter, in which the Registrar will validate to ensure such Registrant data is accurate and complete.

2) WHOIS

In accordance with the ICANN's 2006 JPA Affirmation of Responsibilities, and the 2009 Affirmation of Commitments, all gTLD domain name WHOIS information must be accurate, detailed and public. Although LE does not support the use of proxy/privacy registrations, the LE agencies urge ICANN to exercise the following on proxy/privacy registrations:

    a.   The proxy/privacy registrant is a private individual using the domain name for non-commercial purposes only, and ;

    b.   The proxy/privacy registration service has been accredited by ICANN using the same due diligence process as a Registrar/Registry, and

    c.   Information from the WHOIS database can be provided to law enforcement authorities when the information will assist in the prevention, detection, investigation prosecution or punishment of criminal offences or breaches of laws imposing penalties, or when authorised or required by law.

3) Transparency and Accountability

a. ICANN should require all domain name resellers and all third party beneficiaries to be held to the same terms and conditions and due diligence requirements as Registrars and Registries;

b. ICANN should require all registrars, registries, proxy services, resellers and all third party beneficiaries of any contracts, policies of ICANN to publicly display ownership, parent companies, subsidiaries and business associations.

Conclusion: The international law enforcement community views the above-referenced recommendations as vital in preventing crimes involving the DNS. The law enforcement community has consulted with the Registrar and Registry community in preparing this document. It is imperative that law enforcement and ICANN work together to ensure a safe and secure Internet.

Law Enforcement Recommended RAA Amendments and ICANN Due Diligence

Detailed Version

Introduction: Below are: 1) suggested amendments to the RAA and; 2) due diligence recommendations for ICANN to adopt in accrediting registrars and registries. Both are supported by the following international law enforcement agencies:

- Australian Federal Police;
- Department of Justice (US);
- Federal Bureau of Investigation (US);
- New Zealand Police;
- Royal Canadian Mounted Police;
- Serious Organised Crime Agency (UK)

The amendments are considered to be required in order to aid the prevention and disruption of efforts to exploit domain registration procedures by Criminal Groups for criminal purposes. The proposed amendments take account of existing EU, US, Canadian and Australian legislation and those countries commitment to preserving individual's rights to privacy. These amendments would maintain these protections whilst facilitating effective investigation of Internet related crime.

I. Proposed Amendments to the RAA (May 21, 2009 version)

1) The RAA should not explicitly condone or encourage the use of Proxy Registrations or Privacy Services, as it appears in paragraphs 3.4.1   and 3.12.4. This goes directly against the Joint Project Agreement (JPA) ICANN signed with the United States Department of Commerce on September 25, 2006 which specifically states "*ICANN shall continue to enforce existing (Whois) policy*", i.e., totally open and public WHOIS, and the September 30, 2009, Affirmation of Commitments, paragraph 9.3.1 which states "*ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information*." Lastly, proxy and privacy registrations contravene the 2007 GAC Principles on WHOIS.

If there are proxy and/or privacy domain name registrations, the following is recommended concerning their use:

   a. Registrars are to accept proxy/privacy registrations <u>only</u> from ICANN
       accredited Proxy Registration Services;[13]

   b. Registrants using privacy/proxy registration services will have authentic
       WHOIS information immediately published by the Registrar when registrant is
       found to be violating terms of service, including but not limited to the use of
       false data, fraudulent use, spamming and/or criminal activity.

2) To RAA paragraph 5.3.2.1, language should be added to the effect "or knowingly
   and/or through gross negligence permit criminal activity in the registration of
   domain names or provision of domain name WHOIS information…"

3) All Accredited Registrars must submit to ICANN accurate and verifiable contact
   details of their main operational and physical office location, including country,
   phone number (with international prefix), street address, city, and region, to be
   publicly disclosed in ICANN web directory. Address must also be posted clearly on
   the Registrar's main website. Post Office boxes, incorporation addresses, mail-drop,
   and mail-forwarding locations will not be acceptable. In addition, Registrar must
   submit URL and location of Port 43 WHOIS server.

4) Registrars must publicly display of the name of CEO, President, and/or other
   responsible officer(s).

5) Registrars with multiple accreditations must disclose and publicly display on their
   website parent ownership or corporate relationship, i.e., identify controlling
   interests.

6) Registrar must notify ICANN immediately of the following and concurrently update
   Registrar website:

   a. any and all changes to a Registrar's location;
   b. changes to presiding officer(s);
   c. bankruptcy filing;
   d. change of ownership;
   e. criminal convictions ;
   f. legal/civil actions

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[13] ICANN to implement accreditation system for Proxy Services using the same stringent checks and assurances
as provided in these points, to ensure that all proxy services used are traceable and can supply correct details of
registrant to relevant authorities.

7) Registrar should be legal entity within the country of operation, and should provide ICANN with official certification of business registration or license.

8) Resellers must be held completely accountable to ALL provisions of the RAA. Registrars must contractually obligate all its Resellers to comply and enforce all RAA provisions. The Registrar will be held directly liable for any breach of the RAA a Reseller commits in which the Registrar does not remediate immediately. All Registrar resellers and third-party beneficiaries should be listed and reported to ICANN who shall maintain accurate and updated records.

9) Registrars and all associated third-party beneficiaries to Registrars are required to collect and securely maintain the following data[14]:

(i) Source IP address

(ii) HTTP Request Headers

(a) From

(b) Accept

 (c) Accept-Encoding

(d) Accept-Language

(e) User-Agent

(f) Referrer

(g) Authorization

(h) Charge-To

(i) If-Modified-Since

(iii) Collect and store the following data from registrants:

(a) First Name:

(b) Last Name:

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[14] Anti-Phishing Working Group (AGWG) "Anti-Phishing Best Practices Recommendations for Registrars", October 2008

(c) E-mail Address:

(d) Alternate E-mail address

(e) Company Name:

(f) Position:

(g) Address 1:

(h) Address 2:

(i) City:

(j) Country:

(k) State:

(l) Enter State:

(m) Zip:

(n) Phone Number:

(o) Additional Phone:

(p) Fax:

(q) Alternative Contact First Name:

(r) Alternative Contact Last Name:

(s) Alternative Contact E-mail:

(t) Alternative Contact Phone:

(iv) Collect data on all additional add-on services purchased during the registration process.

(v) All financial transactions, including, but not limited to credit card, payment information.

10) Each registrar is required to validate the following data upon receipt from a registrant[15]:

(1) <u>Technical Data</u>

(a) IP addresses used to register domain names.

(b) E-mail Address

   (i) Verify that registration e-mail address(es) are valid.

(2) <u>Billing Data</u>

(a) Validate billing data based on the payment card industry (PCI standards), at a minimum, the latest version of the PCI Data Security Standard (DSS).

(3) <u>Contact Data</u>

(a) Validate data is being provided by a human by using some anti-automatic form submission technology (such as dynamic imaging) to ensure registrations are done by humans.

(b) Validate current address WHOIS data and correlate with in-house fraudulent data for domain contact information and registrant's IP address.

(4) Phone Numbers

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[15] Anti-Phishing Working Group (AGWG) "Anti-Phishing Best Practices Recommendations for Registrars", October 2008

(i)   Confirm that point of contact phone numbers are valid using an automated system.

(ii)   (ii) Cross validate the phone number area code with the provided address and credit card billing address.

11) Registrar must provide abuse contact information, including the SSAC SAC 038 recommendations below[16]:

- Registrars must prominently publish abuse contact information on their website and WHOIS.

    1. The registrar identified in the sponsoring registrar field of a Whois entry should have an abuse contact listed prominently on its web page. To assist the community in locating this page, registrars should use uniform naming convention to facilitate (automated and rapid) discovery of this page, i.e., http://www.<registar>.<TLD>/abuse.html.
    2. Registrars should provide ICANN with their abuse contact information and ICANN should publish this information at http://www.internic.net/regist.html.

