

Report of Public Comments

Title:		Proposed Draft 2013 RAA Posted For Public Comment									
Publication Date:		7 March 2013									
Prepared By:		Margie Milam, Senior Director, Strategic Initiatives									
Comment Period:		<table border="1"> <tr> <td colspan="2" style="text-align: center;">Important Information Links</td> </tr> <tr> <td colspan="2" style="text-align: center;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center;">Public Comment Box</td> </tr> <tr> <td colspan="2" style="text-align: center;">View Comments Submitted</td> </tr> </table>		Important Information Links		Announcement		Public Comment Box		View Comments Submitted	
Important Information Links											
Announcement											
Public Comment Box											
View Comments Submitted											
Open Date:	7 March 2013										
Close Date:	28 Mar13/Reply 19 Apr 13										
Time (UTC):	23:59										
Staff Contact:	Margie Milam	Email:	margie.milam@icann.org								
Section I: General Overview and Next Steps											
<p>ICANN sought public comments on a proposed 2013 Registrar Accreditation Agreement (RAA), particularly on areas where ICANN and the Registrar Negotiating Team had not been able to reach agreement in principle. This was the first time in the nearly 18 months of negotiations that community comment was formally sought on this document.</p> <p>ICANN and the Registrar Negotiating Team commenced negotiation on amendments to the RAA in October 2011. While the documents posted in this Public Comment Forum reflected many areas of agreement, there were differences between the ICANN and Registrar positions, as highlighted in the documents posted. Since the posting, ICANN and the Registrar Negotiation Team have engaged in extensive negotiation sessions prior to, during, and after ICANN’s Beijing Meeting regarding the open issues in the RAA and the specifications. While in Beijing, the negotiation teams announced an agreement in principle on the remaining items, several of which address issues raised in this Public Comment Forum.</p> <p>During the Beijing Meeting, ICANN announced that it would open a new public comment forum on the fully negotiated 2013 RAA. After review of the comments to be received in the additional public comment forum to be opened shortly, the proposed 2013 RAA will be reviewed to determine if further changes are warranted. The ultimate goal is to have a 2013 RAA completed and approved in the near future for use in the New gTLD Program.</p>											

Section II: Contributors

At the time this report was prepared, a total of twenty-two (22) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
At-Large Advisory Committee	Alan Greenberg	ALAC
Registrar Stakeholder Group	Michele Neylon	RrSG
Non-Commercial Stakeholder Group	Robin Gross	NCSG
ISP Constituency	Wolf Knoben	ISP
Intellectual Property Constituency	Steven Metalitz	IPC
International Anti-Counterfeiting Coalition	Andy Coombs	IACC
Demy's Ltd.	Gordon Dick	DM
1&1 Internet AG	Thomas Keller	1&1
Cronon AG	Michael Shohat	CR
Eco Association	Thomas Richert	ECO
LegalScript	John Horton	LS
Web.com	Bob Weigand	Web
Coalition for Online Accountability	Steven Metalitz and endorsed by the COA	COA
NBC Universal	Meredith Baker	NBC

Individuals:

Name	Affiliation (if provided)	Initials
Benjamin Kerensa		BK
Bill Silverstein		BS
Wendy Seltzer	Wendy Seltzer, Joy Liddicoat, Robin Gross, and endorsed by the NCSG	WS
Mark Andrews		MA
Moritz Bartl		MB
Dave Wrixon		WG

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

General Observations Regarding the Draft 2013 RAA

During the public comment forum, a total of twenty-two (22) comments were submitted during the open public comment period. With regard to submissions from SO/ACs, or their constituencies, the GAC, ALAC, Intellectual Property Constituency and ISP Constituencies voiced general support for the revised RAA, while the RrSg and NCSG voiced opposition to the process as well as specific amendment proposals.

However, the RrSg's position may be tempered by the developments since the initial posting of the RAA. Specifically, negotiations have continued through the pendency of the public comment forum, leading to an announcement at the ICANN Beijing Meeting that the Registrars' Negotiation Team and ICANN have agreed in principle to a new form of the 2013 RAA to be posted for public comment shortly. Similarly, in its Beijing Communiqué, the GAC advised ICANN to finalize the 2013 before any new gTLD contracts are approved and strongly supported the amendment to the new gTLD registry Agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

Comments in Support or Opposition of the Draft 2013 RAA

The ALAC is generally in agreement with ICANN on the issues where ICANN and Registrars disagree.

The proposed RAA is much better than its predecessor. It provides clarity where previously obscurity and even obfuscation ruled, and many of the omissions of earlier RAAs have been addressed. All parties in the current round of negotiations are to be congratulated. *Comments of the ALAC submitted by Alan Greenberg.*

Amid objections related to the remaining points of differences, the RrSg states that... “[A]ll of the items that have been agreed to over the past 18 months would, by themselves, produce an RAA that is vastly improved over the current 2009 version. If adopted, that RAA would significantly raise performance requirements for every ICANN accredited registrar and bring dramatic improvements to the domain name ecosystem.” *Comments of the RrSg submitted by Michele Neylon.*

