

# Understanding the Registrar Accreditation Agreement

## 30<sup>th</sup> International ICANN Meeting in Los Angeles

Workshop for the At-Large Advisory Committee, At-Large Regional Secretariats  
and members of the At-Large community

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## BACKGROUND:

The current interest in the Registrar Accreditation Agreement (RAA) stems from issues that emerged in the wake of financial and operational difficulties at one of the companies approved to offer Internet domain names to the public, an “ICANN accredited registrar” with approximately one million domain names under management that offered services to a customer base estimated at one hundred thousand registrants worldwide.

"What has happened to registrants with RegisterFly.com has made it clear there must be comprehensive review of the registrar accreditation process and the content of the RAA," he said. "There must be clear decisions made on changes. As a community we cannot put this off." – ICANN CEO Paul Twomey

## OVERVIEW:

This workshop is designed to familiarize participants with the ICANN accreditation process, the Registrar Accreditation Agreement and the role of ICANN’s at-large participants in the current review. The workshop will highlight:

- The difference between ICANN-accredited registrars and non-accredited registrars, such as domain resellers, due to the provisions of the RAA which regulate those who are a party to it;
- The fact that registration of domains in gTLDs are intended to be made only via ICANN-accredited registrars whilst ccTLD registrations are not limited in this way;
- The terms of the Registrar Accreditation Agreement in its current form, as they affect domain registrants and end users (for example, the Add-Grace Period).
- The ICANN-submitted amendment proposals related to the RAA and the impact of these proposals on registrants and Internet end-users;
- Further advantageous changes which could be made to the RAA;
- The role of the At-large community in the review of the RAA and related policies/procedures;
- Moving forward - next steps

## ACCREDITATION:

**INTRODUCTION -** At its most basic level, accreditation is a process that protects the stability of the Internet's domain name system (DNS) by ensuring that those that seek to connect to the Shared Registration System (SRS) have the technical acumen to interact in a non-disruptive fashion. Accordingly, "accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

**THE REGISTRAR APPLICATION PROCESS -** To determine whether a potential registrar can meet the expected minimum performance standards, ICANN, through the Registrar Accreditation Application, first asks the applicant a series of questions pertaining to current or planned business capabilities; examples follow [paraphrased]:

- What management, communication, and information processing systems do you have (or propose to have) to handle:
  - Your projected volume of registration business per month?
  - Registrants' requests for changes in registration data? How long do you anticipate that such requests will take to execute?
- What is your capability (or proposal for capability) for:
  - Providing a reliable and readily usable daily backup and archive of all registrant and registration data?
  - Maintaining electronic copies of all transactions, correspondence, and communications with the SRS?
  - Providing public WHOIS access on a real-time basis?
  - Providing information systems security procedures to prevent system hacks, break-ins, data tampering, and other disruptions to your operations?
  - Providing registrants with continued use of their domain names in the event you go out of business or otherwise cease to operate as an ICANN-accredited registrar?
- Do you (or will you) have the capacity to engage a sufficient number of qualified employees to handle the registration, update, and customer inquiry volume you have projected?

Next follow questions pertaining to commercial general liability insurance coverage, working capital, experience, comprehension of the

terms of the RAA, past performance and whether malfeasance has been an issue. If the answers provided are neither incomplete nor vague, and as long as ICANN is reasonably satisfied with the accuracy of the information provided, the accreditation is approved subject to the following conditions:

- Receipt of the US \$2,500 application fee;
- Receipt of the signed Registrar Accreditation Agreement
- Demonstration of US \$70,000 in working liquid (cash or credit) capital before the ICANN accreditation becomes effective, and;
- Demonstration of sufficient general commercial liability insurance coverage (usually US \$500,000) to provide registrants with reasonable compensation for losses caused by possible wrongful acts.

Upon successful completion of the process, ICANN notifies the applicant and the applicable registries of the accreditation and adds the entity to the accredited registrars list. Registry operators then contact the registrar to sign agreements and work out financial and technical details (such as the OT&E - Operational Testing and Evaluation Certification -- wherein the registry issues the software and supporting tool kit and conducts an operational test suite with the registrar).

[Please note that ICANN Staff engages in thorough due diligence with regard to these applications, and this abbreviated explanation is not intended to cast any aspersions upon the performance of their duties].

As a footnote, ICANN also suggests that registrars adopt a Privacy Policy (a model is offered at <http://www.icann.org/registrars/model-privacy-policy.htm>), but this is not a contractual requirement.

## **HISTORY OF THE RAA:**

**BEGINNINGS** - We are now entering into the third iteration of the RAA. The first such Agreement grew out of the “Draft Guidelines for Registrar Accreditation” posted in February 1999 which drew upon the requirement put forth in ICANN’s Memorandum of Understanding with the U.S. Department of Commerce to develop “an accreditation procedure for registrars and procedures that subject registrars to consistent requirements designed to promote a stable and robustly competitive DNS, as set forth in the Statement of Policy.”

After a review of the public comments to the Draft Guidelines, the ICANN board shortly thereafter adopted a “Statement of Registrar Accreditation Policy” and directed ICANN's Interim President and CEO to implement a program for registrar accreditation for the .com, .net, and

.org top-level domains. This first Agreement provided a set of definitions (including, quite importantly, a definition for Consensus Policy) and was sectioned as follows:

I. Policies Concerning Application Fees and Procedures  
 II. Statement of Minimum Qualifications for Accreditation  
 III. Terms and Conditions of Accreditation Agreements

- Registrar Use of ICANN Name
- General Obligations of ICANN and of Registrar
- Submission of Registrant Data to Registry
- Public Access to Registration Data
- Retention of Registrant and Registration Data
- Rights in Data & Data Escrow
- Business Dealings & Domain-Name Dispute Resolution
- Accreditation Fees and Specific Performance
- Termination of Agreement
- Term of Agreement; Renewal; Updated Agreement
- Resolution of Disputes
- Limitations on Monetary Remedies for Agreement Violations
- Handling of Registrar-Supplied Data & Miscellaneous

Of interest is the fact that the WHOIS portion of this RAA provided for “a form of anonymous registration”:

“Any SLD holder that intends to license use of a domain name to a third party is nonetheless the SLD 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 SLD. An SLD holder licensing use of an SLD according to this provision shall accept liability for harm caused by wrongful use of the SLD, unless it promptly discloses the identity of the licensee to a party providing the SLD holder reasonable evidence of actionable harm.”

-- Subsection II.J.7(a), third paragraph

**THE CURRENT RAA** - The most current version of the RAA was adopted in May 2001 after the introduction of the .biz and .info top level domains with the objective of conforming the Agreement “to variations in contractual terminology and circumstances of the new TLDs” [ICANN board resolution 01.62]. As contemplated by this resolution, ICANN staff prepared a new RAA that:

- Allowed registrars to choose in which TLDs (including the new TLDs) they wished to be accredited;
- Offered “conforming changes” including a revision to the bulk registrar Whois provision (so that its language concerning third-party marketing use of the data matched exactly the bulk-zone-file and Whois provisions of the new registry agreements for .biz and .info);

- Added new provisions deemed necessary (such as the Amendments and Waivers clause).
- Added language allowing for contingencies, for example:

“In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.”

## THE RAA - AN EXAMPLE OF THE WHOLE:

The best way to think of the RAA is as a uniform legal contract between two parties - the registrars and ICANN - that sets out mutual expectations. Like most legal documents, portions of it are fairly easy to read, straightforward and clear, while other parts use language that only an attorney would appreciate.

As the time allotted for this workshop makes a thorough review of the entirety of the contract language an impossible feat, we will instead focus on one specific example (section 3.3.1) to better point out the complexities that are to be encountered in an analysis of the RAA and the implications of such complexities for the at-large community.

**THE WHOIS LANGUAGE** - The contract wording on public access to data on registered names is, at first glance, reasonably simple to understand:

During the Term of this Agreement:

At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the

following elements as contained in Registrar's database:

- The name of the Registered Name;
- The names of the primary nameserver and secondary nameserver(s) for the Registered Name;
- The identity of Registrar (which may be provided through Registrar's website);
- The original creation date of the registration;
- The expiration date of the registration;
- The name and postal address of the Registered Name Holder;
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

As many of you know, this above-cited section of the RAA has been at the heart of an active debate within ICANN for the last six years... but let's consider for a moment some issues implicated by the above language that haven't been scrutinized for a long period of time in the context of the current debate; these are issues that were first raised by ICANN Staff in December 2000 before this form of the RAA was even drafted.

ICANN Staff has rightly noted that while "elements" have been designated, the "format" of WHOIS output has not been specified; this consideration led to a series of questions being put forth by Staff that to this day have still gone unanswered:

1. Should registrars provide Whois replies in a standard format? Currently, registrars use a wide variety of formats for Whois responses.
2. If a standard format is to be encouraged, what should it be?
3. If registrars provide supplementary data in response to Whois queries, how should it appear in the overall format? (Some registrars, for example, provide an indication that the domain name

is subject to a UDRP proceeding.)

4. Should registrars be permitted to limit the number of queries from a particular site? If so, what limit should apply? The Registrar Accreditation Agreement appears to require free public access to port 43 Whois service "concerning all active registered names," indicating that limitations on the number of queries are not contemplated. The use of governors, however, can prevent inappropriate heavy loading of a registrar's Whois systems. The ICANN staff would benefit from guidance as to the extent to which it should, as a matter of enforcement choice, permit use of governors.
5. Are there some particular sources from which registrars should not be permitted to limit the number of queries?
6. Should there be a standard definition of the role of technical and administrative contacts?

**THE CENTR CONTRIBUTION:** In addition to these questions that stem purely from the contract language applicable to gTLD registrars, consider for a moment a broader set of questions raised by CENTR in their June 2006 document "WHOIS and Data Privacy: Overview of current practices" about the current state of WHOIS across the ccTLD and gTLD spectrum; they write:

"In its most basic form, WHOIS accesses databases containing information about the domain name, registrant and related information and displays this information as the result of a query. However, virtually everything else about the WHOIS is subject to a great deal of variation amongst providers, as shown below.

There is variation in what database is used to provide the service:

- Some systems use a separate database, and
- Some provide a limited look at the main register database.