- The information a registrar publishes for the abuse point of contact should be consistent with contact details currently proposed as an amendment to Section 3.16 of the RAA. Each contact method (telephone, email, postal address) should reach an individual at the Registrar who will be able to promptly and competently attend to an abuse claim; for example, no contact should intentionally reject postal or email submissions.

- Registrars should provide complainants with a well-defined, auditable way to track abuse complaints (e.g. a ticketing or similar tracking system).

12) ICANN should require Registrars to have a Service Level Agreement for their Port 43 servers.

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[16] ICANN SSAC SAC 038: Registrar Abuse Point of Contact, 25 February 2009

II. Proposed ICANN Due Diligence on current and new gTLD Registrars and Registries

a. ICANN to conduct enhanced due diligence on all Registrars and Registries (including but not limited to owners, officers, board of directors) ICANN accredits, or has accredited, to include, but not limited to:

- criminal checks;
- credit checks;
- financial history and solvency;
- corporate/company structure and ownership.

    For example: Dunn and Bradstreet, Lexis-Nexis, Clear, World-Check, etc.

b. Such due diligence shall be documented by ICANN, in detail, in a written report that can be provided upon request to appropriate auditors.

c. ICANN should provide complainants with well-defined and auditable way to track complaints against Registrars and Registries.

    i. ICANN should publish annual detailed reports of reported complaints.

d. ICANN should conduct WHOIS compliance audits , at least once a year, and publish results on:

    i. Port 43
    ii. WHOIS accuracy

**Governmental Advisory Committee
Chairman**

ICANN

Mr. Peter Dengate Thrush
Chairman of the Board
ICANN

Paris, 12 April 2010

Re: LEA RAA Amendment/Due Diligence Proposals

Dear Peter,

As per the GAC Nairobi Communiqué, I am very pleased to forward statements of support for the "Law Enforcement Due Diligence Recommendations for ICANN" proposals developed by law enforcement agencies from Australia, Canada, New Zealand, the UK and the U.S. for due diligence on accredited registrars and amendments to the Registrar Accreditation Agreement (RAA) from the Interpol Working Party on IT Crime-Europe and the G8 Lyon-Roma Group's High Tech Crime Subgroup. As you will recall, the law enforcement proposals were shared with the GAC, the ICANN Board and broader ICANN community, including the RAA Working Group under the Generic Names Supporting Organization (GNSO), during the October 2009 ICANN meeting in Seoul, Korea.

Also attached are recommendations developed by the participants in the Council of Europe (COE) Octopus Interface Conference, held March 23-25, 2010 as part of the COE Project on Cybercrime. These recommendations include a specific reference the law enforcement proposals noted above. It is notable that all three documents urge ICANN to implement the law enforcement recommendations.

The GNSO Council Chair, Chuck Gomes, is copied on this letter to ensure that the attached statements are circulated to the GNSO RAA Working Group. The GAC expects that these proposals, and the attached statements of support, will be thoroughly examined and taken into consideration by ICANN.

I anticipate that many GAC members will be joined by their law enforcement colleagues from capitals at the Brussels meeting in June 2010, and have no doubt that those law enforcement representatives present at the Brussels meeting will make themselves available to discuss their proposals further and to answer any outstanding questions.

Yours sincerely   ,

Janis Karklins
Chairman of the Governmental Advisory Committee,
Ambassador of Latvia to France

Cc: Mr. Chuck Gomes, GNSO Council Chair

Attachments:
Interpol Working Party on IT Crime-Europe Statement
G8 Lyon-Roma Group High Tech Crime Subgroup Statement
Council of Europe Project on Cybercrime, "Messages from the Octopus Conference"

1

I C A N N
Governmental Advisory Committee

Nairobi, 10 March 2010

GAC Communiqué – Nairobi

I. INTRODUCTION

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Nairobi, during March 6 - 10, 2010.

36 members and 3 observers participated in the meeting, whereas 2 members participated remotely.

The Governmental Advisory Committee expresses utmost gratitude to the Communications Commission of Kenya (CCK) and Kenya Network Information Centre (KENIC) for hosting the meeting in Nairobi and thanks ICANN for supporting the GAC meeting.

II. IDN ccTLD

After discussions with ccNSO, the GAC adopted "GAC Interim Principles on IDN ccTLDs" (Annex A) as a contribution to the ongoing policy development process.

III. New gTLDs

The GAC is grateful to receive updates on progress with the new gTLDs initiative, in particular with regard to the root scaling studies being undertaken and the Special Trade Mark Issues Review Team recommendations currently out for public consultation.

The GAC discussed a number of outstanding issues which it believes require resolution before the gTLD program should be launched. The Chair of the GAC sent the GAC comments on the Draft Applicant Guidebook v3 to the Chair of ICANN Board (Annex B) and the GAC is looking forward to the ongoing dialogue.

The GAC reiterates "the need to explore track differentiation between categories" as indicated in its Seoul communiqué. The Nairobi meeting has also revealed growing awareness in the community of the importance of further exploring this approach. The GAC therefore welcomes the proposal for the creation of a cross-community group to explore this topic and to report on it at the latest one month before the Brussels meeting.

The GAC appreciates the exchange of views on these issues with the GNSO.

IV. EoI

The mandatory nature of the currently proposed Expression of Interest (EOI) model turns it into a slot reservation step and not a mere data-gathering exercise as initially intended and presented. Opening slot reservation and conferring certain rights to the participants against payment of a fee would constitute a *de facto* launch of the new gTLD application process. Should the Board intend to use an EOI mechanism as proposed, the GAC, after interaction

GAC Communiqué—Nairobi

1

with the rest of the community, formally advises the Board to launch it only after the overarching issues have been resolved and the Draft Applicant Guidebook (DAG) finalized.

In that context, the GAC questions the benefits of pursuing further a separate EOI process, which could distract attention and resources from finalizing the new gTLD program. The GAC believes that public forum comments on the EOI and face-to-face discussions in Nairobi have helped identify ideas and concerns that can usefully inform the development of DAG v4, on which the community should focus.

V. Morality and public order issues

The GAC continues to have concerns regarding the procedures outlined in DAG v3 for objections on the basis of morality and public order. The GAC questions the appropriateness of the phrase "morality and public order" and is unclear how the proposed mechanism would work in practice. The GAC believes this item should not be listed on the "closed items" list with respect to the new gTLD process and requests a more detailed briefing from the ICANN staff on the anticipated practical implementation of the approach.

VI. Law enforcement Due Diligence Recommendations

The GAC received an update from law enforcement representatives on domain name abuse and their proposals to mitigate the negative effects of such abuse on consumers, including through further amendments to the Registrar Accreditation Agreement (RAA).

The GAC is aware that these proposals have been favorably reviewed by the high tech crime experts in the G8 and Interpol and will forward their statements of support to the Board separately. These law enforcement RAA amendment proposals will also be shared with the GNSO RAA working group. The GAC expects that these proposals will be thoroughly examined and taken into consideration.

VII. Security and Stability issues

The GAC welcomes the update by ICANN staff regarding ICANN Strategic Initiatives for Security, Stability and Resiliency as well as the SSAC update on root scaling issues.

The GAC welcomes information about the "Global DNS-CERT Business Case" and the initiative to launch a global strategy concerning the medium-long term planning about security of the DNS presented in the recently published documents "Proposed Initiatives for Improved DNS Security and Resiliency".

Concerning the DNS CERT, the GAC recommends that ICANN informs the relevant GAC Representatives about its consultations with national and regional CERTs and is concerned about possible duplication of efforts.