The IPC believes “the revised Section 3 includes some significant changes representing positive steps toward addressing issues that have long plagued IP rights holders – such as better access to more accurate WHOIS data and enforcement of rules compliance against rogue registrars, resellers, and privacy and proxy services – but we believe some of these provisions still require revision to be fully

effective.” *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

Comcast/NBCUniversal’s initial review of the “progress on the 2013 RAA reaffirms our belief that the proposed contract represents an important evolutionary step forward from the 2009 contract. The current iteration of the 2013 RAA still represents a major step forward for the safety, stability and reliability of the DNS.” *Comments of NBC Universal, submitted by Meredith Baxter.*

IACC sees the Draft 2013 RAA as a “constructive step in the right direction and, in many ways, an elegant compromise between ICANN’s responsibilities and ICANN’s ongoing policy development processes concerning some of these same issues.” *Comments of the IACC, submitted by Andy Coombs.*

LS applauds “the move toward greater transparency and accountability by better identifying resellers and holding them accountable to the RAA and other ICANN requirements; preventing the use of “rogue” proxy WHOIS services, which LS has observed being utilized by rogue Internet pharmacy networks; and steps intended to improve WHOIS accuracy.” *Comments of LS, submitted by John Horton.*

In negotiating the contracts that form the basis of its governance regime, ICANN is performing a public, not private, function. In doing so, it has duties to the public, registrants included, to keep our interests in mind... it does not reflect good public policy. *Comments of Wendy Seltzer, Joy Liddicoat, Robin Gross, submitted by WS, and endorsed by the NCSG.*

Process Concerns

The RrSG believes that some of the other new items for inclusion transcend the RAA and could affect the entirety of the multi-stakeholder model. For example, ICANN insisted on including a proposed Revocation Clause that would have given them the ability to unilaterally terminate all registrar accreditations. After major pushback, ICANN staff relented and in its place proposed giving the ICANN Board the ability to unilaterally amend the RAA. This is identical to what ICANN inserted into the proposed new gTLD registry agreement—a clause met with strong opposition not only from the Registry Stakeholder Group but from the broader ICANN community. *Comments of the RrSg submitted by Michele Neylon.*

On a process level, the ALAC wishes to commend ICANN staff for presenting this information in such a way and with multiple views so as to make this very complex set of documents and the differing viewpoints comprehensible. That being said, there are a number of issues where (i) The ALAC is uncomfortable with the position that ICANN has taken; and (ii) The ALAC believes that additional changes are necessary. *Comments of the ALAC submitted by Alan Greenberg.*

The RAA is one of the central contractual underpinnings of the entire ICANN framework for management of the Domain Name System, and thus of the multi-stakeholder model that ICANN purports to embody. Allowing a mere 21 days for public comment on the numerous and complex documents released on March 7 is grossly insufficient, and inconsistent with ICANN’s oft-stated (but not always honored) commitment to accountability and transparency. *Comments of the IPC,*

submitted by Steve Metalitz and endorsed by the COA.

In negotiating the contracts that form the basis of its governance regime, ICANN is performing a public, not private, function. In doing so, it has duties to the public, registrants included, to keep our interests in mind. As lawyers, technologists, and members of the Non-Commercial Users Constituency, we do not believe the latest proposed Registrar Accreditation Agreement (RAA) does so. As such, it does not reflect good public policy. *Comments of Wendy Seltzer, Joy Liddicoat, Robin Gross, submitted by WS and endorsed by the NCSG.*

COA urges that the entire proposed revised RAA be compared against the list of high and medium priority items identified for change in the RAA by the GNSO-ALAC joint drafting team in October 2010, and that that comparison be made public. *Comments of COA submitted by Steve Metalitz.*

CR states that “ [I]ike many of our registrar colleagues we've been closely following the RAA negotiations and were very disappointed by the way ICANN staff handled the final part. We are thus writing in strong support of the registrar negotiating team and its statement from March 8th.” *Comments of Cronon, submitted by Michael Shohat, also supported by 1&1.*

DM thanks the registrar negotiating team for their hard work on this topic and note significant concerns that ICANN's determination to meet a self-imposed deadline to force the use of the new RAA may undermine the credibility of the continuance of the current multi-stakeholder model. It is imperative that ICANN get the RAA 2013 correct not simply have it in place for their self-imposed deadline. *Comments of DM submitted by Gordon Dick.*

DM is also every concerned with the short comment period and the appearance of additional documents justifying ICANN's position in an ad-hoc fashion after publication in a manner that means it is not clear it has been published. This is not in line with good governance standards expected from either Governments or governing organizations. *Comments of DM submitted by Gordon Dick.*

Having followed the process reasonably carefully from a distance, it is clear that process was swamped with Lobbying of English speaking public interest groups and that most of the issues relating to IDN and Asia simply got drowned out. *Comments of DW submitted by Gordon Dick.*

New Topics to Be Included

Several commentators suggested additional topics to be addressed in the 2013 RAA. These include, requiring registrars to delete expired domain names, rather than do what they do now - either taking over ownership of expired domains, or auctioning them off for their own financial benefit. *Comments of ceo@xxxxxx.com.*

The RAA should address IDN Transliteration of existing gTLDs. According to DW, “[t]he potential user confusion is obvious. However, the issue extends far beyond the rights of registrants which have been largely ignored, but extend to the potential of enormous systemic phishing due to the creation of audibly identical gTLDs in a number of scripts which represent all the biggest registries.” *Comments of DW.*

The maintenance of NS, DS, A and AAAA should be treated equally as core parts of maintaining a delegation. There is currently no requirement, proposed or otherwise, for registrars to treat the creation and maintenance of these records on an equal footing. Such a requirement should be clearly stated. *Comments of MA.*

