



[Draft] Advisory 2010

[DRAFT] Advisory re: RAA Subsection 3.7.7.3

Summary and Purpose

The purpose of this advisory is to clarify that if a Registered Name Holder licenses the use of a domain name to a third party, that third party is a licensee, and is not the Registered Name Holder of record (also referred to as the "registrant" or "domain-name holder" in the ICANN [RAA](#), [UDRP](#), and other ICANN [policies](#) and [agreements](#)). This advisory also will clarify that a Registered Name Holder licensing the use of a domain is liable for harm caused by the wrongful use of the domain unless the Registered Name Holder promptly identifies the licensee to a party providing the Registered Name Holder with reasonable evidence of actionable harm.

Definition of Registered Name Holder

[RAA Section 3.7.7](#) requires a registrar to enter into a registration agreement with a Registered Name Holder for each registration sponsored by the registrar. [RAA Section 3.3.1](#) requires a registrar to provide the name and postal address of that Registered Name Holder in response to any queries to the registrar's Whois service.

At times, a Registered Name Holder allows another person or organization to use the domain name. For example, a website designer might be the Registered Name Holder of record for a domain name used by a client, or a "proxy service" might be the Registered Name Holder of record for a domain name used by a client that prefers not to disclose its identity/contact information. In either of these situations, the Registered Name Holder is the person or entity

listed as the registrant/Registered Name Holder by the applicable Whois service (in the examples above, the website designer or the proxy service, not the client of the website designer or the proxy service).

Such circumstances are addressed by [RAA Subsection 3.7.7.3](#). Subsection 3.7.7.3 requires a registrar to include in its registration agreement a provision under which the Registered Name Holder agrees that if the Registered Name Holder licenses the use of the domain name to a third party, the Registered Name Holder is still the registrant of record. The Registered Name Holder has to provide its own full contact information, and provide and update accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the registration. These technical and administrative contacts include the addresses where complaints should be sent regarding such problems.

Acceptance of Liability under RAA Section 3.7.7.3

RAA Section 3.7.7.3 also provides that the Registered Name Holder shall accept liability for harm caused by the wrongful use of the registered name unless the Registered Name Holder promptly identifies the licensee to a party that has provided the Registered Name Holder with reasonable evidence of actionable harm.

Exactly what constitutes "reasonable evidence of actionable harm" or "prompt" identification is not specified in the RAA, and might vary depending on the circumstances. Under the arrangement provided for in RAA 3.7.7.3, if a court (or arbitrator) determines that the Registered Name Holder was presented with what the court considers to be "reasonable evidence of actionable harm" and the court finds that the Registered Name Holder's identification of the licensee was not "prompt," then the court could assign the Registered Name Holder with liability for the harm caused by the wrongful use. It would ultimately be up to a court or arbitrator to assess and apportion liability in light of the promptness of a Registered Name Holder's identification of a licensee. However, by way of guidance, ICANN notes that any delay over five business days in the Registered Name Holder identifying the

licensee would not be "prompt" as that term is used in the RAA. A court (or arbitrator) will also decide whether the documentation presented to the Registered Name Holder met the "reasonable evidence of actionable harm" standard provided for in the RAA, but by way of guidance ICANN notes that, for example, with respect to claims of intellectual property infringement, documentation of ownership of a trademark or copyright, along with documentation showing alleged infringement, should generally constitute reasonable evidence of actionable harm. Also by way of guidance, "reasonable evidence of actionable harm" does not imply a requirement of the filing of a formal process (such as a UDRP complaint, civil lawsuit, or the issuance of a subpoena), but again it will be up to a court or arbitrator to decide whether the evidence presented constitutes "reasonable" evidence.

Conclusion

In summary, if a Registered Name Holder licenses the use of the domain name to a third party, that third party is a licensee, and is not the registrant/Registered Name Holder. A Registered Name Holder that licenses the use of a domain to a third party still has to provide its own contact information (and keep it updated), and also accepts liability for harm caused by the wrongful use of the name unless the Registered Name Holder promptly identifies the licensee to a party providing the Registered Name Holder with reasonable evidence of actionable harm.

RAA 3.7.7.3 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.

<http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm> - 3.7.7.3