The GAC notes progress on the analysis of the factors that provoke the expansion of the root zone file.

In the context of scaling the root, the increasing adoption of DNSSEC will be the major factor; an important milestone will be July 2010 with the anticipated signing of the root going live.

In particular the GAC notes that, in the context of the root scaling issue, "anycast" related questions have been identified as an additional element to be considered.

Furthermore, the GAC notes that, in the context of IDNs, the concept of "variants" requires further clarification.

The GAC finally notes that, in order to take a position on the technical limits to the number of new gTLDs that can be added over a certain time, SSAC needs further analysis with the actors involved.

VIII. Board/ GAC Joint Working Group on the Review of the Role of the GAC at ICANN

The Board /GAC Joint Working Group (JWG) met at the Nairobi meeting. The Working Group discussed provision of GAC advice to the Board; the role of GAC liaisons; travel support to GAC members from developing countries and secretariat support for the GAC.

In particular, the JWG agreed that further consideration of the nature of GAC advice to Board, and its treatment once it has been generated, would assist the JWG in making any recommendations for improvements.

The JWG aims at finalizing its report at the Brussels meeting.

The GAC discussed various models for a secretariat where independence and sustainability would be fundamental considerations. A "hybrid" model, the details of which need to be refined – where a secretariat would be co-funded by governments and ICANN - was viewed as the most promising way forward. At the meeting The Netherlands, Brazil and Norway committed to contribute to fund such a hybrid model, if adopted, for an initial period of 5 years. The proposal will be worked on further inter-sessionally and a detailed proposal will be presented at the Brussels meeting with the purpose of seeking GAC approval.

IX. GAC Operating Principles

The GAC adopted amendments to the Article IX of the Operating Principles (Annex C).

The GAC decided to engage in further revisions of its Operating Principles as a consequence of the work of the GAC/Board Joint Working Group and in this regard is considering the establishment of an ad hoc Group in the near future.

<div align="center">*   *   *   *</div>

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Nairobi.

The next GAC meeting will take place during the period of the ICANN meeting in Brussels, Belgium.

G8 Lyon-Roma Group
High Tech Crime Subgroup

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In October 2009, a series of recommendations for amendments to ICANN's Registrar Accreditation Agreement (RAA) was proposed to ICANN by law enforcement agencies from the US, UK, Canada, Australia and New Zealand.

The principle aim of these proposals is to implement stronger controls around domain name registration and to ensure a mandatory and rigorous regulatory framework to govern ICANN's contracts with domain registrars. They include requirements for effective due diligence on accredited registrars, controls to ensure more accurate WHOIS information and availability for Law Enforcement, in addition to improved transparency around domain name resellers and third party beneficiaries.

The recommendations are considered to be necessary to aid the prevention and disruption of efforts to exploit domain registration procedures for criminal purposes. The international law enforcement community views these recommendations as vital in preventing crimes involving the Domain Name System.

The G8 High Technology Crime Subgroup (HTCSG), which comprises representatives from law enforcement, justice departments and other governmental bodies of the G8 countries, is in support of these recommendations and recommends their implementation.

International   Criminal   Police   Organization
Organización Internacional de Policía Criminal

INTERPOL

Organisation internationale de police criminelle
المنظمـــــــة الدوليـــــــة للشرطـــــة الجنائيـــــة

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General   Secretariat
Secrétariat général
Secretaría General
الأمـــانــــة العامـــة

26 March 2010

Subject:
Law Enforcement Due Diligence Recommendations for ICANN

In October 2009, a series of recommendations for amendments to ICANN's Registrar
Accreditation Agreement (RAA) was proposed to ICANN by law enforcement agencies from
the US, UK, Canada, Australia and New Zealand.

The principle aim of these proposals is to implement stronger controls around domain name
registration and to ensure a mandatory and rigorous regulatory framework to govern
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diligence on accredited registrars, controls to ensure more accurate WHOIS information and
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The recommendations are considered to be necessary to aid the prevention and disruption of
efforts to exploit domain registration procedures for criminal purposes. The international
law enforcement community views these recommendations as vital in preventing crimes
involving the Domain Name System.

The Interpol Working Party on IT Crime - Europe, which comprises representatives from law
enforcement bodies of 15 European countries, is in support of these recommendations and
recommends their implementation.

Wolfgang Schreiber
Chairperson
Interpol Working Party
on IT Crime – Europe

Project on Cybercrime
www.coe.int/cybercrime

COUNCIL   CONSEIL
OF EUROPE DE L'EUROPE

Octopus Interface conference
Cooperation against cybercrime
23 – 25 March 2010
Council of Europe, Strasbourg, France

25 March 10/provisional

Messages from the Octopus conference

More than 300 cybercrime experts representing countries from all continents, international organisations and the private sector met at the Council of Europe in Strasbourg from 23 to 25 March 2010 to enhance their cooperation against cybercrime. At the close of the conference participants adopted key messages aimed a guiding further action.

Participants share a common interest in pursuing the most effective approaches against the growing threat of cybercrime that societies worldwide are faced with.

Effective approaches against cybercrime comprise a wide range of innovative initiatives and actions that need to be pursued in a dynamic and pragmatic manner by public and private sector stakeholders.

At the same time, measures against cybercrime are a shared responsibility and should be based on a set of common principles to allow for clear guidance to governments and organisations, to facilitate partnerships and to ensure the political commitment to cooperate.

In this connection, participants in the conference underline that:

-   For security and the protection of rights to reinforce each other, measures against cybercrime must follow principles of human rights and the rule of law.
-   Security and the protection of rights is the responsibility of both public authorities and private sector organisations.
-   Broadest possible implementation of existing tools and instruments will have the most effective impact on cybercrime in the most efficient manner.

Following detailed discussions, participants recommend:

-   Making decision makers aware of the risks of cybercrime and encouraging them to exercise their responsibility. Indicators of political commitment include steps towards the adoption of legislation and institution building, effective international cooperation and allocation of the necessary resources.
-   Implementation of the Budapest Convention on Cybercrime worldwide to sustain legislative reforms already underway in a large number of countries. Countries should consider becoming parties to make use of the international cooperation provisions of this treaty. Consensus on this treaty as a common framework of reference helps mobilise resources and create partnerships among public and private sector organisations. In this connection, the ratification of the Budapest Convention by Azerbaijan, Montenegro and Portugal prior and during the conference, and the expression of interest to accede by Argentina and other countries serve as examples to other countries.
-   Establishing the Budapest Convention as the global standard goes hand in hand with strengthening the Cybercrime Convention Committee (T-CY) as a forum for information-sharing network, policy-making and standard-setting. It is encouraged to address issues

not (exhaustively) regulated by the provisions of the Cybercrime Convention such as electronic evidence, jurisdiction and liability of ISP's.
-   Coherent and systematic training of law enforcement, prosecutors and judges based on good practices, concepts and materials already available.
-   The establishment and strengthening of high-tech crime and cybercrime units, and incidents response and reporting teams and systems.
-   The development of cooperation procedures between law enforcement agencies, CERTs/CSIRTs as well as internet service providers and the IT industry.
-   Due diligence by ICANN, registrars and registries and accurate WHOIS information. Endorsement of the "Law Enforcement Recommended Amendments to ICANN's Registrar Accreditation Agreement (RAA) and Due Diligence Recommendations" in line with data protection standards. ICANN is encouraged to implement these recommendations without delay.
-   The many networks and initiatives against cybercrime that exist already create a dynamic and innovative environment involving a wide range of actors. Stronger networking among networks is encouraged to allow for synergies and reduce duplication. The mapping of networks exercise initiated by the Council of Europe should be continued.
-   A contact list for enhanced cooperation between industry and law enforcement should be established. A proposal for a secure portal for interest parties is in preparation.
-   Initiatives aimed at preventing, protecting and prosecuting the sexual exploitation and abuse of children are most valuable but require stronger support and consistency. The "Lanzarote" Convention of the Council of Europe (CETS 201) offers guidance in this respect and provides benchmarks to determine progress.
-   Making use of the guidelines for law enforcement – ISP cooperation adopted at the Octopus Conference in 2008.
-   Completion and broad dissemination of the results by the Council of Europe of the typology study on criminal money flows on the Internet that is currently underway.
-   In order to meet the law enforcement and privacy challenges related to cloud computing existing instruments on international cooperation – such as the Data Protection Convention (CETS 108) and the Budapest Convention – need to be applied more widely and efficiently. Additional international standards on law enforcement access to data stored in the "clouds" may need to be considered. Globally trusted privacy and data protection standards and policies addressing those issues need to be put in place and the Council of Europe is encouraged to continue addressing these issues in its standard-setting activities as well as by the Global Project on Cybercrime.