Registrant Rights and Responsibilities (R3)

Although registrars were surprised by these new demands, registrars worked in good faith with ICANN to accommodate its intentions. For example, registrars consulted with their members to fine-tune the R3 document to make it easier to understand and readily translatable in other languages. *Comments of the RrSg submitted by Michele Neylon.*

The "Registrants' Rights and Responsibilities" document gives "feeble rights in exchange for onerous (or unenforceable) responsibilities. It should not have been tabled without input from community and especially across community constituencies. Registrants rights are a foundational aspect of the RFCs which guide the DNS. To purport to define these without community input is not only misguided, but also contrary to the very rights the proposal seeks to assert." *Comments of Wendy Seltzer, Joy Liddicoat, Robin Gross, submitted by WS and endorsed by the NCSG.*

Data Retention Requirements

The following commentators generally objected to the data retention obligations: ECO, and Cronon AG, web.com, while the following commentators believed that the amendments did not go far enough: IPC, IACC, Benjamin Kerensa, COA, and Bill Silverstein.

Regarding Data Retention Specification 1.1.8 – Card-on-File, "the impact of this change is unclear. If it is referring to credit card information where a registrar or client chooses to not have the registrar save the card number for future use, the issue is a difficult one. The ALAC understands the benefit of maintaining such information for forensic purposes, but at the same time believes strongly that a consumer should be able to require that such information not be stored and therefore subject to hacking and theft. *Comments of the ALAC submitted by Alan Greenberg.*

Regarding Data Retention Specification 2 – Trigger for exemptions, the ALAC supports the Registrar position of allowing a contracted party to comply with local law before they are under investigation or cited. *Comments of the ALAC submitted by Alan Greenberg.*

The IPC does not support the change of the data retention term specified in 3.4.2 from three years to two years, as good data retention is critical to law enforcement efforts, both in the public and private sectors. *Comments of IPC submitted by Steve Metalitz and endorsed by the COA.*

Amendment Language:

The ISPC, the NCSG, ECO, Demy, web.com, WS and the RrSG opposed the proposed amendment clauses, while the IPC and the ALAC generally supported them.

The ALAC is "sympathetic with the rationale for this clause. Specifically, the regular amendment

process which can and apparently does take several years, followed by up to five years delay before all registrars are subject to the new RAA is simply too long to address issues that have 'substantial and compelling need.' ICANN as the custodian of the domain name system cannot allow problems that undermine the public interest to exist without taking action That being said, the concept of a unilateral change is not one that many in At-Large feel comfortable with." *Comments of the ALAC submitted by Alan Greenberg.*

The IPC "strongly supports in principle the alternative amendment procedure. For entities accredited by ICANN to be able to exercise veto power over changes to the accreditation standards that ICANN concludes, after an open and transparent process, are necessary to protect the public interest, is simply unsustainable. ... However, the IPC also recognizes the concerns expressed by some registrars about the scope of this provision." *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

CR is specifically concerned regarding granting "the ICANN board the unilateral right to amend the contract as it sees fit. Not only does it seem unfair to include a provision giving one party the opportunity to approve amendments unilaterally, it is also a section that wouldn't be recognized by German courts." *Comments of Cronon, submitted by Michael Shohat, also supported by 1&1.*

1&1 expressed "concern and dismay that the proposed unilateral right to amend a contract is absolutely not acceptable as a contractual term as such as well as a first step to undermine and endanger ICANN's multi stakeholder bottom-up consensus policy model which is the fundamental basis of ICANN legitimacy." *Comments of 1&1 submitted by Tom Keller.*

"Unilateral amendments, even less than bilateral contractual negotiations are not the place to set policy for a multi-stakeholder environment. The unilateral decision-making in this foundational agreement undermines our ability to advocate for multi-stakeholder governance in the ICANN model in other fora. The Internet is, by definition, a community of networks. To create a single point of unilateral decision-making, particularly when no clear case for this has been made, is contrary to this very basic and profoundly important architectural feature." *Comments of Wendy Seltzer, Joy Liddicoat, Robin Gross, submitted by WS, and endorsed by the NCSG.*

DM notes "ICANN's stated concern that the market may develop in a way that is not in the interests of the public and then registrars may seek to resist contract changes that are for the good of the end user. This is a very worthy sentiment, however what is to protect registrars or the end user if the ICANN model itself develops in a way that is not in the public interest but only the ICANN board has the power to make unilateral changes without constraint? ICANN is at best overlooking the problems and at worst being disingenuous with the implications of this requirement." *Comments of DM submitted by Gordon Dick.*

DM has "no contention with any consumer or end user protection measures being put in place through a consensus driven model even where only a minority of registrars support the wider consensus. Given the variety of registrar business models if all registrar business models equally

reject a change then we would suggest it is likely to be unworkable and thus in the overall scheme not in the public interest. *Comments of DM submitted by Gordon Dick.*

Web.com agrees with the RrSG that the proposed language, which empowers the ICANN Board to make unilateral changes to the RAA, creates an unnecessary level of risk and uncertainty for commercial operators such as Web.com. While recognizing that “ICANN has presented the amendment language as a proposal, a starting point for the conversation,” ICANN should delete this proposed change from the RAA. Indeed, if “perpetual” renewal terms are the true source of concern for ICANN, then perhaps greater attention should be dedicated to the term and termination provisions in the RAA, as opposed to insertion of a unilateral amendment provision. *Comments of Bob Weigand on behalf of Web.com.*

