

Report to the GNSO on Proposed RAA Amendments

I. Executive Summary

This paper is an update to the Briefing Paper previously presented to the GNSO for the 18 December meeting and is intended to inform the GNSO review of the proposed changes to the Registrar Accreditation Agreement (RAA) so that it can provide its advice to the Board of Directors as required in the current RAA.

The RAA includes a provision for the adoption of changes to the standardized RAA that would become effective upon renewal of each registrar's RAA. RAA Subsection 5.4 describes the process for RAA amendment, including renewal and substitution of revised forms of the RAA. This includes a “consensus process” as set forth in RAA Subsection 4.3. The section requires: a written report (this document), a two-thirds vote of the Council, and Board action. (The full text of RAA Subsections 5.4 and 4.3 are reprinted in Appendix I.) This process is similar in certain respects to the current GNSO policy development process, encompassing community outreach and public comment, a written report and supporting materials documenting areas of agreement and disagreement and a recommendation adopted by a vote of the Council.

ICANN staff has completed the various required steps and is now submitting this written report to the Council for its consideration (as required by RAA Subsection 4.3.1). It includes a set of seventeen proposed amendments to the RAA (detailed below) and language for a motion to move the process forward to the Board of Directors for action.

II. Background

As previously communicated to the GNSO, an extensive review of the RAA and proposed changes has taken place over the past twenty-two months with two public comment periods, public workshops, presentations and an in-depth dialogue with representatives of the Registrar Constituency. This process followed the June 2007 resolution of the ICANN Board of Directors

<http://www.icann.org/en/minutes/resolutions-29jun07.htm#k>):

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.

As staff pursued the direction detailed in these resolutions it also defined the requirements for adopting changes to the RAA. In Subsection 5.4, “Term of Agreement; Renewal; Right to Substitute Updated Agreement” the conditions under which a new (or revised) agreement can be implemented upon renewal are described. Specifically a revised agreement can be substituted upon renewal if it has been adopted in accordance with RAA Subsections 2.3 and 4.3.

Subsection 2.3 refers to ICANN’s General Obligations to function in an open and transparent manner, to encourage competition, to treat registrars equitably, and to assure adequate opportunities for review and appeal. For the full text of this Subsection, see Appendix I.

Subsection 4.3, “Manner of Establishment of New and Revised Specifications and Policies” describes the “Consensus Policies” procedures in effect at the time of adoption of this version of the RAA in 2001. Essentially, it requires that changes must be demonstrated as follows:

- A written report detailing the extent of agreement and disagreement among impacted groups, the outreach undertaken to achieve adequate

representation of these views, and the nature and intensity of support and opposition;

- Recommendation that the specification or policy be adopted by at least two-thirds of the council of the relevant ICANN Supporting Organization;
- Action by the Board establishing the specification or policy.

The full text of Subsection 4.3 can be found in Appendix I.

A. Discussion of Interested Constituency Groups

Two public comment periods were held. The first period was held between July and September 2007 soliciting input on an initial set of amendments as well as input for additional changes. A total of 53 comments were received and a synthesis of these comments was published on 23 October 2007 (online at <<http://www.icann.org/en/topics/raa/raa-public-comments-23oct07.pdf>>). This document is attached as Appendix II.

The second public comment period followed an extensive dialogue with representatives from the Registrar Constituency that took into consideration the input received during the first comment period as well as additional proposals from ICANN staff and the registrars. Following this dialogue a new set of fifteen proposed amendments were posted for comment. This period ran from June until August 2008, with an extension granted for the At-Large Advisory Committee to provide an opportunity for multi-lingual input. A summary of comments submitted was posted on 20 October 2008 (online at <<http://forum.icann.org/lists/raa-consultation/msg00072.html>>). This document is attached as Appendix III.

In addition to the registrars who provided input through dialogue with staff, the following groups have submitted comments during the public comment periods:

- At-Large Advisory Committee
- Business Users Constituency

- Coalition Against Domain Name Abuse
- Intellectual Property Constituency
- International Trademark Association
- Internet Commerce Association
- U.S. Government Department of Commerce

Staff has met with representatives from several of these entities to answer questions and receive additional input.