Public authorities, international organisations, civil society (including non-governmental organisations) and the private sector should apply existing tools and instrument without delay and cooperate with each other to identify additional measures and responses to emerging threats and challenges.

In order to add impetus and resources to efforts against cybercrime and allow societies worldwide to make best possible use of tools, instruments, good practices and initiatives already available, a global action plan aimed at obtaining a clear picture of criminal justice capacities and pressing needs, mobilising resources and providing support, and assessing progress made should be launched, preferably by the United Nations and the Council of Europe in partnership with the European Union, Parties to the Budapest Convention, and other interested parties.

The results of the Octopus conference should be submitted to the United Nations Crime Congress in Salvador, Brazil (12-19 April 2010) for consideration.
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Annex H
STAFF MEMORANDUM ON

AMENDMENT OPTIONS FOR THE RAA

The Internet Corporation for Assigned Names and Numbers

ICANN

RE: Implementation of new RAA amendments

1.   Background

The GNSO RAA Working Group has requested Staff to investigate and advise it on the available
implementation options under the new GNSO bicameral voting structure to amend the RAA.

2.   The RAA amendment process

The process for amending the current Registrar Accreditation Agreement (RAA) as set out within the RAA itself
is unchanged from the last round of RAA amendments approved by the Board in May 2009.

Section 5.4 contemplates that updated forms of the RAA (which will apply to renewing accreditations) may be
'adopted' by ICANN using the process under Section 4.3. Section 4.3 outlines certain requirements typical to
the usual policy cycle including outreach and soliciting a range of stakeholder inputs, preparing and posting a
written report for public comment and requiring a 'two-thirds vote' of the GNSO Council.   The 2009 RAA
amendments followed this process.   This process is similar to, but is not identical to, the process outlined in
Annex A for the development of policies by the GNSO Council.

Although the RAA does not require a negotiation with the Registrars, the process adopted for the 2009 round of amendments included multiple rounds of negotiations between Staff and Registrars followed by public comment periods. Including a negotiation process with the Registrars enabled ICANN to understand how the Registrars would be impacted by the proposed amendments.

Appendix 1 sets out extracts of the relevant RAA sections.

3.   Development of the new form of RAA.

The form of the RAA that may be approved by the GNSO Council may include topics that are within the scope of "Consensus Policies" as specified under Section 4.2 of the RAA as well as other possible topics. Notwithstanding the broad nature of amendments that can be included in the new form of the RAA, Staff recommends that the RAA Drafting Team evaluate whether a proposed amendment topic is more appropriately addressed through a formal PDP on the specific topic rather than through the existing RAA amendment process.   If the issue reflects a new policy position rather than clarification of existing language or obligations,   the RAA Drafting Team should consider recommending that it be addressed through a separate PDP process to allow all of the stakeholders affected by the issue to properly analyze and debate it as a new policy recommendation.

4.   The GNSO voting to approve RAA amendments

Under the GNSO Council's new bicameral voting structure, Article X, Section 3.9 of the bylaws was amended to specifically require a GNSO Supermajority vote with respect to an affected contract party (e.g. registrars) where the GNSO is to approve a PDP recommendation that would impose new contractual obligations on that contracting party (registrars) and where the contract required "a two-thirds vote of the council" to demonstrate consensus (i.e. as stated under Section 4.3.1 of the RAA).

A GNSO Supermajority is defined as "…an affirmative vote of more than 75% of one House and a majority of the other house."[17]

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[17] http://www.icann.org/en/general/bylaws.htm#X-3.9.c

Translating this to the current bicameral seating structure would mean that a successful GNSO Council vote would require either (A) at least 6 affirmative votes in the Contracted Parties House (75% x 7 seats = 5.25) and at least 7 votes in the Non-Contracted Parties House (50% x 13 = 6.5), or (B) at least 4 affirmative votes in the Contracted Parties House (50% x 7 seats = 3.5) and at least 10 votes in the Non-Contracted Parties House (75% x 13 = 9.75).

Appendix 2 sets out extracts of the relevant bylaws.

5.   Implementing the new RAA

Assuming the criteria and approval steps outlined in (2) - (4) are complete, newly approved registrars for accreditation will simply execute the new RAA. Implementation of the new RAA for adoption by registrars contracted under the current RAA is possible by various concurrent means.

(i)   <u>On renewal of expired RAA:</u> Section 5.4 of the RAA provides for mandatory execution of the then-current RAA at the time of registrar accreditation renewal.

(ii)   <u>Voluntary Acceptance</u>: Section 5.4 also contemplates voluntary election by a registrar to sign a new RAA (version posted on ICANN's website) in place of the existing RAA and deemed to have commenced on the date of the existing RAA. Naturally, to encourage voluntary adoption by registrars, the various potential incentives to adopt should be communicated. These may include: adoption of/compliance with the latest 'best practices'; and community and peer support for the new RAA. Fee incentives were also used in the last 2009 RAA amendment round. Any decision to encourage early adoption or provide incentives would be decided following adoption of the new RAA.

Appendix 1: Relevant RAA provisions

[Note: Italics and emphasis added]

…

4.3.1 "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

…

5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and *agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.3.* In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. *In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted*

agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date
this Agreement was made, and this Agreement will be deemed terminated.

[Note: The reference to Subsection 2.3 imposes an obligation on ICANN to be open and transparent, promote competition, act fairly and provide adequate appeal procedures with respect to any actions involving registrars.]

Appendix 2: Relevant bylaws provisions

Article X, Section 3.9. Except as otherwise specified in these Bylaws, Annex A hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. *The voting thresholds described below shall apply to the following GNSO actions:*
…

c. Initiate a PDP Not Within Scope: requires *an affirmative vote of more than 75% of one House and a majority of the other House ("GNSO Supermajority")*;
…

f. Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: *where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded with respect to any contracting party affected by such contract provision.*

Annex I
Summary of Public Comments Received

Disclaimer

This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. This summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional. The comments may be viewed in their entirety at: http://forum.icann.org/lists/raa-improvements2010/

SUMMARY OF PUBLIC COMMENT ON INITIAL REPORT ON PROPOSALS FOR IMPROVEMENTS TO THE REGISTRAR ACCREDITATION AGREEMENT

I.   Summary and analysis of public comments for the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement

Comment period ended:	30 July 2010
Summary published:	12 August 2010
Prepared by:	Margie Milam, Senior Policy Counselor

II.   BACKGROUND

In March 2007, Dr. Paul Twomey called for a comprehensive review of the RAA and the accreditation process. The results of that review ultimately produced a new form of RAA (2009 RAA) which was approved by the GNSO Council and the At-Large Advisory Committee, and adopted by the ICANN Board on 21 May 2009.