There is variation in what information is shown:

- Some systems show virtually all information about the registration
- Some show far less
- Some show different amounts depending on the nature and preferences of the registrant of the domain (e.g. *.pl* and *.uk*),
- Some show you bare details but will show more if you ask (e.g. *.fr* and *.no*) and
- Some do not offer a WHOIS at all

There is variation in how users are permitted to search the database provided:

- Some systems allow some degree of “wildcard” searches
- Some require exact domain names only
- Some require exact names in the WHOIS, but allow wider searches via other information release methods (e.g. *.uk*); and
- Some allow ‘layered’ WHOIS services (e.g. *.name*)

There is variation in how searches can be performed;

- Some allow searches to be made on third party websites that then make their own WHOIS query;
- Some systems allow queries via third party sites, but handle this through a variant or development of the WHOIS system (e.g. the so-called “WHOIS2” system used by *.uk*);
- Some systems only allow searches from the registry’s own website, and/or prohibit connections to a WHOIS database.

There is variation in who actually provides the database:

- In some systems (including most ccTLDs), it is provided by the registry; and
- In many systems (including most gTLDs), it is provided by the registrars.

There is variation in the protection given the WHOIS data:

- In some systems (primarily the ICANN systems) the bulk data is sold, subject to some terms of use (although we have no examples of those terms ever being enforced);
- In most systems it is released subject to compliance with some terms of use;
- In some systems users via the website must type in a code that is designed to be non-machine readable (e.g.: *.se*, *.be*);
- Many limit the amount of queries that can be made in a specified time;
- In some systems the body responsible claims intellectual property rights in the underlying data and takes legal action against infringements; and
- The mechanisms for looking at volumes and patterns of queries (e.g. to stop attempts to copy the database) vary considerably.

VARIATION AS A POLICY OPTION -- What this input illustrates is that on a worldwide basis WHOIS is managed at the presentation layer in a number

of different fashions - this naturally brooks the question: “Within the gTLD world, in view of the pending expansion of the namespace and differentiation to be offered by new gTLDs, is there indeed a continuing justification for “uniform” contractually proscriptive language, or will the public interest better be served by allowing a non-uniform registry-managed approach such as we see in the ccTLD community?”

The issue of a non-uniform approach to WHOIS in the gTLD world has recently been raised by registrar representatives in the GNSO Council; as such, this is not a mere theoretical consideration. A motion was put forward by GNSO Councilor Ross Rader (seconded by the NCUC’s Mawaki Chango) that states:

Therefore be it resolved;

- (i) That, with regret, the GNSO Council advises the ICANN staff and Board of Directors of the lack of general consensus on the key issues and solutions pertaining to gTLD WHOIS, and;
- (ii) That due to this lack of consensus the GNSO Council recommends that the Board consider “sunsetting” the existing current contractual requirements concerning WHOIS for registries, registrars and registrants that are not supported by consensus policy by removing these unsupported provisions from the current operating agreements between ICANN and its contracted parties, and;
- (iii) That these provisions be sunset no later than the end of the 2008 ICANN Annual General Meeting and;
- (iv) That such provisions will remain sunset until such time that consensus policy in this area has been developed to replace the sunset provisions, at which point they will be eliminated or modified.

Variation, such as that proposed by this motion that would sunset the existing contractual requirements concerning WHOIS, is but one policy option out of many that must be considered by the at-large community in its work on the RAA.

#### **THE RAA: A BIRD’S EYE VIEW**

The current RAA is divided into five primary sections:

- Definitions
- ICANN Obligations
- Registrar Obligations
- Procedures for Establishment or Revision of Specifications and Policies
- Miscellaneous Provisions

These sections incorporate by reference all eight of ICANN’s Consensus Policies which currently include the following:

1. The Procedure for Potential Conflicts between WHOIS Requirements and Privacy Laws
2. The Uniform Domain Name Dispute Resolution Policy
3. The WHOIS Data Reminder Policy
4. The Inter-Registrar Transfer Policy
5. The WHOIS Marketing Restriction Policy
6. The Restored Names Accuracy Policy
7. The Expired Domain Deletion Policy
8. The Registry Services Evaluation Policy

We'll take a brief look at each of these sections.

**SECTION 1: DEFINITIONS** - the words being defined are:

- Accredited
- DNS
- ICANN
- Personal Data
- Registered Name
- Registered Name Holder
- Registrar (with a capital "R")
- registrar (with a lower-case "r")
- Registrar Services
- Registry Data
- Registry Database
- Registry Operator
- Registry Services
- Sponsored
- Term of this Agreement
- TLD
- TLD Zone-File Data

As several of these definitions are several years old and no longer conform to the language used in registry contracts, it is clear that certain changes to the definition section are to be expected. As but one example, the definition of Registry Services in the RAA states:

"Registrar Services" means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

By comparison, the definition for Registry Services in the .com contract is substantially longer:

Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and

dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the .com registry as of the Effective Date; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above. Only Registry Services defined in (a) and (b) above are subject to the maximum price provisions of Section 7.3, below.

Also of interest is the fact that there are no definitions provided for:

- administrative contact
- technical contact
- proxy services provider
- licensee
- reseller
- stability or operational integrity of the Internet
- term of registration

There might be value in having such terms defined; for example, the “term of registration” is at the moment a rather nebulous concept. There are those that argue that a one year term in a legal contract means that services will cease after 365 days. How then do we account for the “Auto-Renew Grace Period” which can be anywhere from 0 to 45 days after the conclusion of the 365-day period? How do we make an allowance for the 30-day Redemption Grace Period if a registrar Terms of Service Agreement contract restricts one to 365 days of paid service?

Some registrars have argued:

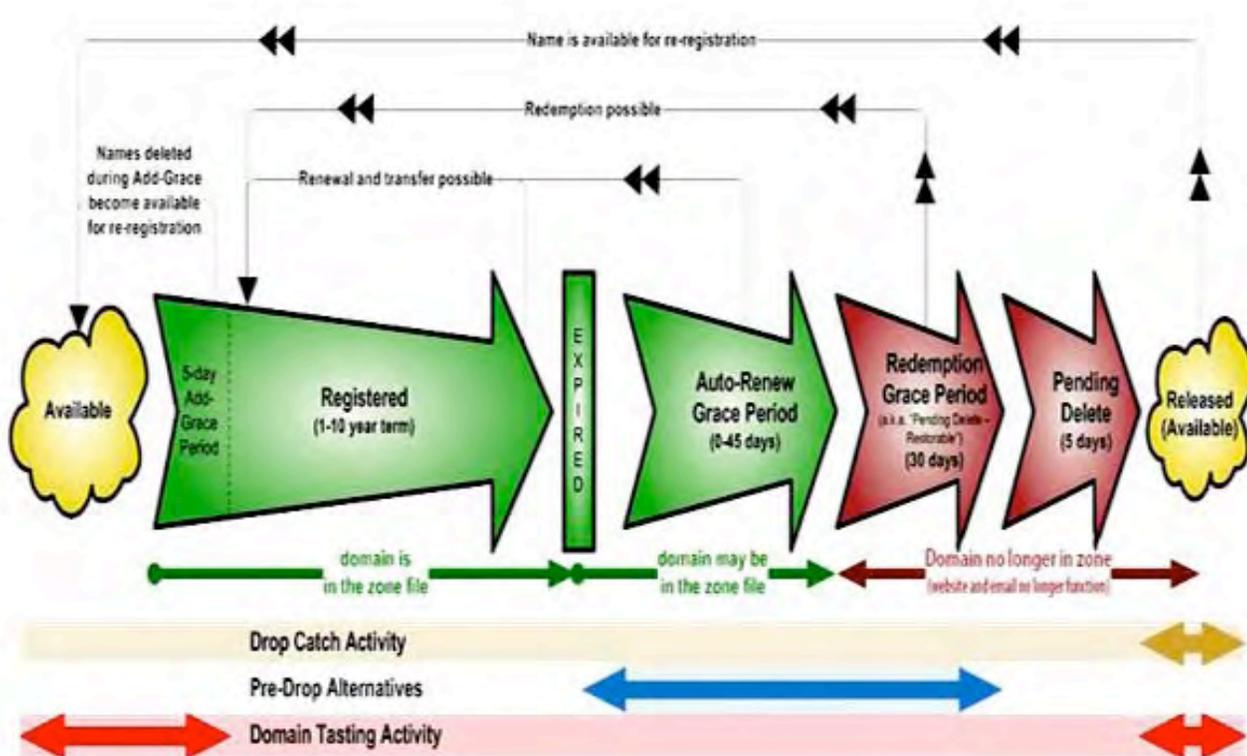
“If the Registrant is voluntarily agreeing (in the Domain Registration Agreement) that they are no longer the Registrant upon expiration, then the Registrar simply needs only to replace the original Registrant with their own name when the domain expires. At that point, any transfer request after the expiration date is an unauthorized transfer.”

And others have said:

“Many registrars claim that the agreement between registrant and registrar ends on the day of expiration. In fact, a good part of the adword market relies on this. Under this assumption there is no autorenewal grace period for the registrant. To address this issue there would have to be a requirement that the registrant is

still allowed to access his domain during AGP. This raises a whole bunch of other questions like what is happening with associated nameservers that the current registrar provides. I have the impression that it will be very difficult to find solution here.”