Web.com supports the Registrar NT Proposed Text for Section 6.7.2 which defines the term “Registrar Approval” and requests that ICANN accept this proposed change to the RAA. *Comments of Bob Weigand on behalf of Web.com.*

Substituting a New Agreement on Renewal

Adoption of any future Updated RAA by the Registrar is optional up until the point of expiration and renewal. In order to avoid an uneven landscape, where not all accredited Registrars are bound by the same RAA, ICANN should consider incentives to correct this discrepancy or, alternatively, mandatory adoption of any future Updated RAA upon a reasonable notice period to the Registrar. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

Termination Language

The IPC commends the drafters for the addition of language addressing several new bases for termination of the proposed 2013 RAA—particularly those related to cybersquatting. It is absolutely vital that ICANN reasonably exercise these new provisions, because they are meaningless absent any real threat of enforcement. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

Definition of Applicable Law

The phrase “applicable law(s) is not defined in the proposed RAA language. When the phrase is used in reference to commercial use of a Registered Name, LS believes that it is critical to clarify that “applicable laws” includes the laws and regulations of any jurisdiction where the registrant is using the website to engage in commercial activity and/or target customers. *Comments of LS submitted by John Horton.*

Audits

ICANN should define these audit requirements in terms of working days in the registrar's head quartered jurisdiction. DM is concerned that ICANN taking a view of a strict number of calendar

days does not take into account regional norms. *Comments of DM submitted by Gordon Dick.*

WHOIS

The IPC, IACC, COA, BK and BS generally believe that the new obligations did not go far enough. On the other hand, the NCSG, Cronon AG, and generally believe that the obligations go too far.

The ALAC is particularly pleased to see the new sections on Privacy and Proxy registrations; resellers; the Whois Accuracy Program Specification; uniformity of Whois; and a clear, concise simple-language statement of registrant rights and responsibilities. *Comments of the ALAC submitted by Alan Greenberg.*

The IACC applauds ICANN's efforts to correct deficiencies in the quality of WHOIS information and, in particular, addition of the proposed added specification to on WHOIS verification. *Comments of the IACC, submitted by Andy Coombs.*

The ALAC supports the ICANN position of using all available information in addressing Whois Accuracy, not solely that which is in the current Whois record. *Comments of the ALAC submitted by Alan Greenberg.*

Of concern to the IPC is that Section 3.2.1 of the RAA states that "even its minimum requirements could be changed by agreement between the Registry and Registrar, if the agreement is approved by

ICANN.... While we respect the desire for registry operators and registries to modify, with ICANN's blessing, some contractual provisions under some circumstances, the IPC believes that the elements set forth in 3.2.1 must remain static and represent the bare minimum set of data elements to be furnished by Registrars to the Registry." *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

With regard to Whois Accuracy Program Specification 1e – Information availability, the ALAC is unsure of the subtle difference in meaning between "made available" and "readily available". If the issue being addressed by the Registrars is a matter of cost or effort required to avail oneself of the information, that should be made much clearer and not rely on the vague term "readily" which is too subject to varying definitions. *Comments of the ALAC submitted by Alan Greenberg.*

IPC supports the first four validation requirements, and notes that all could be accomplished in an automated fashion in close to real time upon receipt of the Whois information from the registrant. With respect to 1(e), IPC supports the text proposed by ICANN. The standard of requiring validation of postal address fields only if the data "readily available" is subject to gaming. IPC recognizes that such data is not equally available for all countries but registrars should be obligated to make a diligent effort to obtain and use such data for validation. Also, the validation requirement should be expanded so that the street address is validated as to whether the numerical address exists on that street. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

IPC strongly urges that the final word of 1(f)(i) be changed from “or” to “and.” The probability of identifying a bad actor increases significantly if both the e-mail address and phone number are checked. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

With regard to Whois Accuracy Program Specification 5 – Whois inaccuracy remedy, the ALAC believes that the start of this section is too vague. In particular, the word “occurrence” is undefined subject to misinterpretation. The ALAC suggests replacing the beginning of the sentence with “Upon a validated report or discovery of a...”, or alternately, “Upon learning of a...” *Comments of the ALAC submitted by Alan Greenberg.*

The wording of Section 3 is ambiguous in some respects. “Possession of facts” and “possession of ... knowledge of circumstances” are somewhat strange locations. The standard should be whether the registrar has received information suggesting that the contact information, even though previously validated or verified, is no longer accurate or current. *Comments of the ALAC submitted by Alan Greenberg.*

The IPC notes that the verification language is defective. In a case in which verification has not been achieved, it provides the registrar the option to “verify the applicable contact information manually,” with no time limit or explanation of what is required. This means that a registration with unverifiable e-mail or phone contact information could remain active for weeks or months, until “manual” verification is carried out. Instead, registrars should be required, at a minimum, to suspend the registration until there is verification. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

The verification language should clearly set forth what should be done when contact information cannot be validated, per section 1(a)- (e). The treatment should be the same – at least suspension until validation occurs. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

Section 2 of the WHOIS Accuracy Specification conforming changes to be made. As with initial verification and validation, there is no reason why it should take 15 days for registrars to complete this process. The defects noted above concerning unvalidatable information and the results of failure to validate or verify should also be corrected. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

Given tools available to registrars, a deadline for validation and verification does not need to be nearly so long as the proposed 15 days. *Comments of IACC, submitted by Andy Coombs.*

IPC supports the inclusion of customer account holder information as subject to verification (as per ICANN proposed text). This data, which registrars have strong incentives to keep accurate and current, is useful in pursuing enforcement activities, even though it generally is not currently publicly accessible via registrar Whois. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.* IACC supports proposals to make account holder information subject to verification.

