

The ICANN GNSO “Business Constituency”



# Comments on Proposed Final Registrar Accreditation Agreement (RAA)

Status: FINAL

Version: 2

30-May-2013

**Business Constituency Submission**

**GNSO//CSG//BC**

## **Background**

The Business Constituency hereby provides comments on the proposed Final 2013 Registrar Accreditation Agreement (RAA). The BC appreciates the efforts of ICANN and the Registrar Negotiating Team to address issues that have been raised by Law Enforcement.

## **General Comments**

The BC supports an RAA that will protect the public interest and ensure registration of domain names by Internet users in a legal, transparent, and secure manner, as well as one that provides for mechanisms that will assist in combatting fraud, phishing and other forms of illegal activity.

With so many new obligations, the BC recommends that ICANN ensure that its compliance team is properly staffed to enforce the new RAA.

The BC also commends ICANN for requiring registrar training to educate all registrars about the RAA requirements pursuant to section 3.14, so that they fully understand how to comply with the new agreement.

As a procedural and drafting matter, many BC members have raised the concern of how difficult it has been to follow and provide comments on this RAA. The RAA is unduly complicated and lengthy with myriad cross-references to specifications, other policies and standards. The Amendment and Waiver Section (section 6) is particularly convoluted.

At a minimum, the BC recommends that the RAA include a Table of Contents listing the RAA provisions and a Table of Specifications, and incorporate both into one document, with hyperlinks to other policies and standards referenced therein, so that the RAA is easier to comprehend and navigate.

We note that some of the specifications are set forth in the definitional section of the RAA and others are not, and so we recommend that they should all be set out in the RAA in a consistent way that clearly depicts their content. There are additional definitions in section 6 which a reader doesn't even know about until reaching the end of the section 6, so we recommend referencing the definitional section number when the defined words are first encountered.

In addition to the general comments noted above, the BC has the following specific comments on the RAA and certain Specifications:

### **Comments on Section 3: Registrar Obligations**

The BC recommends that registrars be obligated within a specific time frame of seven (7) days to update Registered Name data upon receiving any updates to the required data elements.

The BC recommends that section 3.7.7.2 be amended to state that "willful provision of inaccurate or unreliable information . . . shall constitute a material breach of the Registered Name Holder-registrar

contract and **shall result in** suspension and/or cancellation of the Registered Name registration. Such suspension/cancellation should not, in the BC's opinion, be discretionary under the breach circumstances described.

The BC recommends adding a provision that states:

“Registrar, and any Proxy Privacy Provider it makes available, are prohibited from engaging in false advertising or deceptive practices, including deceptive notices, hidden fees, and any other illegal practices that are illegal under any applicable consumer protection laws.”

This would ensure that the protections afforded in section 3 of the Registrant's Rights and Responsibilities are clearly set forth in the RAA.

The BC also recommends that the second section of section 3.7.8 be amended to state:

“In addition, notwithstanding anything in the Whois Accuracy Program Specification to the contrary, Registrar shall abide by any Consensus Policy requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar **and** (b) **annual** re-verification of such information.”

#### **Comment on Section 5: Term, Termination and Dispute Resolution**

Section 5.3 -- “Right to Substitute Updated Agreement” -- provides for the possibility that ICANN will enter into a revised “form Registrar accreditation agreement” into which a registrar could “elect” to enter. The procedure for updating the RAA appears to be on a different track from the amendment process and the BC requests more information on this process and wishes to understand the repercussions of having some registrars elect to enter into a new agreement while others might elect to stay with the current accreditation agreement.

#### **Comment on Section 6: Amendment and Waiver**

The BC is concerned that the Working Group will be exclusive and not allow for broad stakeholder input. The BC believes that any proposed amendments and/or negotiations should be subject to multi-stakeholder representation and public comment.

The BC recommends that public/stakeholder comment be provided for in section 6.6. The BC also asks that stakeholders have a say regarding requests for exemptions from certain provisions of the RAA requested by a registrar pursuant to 6.8.

#### **Comments on Privacy-Proxy Specifications**

The BC applauds the negotiating team for adding a specification addressing the issue of privacy-proxy (P/P) procedures. The BC notes, however, that the specification only requires that registrars require P/P Providers to post their privacy-proxy terms and conditions on their websites and does not require specific content of what those terms and conditions must entail. The BC would like to see specific content requirements of the terms and conditions as to the following issues:

- Specify under what circumstances, pursuant to section 2.4.3, the P/P Provider will relay communications from third parties to the P/P Customer. The BC recommends that the P/P Provider be required at a minimum to relay any communications alleging illegal conduct or consumer fraud (e.g., infringement of intellectual property rights).
- Specify under what circumstances and which time frame, pursuant to section 2.4.5, the P/P Provider will be required to reveal the Whois information of the P/P Customer. The BC recommends that if illegal activity is alleged, that the P/P Provider be required to reveal the Whois information and that this revelation occurs within seven (7) business days to conform to section.
- The BC would also recommend that the P/P Provider be required to relay any covered communication within three (3) business days to the P/P Customer. In addition, the BC requests that the specification require that the P/P Provider confirm such relay within 24 hours to the person submitting the report of abuse.

The BC is also concerned that there is no means by which to amend the P/P specification. It could be several years before this specification is replaced by a Privacy and Proxy Accreditation Program. Therefore, the BC recommends there be a mechanism to amend the P/P specification as may be considered necessary by the parties and stakeholders.

#### **Comments on Whois Accuracy Program Specification**

The BC recommends that the first paragraph of this specification insert “in accordance with section 6 of the Registrar Accreditation Agreement” after Registrar Stakeholder Group to ensure that public comment are accounted for.

The BC asks that registrars not be allowed to activate a domain name registration until after contact information is verified.

The current draft allows the domain name to resolve for 15 days without verification before any action such as suspension and/or cancellation takes place with respect to a failure of verification. This essentially provides cybercriminals a 15 day window within which to use a domain name without providing verification, thereby avoiding scrutiny or action by the Registrar. Keeping in mind the serious risks identified by SSAC 025 with respect to Fast Flux name exploitation, allowing such a long window could assist—instead of hinder—exploitation of domain names by cybercriminals.

Therefore, the BC recommends that section 1 be amended to read: “Except as provided in Section 3 below, **prior to** (1) the registration of a Registered Name . . . .”

The BC also believes it is best practice for registrars to verify contact information by email and telephone. Thus, the BC recommends substituting “and” for “or” at the end of section 1.f(i).

**Comments on Data Retention Specification**

The BC recommends that section 2 of this specification be clarified that public comments will be allowed when ICANN posts its proposed final data retention specification.

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This comment was prepared and approved by BC membership in accord with our Charter. Anjali Hansen acted as Rapporteur.