In approving the 2009 RAA, the GNSO Council conditioned its recommendation on the beginning of work on further RAA amendments.   The GNSO Council formed a joint drafting

team with members of the At-Large Community (known as the RAA Drafting Team) to conduct further work related to proposals for improvements to the RAA.   Various stakeholders submitted proposals for amendment topics that were carefully evaluated by the RAA Drafting Team, including, representatives of the law enforcement community, the Intellectual Property Constituency, and ICANN Staff.

The Initial Report to the GNSO Council describes the recommendations on (i) the proposed form of a Registrant Rights and Responsibilities Charter, and (ii) potential topics for additional amendments to the RAA, as well as a proposal for next steps for the GNSO Council to consider in determining whether to recommend a new form RAA to be adopted by the ICANN Board.

III. SUMARY ANALYSIS AND CONTRIBUTIONS

Ten contributions were received in the Public Comment Forum. Only one Stakeholder Group and one Constituency submitted statements on the RAA Initial Report.   These statements are provided in **Annex A** of this Summary.

The following contributors participated in the Public Comment Forum:

Name:	On Behalf of:
Clarke Walton	Registrar Stakeholder Group
J.Scott Evans	Intellectual Property Constituency, Commercial Stakeholder Group
Andy Coombs	International Anti-Counterfeiting Coalition
Phil Corwin	Internet Commerce Association
Claudio DiGangi	International Trademark Association
Alan Greenberg	Individual
Debra Hughes	American Red Cross
George Kirikos	Leap of Faith Financial, Inc.
Jeff Williams	Individual
Jerry Upton	Messaging Anti-Abuse Working Group

Most commentators were supportive of the Initial Report and recognized the difficult task faced by the RAA Drafting Team.

Most comments were supportive of the recommendations for a Registrant Rights Charter, and the call for additional work to be conducted on the "aspirational charter." One

commentator observed that the Registrant Rights and Responsibilities Charter should be revised to remove any legal conclusions embodied in the proposed language.

With regards to the high priority amendment issues, there was general support for preserving the priority levels allocated by the RAA drafting team, with some suggestions of expanding the list of high priority amendments to include additional issues.   Many commentators support the principle that the RAA should be enforceable by third parties.

Of the commentators that addressed the "next steps" portion of the Initial Report, most support a negotiation process that includes parties other than the Registrars and ICANN.

IV. GENERAL COMMENTS

A tremendous amount of work has been performed to date by the participating members from both SubTeam-A and SubTeam-B and the Registrar Stakeholder Group (RrSG) is thankful for such extensive community participation*. Registrar Stakeholder Group Statement submitted by Clarke Walton, Advocate 3 Aug 2010.*   Alan Greenberg commends the Joint GNSO/ALAC RAA Drafting team for a comprehensive report on a difficult subject. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*   The IACC applauds the efforts by ICANN to grapple with serious and systemic issues associated with the domain name space, many of which can only be effectively addressed through comprehensive amendment of the RAA. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Leap of Faith states that it has a hard time taking the Initial Report seriously.   It's lengthy, but seems to be more of a "laundry list" of concerns that are not prioritized and seem to come out of left field in many cases. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

The GNSO resolution passed in March 2009 with the stated intent of having the recommendations by the end of July 2009. A year later, we have an Initial Report. This is not meant as a criticism of the Drafting Team(s) - in retrospect, the target date was euphorically optimistic. But it should be a wake-up call to push forward with the process with due haste. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

V. REGISTRANT RIGHTS AND RESPONSIBILITIES CHARTER.

The Red Cross strongly encourages ICANN to more clearly define the purpose of the Registrant Rights and Responsibilities Charter, by providing detailed, meaningful guidance that will produce benefits to registrants and the public. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Leap of Faith is very disappointed by the lack of progress on a registrant rights charter.   Indeed, the working group appears to have given up, thereby failing registrants entirely*. Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

The proposed Registrants rights "charter" seems very silly and a waste of time, because as Annex D plainly states "The summaries provided here do not override or replace the actual terms as written in the RAA or the related policies and specifications." If this "charter" is to have any value, it should work the other way around, namely that registrant rights are enumerated in one place and any other document/policy cannot conflict with that charter. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

A. Support for further work on Aspirational Charter

The IPC is supportive of the call for the development of a Registrant's Rights and Responsibilities Charter as outlined in Chapter 3, section 2 of the Initial Report and supports the further work by the At-Large Community and other constituents, on the proposed "aspirational charter" described in Chapter 3, section 1 of the Initial Report. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

While the Initial Report acknowledges that additional work may be conducted by members from the At-Large Community relating to an aspirational charter, INTA notes that such additional work should include participants from the entire community. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

The Internet Commerce Association (ICA) urges swift adoption of a Registrant Rights and Responsibilities Charter so long as superfluous legal opinions and inappropriate references to retail price regulation have been removed from its text; and also suggests that the Charter be supplemented by the addition of a concise Executive Summary. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

INTA strongly agrees that registrant rights and responsibilities should be more clearly defined and that such rights and responsibilities should be enumerated in the RAA rather than being contained in a separate Charter. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While the Registrant Rights and Responsibilities Charter is very detailed, it only details rules already in existence and therefore the Charter may not prove terribly useful. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While an "Aspirational Registrant Rights and Responsibilities Charter" is a lofty goal, its effect on the reality of fighting online malicious behavior is nebulous. A more detailed and specific enumeration of such "aspirations" is necessary in order to make the RAA an effective document and tool in ensuring the security and stability of the on-line community. *Comments of the American Red Cross, submitted by Debra Hughes, on 30 July 2010.*

ICA agrees with the approach taken in the proposed Charter to list all current rights and responsibilities, while leaving consideration of an "aspirational charter" that reflects

idealized rights and principles to future development in the context of additional RAA

amendments or the GNSO policy development process, as appropriate. *Philip S. Corwin,*

Counsel, Internet Commerce Association, 30 July 2010.

B. Principles in the Aspirational Charter.

The principles enumerated in the Aspirational Charter should be subject to analysis and

future recommendations. INTA notes that some of these rights ought to be enjoyed, not only by registrants, but by members of the public, whether or not they are domain name registrants. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Regarding Principle-1: *(Registrants should…have accurate, current and complete contact and locative information regarding their registrar)*

While registrants may need contact information for their own registrar, members of the public need access to information that is necessary and sufficient for legal service on any registrar, including an email address to which UDRP complaints can be sent. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

It is critical for both registrants and members of the public to have access to accurate contact information regarding a registrar such that malicious behavior can be identified and legal service performed if necessary. Nothing in this provision outlines how registrants can ensure that they are in possession of accurate, current and complete contact information regarding their registrar or other registrars, or how that information may be made available to the public seeking to combat malicious behavior. At a minimum, this provision should specify how and where registrars must provide and publish their contact information so that it is available to registrants and the public. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-2: *(Registrants should be the sole entity capable of asserting and changing ownership information for their domain)*

INTA agrees with this principle, subject to exceptions such as for transfer of ownership ordered as the result of a UDRP or other legal proceedings. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Provisions must be made so that ownership information can be changed by parties other than the registrant if required by law or other contracted responsibilities (*i.e.* transfer as the result of a UDRP proceeding). *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-3: *(Registrants should have ample opportunity to renew their existing domain(s) at the same rates as new domains")*

To the extent that this provision implies that ICANN can set registrar pricing it is

entirely inappropriate and outside ICANN's purview. ICANN is not and was never intended

to be a retail pricing regulator for domains and has no authority to regulate the prices set by

individual registrars for domain registrations and renewals, nor the prices paid for domains

in the thriving secondary market. *Philip S. Corwin, Counsel, Internet Commerce Association,*