The public comments reflect a diversity of interests with a plurality of viewpoints on many of the proposed changes. As can be seen in the summary of comments (Appendix III), many believed that the proposed changes did not go far enough. The comment summaries from each source detail what aspects of the proposed changes they agree with, which ones they disagree with, and any proposed revisions or additions provided in their comments. For a complete copy of each comment submitted refer to the public comments online at <http://forum.icann.org/lists/raa-consultation/>.

Section C below details specific areas of support and opposition among community members. Generally, what has emerged from these comments and subsequent consultations with several of the groups represented is a sense that enhancing protection of registrants through the proposed changes is desirable and should be advanced; however, there is a serious concern that advancing these changes by themselves will remove the urgency or the will to work for additional changes in the future. To address this concern there has already been discussion about creating a process for ongoing review and possible revision of the RAA going forward. Staff also has plans to address the issue of accreditation and qualification requirements as another phase in this review.

B. Outreach Process Used to Achieve Adequate Representation of Views

The RAA Amendment project grew in large part out of the concerns raised during the RegisterFly registrar failure. In March 2007, ICANN's CEO Paul

Twomey issued a call for a major review of the RAA and the registrar accreditation process in order to better protect registrants and provide for enhanced security and stability of the DNS. The key issues identified at that time became the building blocks of subsequent amendments. This statement is located online at <http://www.icann.org/announcements/announcement-21mar07.htm>.

A workshop was held in June 2007 at the ICANN meeting in Puerto Rico where issues of data escrow, registry failover, compliance, and RAA amendments were discussed. At that same meeting the Board resolved to direct staff to solicit community input related to RAA amendments, engage with registrars to arrive at a set of proposed RAA amendments to be posted for public comment, and solicit advice from ALAC, the GNSO, and other interested parties to inform the Board's review of the amendments.

To achieve the first step a page was established on the ICANN website for "Consultation on Registrar Accreditation Agreement Amendments" at <http://www.icann.org/topics/raa/>. An initial set of amendments was drafted based primarily on the list of issues and posted for public comment between July and September 2007. At the same time initial discussions were also held with registrars.

At the conclusion of this public comment period a Synthesis document (Appendix II) was produced <http://www.icann.org/en/topics/raa/comment-summary.html> that detailed the recommendations received in a total of 53 submissions. Each recommendation was classified into one of five categories ranging from "in line with initial amendment proposals" to better "handled through the Consensus Policy process." By classifying the recommendations in this way, a structure was provided for staff and registrars to proceed with a dialogue, as directed by the Board, that was focused on what were considered the most feasible and appropriate changes to the RAA. Several of the recommendations received through this public comment round were eventually incorporated in some form in the set of proposed amendments that were eventually published.

The Registrar Constituency created a working group to enter into an ongoing dialogue with ICANN staff on the RAA issues under consideration. Several iterations were drafted and revised as the dialogue between the working group and staff progressed. Both face-to-face and telephone conferences were held over several months.

The ALAC also created a working group to review the RAA and has contributed to the dialogue.

The dialogue between ICANN staff and the Registrar working group led to a proposed set of amendments that was posted prior to the ICANN meeting in Paris, thus completing the second step in the Board resolutions.

As directed by the Board, the second step included a second public comment period to consider the proposed amendments and was open from 18 June 2008 to 4 August 2008. An extended comment period was held with members of ALAC beyond those dates to permit translation of pertinent documents and to allow for interaction with staff on the issues for non-English speaking participants. The proposed amendments and supporting documents were translated into Spanish, French and Portuguese, while copies of the RAA and a redline version showing the proposed changes were also translated into Chinese, Japanese, and Korean for delivery at the Asia/Pacific Registry-Registrar Outreach Gathering held in Seoul in September. ALAC approved a Statement to the Board that was also submitted to the public comment forum, <http://forum.icann.org/lists/raa-consultation/pdfVt8QtSUuxc.pdf>. The summary of these comments is also posted there (Appendix III).