Comments of IACC, submitted by Andy Coombs.

IPC believes that registrars should be required to validate and verify domain name registration data before registrations go live. However, in the event that this is not achievable, we believe the time frame for required validation and verification should be much shorter than the 15 days proposed.

Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.

The IPC notes that there is also a mismatch in Section 4 between the category of incorrect information identified (sections 1(a) through 1(g)) and the type of reverification required (e-mail address only). If the physical address is incorrect then reverifying e-mail will not cure the problem.

Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.

DM notes that it has a greater knowledge of its clients and their business model than the average registrar yet ICANN will add greater costs to its business model by duplicating an authentication process it already have in place with one that will not add any value and is more open to abuse. DM wholeheartedly endorses ICANN's wish to require registrars know their customers and cooperate with law enforcement where they legally can but to prescribe a flawed method will not help the situation.

Comments of DM submitted by Gordon Dick.

IPC agrees with Section 3.7.8 that Registrars should comply with the obligations of the Whois Accuracy Program Specification, but believes that those obligations should be considerably strengthened. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

IPC strongly supports Section 5 which for the first time specifies when registrars must cancel, suspend or render unresolvable (by placing on Client Hold status) registrations based on false contact data. It should be accompanied by a savings clause spelling out that nothing in the specification prevents a registrar from cancelling, suspending or placing on Client Hold a registration for any other reason consistent with its terms of service or contract with registrants. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

IACC supports the language which provides that registrars must take action to block resolution of domain names where registrations based on false contact data. The specification should expressly provide that it does not prevent a registrar from taking action at any time when it has a reasonable basis to believe that false contact data was supplied. *Comments of the IACC, submitted by Andy Coombs.*

IPC supports the concept of review of the Specification, but this should not be an opaque and bilateral consultation between ICANN staff and the Registrar Stakeholder Group. Other stakeholders that rely on access to accurate Whois data, including but not limited to intellectual property interests, must have an opportunity to be meaningfully involved. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

IPC agrees that customer account holder information need not be verified if it is not correlated with any active domain name registration. *Comments of the IPC, submitted by Steve Metalitz and endorsed*

by the COA.

COA strongly supports inclusion of a data item identifying the reseller in the Registration Data Directory Specification, if any, associated with a registration (see section 1.4.2). This should include contact points for the reseller. *Comments of the COA, submitted by Steve Metalitz.*

COA strongly supports the requirement to link to the ICANN Whois Data Problem Reporting System (or its successor) in registrar Whois output. The link should be required to be accompanied by the phrase “To report inaccurate or incomplete data in this report:” or words to that effect. *Comments of the COA, submitted by Steve Metalitz.*

Regarding the SLA, DM is concerned that the SLR defined by the SLAs in this clause is unreasonable and out of the control of the registrar. They may also discriminate against Registrars from countries with poorer connections to the internet. DM accepts and agrees “with law enforcement on the need for the service but rather than implementing via a strict SLA model perhaps the stick could cater for registrars being able to comply by making all reasonable efforts to match the SLA?” *Comments of DM submitted by Gordon Dick.*

The RAA needs language to ensure that when a individual files a WHOIS complaint and the registrar takes action that they not seize the domain from the original registrant and then re-sell it for their own profit. It needs to be clear that registrars need to delete domains whenever they fail to be brought into compliance by the registrant. *Comments of BK.*

The RAA WHOIS Accuracy portion should require all registrars to list a point of contact at their company who can handle WHOIS compliance issues. In addition, there should be some automated form at every registrar site to allow receipt of complaints in addition to the already existing Internic tool. *Comments of BK.*

COA’s view is that any directive from ICANN for registrar to implement a new directory service in accordance with a standard promulgated by IETF in the future must be issued only after a full opportunity for public comment on the standard and whether ICANN should require it. *Comments of the COA, submitted by Steve Metalitz.*

The ISPC supports the requirement the of a contact point at the registrars to handle WHOIS compliance issues. *Comments of ISPC, submitted by Wolf Knobon-Ulrich.*

LS believes that there are important reasons to retain some type of bulk WHOIS access requirement, and urges the retention of a general requirement that Registrars be required to provide bulk WHOIS access with weekly updates in limited circumstances. *Comments of LS submitted by John Horton.*

Web.com requests the removal of the third-party bulk access obligations outlined in Section 3.3.6 of the proposed RAA. The competitive circumstances underlying the bulk access mandate (the existence of a single registrar model) no longer exist, thus this provision is no longer relevant. Upon removal of this provision, we would not oppose an ability by ICANN to re-impose the requirement in response to changes in the competitive landscape. *Comments of Bob Weigand on behalf of Web.com.*

Privacy/Proxy Specification

The IPC supports the requirement for Resellers and Registrars to comply with “any ICANN-adopted Specification or Policy that establishes a program for accreditation of individuals or entities who provide proxy and privacy registration services. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