30 July 2010.

This principle seems well intentioned but ineffective. A simple change to clarify that a registrant must be given opportunity to renew at the same rate at which that registrant registered would be helpful. Also, it may be useful to provide a guarantee of rapid portability so that names can be transferred to a new registrar. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

It is crucial that Red Cross not be subject to undue rate increases for the renewal of domain names. This provision is likely to be ineffective at preventing registrars from applying relatively expensive "standard" rates for renewal after offering initial registration as a discount. Red Cross recommends that such language be amended to clarify that excessive rate hikes are prohibited or that when faced with a rate increase, registrants have the option to switch registrars with a guarantee of rapid transfer completion by the registrar. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle - 4: (Registrants should protect their trade name against unauthorized use")

It might be better conceived as "Registrant should have the right to implement mechanisms to protect their trade names ..." For example, registrars are individually and collectively able to publish what is being registered and to whom. Mandating publication of that information, perhaps in a format that can be aggregated by third parties, will allow service providers to set up watches and similar services. It may even, over time, enable 'waiting periods' whereby those with a right to a domain may contest any registration or put the registrant on notice that bad-faith use of the domain will not be allowed. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

The Red Cross believes that this provision could be clarified to ensure that mechanisms are in place so that registrants can protect their trade names from unauthorized use and the public from misleading and malicious online behavior. As written, this provision does not provide sufficient guidance as to the rights protection mechanisms available to registrants. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle- 5: ("Registrants should refuse the transfer of their personal information to unauthorized bodies")

This provision should be modified to read: "Registrants should have the right to refuse [or prohibit, or prevent]..." The revised wording permits an opt-in (or even an opt-out) privacy policy. In any event, this principle should apply only to personal information other than what is contained in WHOIS, which should remain publicly available as it has been throughout the history of the domain name system. This provision should convey that registrars cannot distribute non-WHOIS personal information without registrant permission, unless the registrar is obligated to disclose the information pursuant to the RAA, a binding court order or a decision

by a panel as set out in ICANN policies. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

This principle should not outweigh the need for a safe and secure online community. The Red Cross recommends this provision be amended such that it is clear that engaging in malicious online behavior will result in a forfeiture of this right and that WHOIS contact information for registrants will be provided to the public upon request in the event that malicious behavior needs to be stopped. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-6: *(Registrants should expect ICANN to enforce its agreements with registrars").*

Registrants (and perhaps the public) should have something resembling a cause of action against ICANN and any registrar for the breach of agreements, because those agreements are meant to protect registrants and the public at large. The only way to ensure these protections are in place is to allow the public to assert them, such as something akin to the UDRP. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While registrants may expect ICANN to enforce its agreements, there is little recourse for registrants to ensure such enforcement. As the enforcement of such agreements can serve as an effective tool in combating malicious online behavior, the Red Cross would like to see some language added or changes made to the RAA that would allow for registrants (and perhaps the public) to have a form of recourse to ensure that the terms of ICANN's agreements with its registrars are properly enforced. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

ICA disagrees with including this principle in the Aspirational Charter.   Registrants today have every right to "expect ICANN to enforce its agreement with registrars". Listing this as a future, aspirational right implies that it is acceptable for ICANN to fail to adequately enforce the current RAA – but that is entirely unacceptable. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

C. Suggested corrections to the Registrant Rights and Responsibilities Charter

The Charter contains certain conclusions of law that have no place in such a summary document. For example, the Charter states:

"As the RAA is between ICANN and a registrar, **no one else** *– including a Registered Name Holder –* **may sue ICANN or the Registrar to claim a breach of the RAA***. (Emphasis added)"*

Likewise, the Charter also states:

"[T]he Registered Name Holder cannot dispute the UDRP provider's ability to hear a dispute that is otherwise properly brought under the UDRP."

ICA disagrees with that statement to the extent that a UDRP provider has unilaterally elected to institute an expedited or other altered form of the UDRP under its Supplemental Rules or by

other means that no longer provides a registrant with a reasoned decision or a reliably uniform process, and the ICA believes that a registrant would have standing to dispute the provider's ability to hear a dispute under those circumstances even if the action has been properly brought by the complainant. The Charter should be restricted to reciting and explaining a registrant's rights and responsibilities under the current UDRP without venturing into the area of legal opinions. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

VI. Topics for RAA Additional Amendments

A. General Observations

The IPC also wishes to publicly state its general support for the list of topics for further amendments to the Registrar Accreditation Agreement ("RAA") set forth in Chapter 4, Section 3 of the Initial Report. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

The high priority issues listed in the report are indeed high priority, and it would be good to see quick progress. This is all the more so in light of the recommendation to handle issues that are eligible for consensus policy via PDPs, a process which itself typically takes years, and the fact that as the RAA is interpreted, it can take up to five years to implement a new version. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

It is critical to differentiate *policy development* from *policy implementation*. Only a PDP undertaken under auspices of the GNSO is the proper means of developing new policy. While the RAA does implement certain policies, and may do so again in the future, its amendment process can never be a proper vehicle for policy development. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

B. Third Party Enforcement

Leap of Faith agrees with Section 18 (privity of contract). Registrants need to be able to hold ICANN accountable, but ICANN goes out of its way to make this difficult or impossible. Note how TM holders were given the UDRP, even though TM holders are not a party to a contract between ICANN, a registrant or a registrar. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

Registrants and the public must have processes to ensure their rights are adequately protected and enforced under the RAA. The public faces problems with some registrars involved with cybersquatting and other forms of malicious online activity. Registrants and third parties must have rights which are able to be asserted against not only their own registrar, but against all registrars. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Registrants and the public should have a right to enforce the RAA, or at the least be considered a third party beneficiary to the Agreement. Registrants and third parties must be able to assert their rights not only against their own registrar, but against other registrars who may be harboring and/or abetting malicious online activity. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

C. Resellers

Alan Greenburg strongly supports the 9th high priority topic to define reseller and clarify responsibilities.   He supports the wording of the IPC and Law Enforcement proposals to make it explicit the resellers must comply with ALL registrar requirements that are delegated to them. Prior to the 2009 RAA, resellers were not mentioned in the RAA, and one could assume that resellers would have to adhere to any rules associated with the registrar tasks that they perform.   In the 2009 RAA, Section 3.12 explicitly assigns certain responsibilities to resellers, and some registrars have claimed that this means that those responsibilities not mentioned are de facto excluded. As a result, adding Section 3.12 could be viewed as having effectively weakened the RAA.   *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

D.   Compliance

The RAA only provides protections to registrants and Internet users insofar as its provisions are enforced. It is essential that every provision be written to permit meaningful verification of compliance, and that ICANN develop and implement its compliance verification strategy in parallel with the RAA modifications. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Although not currently an RAA issue, it is also important to note that ICANN Compliance has always said that since ICANN has no contracts with resellers and therefore cannot take actions against them, they do not focus any attention on reseller issues. They are correct that they have no right to audit or otherwise force disclosure of information from resellers. But that can take action through the appropriate registrar. And there is nothing to stop compliance from doing audits using publicly available information (such as web pages) and then following up with registrars if needed.   The lack of a definitive list of all resellers should not stop ICANN from at least doing spot checks or investigations based on complaints. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

E.   Registrar Business dealings with Registrants

The report section on "Registrar Business Dealings with Registrants" starting on page 39 makes it sound as if the "Registered Name Holder" is a single entity. Most registration agreements allow the registrar to unilaterally reassign a Registered Name to itself or a related or unrelated third party at any time after expiration. It is unclear if such transfers are in fact in compliance with section 3.7.4 of the RAA, but regardless, the ORIGINAL Registered Name Holder (that is, the one on record just prior to expiration) is not accorded the rights as described in this section.   As a result, this section of the report does not really represent reality.   *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