Staff held follow-up discussions with several constituency members at the ICANN meeting in Cairo, Egypt. In fact, two additional proposed changes have arisen from the comments received and subsequent dialogue. These can be found in the listing of amendments below as 2.d. and 2.e. These changes were found acceptable by the Registrar Constituency working group and have been included in the final set of proposed amendments as positive additions.

The next step in this process would be for the GNSO to recommend adoption to the Board of Directors. At that point, one final public comment period would be held prior to Board action.

C. Nature and Intensity of Reasoned Support and Opposition

As documented in Appendix III, certain amendments have generated more intense support or opposition. Below is a brief summary by category of some of this input. These comments are in the same order as the list of amendments that follow in Section III.

1. Enforcement tools
 - a. Considerable support exists, for example, for enhanced compliance and enforcement tools, though there were different opinions on how well defined they were and how restrictive the terms under which they could be used were. For example, different views exist on how much notice, if any, should be given prior to on-site registrar audits.
 - b. The graduated sanctions provisions were supported, but there was some disagreement over the amounts or how they would be calculated and under what circumstances they could be imposed.
 - c. The group liability provisions were approved of, but some considered them too limited.
 - d. There was some disagreement over making a practice permanent that has been followed by ICANN for several years whereby registrars are not charged a separate fee for each gTLD it offers. Elimination of this fee is intended to facilitate start-up and small registry business models. This particular change was coupled with the introduction of late payment fees, which were strongly supported.
 - e. The provision addressing registration by registrars generated some comments that raised concerns about warehousing or “special treatment”.

- f. General support was expressed for the change to the arbitration stay provision.
2. Registrant protections
 - a. Concerns were raised about the introduction of a data escrow option for the underlying data of privacy or proxy registrations when offered by the registrar or a reseller. Most commenters supported the escrow provision, but objected to it being an optional requirement. The U.S. Department of Commerce commented with concerns that these escrow provisions might be seen as an “endorsement of proxy services” and as inconsistent with GAC principles and ICANN’s commitment to enforce Whois policy. The letter stressed support for preserving all registrant data and opposed any actions that would legitimize proxy services.
 - b. General approval exists for the registrant rights and responsibilities provision, provided it is developed with a broad cross-section of the community.
 - c. There was general support for the provisions that add requirements for resellers, but concern was expressed that they did not go far enough.
 - d. As noted above, two additional amendments were added as a result of the final round of public comment. Some commenters recommended that registrars be required to publicly provide the registrar’s contact information. As a result of this input, this has been included in one of the two additional proposed amendments.
 - e. The second additional amendment addresses concerns raised about the effectiveness of the existing licensee provision whereby licensors are required to disclose the identity of the licensee when presented with evidence of actionable harm or accept liability for the harm. This provision has been enhanced with the additional requirement that the licensor also disclose the current contact information provided by the licensee (or accept liability for the harm). These are expected to be generally well received.

3. Promoting stable and competitive registrar marketplace
 - a. These provisions generated very few comments.
 - b. Support was expressed for the skills training provision.
 - c. One comment expressed that the use of ICANN accredited registrars may require a different approach with new gTLDs.
4. Agreement modernization
 - a. These provisions were generally supported.
 - b. Some expressed concern that it is premature to remove references to the Department of Commerce in the agreement (a change consistent with other contracts that ICANN has executed recently).
 - c. Data retention requirements were generally supported.

Some comments were received criticizing the process used to arrive at the proposed amendments. These criticisms asserted that greater community input should have been sought and criticized the extent of the dialogue between ICANN staff and registrars.

III. Proposed RAA Amendments

A set of seventeen amendments is under consideration (including two new ones added in response to the most recent round of public comment). This set has been developed following extensive consultation as detailed above and with numerous modifications and refinements that attempt to reflect as many of the comments received as possible. A full set of the proposed changes in contract language is available in redline form as Appendix IV and in chart form comparing current and proposed language for each change as Appendix V. Below are brief descriptions intended to provide a “high level” sense of what each proposed change is intended to accomplish:

1. Enforcement tools
 - a. Registrar Audits – Allowing ICANN to conduct site visits and audits of registrars upon at least 15 days notice.

