



April 29, 2009

Fiona Alexander, Associate Administrator  
Office of International Affairs  
National Telecommunications & Information Administration  
1401 Constitution Ave. NW, Room 4701  
Washington, DC 20230

Dear Ms. Alexander:

After several discussions among Department and ICANN staff members regarding the proposed amendments to the Registrar Accreditation Agreement, I believe it would be useful to summarize many of the key points about this process. I am responding to the Department letter of August 1, 2008 which provided input to the draft version of Registrar Accreditation Agreement (“RAA”) amendments that were posted for public comment and also several discussions that involved, at various times, NTIA, law enforcement, and ICANN personnel. These discussions bracketed the release of additional amendments created in response to public comment.

The RAA amendment process is, as you observed, an effort to enhance registrant protections in a domain name marketplace that has evolved considerably since the RAA was first drafted. I want to be very clear that this was a draft set of proposals developed through public discussion and that those proposals were the subject of considerable stakeholder discussion. Indeed at ICANN’s meeting in Paris, Paul Twomey stated in public session:

*“...this is something up for comment by all parties that are affected. It is not yet finalized. It is not ICANN finalized text. It is a thing for comment. We are looking for feedback.” “And obviously we are really looking for observations from affected parties, which is clearly ALAC -- it is, basically, everybody. Please have a look and give us that feedback.” (ICANN Public Forum, Paris Meeting, June 25, 2008)*

The current state of the draft amendments were developed through extensive consultation with community members, including registrars, registrants, business and intellectual property interests, and At-Large Internet users. The consultation was open to all through ICANN’s practice of conducting public comment fora on its website and workshops at the triennial ICANN meetings. At the end of those consultations, the At-Large Advisory Committee and GNSO Council approved a set of amendments and presented them for approval by the ICANN Board. However, the process of amendment is not ended. While it is worth noting that the GNSO Council voted unanimously to support rapid adoption of the set of amendments by the ICANN Board, they also resolved to convene two groups to (by a date certain): 1) draft a registrant rights charter; and 2) identify additional amendments to the RAA on which further action may be desirable. In accordance with this request, the Board is scheduled to consider the set of amendments at its meeting scheduled for May 21, 2009.

That set of RAA amendments that have been posted recently for another round of public comment would require registrars to either escrow privacy/proxy customer data or make it very clear to consumers through a conspicuous warning that their data is not subject to escrow. This is not an endorsement of registrar privacy or proxy services, nor an abrogation of registrar WHOIS obligations. Rather, these amendments are recognition of a marketplace reality. Reviews by ICANN and others of the domain name marketplace demonstrate that there is a significant market for services that help protect consumer privacy, whether via a proxy or privacy service offered by an ICANN-accredited registrar or through an independent entity that has no contractual relationship with ICANN. Just as any registrant may license use of its domain name to another user, so too have proxy services been developed to offer this as a mainstream service. ICANN takes no position on the appropriateness of a particular use of a domain name, whether by a registrant as beneficial user of a name or by a registrant that sublicenses use of the name to another person or entity. Whether it is made permissible as a registrar service or not, these types of licensing arrangements will undoubtedly continue.

These RAA amendments, as developed by the various community participants, are in fact intended to shine a light on the proxy/privacy service marketplace and encourage registrars to deposit beneficial user data into escrow in the case of proxy and privacy service registrations offered by registrars and their contracted resellers. If Registrars elect not to escrow such user data they will be required to inform their customers of the potential consequences of the use of their service. This alternative is intended to educate consumers to be able to make meaningful decisions about their choice of registrar in a competitive registrar marketplace. The RegisterFly collapse and the experience of many of its customers demonstrated that consumers may not be aware of the risks associated with proxy and privacy registration services, i.e., an apparent lack of understanding of the risks associated with potential failures of such services. However, the feedback during the consultation so far is that simply prohibiting registrars from offering such services would likely lead to growth in the offering of privacy and proxy services by parties who have no contractual relationship with ICANN and work to favor resellers and agents over accredited registrars (with whom ICANN has contract privity). That is because – as I said earlier – there is clearly a market demand for the service.

ICANN's responsibility to registrants in the event of registrar de-accreditation remains unchanged by these proposed amendments. All registrant data is currently subject to mandatory escrow today, and it will remain so. These proposed amendments extend the reach of the registrar data escrow program to customers of registrars' proxy and privacy services and provide meaningful education to consumers whose registrars do not escrow such data.

I also understand the NTIA concern that one of the Principles put forward on new gTLDs by the Governmental Advisory Committee (GAC) – to study the uses and misuses of WHOIS data – is being ignored. In fact, during the ICANN meeting in Mexico City, the GNSO Council finalized a list of six WHOIS study recommendation areas that takes into account the studies requested by the GAC and public input on WHOIS research needs. The six study areas identified by the Council are quite extensive and include studies of potential misuse of public WHOIS data, the impact of non-ASCII character sets on WHOIS readability and accuracy, the extent of abuse of proxy and privacy services related to WHOIS, the responsiveness of proxy and privacy services to information requests and related WHOIS topic areas. The Council has provided this list of hypotheses to the ICANN staff to determine cost, feasibility, potential methodology, and estimated time frames for testing. Staff is currently working on this request and will keep the Board, Council and GAC apprised of its progress.

Finally, ICANN continues to require compliance with the provisions of the RAA and enforce existing WHOIS policy consistent with ICANN's Affirmation of Responsibilities for ICANN's Private Sector Management, which was incorporated in the Joint Project Agreement between the U.S. Department of Commerce and ICANN. The proposed amendments do not change ICANN's enforcement of WHOIS policy or the WHOIS provisions of the RAA. ICANN takes that responsibility (like all those under the Joint Project Agreement) very seriously. All registrants remain and would continue to remain obligated to provide their registrar with accurate registration information, and all ICANN-accredited registrars remain obligated to take reasonable steps to investigate and correct WHOIS data inaccuracies. That is, ICANN would continue to enforce existing WHOIS provisions as required by the JPA responsibilities.

Thank you for sharing the Department's comments with me and other ICANN staff members and participating in the comment process in such a transparent and thoughtful way.

Sincerely,

A handwritten signature in blue ink, appearing to read "K Pritz", is written over a faint, light blue circular watermark or stamp.

Kurt Pritz  
Senior Vice President – Services