ICA supports further consideration of High Priority suggestions for RAA amendments so long as matters of cost, practicality, registrant privacy, and interface with relevant national laws are adequately addressed; and that contemplated amendments fall within the "picket fence" provision of the RAA that separates matters that are appropriate for RAA amendment from policy changes that must be considered through the GNSO policy development process (PDP). *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

F. Privacy/Proxy Services

ICA endorses further consideration of proposals that proxy/privacy services promptly forward allegations of illegal conduct to registrants, and that registrars promptly advise registrants of security breaches that may have compromised their account information. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

The Red Cross strongly supports changes and amendments to ensure access to domain name contact information, especially in the case of private or proxy registrations, as it is critical to stop the public from being harmed by malicious online conduct associated with fraudulent solicitations for charitable donations. It does not appear that the proposed changes to the RAA or the Registrant Rights and Responsibilities Charter provide any useful means for combating malicious online conduct and easing the discovery of the source of such behavior.   The RAA should require every registrar to implement a fair and clear process that is enforced by ICANN, for disclosure of the identity and contact information of the licensee of the domain name. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

While many proposed changes to Whois proxy/privacy services were given high priority, matrix item 5.11 (Restrict Proxy/Privacy Services to only non-commercial purposes)

did not get prioritized. This is an oversight that should be rectified by raising matrix item 5.11 to medium priority. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

G.   Improvements to WHOIS

In High Priority Issue-7, the RAA needs a time limit for registrars to act on invalid Whois information, so ICANN can verify both whether a registrar responds and whether the response is timely. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Not found in the "high priority" list of topics on page 18 is the designation of a legal contact in the WHOIS. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

Having Verified WHOIS would have been a step in the right direction.   *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

H.   Need for Additional Sanctions/Penalties

Sanctions should also apply when reverse domain name hijacking cases occur in UDRPs. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

I.   Registrar Contacts

For those items that require registrars to provide contacts or other information, it would be very desirable for ICANN to publish the information provided by the registrars and the last time it was verified. This would include, for example, item HP3, the 24/7technical contact, and item HP11, the registrar's contacts, officers, and business information. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

J.   Registrar Transfers

No registrar should transfer or otherwise use for any purpose other than those determined by the registrant without the registrant first approving such a transfer and/or requested such a transfer. *Jeff Williams, individually, 8 July 2010.*

K.   60-day lock following registrant change

ICANN's current interpretation of the 60-day lock following registrant change that some registrars are doing appears to be incorrect. This needs to be revisited. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

L.   Grace period considerations

If a registrant is late or re-registering his domain name at or near the time of renewal, some notice to that registrant at least 15 days prior and 10 days after the

expiration date should be allowed before the original registrant's domain name can be sold or otherwise utilized. *Jeff Williams, individually, 8 July 2010.*

M.   Registrant Records

All records regarding that registrants registered domain names should be viewable and updatable for accuracy etc. by the registrant only via a similar mechanism. *Jeff Williams, individually, 8 July 2010.*

N.   Cybersquatting

Registrars should be prohibited from engaging in "cybersquatting." However, ICA strongly questions whether there is a need for a contractual definition of this term aside from a cross-reference to the UDRP, given that registrars act in the capacity of registrants when they manage their own domain portfolios. Registrars acting in that capacity should be prohibited from and face sanctions for intentionally infringing on the trademark rights of others, but any definition of cybersquatting must reference and track the UDRP and be limited solely to the type of infringement for which the UDRP provides an administrative remedy. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

While ICA has no issue with the establishment of registrar response timelines in connection with UDRP proceedings, this matter is most appropriately considered in the context of general, balanced UDRP reform. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

O.   Enhancing the RAA to address Malicious Conduct

The Red Cross urges ICANN to consider the role the RAA has and can have in effectively combating malicious behavior online. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Leap of Faith disagrees with many of the high priority topics, e.g. "malicious conduct" is better suited to the courts, rather than making the registrars become the court and police for all claimed "abuse" on the internet. The duty should be to have WHOIS accuracy, and then let private parties, police, etc. handle things in the real world. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

In many cases, the police want too much information. Privacy laws exist in various countries, as do laws that limit the scope of a police "search."   A proper balance needs to be maintained. Search warrants should be required.   Also, jurisdiction needs to be properly handled and respected. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

P. Priorities Assigned to the Amendment Topics

Since medium and low priority items will have a reduced likelihood of being immediately incorporated into a revised version of the RAA, it is critical that the most urgent items remain in the high priority category. We also assume that the high priority list will not remain meaningful and useful if allowed to grow beyond its initial size of twelve

items. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Reviewing the list of twelve high priority items on pages 18 and 19, MAAWG concurs with the authors of the Initial Report that items HP2 through HP11 from the high priority list should properly receive top.   These are "common sense" items that we believe most would already expect to be part of the RAA.   With respect to the remaining two items that might ultimately comprise a twelve-item high priority slate, items MP3 and MP5 from the medium priority list should be elevated from the medium priority list to the high priority list (if necessary displacing current high priority items HP1 and HP12 to keep the size of the high priority list manageable). *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Regarding the issues raised by law enforcement as topics to be assigned priority in a future round of negotiations, the IACC joins with the law enforcement community in identifying these issues as key issues requiring urgent attention in any new round of RAA amendments. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Turning to the one dozen High Priority Topics listed, ICA is in general agreement that these are matters worthy of further consideration. We certainly agree that registrars should be prohibited from engaging in "cybersquatting. However, we strongly question whether there is a need for a contractual definition of this term aside from a cross-reference to the UDRP, given that registrars act in the capacity of registrants when they manage their own domain portfolios. We certainly agree that registrars acting in that capacity should be prohibited from and face sanctions for intentionally infringing on the trademark rights of others, but any definition of cybersquatting must reference and track the UDRP and be limited solely to the type of infringement for which the UDRP provides an administrative remedy. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

Q. Comments on the RAA Matrix

Although it is impossible to comment on every idea included in the RAA Matrix, some of the input is simply preposterous. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

ICA questions whether there is a need for a Registrar Code of Conduct as registrars are sophisticated business entities and certainly should understand their contractual rights and responsibilities under the RAA. They therefore stand in a different position than registrants, many of whom are not familiar with the RAA and will therefore benefit from adoption and publication of the Rights and Responsibilities Charter discussed above. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

ICA endorses further active consideration of two matrix items:

- No. 5.3, to amend the RAA to require privacy/proxy services to forward allegations of malicious conduct, cybersquatting, and other illegal conduct to their customers

- No. 10.3, which would require a registrar to promptly notify ICANN of any security breaches affecting the registrar or its systems, and to notify registrants when there is reasonable evidence that their accounts have been the subject of unauthorized access

Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.

