

Understanding the Registrar Accreditation Agreement

30th International ICANN Meeting in Los Angeles

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

SUMMARY:

The current interest in the Registrar Accreditation Agreement (RAA) stems from issues that emerged in the wake of financial and operational difficulties at RegisterFly, an ICANN-accredited registrar. As the debacle unfolded, ICANN began to receive complaints of fraud, of unanswered support tickets, of horrendously long hold times for phone calls, of transfer-away issues, and reports of multiple overcharges for registration services. These led to additional complaints that RegisterFly had suspended customer accounts and domain names in retaliation for complaints about overcharging.

Progressively the situation became worse as reports started to emerge that domain names were no longer being renewed by RegisterFly even though registrants had records attesting to full payment. Court documents further show that over 75,000 customer domain names were compromised because of RegisterFly's failure to pay the registration fees.

ICANN's experiences in dealing with this situation led CEO Paul Twomey to remark:

“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. There must be clear decisions made on changes. As a community we cannot put this off.”

“All ICANN stakeholders need to be involved in this debate. But in particular I would like to see registrars and registrants actively engaged in the discussion,” Dr Twomey said. *“It is in their interests to make sure that poor practice is driven from the process and that the protection of registrants is increased.”*

Accordingly we are here to discuss those changes that need to be made to the accreditation process and to the RAA to protect the interest of the registrant community. We are the resident experts; we are those that must devise the solution-sets. It is up to us to ensure that the principle of consumer protection is made manifest in the revisions to the RAA.

THE CONSULTATIVE PROCESS:

In March, ICANN first called for a comprehensive review of the RAA and the Accreditation process. The results of that review included a workshop at ICANN's meeting in San Juan, Puerto Rico and Board resolutions describing an approach for arriving at and implementing necessary changes:

Resolved (07.50), the Board directs staff to solicit and consider the input of the Internet community, including the At-Large community and the GNSO constituencies, regarding proposed changes to the RAA, registrar accreditation process, and related policies.

Resolved (07.51), the Board 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.

Resolved (07.52), 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.

In accordance with these resolutions, ICANN has solicited public input through a Public Forum for possible changes to the RAA and to the accreditation process, and has drafted a preliminary series of proposed amendments; this public input and the current batch of proposed amendments will be discussed in full at this workshop.

Next, at some point soon, input from the public comment forum will be synthesized for discussion with the Registrar Constituency in order to develop a full set of proposed amendments to the RAA; additionally, there will be a publicly available assessment of the impact that the input and comment had on the development of the amendments. Finally, another forum will be opened when the complete set of proposed amendments have been drafted and have been posted for discussion.

The At-Large community has already participated to a major degree in the preliminary consultative phase, offering numerous specific recommendations to the public forum. The community is now being called upon to prepare for the latter stages of this process by reviewing the totality of the contributions tendered thus far (while understanding that ICANN's only tool for compliance today is contract, and contracts won't necessarily cover every possible contingency).

Part of the challenge will therefore be to anticipate the challenges that have yet to arise, to ask questions like: "Do we have a registrar failover plan in place? If not, should we be calling for failover language in the RAA?"

THE ICANN PRELIMINARY PROPOSED 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".

These amendments will later be supplemented by other amendments developed as a result of the preliminary consultative phase; that phase has already seen the public submit 50+ additional proposals, with another 37 more put forward by the At-Large Working Group on RAA revisions. These recommendations covered the following general areas:

- ENFORCEMENT
- COMPLIANCE ASSESSMENTS FOR REGISTRARS
- INFORMATION GIVEN TO REGISTRANTS ABOUT DOMAIN REGISTRATIONS
- ROLES AND RESPONSIBILITIES OF THE REGISTRANT'S CONTACTS
- TRANSFER PROCEDURES AND FEES
- RATING OF REGISTRARS
- RESELLER RELATIONS WITH REGISTRANTS AND REGISTRARS
- FAILURE OR CLOSURE OF REGISTRAR
- PROXY REGISTRATIONS

Clearly, the RAA will 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

who may indeed also wish to comment upon any changes that are proposed.

UNDERSTANDING THE RAA:

In simplest terms, the Registrar Accreditation Agreement is a contract between two parties, a registrar and ICANN. Like all contracts, it can appear to be easy to read and yet be exceedingly complex with the simplest of considerations becoming veritable conundrums - for example, how would you answer the question: "How long is a one-year term of registration?"

The answer can actually range from 365 days to 440 days (depending upon whether a registrar chooses to utilize the Auto-Renew Grace Period and/or the Redemption Grace Period - both of which are subject to the registrar's discretion); the term of registration, as such, is not explicitly defined by the RAA.

Neither are other terms defined, such as:

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

...and some definitions (such as the definition for Registry Services) need to be conformed to language that appears in other ICANN contracts.

Yet definitions are only one small part of the RAA with the vast bulk of the clauses devoted to registrar obligations:

- 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

Other sections of the current RAA include language setting out ICANN obligations, procedures for the establishment or revision of specifications and policies, and a set of miscellaneous provisions that cover such topics as resolution of disputes under the agreement.

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.

We note from the 5 September Meeting Notes of the Intellectual Property Constituency that a task force of the IPC has already created a draft redline of the RAA with comments. It is now time for the at-large community to put together its own task force or working group to analyze and comment upon the amendments that will emerge from the consultative process.

...but that is not the only action that may be taken.

As the Registrar Accreditation Agreement is a two-party contract, there exist opportunities for the at-large community to successfully lobby both parties to this 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. It will take hard work and a sustained effort to secure for registrants the protections that they deserve, but that surely is what must be done.