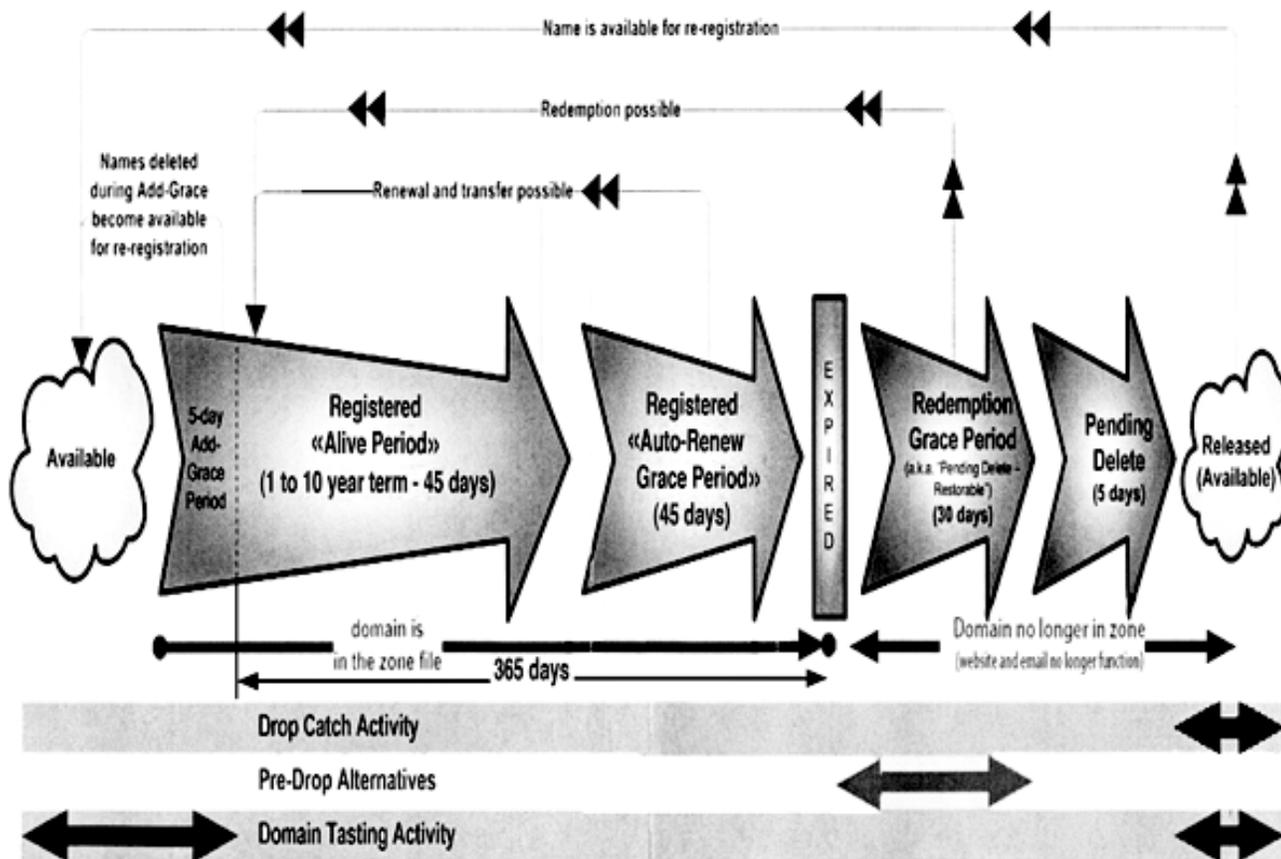
To illustrate further the complexity of this issue, consider first this diagram of the domain name life cycle:



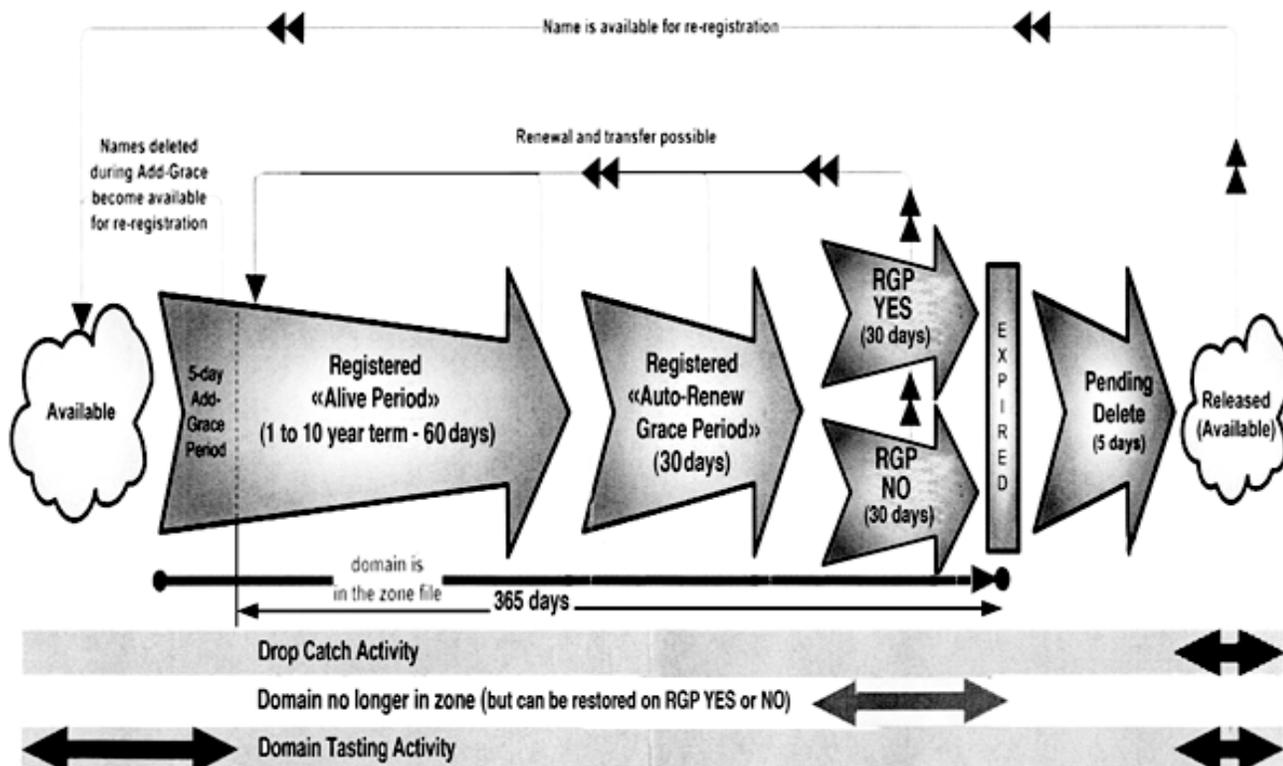
As one registrar has noted:

“If I enter into a service contract on 20 September 2007 with Tom, and the contract specifies that I am to receive the contracted service for one year, then Tom's obligation to me ends on 20 September 2008. Now, our contract may include a number of voluntary renewal provisions and may limit Tom's obligation to perform specific services for a longer period than one year, however when I enter into a contract for services for a term, then I am entitled to know when that term ends. Both parties are entitled to clarity as to term.”

This lack of clarity has prompted a new set of proposals regarding the term of registration that are illustrated in these two diagrams:



In the first proposal, you'll note that the Auto-Renew Grace Period is moved inside of the 365-day term.



In the second proposal put (forward by Domaine.fr) both the Auto-Renew Grace Period and the Redemption Grace Period are included within the 365-day term.

The definition of “term length” -- inclusive of services to be provided therein -- will be of some concern to the user community that has already had a number of issues with one portion of the domain name life cycle - the Add Grace Period.

**SECTION 2: ICANN OBLIGATIONS** - This portion of the contract is relatively short:

**2.1 Accreditation.** During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.

**2.2 Registrar Use of ICANN Name and Website.** ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject

of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:

2.3.1 Exercise its responsibilities in an open and transparent manner;

2.3.2 Not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 Not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 Ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

**SECTION 3: REGISTRAR OBLIGATIONS** - This portion of the contract is rather lengthy and constitutes the bulk of the language in the RAA (and as such cannot be discussed in full measure at this session); it is divided into several sections:

- Obligations to Provide Registrar Services
- Submission of Registered Name Holder Data to Registry
- Public Access to Data on Registered Names
- Retention of Registered Name Holder and Registration Data
- Rights in Data
- Data Escrow
- Business Dealings, Including with Registered Name Holders
- Domain-Name Dispute Resolution
- Accreditation Fees

**SECTION 4: PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES** - This part of the contract is similarly divided into a number of sections:

- Registrar's Ongoing Obligation to Comply With New or Revised Specifications and Policies
- Topics for New and Revised Specifications and Policies
- Manner of Establishment of New and Revised Specifications and Policies
- Time Allowed for Compliance

**SECTION 5: MISCELLANEOUS PROVISIONS** - The final portion of the contract is rather fascinating as it deals with, among other things, the enforcement measures that both parties have accepted; this portion is sectioned as follows:

- Specific Performance
- Termination of Agreement by Registrar
- Termination of Agreement by ICANN
- Term of Agreement; Renewal; Right to Substitute Updated Agreement
- Addition or Deletion of TLDs for Which Registrar Accredited
- Resolution of Disputes Under this Agreement
- Limitations on Monetary Remedies for Violations of this Agreement
- Handling by ICANN of Registrar-Supplied Data
- Assignment
- No Third-Party Beneficiaries
- Notices, Designations, and Specifications
- Dates and Times
- Language
- Amendments and Waivers
- Counterparts
- Entire Agreement

### **THE PROCESS FOR CHANGING CONTRACT LANGUAGE:**

Significant in the above two sections is contract language pertaining to “consensus policies”, “specifications”, substitution of “updated agreement”, and “amendments”, as these clauses detail the ways by which this contract may be modified. Unlike standard contracts that require mutual agreement prior to the adoption of new contract language, the consensus policy provisions in this document make it possible for dissent on the part of certain registrars to be overridden by a broad demonstration of community-wide consensus. So the Consensus Policy Process as detailed in section 4.3.1 is one very significant way by

which the contract may altered. For the benefit of better understanding the consensus process, let's review the contract language:

“Consensus Policies” are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by:

- (a) Action of the ICANN Board of Directors establishing the specification or policy,
- (b) A recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and
- I A written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that:
  - (i) Documents the extent of agreement and disagreement among impacted groups,
  - (ii) Documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and
  - (iii) Documents the nature and intensity of reasoned support and opposition to the proposed policy.

But what are “specifications” (as opposed to policies)?

A recent example of a “specification” is the “Revised Data Escrow Specs” posted to the registrar blog at [regbits.info](http://regbits.info) that specifies the schedule, terms, and format registrars must use to escrow data pursuant to RAA paragraph 3.6.

The problem with the consensus policy process, as many of us know, is that it can take years to pass a policy through this process - we are already six years into focused discussions on the WHOIS with still no light at the end of the tunnel - which means that “timely” modifications to the RAA perhaps may not be brought about through reliance on the consensus policy process.

**OTHER OPTIONS** - The Amendments & Waivers clause represents a possible way forward (and indeed, ICANN has chosen to term their six proposals for improvements to the RAA as “amendments”). Let's see what that clause states:

“No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties.”