VII. Next Steps for RAA

The IPC strongly believes that parties affected by the terms of the RAA should have a formal role in the future negotiations of any amendments to the agreement. At a minimum, the IPC believes that such parties should be allowed to participate as observers to the negotiations. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

The RAA is a chief concern for registrars and the RrSG welcomes opportunities to participate in further discussions with the community as the process for proposed RAA Improvements advances.   *Registrar Stakeholder Group Statement submitted by Clarke Walton, Advocate 3 Aug 2010.*

The IACC strongly believes that Proposed Process "A" is the appropriate process for further deliberations relating to the amendment of the RAA.   *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

A significant contributory factor for the failure of the initial amendments to address these key topics of critical importance to the Internet community can be attributed to the misguided belief the negotiation of the RAA is a private negotiation involving private rights. This is clearly not the case. The fact the RAA addresses rights of third parties not part of the RAA (registrants, intellectual property rights owners, among others) constitutes an explicit recognition that stakeholders not party to the RAA are directly affected by its terms. The failure to adequately include those stakeholders in discussions concerning the RAA does this do a serious injustice to the broader issues affecting the entire Internet user community and it reflects a fundamental mistake regarding ICANN governing role in managing the domain name space. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Alan Greenburg believes that the wording in both Option A and B implicitly biases the outcome. They describe the two parties who must negotiate as Staff and Registrars. But it is not "Staff" who is one of the signatories of the contract, it is "ICANN". The responsibility to negotiate and sign has been delegated to certain ICANN staff, but that is a policy decision within ICANN If ICANN chooses to have as its negotiating team, someone from ICANN legal services, the ICANN Chief Registrar Liaison, and several people representing ICANN Stakeholder Groups or Advisory Councils, that should be an internal ICANN decision. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

ICA endorses proposed Process B as the most reasonable and efficacious means to facilitate further consideration of potential RAA amendments. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

The RAA should not be negotiated behind closed doors at present, as it affects registrants. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

ANNEX A
STAKEHOLDER GROUP/CONSTITUENCY STATEMENTS

Registrar Stakeholder Group Position Regarding

Improvements to The Registrar Accreditation Agreement

BACKGROUND

The Registrar Stakeholder Group ("RrSG") has been asked to provide feedback regarding the Initial Report for Improvements to the Registrar Accreditation Agreement ("RAA Improvements"). This position paper captures the overall sentiment expressed by the RrSG Executive Committee members who provided feedback about this matter. Due to time constraints, however, no formal vote regarding this position paper was taken.

RrSG POSITION

The RrSG appreciates the effort of the RAA Improvements Drafting Team. A tremendous amount of work has been performed to date by the participating members from both SubTeam-A and SubTeam-B and the RrSG is thankful for such extensive community participation.

The RAA is a chief concern for registrars and the RrSG welcomes opportunities to participate in further discussions with the community as the process for proposed RAA Improvements advances.

CONCLUSION

The opinions expressed by the RrSG in this position paper should not be interpreted to reflect the individual opinion of any particular RrSG member.

IPC COMMENTS FOR ICANN

On

Initial Report On Proposals For Improvements To The Registrar Accreditation Agreement

The Intellectual Property Constituency ("IPC") is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement posted for comment on 28 May 2010 (the "Initial Report").

The IPC is supportive of the call for the development of a Registrant's Rights and Responsibilities Charter as outlined in Chapter 3, section 2 of the Initial Report and supports the further work by the At-Large Community and other constituents, on the proposed "aspirational charter" described in Chapter 3, section 1 of the Initial Report. The IPC also wishes to publicly state its general support for the list of topics for further amendments to the Registrar Accreditation Agreement ("RAA") set forth in Chapter 4, Section 3 of the Initial Report. Lastly, the IPC strongly believes that parties affected by the terms of the RAA should have a formal role in the future negotiations of any amendments to the agreement. At a minimum, the IPC believes that such parties should be allowed to participate as observers to the negotiations.

In closing, the IPC would like to extend its thanks and appreciation to the members of the joint ALAC-GNSO RAA Drafting team for their efforts on these issues.

Annex J
SubTeam-A Review of Public Comments Received

SubTeam-A has carefully reviewed the comments received in the public comment forum on the Initial Report on the Proposals for Improvements to the Registrar Accreditation Agreement http://www.icann.org/en/public-comment/public-comment-201007-en.htm#raa-improvements2010   pertaining to the work of SubTeam-A , and the summary prepared by ICANN Staff posted at: http://forum.icann.org/lists/raa-improvements2010/msg00010.html.   The SubTeam-A thanks the members of the community who have taken the time and made the effort to share their opinions on these topics. Some of these reflect important insights and perspectives that the Council should consider.

Reflected in the public comments, and in the reaction of several people in the at-large community is a sense of disappointment that SubTeam A did not go far enough in its work. Indeed some members of SubTeam A at first thought the report was something of an exercise in stenography, or cutting and pasting language from the RAA into the registrant rights document. However, as work progressed three issues became clear: One, the scope of SubTeam-A's work was limited to the contents of the current RAA; two, no plain-English version of the RAA actually existed, and obtaining one from ICANN staff required several weeks of work. Three, timing had created a situation in which registrars did not have the current language on registrant rights posted to their web sites as was contemplated by the 2009 version of the RAA.

As the process unfolded, members of the team concluded that proposed improvements to the RAA would need to be consigned to an "Aspirational" Charter, which should be a "living" document, open to additions. Several attempts have been made, and will continue to be made, to solicit cross-community input on these future improvements to the RAA.

SubTeam-A is supportive of calls from INTA and others to further develop and redefine the charter, and particularly, to develop a roadmap for how the content of the Aspirational Charter will be evaluated and included in future versions of the RAA.

SubTeam-A therefore recommends that the GNSO Council support and encourage participation in cross-community activities underway with the At-Large Community and with other groups that have formed since the Nairobi ICANN meeting to address consumer and end-user issues within ICANN.

In a similar vein, several who submitted comments suggested revisions to the principles described in the Aspirational Charter. SubTeam-A recommends a) these comments be evaluated as part of any future work to be commenced on the Aspirational Charter though the new, cross-community effort described above, and b) that those who are interested should submit comments directly to the charter's wiki page at https://community.icann.org/display/atlarge/raa+wg+a+workspace+for+aspirational+registrant+rights.

The subteam also reviewed comments from the Internet Commerce Association suggesting elimination of language containing legal conclusions. However, after discussion, SubTeam-A did not reach consensus for revising the Registrant Rights and Responsibilities Charter in the manner suggested. SubTeam-A invites the Internet Commerce Association to engage in the cross-community comment process as described, using the wiki.

Annex K

SubTeam-B Review of Public Comments Received

Subteam-B has carefully reviewed the 10 comments received in the public comment forum, as well summarized by staff at **Annex I**. Some of these reflect important insights and perspectives that the Council should consider. In a few instances, our review of comments persuaded us to make adjustments or clarifications in the recommendations appearing in the Initial Report. These are reflected in the "List of High Priority Topics" chart on page 20 of the Final Report.

We offer the following responses to some comments which did not lead us to change our recommendations:

<u>Summary section VI(B) – Third party enforcement</u>

We note the strong support in the comments for according domain name registrants, if not other members of the public, third party beneficiary status that would enable them to enforce the RAA against non-compliant registrars. We had discussed this point in our preparation of the Initial Report. We think that there would be significant practical difficulties in implementing this proposal. However, these comments underscore the importance of ICANN developing and maintaining a robust contract compliance capability, and one that is responsive to complaints from registrants and other members of the public. If this were to occur, the pressure to accord third party beneficiary status to these non-parties to the contract would be lessened.

<u>Summary section VI (C) – Resellers</u>

This comment regarding reseller responsibilities is indicative of community concerns and deserves attention in the negotiation of the next version of the RAA.

<u>Summary section VI(D) – Compliance</u>

The subteam agrees with the comment that RAA modifications should be developed with compliance strategies in mind. We endeavored to incorporate this factor into our prioritization efforts, and to get the input of ICANN compliance staff on all issues.

<u>Summary section VI(P) – Priorities Assigned to the Amendment Topics</u>

The comments in this section are certainly worth considering but did not persuade us to change the prioritization that we recommended in the initial report. We should restate that the twelve topics on the "high priority" list are not themselves presented in order of priority. We also believe that a list of more than twelve "high priority" topics would not be very meaningful.

<u>Summary section VII – Next steps for RAA</u>

The subteam notes that the comments summarized here reflect the divergent views of subteam members on this issue, and commends them to the Council's attention.