The IPC supports the addition of the proposed interim specification on privacy/proxy services ("Interim Specification"). The serious problems created by unregulated privacy/proxy services has been the subject of repeated comment from the IPC, which has repeatedly urged ICANN to address these issues in connection with negotiation of the amended RAA. *Comments of the IPC, submitted by Steve Metalitz and endorsed by the COA.*

The IACC strongly believes that the proposed specification to address proxy/privacy services should be included in the RAA Amendments. *Comments of the IACC, submitted by Andy Coombs.*

“The European Privacy law is very strict, and in general limits the amount of customer data you are allowed to collect to data that is required for billing purposes. Even forcefully collecting for example a phone number, or even an address where it is not needed, is prohibited. Since it is already widespread practice to simply violate these laws, and most people and citizen have given up on fighting for their privacy rights, I am even more worried about section 3.3.2: You want to force privacy registrars to submit a copy of all customer data to the ICANN or an escrow service... I really don't see why this is necessary. Again, this is very likely against European privacy laws, and apart from that me as a registrar would want the assurance and ability to check on the escrow service's handling of data, and require it to be in my country or a country of my choosing....I urge you to completely drop 3.3.2.” *Comments of MB.*

“The proposed accreditation of privacy services and proxy registration providers, along with new data collection and retention demands, has come under much criticism -- it is vital that human rights implications of such changes be taken into account... Such provisions must be subject to the rule of law, due process and take into account registrants rights such as to freedom of association and freedom of expression. Even a placeholder for this policy is inappropriate at this stage.” *Comments of Wendy Seltzer, Joy Liddicoat, Robin Gross, submitted by WS and endorsed by the NCSG.*

There should be no privacy or proxy registration unless (1) the privacy/proxy service is treated as the owner of the domain name; and (2) the public is the 3rd party beneficiary of the contracts for the purpose of 3.7.7.3 of the RAA. *Comments of BS.*

Web.com does not support the proposed language in Section 3.14 which obligates Registrars to “...comply with ICANN-adopted Specification or Policy that establishes a Proxy Accreditation Program” and “agree to comply with the Specification on Privacy and Proxy Registrations attached hereto” [Emphasis Added]. *Comments of Bob Weigand on behalf of Web.com.*

The IPC believes that the Privacy/Proxy Specification could be clearer in insuring that its terms apply to registrars, their affiliates, and to third parties in privity with the registrars (e.g., resellers). *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

While paragraph 2 appears to suggest the specification should equally apply to “affiliates” and “resellers”, the language of paragraph 3 is not equally clear. This language should be reconciled to make clear that "Registrar" includes "Resellers and Affiliates". *Comments of the IACC, submitted by Andy Coombs.*

Although the Privacy/Proxy Specification does impose an obligation to escrow customer information, it does not appear to impose any obligation upon privacy/proxy providers to verify such information. This is a fundamental flaw. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA. Comments of the IACC, submitted by Andy Coombs.*

If the customer cannot be contacted using the “revealed” data, the registration should be subject to suspension or cancellation on the same basis as if the data had been submitted to the Registrar as Whois data. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

The IPC believes that there is no justification for a five day window for fulfillment of the relay obligation in paragraph 3.4. The provision already specifies a limitation where legal prohibition prevents relay, but in the context of the harms which may be at issue and the means of communication available, there seems little if any reason for a delay of "up to five days" before relaying notices received by privacy/proxy services. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA; Comments of the IACC, submitted by Andy Coombs.*

Business Dealings With Registrants

The IPC “applauds the change to Section 3.7.7 which requires Registrars to enter into agreement with a Registered Name Holder other than the Registrar and enforce compliance with the provisions of the registration agreement. If vigorously enforced by ICANN, this could be a significant step toward the goal of reducing the instances of non-compliance by registrants who flout current rules and regulations due to a lack of effective enforcement provisions in the existing RAA....However, the IPC would like to see, at least as a best practice, Registrars adhere to a stricter requirement than 3.7.7’s “commercially reasonable efforts” to enforce compliance with the provisions of the registration agreement between Registrar and any Registered Name Holder (that relate to implementing 3.7.7.1 through 3.7.7.12).” *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

While strongly supportive of the requirement that registrars enforce compliance with the provision of the registration agreement, this requirement must be vigorously audited and enforced by ICANN if it is to be meaningful. Registrars should be required to provide ICANN with copies of their then-current standard registration agreements, and to respond to reasonable ICANN inquiries regarding their enforcement. *Comments of COA, submitted by Steve Metalitz.*

Domain Name Dispute Resolution

The IPC supports the requirement for Registrars to comply with the Uniform Rapid Suspension (URS) procedure and is pleased to see this new rights protection mechanism incorporated into the RAA. Furthermore, because of the questionable track record of some resellers in cooperation with the UDRP process, the IPC recommends that it be spelled out in this section that Registrars must ensure compliance by their resellers with UDRP and URS obligations. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

Reseller & Other Third Parties

The IPC supports the changes to this section holding Registrar responsible for the compliance of its Resellers and third parties providing Registrar Services, and further supports the requirement for a written agreement between Registrar and Resellers. The IPC further commends the requirements for Registrars to take reasonable steps to enforce agreements with Resellers in an effort to cure non-compliance. However, in light of the significance and potential impact of this provision the IPC would support changing it to require Registrars to take “all necessary steps” to enforce these obligations. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