This language basically means that everyone needs to agree on the contract language. If any one registrar disagrees with a proposed amendment and is not willing to sign on to the amendment, then he can't be forced to comply. Both parties must be in agreement. As we now have close to a thousand registrars that are accredited, the chances that one or more may have a disagreement with a proposed amendment are strong enough that we might ultimately be looking at a non-uniform RAA (with some registrars signing onto amendments and other not doing so) if the Amendments & Waivers clause is used as the way forward for contract modifications - that could become a problematic situation.

Perhaps solace may be found in the "Right to Substitute Updated Agreement" language:

"In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement."

The problem with this language is that "election to enter an agreement" is an option. As registrars are accredited on a rolling basis for five-year terms, a recently accredited registrar may decide to wait another four and a half years before electing to adopt the new contract language.

How then do we obtain a uniform contract given the fact that the options discussed so far all seem to have certain limitations that can work against a timely adoption?

The way forward is presented in section 4.1 of the RAA - "Registrar's Ongoing Obligation to Comply with New or Revised Specifications and Policies":

During the Term of this Agreement, Registrar shall comply with the terms of this Agreement... with

4.1.1 New or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies...

4.1.2 In cases where:

4.1.2.1 This Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2 The specification or policy concerns one or more topics described in Subsection 4.2 [which is: Topics for New and Revised Specifications and Policies - the section referred to as the “Picket Fence”].

ICANN is in a position to present new “specifications” that are defined to include “forms of agreement to which Registrar is a party”. These specifications are not the same as “consensus policies,” and as long as they are closely tied to “stability,” then they’re okay under the Picket Fence provisions.

We need to understand that if everything has to be done by consensus, then the Board could never adopt a revised agreement on its own. And the Board has to be able to do that.

Next, let’s have a look at the “amendments” proposed by ICANN that perhaps may become “specifications”.

## THE AMENDMENTS

As noted in ICANN’s public announcement: “The consultation is looking for ideas and input on amendments to the RAA and the registrar accreditation process in order to provide additional protection to registrants. Previous discussions in the ICANN community have already helped create a number of suggestions for discussion, which are:

- **The Accreditation by Purchase Amendment** -- Incorporating provisions to govern the terms under which a registrar can be sold and continue to retain its ICANN accreditation.
- **The Enforcement Tools Amendment** -- Including additional contract enforcement tools offering more options than the current one option - terminating accreditation.
- **The Group Liability Amendment** -- Addressing the responsibilities of a parent owner/manager when one or more of a “family” of registrars fails to comply with ICANN requirements.
- **The Private Registrations & Registrar Data Escrow Requirements Amendment** -- Requiring registrars to escrow contact information for customers who register domain names using Whois privacy and Whois proxy services.

- **The Contractual Relationships with Resellers Amendment** -- Augmenting the responsibilities placed on registrars with regard to their relationships with resellers.
- **The Operator Skills Training and Testing Amendment** -- Requiring operator skills training and testing for all ICANN-accredited Registrars”.

Please note that each of these six amendments and the Registrar Accreditation Agreement itself is reproduced in full in the annex to this document.

### **BEYOND THE AMENDMENTS:**

Thanks to the work of ICANN Staff we now have six proposals that were geared to start the public consultative phase. The public (as of Sept. 29) has put forward 50 additional proposals:

1. Placing limits on the number and types of disclaimers, waivers, damage limitations, disclaimers of warranty, etc. which can be included in the registrant agreement -- ICANN should be forcing registrars to accept a certain level of legal liability for negligence, reckless or intentional misconduct.
2. A challenge mechanism to allow for correction of Whois identity theft.
3. Mandating that all registrars adopt an Acceptable Use Policy so as to better deal with criminal fraud.
4. Dealing with registrars that can unilaterally change administrative and other contact details for a domain without either authorization from or notice to the registrant, by providing for a dispute resolution mechanism in the event that an unauthorized transfer occurs that is not “between registrars”, but rather within the systems of a given single registrar.
5. Compelling registrar use of registrant identity verification systems developed to perform fraud analysis on electronic commerce transactions (specifically targeting invalid and undeliverable postal addresses, undeliverable e-mail addresses, and non-dialable telephone numbers).
6. Noting that in all of its recent registry agreements, ICANN has moved away from what it has termed an “impractical” administrative sanctions program in favor of arbitration-based enforcement provisions, ICANN should avoid pursuing a similarly “impractical” sanctions program for registrars and should instead seek to cure any possible deficiencies in the arbitration approach to contract enforcement so as not to engage in discriminatory treatment (favoring registries with one approach and

using another approach for registrars).

7. Establishing a uniform expiry period (in that Grace periods after expiry range from zero to 45 days) - the lack of term uniformity promotes unnecessary registrant confusion.
8. Denying the possibility of unfair and unequal special access to a registrar's computer systems by independent domain name speculators.
9. Curtailing the free five-day "tasting" period of domain names.
10. Parking an expired registration for a longer period of time with the original owner retaining full rights to repurchase it, or voluntarily relinquish it.
11. Requiring domain name portability within a reasonably and well-defined amount of time as currently unscrupulous registrars will place the domain name in limbo for long periods of time.
12. Crafting language to prevent "domain name slamming" by registrars.
13. Stipulating that the actual purchaser maintains ownership of domain names, not third party registration services that substitute their own name in lieu of the real registrant's name.
14. Requiring that a domain name must have individual or corporate contact information of the actual owner of the domain name -- no more domain name anonymous services.
15. Disallowing parked domain names.
16. Limiting domain name registrations per entity per time period - not to exceed 5 domain names per day, nor to exceed 30 domain registrations per year.
17. Prohibiting registrars from registering and holding onto names for speculative reasons - warehousing.
18. Protecting the integrity of the domain name registration system: whenever registrants go through the process of researching a domain name and/or semi-completing the registration process, registrars can log such activity and determine which investigated domain names were not ultimately registered by a prospective registrant, and that data may either be used by the registrar to register such domain names in its own behalf, or the data may be sold to third party speculators - such potential actions threaten the integrity of the registration process.

19. Making “uniform” provisions requiring registrars to release auth-info codes to a name holder upon request - as current procedures for auth-info code release vary across registrars - and supplementing such provisions with sanctions to ensure such release.
20. Making transparent the name of registrar corporate officers so that the public may more readily be alerted to the possibility of registrar officer malfeasance.
21. Mandating that all registrars provide Opt-out policies with respect to Bulk WHOIS sales.
22. Curtailing the inappropriate lending of registrar access to registries by way of leasing agreements.
23. Establishing registrar Service level Agreements.
24. Forbidding the auction of domain names.
25. Defining which data are displayed by whois service.
26. Supporting DNSSEC and blocking fast flux.
27. Establishing a Registrar Code of Conduct.
28. Dealing with registrar circumvention of the Expired Domain Deletion Consensus Policy.
29. Ensuring the public’s right to know by posting registrar Violation Reports that clearly identify offending registrars by name.
30. Requiring registrars to permit registries to notify ICANN of under-funded registrar accounts and issuing Public Alerts whenever a registrar’s account becomes under-funded so that the registrant community may properly respond to such circumstances.
31. Establishing a searchable Cross Registry WHOIS Database so that Complainants under the UDRP can readily determine whether a pattern of "bad faith" has been demonstrated by a particular registrant through recourse to a searchable WHOIS database.
32. Curtailing the circumvention of the Inter-Registrar Transfer Consensus Policy requirements pertaining to the 60-day rule.
33. Requiring the adoption of a Stage 2 Redemption Grace Period specification so that competition may reduce the onerous RGP charges

levied by certain registrars.

34. Devising new criteria that would eliminate all registrar accreditation applicants that exist only as paper entities that are applying either to game the deleted names pool or game the upcoming new gTLD landrush cycles.
35. Facilitating the reporting of invalid WHOIS data by providing a hyperlink at the bottom of a WHOIS result that allows one to “Report Invalid WHOIS” -- this hyperlink should directly lead to the Whois Data Problem Report System.
36. Requiring prior verification of whois data via postal verification codes to thwart criminal activity.
37. Not allowing the business failures of registrars and registries to lead to widespread paranoia.
38. Requiring registrars to act in a timely fashion when notified via the Whois Data Problem Report System of an inaccuracy, (while having registries authorized to place domains in registry-hold status that have not been appropriately updated according to established schedules... with registries invoicing the registrars for the services rendered).
39. Asking ICANN to coordinate an event involving ccTLD managers wherein all could learn of accreditation conditions that have well-served other communities.
40. Requiring registrars to block continuing attempts at registering spam domains by the same Registrant.
41. Determining whether current registrar accreditation financial requirements are posing a barrier to entry for registrars in the developing world.
42. Amending proposed operator skills training protocols to include anti-spam name server shutdown techniques.
43. Ensuring that registrars are contractually obligated to heed security-driven recommendations from the SSAC on “Hijackings” and other matters so that the registrant community may benefit from the degree of protection to which they are rightfully entitled.
44. Ensuring consistency - “ie: some registrars have a 5 day pending delete period, while others may have 180 days.”

45. Asking ICANN to initiate a working group to deal with the next version of the Transfers system.
46. Asking ICANN not to wait for the market to step in and offer solutions in the next registry/registrar meltdown - it should be proactive.
47. Asking ICANN to support a 3rd party in coordinating a registrar rating system.
48. Having people afforded the opportunity to have domains administered through proxy by another party.
49. Providing a forum for remedy when a registrar fails to perform the task which they are "licensed" to do, and for which a customer has correctly and sufficiently provided recompense.
50. Requiring registrars that are upstream of resellers to allow for direct contact by a retail customer through a complaint resolution mechanism.

#### **THE RAA WG:**

An additional set of proposals have come by way of an at-large RAA Working Group. This working group has put forward the following proposed actions:

##### **ENFORCEMENT:**

- The revised RAA should contain a range of incentives and remedies short of revocation, such as public admonishment, fines, and temporary suspension of new registration privileges.
- ICANN should define internal procedures to monitor registrar compliance, accept public reports of problems and non-compliance, and engage in corrective actions in a timely fashion.
- ICANN should consider transferring the burden of enforcing the RAA from itself to domain name registrants by making domain name registrants third-party beneficiaries of the RAA.

