

RAA Posted for Public Comment

7 March 2013

After nearly 18 months of negotiations, ICANN is posting a new version of the proposed 2013 Registrar Accreditation Agreement (RAA) for public comment.

The Registrar Negotiating Team (NT) has continued to engage in good faith negotiations to understand ICANN's perspective with respect to the outstanding issues, and to share the often divergent positions within the Registrar Stakeholder Group. Recently, additional revisions were proposed by ICANN's Negotiating Team stemming from the call by ICANN's CEO, Fadi Chehadé, to work to improve the image of the domain industry and to protect registrants through a further updated contractual framework. The Registrar NT considered each of these new issues, and worked towards finding solutions where appropriate. The RAA posted today reflects hard-fought concessions on many of key issues raised throughout the negotiations, and highlights issues remaining in order for the final 2013 RAA agreement to be reached.

Throughout the RAA and its Specifications, there are portions where two versions of draft text appear side by side. These highlight areas where ICANN and the Registrars have not been able to reach agreement in principle on an issue, therefore both positions are provided for comment. Unless otherwise noted, the remainder of the document reflects agreements in principle among ICANN and the Registrar NT.

ICANN and the Registrar NT have agreed in principle on many key focus areas:

- **The 12 Law Enforcement Recommendations** that served as the impetus for these negotiations are all addressed in this proposed draft. As reported at ICANN's meeting in Toronto, agreement has been reached on 11.5 of the 12 recommendations. The proposal posted today includes an additional measure to fill out the recommendations – a requirement for verification of an email address or phone number for an account holder, not just the registrant of a domain name.
- **Enhanced Compliance Tools** including broader suspension and termination tools, clarification of audit rights and access to information to facilitate ongoing investigations, and annual certification requirements.
- **A Registrant Rights and Responsibilities Document** that sets out, in clear and simple language, the types of information that registrants can expect to be made available to them about terms and conditions of registrations, fees and customer service processes. The document also emphasizes the registrant's role in providing accurate contact information, and responsibilities in maintaining domain name registrations.

- **Registrar Responsibility for Reseller Compliance** with all appropriate terms of the RAA.
- **Consolidation with the Registry Agreement for New gTLDs.** Where appropriate, ICANN and the Registrar NT have agreed to mirror language from the Registry Agreement, to allow for contracts that are better aligned. The New gTLD Registry Agreement and the 2013 RAA are anticipated to complement each other as Registries and Registrars move towards agreements that better reflect the changing marketplace.

Major Advancements In Negotiations

The documents posted today reflect the work and advancement that ICANN and the Registrar NT have made in the negotiations. There are significant changes from what was previously presented to the community in June 2012. Accompanying the posting of the documents, ICANN is also providing a summary of changes document to demonstrate the changes between the June 2012 documents and those posted today. Where helpful, ICANN is also posting redline comparisons between the June 2012 documents and the new proposed 2013 RAA.

One of the new areas of advancement is negotiations on the development of interim proxy and privacy service standards for privacy and proxy services that are offered through the Registrar, including the provision of access to terms of the service as well as a mandatory escrow requirement. The negotiations contemplate that interim standards will be in force until a Proxy/Privacy Accreditation Program is developed by the ICANN Community. A specification of proxy and privacy service standards has been drafted and is under consideration.

Differences Still Remain

Though much agreement has been reached on the principles guiding the 2013 RAA, ICANN and the Registrars are now at the point where the negotiations surround specific language within the RAA.

Some of those areas of difference include:

Section 3.3.1	The registrars request that obligations to provide Whois query access on Port 43 for thin registries.
Section 6.3	As a compromise from the Revocation language that ICANN proposed earlier in the negotiations, ICANN now proposes a Board-approved amendment clause, described more fully below.
Whois Accuracy Program Specification	ICANN has requested the verification of the email address or phone number of the account holder.

One of these key areas of difference is in regards to how ICANN, acting in the public interest, assures that the RAA contains sufficient flexibility to address changes in the marketplace. Since 1998, we have seen the registrar marketplace grow from one to over 1000 accredited registrars, yet many terms of the RAA are still based on terms negotiated in 2001 when there were just a few registrars in the market. With the anticipated introduction of over 1000 new gTLDs, and the re-introduction of vertical integration of registry operators and registrars, no one can know what this marketplace will look like in a few years. The RAA must be a stable document, yet flexible enough to continue to allow for innovation and change in the future. ICANN previously introduced a sunset provision into the RAA, allowing the Board the opportunity to end the current accreditation model if it was no longer feasible. As a compromise to the Registrars, ICANN has offered to remove that sunset provision, and instead includes the ability for the Board to approve an amendment to the RAA that has community and Board support, though is not approved by the Registrars. This is similar to the provision inserted to the New gTLD Registry Agreement. The Registrars indicate that this is an area where further discussion is expected and their proposed language does not include this term.

The Board-approved amendment process is drafted to address a key concern of ICANN in this changing marketplace – what if the gTLD registration market develops in a way that is anti-consumer, yet very favorable to the existing registrars. In this situation, it would be against the business interests of the incumbent registrars to adopt a change – even when the broader community supports the change.

Next Steps

Given the agreement in principle over so many areas of the agreement, there were two paths forward: continue negotiations to address points that have been raised multiple times by each side, or put the agreement out to the community now for public input on the finalization of the agreement. After the long period of negotiations, as well as the import of the 2013 RAA to the New gTLD Program, ICANN feels that it is very important to take the RAA proposal to the community.

Due to the extensive focus on the base agreement, the Data Retention Specification and the Whois Accuracy Program Specification, some of the Specifications posted for comment reflect ICANN's position. For those, ICANN anticipates further engagement with the Registrar NT as community comment is received.

The members of the Registrar NT have devoted countless hours to this work, and have produced many positive changes into the future RAA. The members of ICANN's negotiating team thank them for the constructive dialogue and tireless work they have contributed to bring this agreement to where it is today.