Abuse Point of Contact

The IPC is pleased to see the addition of a requirement for Registrars to provide a publicly designated contact for reports of abuse including “Illegal Activity” and requiring prompt steps to investigate and respond to these reports. The IPC is also supportive of the designated provisions for tracking and publishing these reports. The IPC believes there should be performance standards identified here for responding promptly to reports of illegal activity and abuse by those who are not law enforcement or acting on behalf of the government. *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

The abuse contact available to the general public under section 3.18.1 should be subject to requirements similar to those applicable to the law enforcement agency abuse contact. *Comments of COA, submitted by Steve Metalitz.*

Compliance Sanctions

ICANN should have the authority to impose, as sanctions for violations of particular RAA provisions, curative measures going beyond standard RAA requirements. *Comments of COA, submitted by Steve Metalitz.*

Treatment of Expert Working Group Output

From the Board resolution, “it is clear that the intent was that the Expert Working Group’s conclusions be funneled into a PDP, and it seems premature to have the RAA use the Special Amendment process without at least starting the PDP. It would be reasonable to allow the Special Amendment process (or what may replace it in light of the earlier comments) to be used when and if it is apparent that the PDP was not progressing with a reasonable chance of a suitable outcome.”

Comments of the ALAC submitted by Alan Greenberg.

IPC supports the ICANN proposal that implementation of the new directory service model should not be delayed pending completion of a PDP. However, the wording of this provision needs to be modified to clarify that a new model “emerges from this effort” only upon approval by the ICANN Board after a full opportunity for public comment (including reply comments and a reasoned and comprehensive response by ICANN to comments received). *Comments of IPC, submitted by Steve Metalitz and endorsed by the COA.*

Process for Local Law Exceptions

ICANN is currently unclear on what it believes will be a 'trigger event' to vary the contract when it conflicts with national law. ICANN cannot through its contract require a registrar to breach applicable law. Therefore the only trigger event can be the registrar's reasonable belief that in carrying out the action would put them in breach of the law. *Comments of DM submitted by Gordon Dick.*

Elimination of Port 43 obligations for Thick Registries

Supporters for the elimination of Port 43 obligations include the RrSG, web.com, and DM. On the other hand, the ISPC and the IPC support maintaining the current registrar obligations with respect to Port 43.

ALAC does not have a strong position on this, but some members believe that in the absence of a compelling reason from ICANN as to why the port 43 service should be maintained for thick registries, the registrar position is reasonable. *Comments of the ALAC submitted by Alan Greenberg.*

DM notes that it has “not seen ICANN publicly identify its rationale for requiring registrars to duplicate the WHOIS service provision for thick registries.” In the current situation there is differing information in the registrar's WHOIS from the registry WHOIS. This simply adds to confusion and lack of clarity to the general public as well as adding cost that is passed on to the registrant. Adding cost for no tangible benefit is not in the interests of registrants, law enforcement authorities or internet users. *Comments of DM submitted by Gordon Dick.*

Requiring both Registrars and “thick” Registries to provide free public query-based port 43 access creates duplicative efforts and unnecessary expenses for all parties. It also creates uncertainty as to the authoritative source for the port 43 Whois service, exacerbated by rare instances where inconsistent registration data exists at the Registry and Registrar levels. *Comments of Bob Weigand on behalf of Web.com.*

The IPC notes that “[t]he provisions of 3.2.1 set forth data elements that a Registrar is required to submit to the Registry, such as the name, IP addresses and names of primary and secondary name servers, identity of the Registrar, and expiration date of the registration. These elements are required today, and, while better verification of those elements needs to be provided for under the RAA, the IPC naturally supports the requirement to continue to provide this data. Since the overwhelming majority of registries in which registrars will sponsor registrations pursuant to this agreement will be “thick” registries, it would make more sense to include the full list of data elements (as in section 3.3)

in this section, with the statement that the list could be reduced to the six elements listed here solely in the case of “thin” registries, of which there are only 3.” *Comments of IPC submitted by Steve Metalitz and endorsed by the COA.*

The IPC supports the continued provision of Port 43 Whois service for all gTLDs, and is concerned that present day access is threatened by the new mechanism in 3.3.1 that allows Registries to enter into agreement with the gTLD Registry operator and, with the approval of ICANN, provide “alternative” data elements. *Comments of IPC submitted by Steve Metalitz and endorsed by the COA.*

Scope of Consensus Policy Development

With regard to the Consensus Policies 1.2.4 – taking into account use of domain name, although the ALAC understand the possible difficulty of having a registrar analyze the usage of a particular domain, one cannot totally ignore such usage either. Any policy that includes the requirement to factor in use of a domain name may be difficult to craft so that it can be effective, but the RAA should not preclude such efforts. *Comments of the ALAC submitted by Alan Greenberg.*

With regard to the Consensus Policies 1.3.4 – Details of accuracy and up-to-date specification, “it is unclear what the effect would be of the Registrar request to omit the detailed list of issues that are subject to Consensus/Special Policy. If the omission implies that such issues would be out-of-bounds for future policy, the ALAC does not agree.” *Comments of the ALAC submitted by Alan Greenberg.*