#### **COMPLIANCE ASSESSMENTS FOR REGISTRARS:**

- ICANN should continue to conduct regular assessments of the compliance of each registrar, either directly or through third parties, using a standardized checklist that verifies the compulsory behaviors (e.g. compliance with applicable ICANN policies), the average levels of service (e.g. technical performance, average rate and speed of response to customer

inquiries), and a set of performance indicators that could warn about possible problems (e.g. degradation over time in new registration and transfer-away rates). Compliance should be verified at least once a year.

- ICANN should establish an online method specifically to accept complaints about registrar behavior; while ICANN cannot generally solve individual problems, consumers can still receive pointers to useful information in various languages, and to appropriate consumer protection agencies and organizations. This mechanism would allow ICANN to extract aggregated information to recognize developing problems with registrars.
- Using automated electronic means (e.g. search engines), ICANN should identify and combat abuses of the “ICANN accredited” logo by unaccredited parties.

#### **INFORMATION GIVEN TO REGISTRANTS ABOUT DOMAIN REGISTRATIONS:**

- Add a clause in the RAA to require registrars to show a standardized description of registrant rights, to be provided by ICANN in different languages, as an appendix to the contract at the time of registration, and also to make it available in the registrant’s domain management interface whenever available. Such obligation should also be passed onto resellers.
- Add a clause in the RAA so to require registrars to clearly state the name under which they are accredited by ICANN and the number of their accreditation contract, at the time of registration and on the invoices / receipts related to the registration.

#### **ROLES AND RESPONSIBILITIES OF THE REGISTRANT’S CONTACTS:**

- Develop a clear and uniform document describing the roles, requirements and use of the different contacts, that could be used as a reference document by registrants and by third parties registering domain names on their behalf, also in case of controversies between them.
- Contact data should be verified at the time of collection.

**TRANSFER PROCEDURES AND FEES:**

- While the obligations of registrars for what regards transfers are implicit in their obligations to abide by ICANN consensus policies, we think that, given the extreme importance of this policy, it would be useful to add a clear reminder in the RAA, under the form of a clause saying something like “The registrar recognizes the right of the registrants to transfer their domain names to other registrars, according to the policies established by ICANN, and commits to make the process of transferring domain names as simple and quick as possible, and not to unreasonably stifle this opportunity in any way.”
- We ask ICANN staff to prepare a summary of the current practices, fees and burdens imposed on registrants by a significant sample of registrars. (The ALAC is ready to ask for an Issues Report if necessary).
- We ask that the GNSO Transfer Policy include specific requirements to enable transfer of domain names. Registrants should be able to process a transfer entirely through the services of the gaining registrar and/or the registry, without the need for action by the losing one, including obtaining Authinfo codes and the like when required.
- We ask that the GNSO Transfer Policy forbid losing registrars to require an extra fee or paperwork to transfer their domain names. Since the entire transfer process can be automated, its operational cost is so low to be covered by the registration fee, and there is no cost justification for extra fees.
- We ask that ICANN provides official translations of the transfer forms and rules into major languages; the registrant should be able to perform the entire procedure in his/her native language, if it is one of the supported ones.

**RATING OF REGISTRARS:**

- ICANN should appoint a separate entity, targeted with the task of conducting compliance assessments similar to those delineated in Compliance above. A suitably independent entity could do the assessments both for the purpose of ICANN's compliance verification activity, and for the purpose of releasing ratings. Consumers Union, an ALS in the United States with extensive experience in product ratings, has expressed willingness to assist.
- The delegated entity should continue to conduct assessments at least once a year, and should produce a graded rating published on ICANN's website and on a specific page aimed at

final consumers, and disseminated over the Internet through outreach and information campaigns.

- Registrars obtaining top grade evaluations should be allowed to display a specific mark on their website.
- Registrars obtaining a very low grade should be immediately subject to specific corrective measures by ICANN, and, if appropriate, to sanctions according to the compliance provisions of the RAA.

#### RESELLER RELATIONS WITH REGISTRANTS AND REGISTRARS:

- ICANN should require that any registrar that sells through resellers have binding agreements with their resellers that pass through registrar's duties to registrants.
- ICANN should have an inexpensive program to accredit resellers..
- ICANN should consider including resellers in the compliance and rating evaluations described above.

#### FAILURE OR CLOSURE OF REGISTRAR:

- ICANN should define criteria to determine when a registrar has failed, such as failure to process transfers and registrations in a timely fashion. Voluntary closure of a registrar should be treated as failure unless the closing registrar has taken action to transfer all of its registrants to other registrars.
- ICANN should establish procedures to follow when a registrar has failed, to select one or more other registrars to which to transfer the registrants.
- ICANN should establish procedures to verify that registrars are properly escrowing data, by spot checks and other means.
- ICANN should use the results from the compliance and rating assessments, as well as any other available information, to monitor which registrars appear subject to possible failure in the near future.

#### PROXY REGISTRATIONS:

- The RAA should include the proposed amendment that requires

that when registrars are aware that a registration is performed by a proxy, the escrowed registrant data must include the information for the actual registrant, unless the actual registrant opts out.

Altogether, eighty-seven distinct proposals have been tendered in the public consultative phase in addition to the six provided by ICANN Staff. Clearly, the RAA could require a major re-write and negotiations between the parties can be expected to take some time.

Complicating the matter is the fact that certain sets of registrars heavily rely upon a reseller community that may be impacted by changes proposed to the RAA and who may indeed also wish to comment upon any changes that are proposed.

## THE RESELLER COMMUNITY:

Just how many domain name resellers are out there? To get a general idea, consider the following:

- Tucows Inc. has a global network of more than 7,000 wholesale distribution customers. According to their most recent 10-Q Filing, they also offer provisioning services to ten registrars on a monthly basis (managing 1.9 million domain names for these ten registrars).
- Directi has a network of over 18,000 resellers, serving a client base in excess of 500,000 customers in 230+ countries.
- The eNom statistics page reports: “There are 95,455 total resellers”.

Resellers of domain names may be characterized as entities unaccredited by ICANN that still serve an important function in that they are typically hosting companies and ISPs, and as such, they tend to have established relationships with the registrants of domain names they resell. As explained by ICANN registrar liaison manager Mike Zupke in his article entitled: “What’s wrong with Resellers?”, resellers can focus their efforts on creating value-added tools that allow less-sophisticated consumers and small businesses to easily set up a website or an email address, without the overhead of running a registrar at the same time (which obviously requires a significant volume of registration business to justify the expense). So, no one disputes that resellers bring value to the marketplace, but are they also the source of problems that need to be addressed?

According to webhosting.net: “The surging popularity of domain name affiliate programs has created countless “fly by night” operations; dozens of domain name resellers worldwide cease operations every month, often leaving the administrative status of the domains they leave behind up in the air.” Clearly, this could be a problem.

Another set of problems have been summarized by Mike Zupke, who states:

“So here’s a short list of common problems I frequently see with (registrars who use) resellers:

1. Because resellers often have relatively close relationships with their customers, their business operations sometimes suffer from what I’d call “trust me syndrome” (TMS). TMS can manifest itself in the form of inadequate or nonexistent registration agreements, use of whois privacy services without disclosure to the customer (or without disclosure of the implications of using a privacy service), and internal transfer-out policies that are inconsistent with the Inter-Registrar Transfer Policy.
2. Sometimes small resellers (e.g. where the customer service rep is also the president, CEO, treasurer, bookkeeper, janitor, etc.) take the business a little too personally. In the past, this has caused customers difficulty when they try to terminate the services of the reseller. We’ve seen situations where this allegedly caused transfers to be NACK’d without explanation and whois data to be altered without the customer’s consent. (While this is also a potential risk with registrars, it is less likely when the registrar actually values its continued accreditation. A small-time reseller can easily find a new host-registrar for whom it may resell names, so it may not place as much importance on the agreement it holds with its current host-registrar.)
3. While every registrar’s reseller model is different, there are some models that delegate substantial responsibility to resellers, but not all resellers take their responsibilities as seriously as they should. By way of example, we saw an enormous uptick in complaints about resellers following VeriSign’s migration to EPP in late 2006. In particular, customers complained that resellers wouldn’t or couldn’t provide auth-info codes for .com/.net names and that requests to the sponsoring registrar were met with deflection of the matter to the unresponsive reseller. In some cases, even ICANN’s attempts at intervention were similarly deflected.”

At the end of the day what we will need to determine is:

- (1) how to properly establish reseller liability under the RAA, along with determining what tools are needed to ensure better accountability by resellers to registrants; or
- (2) how to properly eliminate reseller services.

This latter choice remains an option that has been chosen within the ccTLD world by the registry operator of .eu - Eurid cites Regulation 874/2004 of the European Commission laying down the public policy rules concerning the .eu Top Level Domain. The rule states clearly that only registrars accredited by the Registry shall be permitted to offer registration services for .eu domain names (see article 4 of the regulation). This means that the offering of services as a "reseller" (as a kind of subcontractor of an accredited registrar or as an intermediary without having concluded an agreement with the Registry in order to become an accredited registrar) is completely excluded.

Again, we are faced with policy options to evaluate. Is it good policy to completely deny the prospect of reseller services (along the lines of the European Commission policy model) or does good policy call for allowing resellers and affiliate networks to continue operating while acting to ensure reseller accountability? It is up to the community to answer these questions and to modify the RAA accordingly.

#### **ONLY VIA ICANN-ACCREDITED REGISTRARS:**

Thus far we have been operating on the premise that registration of domains in gTLDs are intended to be made only via ICANN-accredited registrars (whilst ccTLD registrations are not limited in this way). We also now have a new gTLD recommendation that has been issued by the GNSO Council in support of this proposition, namely their recommendation #19 that states:

“Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.”

That said, it should be noted that resistance to this concept has emerged from a number of diverse sources. As reported on the Internet Governance Project blog: “This opposition not only came from former Board member Michael Palage, but from a domain name registrar from China and a representative of CNNIC, the Chinese

country code registry. Both comments argued that it was inappropriate for applicants for internationalized (non-ASCII) domains to rely on ICANN-accredited registrars, because "local registrars best understand local users' needs."

An additional argument emerged with the proposition tendered by the Universal Postal Union, sponsor of the proposed .post TLD; The UPU seeks to rely on a number of country designated operators (DOs) "including those that may not wish to either seek accreditation or partner with an existing ICANN accredited registrar".

So, once more, we as a community are faced with policy decisions... do we allow for the possibility of non-ICANN-accredited gTLD registrars in the coming IDN world, in the world of tiny boutique TLDs such as .MUSEUM, and in future TLDs such as .POST? Will we take the position that a registry may also be accredited as a registrar for its TLD? Will we come to accept the present ccTLD model that has the registry operators certifying their channel partners without the benefit of ICANN accreditation? Or do we simply ratify the current approach?

## **RAA & THE ROLE OF THE AT-LARGE:**

The At-Large community has played, and will continue to play, a vital role in securing protections for the registrant and broader user community. As early as March of 2006 the At-Large Public Forum began receiving complaints regarding the RegisterFly registrar; by year's end 79 complaints had been sent to that Forum alone. These letters, in conjunction with reports being posted to numerous blogs, prompted commentary on the GNSO's General Assembly Discussion list that led to e-mail being sent to ICANN's Chairman of the Board requesting that the ICANN Compliance Manager or Registrar Liaison look into the matter.

As such, the initial role of the at-large may be described as that of facilitators - through vehicles such as the At-Large Public Forum the community has a gateway into the ICANN process and can forward correspondence citing the problems that they have encountered.

Unfortunately, at this time the At-Large Public Forum that accommodated complaints about RegisterFly and other matters is closed by decision of the ALAC, and neither does ICANN currently have an open miscellaneous-topic Forum that is readily accessible from the Public Comment link on ICANN's Home Page.

A secondary role for the at-large community is to serve as a fact-finder. Just as community members compiled citations of issues associated with RegisterFly and forwarded them on to the ICANN Chairman of the Board

for investigation, the structured user communities within ICANN (in particular its Advisory Committees) have a role to play as fact-finders who, per the bylaws, “shall report their findings... to the Board”. In general terms, this means collecting, aggregating and documenting community concerns. Just as the Consensus Policy process calls for documenting “the nature and intensity of reasoned support and opposition to the proposed policy”, so too should at-large fact-finding initiatives document the intensity of community commentary.

For example, here are two letters posted to the At-Large Public Forum that begin to demonstrate the range of “intensity” on the topic:

Hello,

I'm looking for help in renewing several domains registered with Registerfly.com, an Enom reseller.

Registerfly.com has not been able to renew domains for over a week and several domains I own have expired or will expire in the next few days.

Registerfly.com has charged my account for the renewals but claim they are unable to renew the domains because of technical problems. To date, I have been unable to speak with a supervisor or anyone willing to correct the problem.

Is there anyway to compel Registerfly to renew my domains, which they have already charged my credit card for?

Does ICANN have any over-site or influence with these companies?

John Burden

Despite all the complaints everyone has against them, why are they not being stripped off their status as an ICANN accredited registrar??!!

ICANN should really look into this and think about this, I've lost tons of domains there and don't intend to loose anymore with them!

Regards,

Alan

Once documentation, the evidence of a problem, is collected the resident experts in the at-large community must task themselves with problem-solving, with arriving at solutions in the form of recommendations - this too is a bylaws mandated function (as Advisory Committees are charged with presenting their “recommendations” to the ICANN board).

The combination of fact-finding and recommendations is usually tendered by way of a Report that is disseminated both to the ICANN board and to the general community. The Security and Stability Advisory Committee (SSAC), which was created at the same time that the ALAC was formed, has thus far submitted twenty (20) documentary Reports and Advisories - each highly detailed, each containing clear-cut facts and the recommendations that arise from such facts.

It should be noted, however, that not all Recommendations require changes to policy that must be codified in contractual language. For example, consider the following SSAC recommendation on the topic of domain name hijackings:

“**Recommendation (6):** ICANN, the registries, and the registrars should conduct a public awareness campaign to identify the criteria and the procedures registrants must follow to request intervention and obtain immediate restoration of a domain name and DNS configuration.”

On the other hand, some recommendations warrant the development of policy and the at-large has a clear role to play in launching the policy development process through the formalization of an Issues Paper for consideration for by the ICANN Supporting Organizations – this too is a power granted under the ICANN bylaws.

To recap, the at-large role in general terms may be described as follows:

1. Facilitating the receipt of public input
2. Assessing whether a problem exists
3. Collecting and documenting the facts
4. Analyzing the problem
5. Arriving at solution-sets to deal with the problem
6. Presenting the facts and the at-large recommendations
7. Disseminating well-drafted Reports and Advisories
8. Preparing Issue Papers to launch a PDP (if warranted)

## NEXT STEPS

The current consultation on the RAA stems from ICANN board resolutions made at the June San Juan meeting calling for input. Next in the process is an examination of the summary and analysis of community feedback that is to be made available at the end of the comment period. This will be followed by additional amendments that will be put forward by ICANN staff, and there will be a publicly available assessment of the impact that the input and comment had on the development of the amendments.

Concurrent with these activities, the registrars and ICANN have already commenced their own negotiations; this too is in keeping with ICANN board Resolution (07.51) that “requests that staff engage with the Registrars Constituency in order to arrive at, and post for public comment, a set of proposed amendments or alternative version to the RAA, that is intended to address to the extent feasible the concerns raised by the Internet community.”

One additional board Resolution (07.52) outlines the remainder of the steps to be followed, namely “that when the RAA is published for public comment, that notice be provided to allow the At-Large Advisory Committee, the GNSO, and other interested parties to review the proposed revised RAA and provide advice to the Board in its review.”

Having completed the initial consultative phase, we now await the publication of the proposed revised RAA. This is the final and most critical phase where well-considered commentary will be most appreciated.

## THE ANTICIPATED PROBLEMS

Loopholes.

There are times when loopholes seem to be the only source of true innovation in the DNS - it was a loophole in the RAA that allowed for the marketing of proxy registration services; it was loopholes in the accreditation process that allowed for the creation of “phantom registrars” that only exist as a device to gain access to the deleted names pool.

Loopholes can allow for future gaming of the new gTLD LandRush cycles, they can inhibit enforcement activities, and they can cripple dispute resolution to the point that a “walking dead” registrar can seriously impact the registrant community.

Loopholes can become the bane of our community... and they are not easy to spot.

When the proposed revised RAA is published, the document will need to be examined under a microscope. It will require a dedicated team to analyze the implications of each clause and paragraph. While the registrars and ICANN have been “reviewing” the RAA since 2005, those of us that hail from the at-large world have never before attempted a comprehensive review of this legal document.

With that thought in mind, perhaps we can take some guidance from the instructions given to the registrar constituency by their Chair back in 2005 when Review issues first arose:

Hi all,

ICANN is currently reviewing the RAA and intends to make changes and come up with a new RAA by June. This is very important to all of us from the following perspectives -

#### **ICANN'S Objectives**

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- \* to merge some of the consensus policies into the RAA
- \* to come up with alternative options to enforce compliance for Registrars who are not currently in compliance with their RAA (such as for instance a contractual provision that would allow ICANN to temporarily suspend ADDs of a Registrar if they are not in compliance)
- \* there have been a few circumstances highlighted in the ICANN Contracts which conflict with local law in other countries such as Germany. There maybe possible changes that could be made to the RAA to circumvent those

#### **Our Objectives**

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I would ask everyone in the Registrars Constituency to sit with a copy of the RAA and a marker and highlighting other areas that ICANN should review, this maybe an opportunity for us to give feedback on certain contractual modifications that the RAA should have which would benefit us as a community. Couple of areas that we could look at are -

- Budget ;)

- Compliance

Any feedback that you may have on suggestions in the RAA review process - send them out to the list. If you wish to send them directly to ICANN - feel free to send them to Tim Cole

Bhavin Turakhia

The key point that Registrar Constituency Chair Bhavin Turakhia raised was that a Review was a group effort, an effort that required parties to assemble together in a room with paper, pens, markers, highlighters and copies of the RAA to hammer out contractual modifications.

## BETWEEN NOW & THEN

As the Registrar Accreditation Agreement is a two-party contract, there exist opportunities for the at-large community to successfully lobby both parties to the agreement. In San Juan the ALAC put forward a resolution that proposed:

“To work together with the Registrar Constituency and any other interested party to build consensus on a mix of useful actions to address these issues.”

As members of the ALAC have yet to formally meet with Registrar Constituency Chair Jon Nevett and his colleagues, this would be an opportune time to arrange a series of consultations. Equally, it would be regarded as advisable to schedule meetings with the ICANN Staff negotiating team so that both parties to the contract may benefit from the input that the at-large has to offer.

## OTHER RECOMMENDATIONS

Are there other advantageous recommendations that can still be put forth? Certainly; for example, proposals have emerged calling for registrant Complaint Resolution mechanisms along the lines of those now utilized by auDa. Additionally, we can still learn from accreditation practices used elsewhere in the ccTLD world:

- For example, SGNIC requires that “Registrar shall have had not less than six months’ experience in the registration of internet domain names within the period of 12 months preceding the its application to SGNIC to be an accredited registrar”.

- AuDA establishes provisional accreditation that compels a registrar to pass an Interface test, a Policy test and a Regulatory test.
- .es requires the registration or renewal of 1.000 domain names under “.es” every year as a condition of ongoing accreditation
- New Zealand has a “de-authorization of registrars” process “managed by a special Domain Name Commissioner, whose oversees the smooth transition of the domain names from the de-authorized registrar to a new registrar”.

## FINAL REMARKS

Many recommendations have come forth during the public consultative phase and many (if adopted) will have a profound impact on the registrant and user communities. One of the questions put forth when the consultation was first announced was this:

“Is there a need for a new entity to assist customers and intervene on behalf of their concerns?”

The RAA won't create any such new entity, but the question still deserves an answer. Who currently is supposed to be assisting and intervening on behalf of registrants?

According to the ICANN bylaws “Each RALO shall serve as the main forum and coordination point for public input to ICANN” with RALOS coordinating the following activities:

- Keeping the community of individual Internet users informed about the significant news from ICANN;
- Distributing information about items in the ICANN policy-development process;
- Developing and maintaining on-going information and education programs regarding ICANN and its work;
- Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

So... are the RALOs the entities that are supposed to “assist customers and intervene on behalf of their concerns”, or should ICANN be looking for a new entity to fulfill that need?