The IPC “also notes, and opposes, the proposed change to 3.3.4. Under this revised provision, Registrars could be required to contribute data to a cross-registrar Whois service if (and only if) ICANN adopts a Consensus Policy to that effect. Given the historical pace of ICANN’s consensus policy development, this change to the RAA effectively forecloses the hope of a timely implementation of a cross-registrar Whois service – even if a majority of Registrars decide to support and provide it.” *Comments of IPC submitted by Steve Metalitz and endorsed by the COA.*

The IPC concerns are deepened by the “Registrar proposal to remove from the list of topics that are appropriate for consensus policies both ‘the development of a distributed capability that provides query-based Whois search functionality across all registrars’ and ‘the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.’” *Comments of IPC submitted by Steve Metalitz and endorsed by the COA.*

2013 RAA required for New gTLD Program

The RrST notes that “in addition to the new items for inclusion there was a surprise announcement that all new gTLD registries must only use registrars that have signed the 2013 RAA, a transparent effort by ICANN to arbitrarily link the new gTLD program to the outcome of RAA negotiations. This requirement would create separate ‘classes’ or ‘levels’ of registrars, which is unprecedented in the DNS industry. There can and must be only one meaning of ‘ICANN-Accredited.’” *Comments of the RrSg submitted by Michele Neylon.*

NBC “strongly supports ICANN’s position that the RAA must be finalized before new gTLDs are

approved. The RAA represents one of the most important checks against DNS abuse in what will be a massively expanded Internet addressing system. Beginning that expansion before the RAA is firmly in place dramatically increases the risk of abuse and exploitation of the new gTLD program. Because the ongoing success of the new gTLD program will be determined, in large measure, by the effectiveness and stability of its launch, it is critical that all appropriate protections be in place before that process begins.” *Comments of NBC Universal, submitted by Meredith Baxter.*

The ISPC supports the request that all registries for new gTLDs use registrars having signed the 2013 RAA. *Comments of ISPC, submitted by Wolf Knoben-Ulrich.*

Assignment of the RAA

With respect to assignment of registrar accreditation, while assignment to another accredited entity that already (and in a compliant manner) acts as a registrar poses fewer risks than assignment to a third party not currently engaged in the registrar business, COA disagrees that such a transaction should automatically be approved unless ICANN formally objects within 10 calendar days. *Comments of COA, submitted by Steve Metalitz.*

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Although the comments submitted reflect many valuable insights, it may difficult to incorporate them in the final 2013 RAA, as the document posted reflects many hard-fought compromises between the negotiation teams. However, some of the concerns raised in the public comment period will be reflected in the future version of the RAA. For example, the community concern raised in regards to what was previously referred to as the “unilateral” amendment clause have been taken into account, and the Board-approved amendment process has been revised to include substantial procedural protections, including the opportunity for the Registrars to proposed alternative amendment language. In addition, ICANN and the Registrar NT have developed a path towards negotiations – an element missing from prior versions of the RAA – to allow for either side to raise issues for consideration.

In terms of data retention issues and the process for local law exemption, ICANN and the Registrar NT have developed a path forward that allows for registrars to seek waivers from ICANN prior to having a proceeded initiated in the event that an obligation from the RAA would cause a registrar to violate the laws under which it operates.

On Port 43 obligations for Thick Registries, the comments received did not evidence vast support or lack of support for either ICANN or the Registrar NT provision. As a result, ICANN has agreed to remove the Port 43 obligations as they relate to thick registries. On other Whois items, the reference to the output of the Expert Working Group has been removed from the agreement, as mentioned in

the comments, and ICANN and the Registrar NT have maintained the Whois SLA. In terms of the other recommended solutions for Whois-related issues, given the ongoing work of the Expert Working Group, the Registrar NT and ICANN did not engage in further negotiations to bring in some of the ideas raised, such as further refining validation requirements. For each of these ideas, as well as the comments on how the privacy/proxy specification should be expanded or reduced, the forthcoming policy-related work on these items are a more appropriate venue for these recommendations. While further enhancements could be achieved in these areas, the anticipated future policy development work will be a more appropriate venue to continue considerations of the balance of need, cost and public impact of the suggested changes.

For the Consensus Policy specification, ICANN confirmed that there would be no diminishment in requirements to follow consensus policies on some of the enumerated topics, and therefore removed the list of items from the specification in favor of the items remaining within the RAA. On the issue of “use” of the domain name, the Registrar NT and ICANN agreed to not change the language and remain with the phrase that has previously been included within the RAA.

The additional revisions to the RAA, as described here, will be posted shortly for a public comment period which will provide an additional opportunity for the ICANN community to provide input and commentary.

Please note that there may be one or more GNSO policy development processes (PDP) initiated to address several of the topics raised during this public comment. For example, ICANN has committed to re-initiate work towards a Proxy/Privacy Accreditation Program. In addition, while many of the comments submitted in this public form address inadequacies in the current WHOIS system, full evaluation of these suggestions has been deferred due to the upcoming PDP on Data Directory Services. This PDP has been requested by the ICANN Board to identify a replacement for the current WHOIS protocol, and as a result, ICANN has convened an expert working group (EWG) for this purpose. When the EWG concludes its work and delivers a proposal for a new system of Data Directory Services, the GNSO will have an opportunity to commence a PDP to evaluate the policy implications of the new system & make recommendations to the ICANN Board. Further revisions to the WHOIS related obligations in the draft 2013 RAA were viewed as inappropriate in light of this pending work.