The question does deserve an answer and goes to the heart of the concerns raised in the “protections for registrants” consultative process. Will the at-large, as currently constituted, become the defender of the registrant interest and forcefully advocate for enhanced protections, or will this perhaps become the new mandate for a new GNSO Registrants Constituency?

## The Proposed RAA Amendments

### 1. Accreditation by Purchase

**Issue:**

Incorporate provisions in the Registrar Accreditation Agreement (RAA) to govern the terms under which a registrar can be sold and continue to retain its ICANN accreditation.

**Background:**

While ICANN follows specific guidelines, which include requiring applicants to meet certain minimum qualification to become an ICANN accredited gTLD registrar, there are other means by which an entity can acquire accreditation rights. The two primary mechanisms are to apply for an assignment of the accreditation by ICANN from one company to another. The other mechanism is for one entity to acquire the entire assets of a company that holds an ICANN accreditation. The assignment process is similar to the initial application process and receives extensive scrutiny, while the latter can be done without consulting ICANN and without the new owner satisfying the qualification requirements. Parties interested in becoming ICANN accredited without the scrutiny of the application process can avoid this by acquiring an existing registrar.

**Statement of Problem:**

The process followed to consider an application for accreditation includes requiring that certain qualifications be met and, as part of the application process, ICANN conducts various background investigations into the entity and its principal owners, partners and managers. When an applicant appears to be poorly suited for accreditation purposes, it is encouraged to withdraw the application or to change the underlying factors until it meets the requisite qualifications. An entity that bypasses this process by purchasing a previously approved entity, can

function with the ICANN accreditation and hold itself out in the marketplace as though it had met all of the qualifications. In fact, there are companies that market existing accredited registrars to other entities for this purpose. (RegisterFly acquired its accreditation in this manner.)

Since ICANN approves companies, not individuals, a company with a new owner is still the entity that had been approved; hence additional contractual terms might be required to impose conditions on new owners.

#### **Potential Outcomes:**

- Assuring that all entities doing business as ICANN accredited registrars meet the same minimum requirements will promote stability.
- Registrants can be assured that a registrar claiming to be ICANN accredited has met the minimum requirements.
- Placing conditions on purchases of accredited entities could delay or inhibit otherwise acceptable sales.
- Such restrictions could reduce the value of a registrar entity in the marketplace.

## **2. Enforcement Tools**

### **Issue**

Amend the Registrar Accreditation Agreement (RAA) to include additional contract enforcement tools.

### **Background**

The RAA does not contain graduated enforcement tools. Pursuant to the RAA, the only remedy available to ICANN if a registrar fails to cure a breach of the RAA is termination of the agreement. This is challenging and impractical, as many contract breaches are material but do not warrant termination of the agreement, or breaches occur and are cured on a repeat basis. For example, if a registrar fails to comply with the requirements of a consensus policy or fails to comply with the RAA requirement to maintain registration data, these are quite serious contract breaches; however, they do not necessarily warrant contract termination. In the absence of graduated contract remedies, ICANN has been limited to providing counseling to those registrars who breach

material terms of the RAA and requesting that they abstain from engaging in such behavior in the future.

#### **Statement of Problem**

Historically, ICANN has been reluctant to terminate an agreement for anything other than flagrant, repeated failures to cure material breaches of the RAA, because termination is viewed as an extreme remedy, with negative consequences to registrants. As a result, registrars, registrars are aware that there are no substantive consequences for breaching the RAA. A graduated sanctions scheme based on the nature and seriousness of alleged breaches will allow ICANN to more effectively enforce the terms of the RAA and thereby encourage broad community compliance with RAA requirements.

#### **Potential Outcomes**

- Compliance could improve as registrars will seek to avoid being the subject of enforcement proceedings.
- Lawsuits could be filed against ICANN when new enforcement remedies are invoked.
- Graduated sanctions would provide more measured responses to less serious breaches.
- Sanctions could be designed to penalize registrars without harming registrants.

### **3. Group Liability**

**Issue** -- Incorporate terms in the RAA that address the responsibilities of a parent owner/manager when one or more of a "family" of registrars fails to comply with ICANN requirements.

**Background** -- For business reasons, often related to enhancing access to the deleted names pool, some companies have chosen to establish multiple ICANN accredited registrars that are either wholly-owned or, in some other way, share management and resources. These groups range from two to over one hundred registrars in a group. Roughly two-thirds of all accredited registrars are part of a larger group. Most of these groups maintain a solid working relationship with ICANN due to their size and ongoing interaction on a variety of fronts. Occasionally, problems have arisen with one or more registrars within a group.

**Statement of Problem** -- Under existing practices, each registrar accreditation is treated as a separate contract with a separate entity, though some efficiencies have been gained through batching invoices and other communications. Nevertheless, the opportunity exists for a subset of a group of commonly owned or managed registrars to pursue practices that are non-compliant with their ICANN contracts. At present, ICANN's recourse involves taking steps to address individual registrars, but does not have a direct contractual means for including the larger company and its other accredited entities in the process. Our experience has shown that failure to comply with some aspect of the ICANN contract can be symptomatic of larger problems within the company. In terms of group ownership/management, this could eventually affect more registrars within the group.

### **Potential Outcomes**

- Potential negative practices could be discouraged.
- ICANN would have an additional enforcement mechanism available to discourage non-compliance.
- Registrar owners/managers could experience negative consequences by registrar entities that have done nothing inappropriate.
- Registrants could benefit by more effective contract compliance.
- ICANN might identify and address underlying problems that could affect multiple registrars sooner than otherwise possible.
- Registrar entities within multiple registrar groups could perceive themselves as inappropriately punished for the action of a related entity outside of its control.

## **4. Private Registrations & Registrar Data Escrow Requirements**

### **Issue**

Amend the Registrar Accreditation Agreement (RAA) to require registrars to escrow contact information for customers who register domain names using Whois privacy and Whois proxy services.

### **Background**

Many registrars, resellers, and unofficial resellers (such as attorneys, hosting companies, and others who have no official relationship with a registrar, but who register domain names on behalf of their clients) offer some form of Whois privacy or proxy service to prevent the display of the contact information of the beneficial user of the name.

Whois privacy services generally display some registrant information, such as registrant name, but they conceal other identifying information, such as address, telephone number, and email address, by providing alternate contact information, often that of the registrar or privacy service provider.

Whois proxy services generally do not allow the display of any of the beneficial user's registration information via Whois. Instead, the proxy acts as the customer's agent and registers the domain name, naming the proxy as registrant, administrative, technical and billing contacts. Under such arrangements, the proxy then licenses use of the domain name to the beneficial user.

Pursuant to the "data escrow" provision of the RAA, registrars are obligated to submit registrant, administrative, technical and billing contact information for each gTLD name to ICANN or an approved escrow agent. The RAA does not require registrars to escrow additional information, such as that of the beneficial user of a name when the beneficial user uses a Whois privacy or proxy service. In the case of these "private" registrations, the contact information of the beneficial user is not escrowed and is unavailable in the event the registrar's accreditation is terminated with its registrations transferred to another registrar.

#### **Statement of Problem**

Given the widespread use of Whois privacy and proxy services, some form of protection should be afforded to the beneficial users of names registered through privacy and proxy services in the event the registrar's accreditation is terminated. Although the planned implementation of the Registrar Data Escrow (RDE) program permits registrars to optionally escrow beneficial user data, the escrow of beneficial user data cannot be made mandatory absent modification of the RAA or consensus policy.

#### **Potential Outcomes**

- Customers who used registrar-provided Whois privacy or proxy services would be protected in the event their registrar's accreditation agreement is terminated.
- Customers may unintentionally share "private" information with ICANN or a registrar other than the registrar of their choosing in the event data is retrieved from escrow.
- Customers who register domain names using the Whois privacy or proxy service of an entity other than an ICANN-accredited registrar would not be protected.
- Some customers may elect to utilize registrar-provided privacy/proxy services instead of third party services to ensure

protection in the event of termination of their registrar's accreditation.

- Some customers may elect not to utilize registrar-provided privacy/proxy services in order to prevent sharing of their contact information.

## 5. Contractual relationships with resellers

### Issue

Incorporate terms in the Registrar Accreditation Agreement (RAA) that augments the responsibilities placed on registrars with regard to their relationships with resellers.

### Background

ICANN's primary relationship with entities that sell gTLD registrations is governed by the RAA. While many registrars act as retail outlets for domain name registrations, some function exclusively as "wholesale" outlets that market domain name registrations through reseller entities. Other registrars function using a combination retail/wholesale model. Problems encountered by registrants when dealing with a reseller can be aggravated by the fact that the business relationship is not direct. At times the customer has no idea that there is a registrar responsible for its registration. ICANN has no direct contractual relationship with resellers.

### Statement of Problem

ICANN receives numerous complaints about reseller practices that it cannot directly address, but must address through the registrar. Experience has varied widely in terms of responsiveness and influence over reseller behavior among various registrars. Communications, compliance, and confusion are hallmarks of these problems. In addition, because an additional business relationship is involved (registrar-reseller), there is one more opportunity for problems to arise. A falling out between registrar and reseller can leave the registrant in the middle. Even if a registrant knows the identity of the registrar for its registrations, it may encounter difficulty in performing typical registrant functions through the registrar if the registrar does not have customer records that enable it to adequately identify the customer as the rightful registrant.

Furthermore, many resellers have no understanding or appreciation of the terms of the RAA that govern relationships between registrar and

registrant. Opportunities for non-compliance can be multiplied in such circumstances.

### **Potential Outcomes**

- Registrants could benefit from enhanced reseller compliance with ICANN policies.
- Resellers often wish to keep the identity of the registrar undisclosed in order to enhance its own business relationship with its customer - new requirements could interfere with this.
- Registrars with major reseller relationships could find new terms costly to implement.
- Registrant confusion could be fostered by terms that require greater involvement of the registrar in the reseller-registrant relationship.

## **6. Operator Skills Training and Testing**

### **Issue**

Amend the Registrar Accreditation Agreement (RAA) to require operator skills training and testing for all ICANN-accredited Registrars.

### **Background**

The registrar business is a specialized business that requires specialized knowledge and skills to operate effectively and in compliance with RAA requirements. Currently there is no established process to assess whether registrars have the requisite skills necessary to successfully operate their businesses and consistently perform to a standard upon which registrants can rely. The accreditation process deals with qualifications, but not the specific skills of the registrar personnel. Over the years, ICANN has observed that registrars have developed a myriad of business models and management processes. However, some registrars appear to operate their businesses more efficiently and effectively than others and experience fewer RAA compliance problems. Operator skills training and testing for newly accredited registrar operators, as well as for experienced registrar operators, designed to provide critical information and operational skills, as well as test competence, would more than likely improve operator performance, result in the establishment of consistent operational practices and improve overall compliance with RAA requirements.

**Statement of Problem**

There are approximately 900 ICANN-accredited registrars operating with various levels of competence, skill, education and experience. Registrants have no way of knowing if a registrar has the necessary skills and training to provide the services promised in a registration agreement. By requiring operator skills training and testing in the RAA, all registrars will possess common skills which will enable them to perform in compliance with RAA requirements and effectively provide the services promised in a registration agreement.

**Potential Outcomes**

- Compulsory training and testing could establish a common standard of registrar operator performance upon which registrants can rely.
- Compulsory training and testing could result in fewer registrar failures.
- Compulsory training and testing could become an added expense for registrar operators.
- Registrant confusion could be diminished by making the relationship between registrant and registrar more clear.

## Registrar Accreditation Agreement

This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation, and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), and shall be deemed made on \_\_\_\_\_, at Los Angeles, California, USA.

1. DEFINITIONS. For purposes of this Agreement, the following definitions shall apply:

1.1 "Accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

1.2 "DNS" refers to the Internet domain-name system.

1.3 The "Effective Date" is \_\_\_\_\_.

1.4 The "Expiration Date" is \_\_\_\_\_.

1.5 "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.6 "Personal Data" refers to data about any identified or identifiable natural person.

1.7 "Registered Name" refers to a domain name within the domain of a TLD that is the subject of an appendix to this Agreement, whether consisting of two or more (e.g., john.smith.name) levels, about which a TLD Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.8 "Registered Name Holder" means the holder of a Registered Name.

1.9 The word "Registrar," when appearing with an initial capital letter, refers to [Registrar Name], a party to this Agreement.

1.10 The word "registrar," when appearing without an initial capital letter, refers to a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered

Name Holders and submits registration information for entry in the Registry Database.

1.11 "Registrar Services" means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

1.12 "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.

1.13 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14 A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific TLD.

1.15 "Registry Services," with respect to a particular TLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that TLD.

1.16 A Registered Name is "sponsored" by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a registrar loses accreditation, in accordance with then-current ICANN specifications and policies.

1.17 "Term of this Agreement" begins on the Effective Date and continues to the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.18 A "TLD" is a top-level domain of the DNS.

1.19 "TLD Zone-File Data" means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

## 2. ICANN OBLIGATIONS.

2.1 Accreditation. During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.

2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:

2.3.1 exercise its responsibilities in an open and transparent manner;

2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

## 3. REGISTRAR OBLIGATIONS.

3.1 Obligations to Provide Registrar Services. During the Term of this Agreement, Registrar agrees that it will operate as a registrar for each TLD for which it is accredited by ICANN in accordance with this Agreement.

3.2 Submission of Registered Name Holder Data to Registry. During the Term of this Agreement:

3.2.1 As part of its registration of Registered Names in a TLD as to which it is accredited, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD the following data elements:

3.2.1.1 The name of the Registered Name being registered;

3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.2.1.3 The corresponding names of those nameservers;

3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;

3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and

3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.2.1.1 through 3.2.1.6 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

3.3 Public Access to Data on Registered Names. During the Term of this Agreement:

3.3.1 At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the following elements as contained in Registrar's database:

3.3.1.1 The name of the Registered Name;

3.3.1.2 The names of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.3.1.3 The identity of Registrar (which may be provided through Registrar's website);

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

3.3.1.6 The name and postal address of the Registered Name Holder;

3.3.1.7 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and

3.3.1.8 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder, Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.

3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.

3.3.4 Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to

facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.

3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy according to Section 4, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6 In addition, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions:

3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.

3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.

3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than such third party's own existing customers.

3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6.5 Registrar's access agreement may require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.

3.3.6.6 Registrar may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk

access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy, Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service.

3.3.7 Registrar's obligations under Subsection 3.3.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN policy, established according to Section 4, governing bulk access to the data subject to public access under Subsection 3.3.1, or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.

3.3.8 To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies and specifications establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. In the event ICANN adopts any such policy, Registrar shall abide by it.

#### 3.4 Retention of Registered Name Holder and Registration Data.

3.4.1 During the Term of this Agreement, Registrar shall maintain its own electronic database, as updated from time to time, containing data for each active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8; the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2.

3.4.2 During the Term of this Agreement and for three years thereafter, Registrar (itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator(s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.

3.6 Data Escrow. During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the database described in Subsection 3.4.1 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete, consistent, and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. The escrow shall provide that in the event the escrow is released under this Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

### 3.7 Business Dealings, Including with Registered Name Holders.

3.7.1 In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.

3.7.2 Registrar shall abide by applicable laws and governmental regulations.

3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.

3.7.5 Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.

3.7.6 Registrar shall not insert or renew any Registered Name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal.

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:

3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.

3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for cancellation of the Registered Name registration.

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 identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:

3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;

3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);

3.7.7.4.3 Which data are obligatory and which data, if any, are voluntary; and

3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.

3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4.

3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.

3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and

other limitations about which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

3.7.7.9 The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.

3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.

3.7.8 Registrar shall abide by any specifications or policies established according to Section 4 requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars.

3.7.10 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names.

3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website ([www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)).

3.9 Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and variable fees.

3.9.1 Yearly Accreditation Fee. Registrar shall pay ICANN a yearly accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly accreditation fee shall not exceed US\$4,000 for the first TLD for which Registrar is Accredited plus US\$500 for each additional TLD for which Registrar is Accredited at any time during the year. Payment of the yearly fee shall be due within thirty days after invoice from ICANN.

3.9.2 Variable Accreditation Fee. Registrar shall pay the variable accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.

3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

3.10 Insurance. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.

#### 4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1 Registrar's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registrar shall

comply with the terms of this Agreement on the schedule set forth in Subsection 4.4, with

4.1.1 new or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,

4.1.2 in cases where:

4.1.2.1 this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2 the specification or policy concerns one or more topics described in Subsection 4.2.

4.2 Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registrar Services, Registry Services, the DNS, or the Internet;

4.2.2 registrar policies reasonably necessary to implement ICANN policies or specifications relating to a DNS registry or to Registry Services;

4.2.3 resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names), including where the policies take into account use of the domain names;

4.2.4 principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);

4.2.5 prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers;

4.2.7 reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and names with single-letter/digit labels);

4.2.8 procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and

4.2.9 the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.

Nothing in this Subsection 4.2 shall limit Registrar's obligations as set forth elsewhere in this Agreement.

#### 4.3 Manner of Establishment of New and Revised Specifications and Policies.

4.3.1 "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2 In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registrar seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registrar must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.6.

4.3.3 If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registrar still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in Subsection 5.6; provided, however, that Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.6 or a final decision is rendered in accordance with the provisions of Subsection 5.6 that relieves Registrar of such obligation. The decision in any

such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

4.3.5 For all purposes under this Agreement, the policies specifically identified by ICANN on its website ([www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies" and accordingly shall not be subject to review under Subsection 4.3.2.

4.3.6 In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the specification or policy in the interim.

4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after receiving notice of the establishment of a specification or

policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

## 5. MISCELLANEOUS PROVISIONS.

5.1 Specific Performance. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner provided in Section 5.6 below, provided the party seeking such performance is not in material breach of its obligations.

5.2 Termination of Agreement by Registrar. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.

5.3.2 Registrar:

5.3.2.1 is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or

5.3.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.

5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances.

5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.

5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.

5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.

5.3.7 Registrar becomes bankrupt or insolvent.

This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Subsection 5.6 below. If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.

5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.3. In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted agreement as stated in the updated form posted on the

web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

5.5 Addition or Deletion of TLDs for Which Registrar Accredited. On the Effective Date, Registrar shall be accredited according to Subsection 2.1 for each TLD as to which an appendix executed by both parties is attached to this Agreement. During the Term of this Agreement, Registrar may request accreditation for any additional TLD(s) by signing an additional appendix for each additional TLD in the form prescribed by ICANN and submitting the appendix to ICANN. In the event ICANN agrees to the request, ICANN will sign the additional appendix and return a copy of it to Registrar. The mutually signed appendix shall thereafter be an appendix to this Agreement. During the Term of this Agreement, Registrar may abandon its accreditation for any TLD under this Agreement (provided that Registrar will thereafter remain accredited for at least one TLD under this Agreement) by giving ICANN written notice specifying the TLD as to which accreditation is being abandoned. The abandonment shall be effective thirty days after the notice is given.

5.6 Resolution of Disputes Under this Agreement. Disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.6 pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registrar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the Board's determination that a specification or policy is supported by consensus, Registrar may at the same time request that the arbitration panel stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In all

litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.7 Limitations on Monetary Remedies for Violations of this Agreement. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

5.8 Handling by ICANN of Registrar-Supplied Data. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar for a purpose or under conditions inconsistent with the specification in effect when the Personal Data was provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

5.9 Assignment. Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of Internet stakeholders.

5.10 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.

5.11 Notices, Designations, and Specifications. All notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile with receipt of confirmation of delivery, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers  
Registrar Accreditation  
4676 Admiralty Way, Suite 330  
Marina del Rey, California 90292 USA  
Attention: General Counsel  
Telephone: 1/310/823-9358  
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

[Registrar Name]  
a [organization type and jurisdiction]  
[Courier Address]  
[Mailing Address]  
Attention: [contact person]  
Registrar Website URL: [URL]  
Telephone: [telephone number]  
Facsimile: [fax number]  
e-mail: [e-mail address]

5.12 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

5.13 Language. All notices, designations, and specifications made under this Agreement shall be in the English language.

5.14 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall

any such waiver constitute a continuing waiver unless otherwise expressly provided.

5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.16 Entire Agreement. Except to the extent (a) expressly provided in a written agreement executed by both parties concurrently herewith or (b) of written assurances provided by Registrar to ICANN in connection with its Accreditation, this Agreement (including the appendices, which form part of it) constitutes the entire agreement of the parties pertaining to the accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.