- b. Sanctions & Suspension – Providing for escalated compliance enforcement tools such as monetary sanctions and suspension of registry access.
- c. Group Liability – Preventing “serial misconduct” by registrars when another affiliated (by common control) registrar’s RAA is terminated.
- d. Registrar Fees – Revising registrar fee provision to be aligned with recent and current ICANN budgets; assessing interest on late fee payments.
- e. Registrations by Registrars – Creating liability by registrars to ICANN for any registrations created by a registrar for its own use (in lieu of a registration agreement between the registrar and itself).
- f. Arbitration Stay – Eliminating the existing automatic 30-day stay of termination registrars receive by initiating arbitration or litigation to challenge an RAA termination.

2. Registrant protections

- a. Private Registration & Registrar Data Escrow Requirements –Registrars are required to either escrow underlying customer data in the case of private or proxy registrations or, alternatively, give prominent notification that such data will not be escrowed.
- b. Registrant Rights and Responsibilities – Requiring registrars to include on their websites a link to a “Registrant Rights and Responsibilities” document to be created in consultation with the ICANN community.
- c. Contractual Relationships with Resellers – Protecting registrants who are customers of resellers by obligating resellers to follow ICANN policies and requiring that they either escrow privacy/proxy customer data or, alternatively, give prominent notification that such data will not be escrowed.
- d. Licensee Contact Information Disclosure – Requiring any Registered Name Holder that licenses use of a domain name to disclose the current contact information provided by the licensee (in addition to the identity) when presented with evidence of actionable harm or accept liability for the harm caused.
- e. Registrar Contact Information – Requires registrars to provide their accurate contact details on their websites including valid email and mailing addresses.

3. Promoting stable and competitive registrar marketplace

- a. Accreditation by Purchase – Requiring registrars to notify ICANN upon a change of ownership and to re-certify compliance with the RAA.
- b. Operator Skills Training and Testing – Providing for mandatory training of registrar representatives to ensure better registrar understanding of ICANN policies and RAA requirements.
- c. Use of ICANN-Accredited Registrars – Maintaining ICANN’s general policy of requiring registries to use ICANN-accredited registrars (in the absence of a reasonable and noted exception).

4. Agreement modernization

- a. Notice Provision – Streamlining ICANN’s obligation to provide notice to registrars of new consensus policies applicable to registrars.
- b. References to the Department of Commerce – Acknowledging ICANN’s movement toward independence from the DOC by removing certain references within the RAA to a requirement of DOC approval.
- c. Registrar Data Retention Requirements – Clarifying data retention requirement for registrars to allow for more uniform practices.

IV. GNSO Action Required

As detailed above, the RAA requires that changes intended to apply to all registrars upon renewal, among other requirements, must be supported by “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.” Hence the GNSO is being requested to adopt a resolution that achieves this.

Sample wording of such a resolution that follows the contract language would be:

Resolve:

The GNSO Council supports the attached RAA amendments and recommends to the Board that they be established.

The RAA requirement of “at least two-thirds vote” was written in 2001, prior to weighted voting. However, because the current Bylaws require weighted voting and govern how the two-thirds vote should be achieved, weighted voting applies to the RAA Amendments vote.

V. Conclusion

This lengthy consultation process has produced a set of improvements to the RAA that will enhance registrant protections and modernize the agreement. Staff believes this process has produced significant improvements that will benefit the ICANN community. Further dialogue on the RAA and on the accreditation process will assure that additional improvements can be considered over time.

It is recommended that the GNSO move to recommend adoption to the ICANN Board of Directors.

Appendix I

Relevant Provisions from Current RAA

RAA 5.4:

RAA Subsection 5.4 requires ICANN to “adopt” any new form of the RAA just as though it were a “Consensus Policy.”

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.

RAA 2.3:

RAA Subsection 2.3 <<http://www.icann.org/registrars/ra-agreement-17may01.htm#2.3>> sets forth the “General Obligations of ICANN.” RAA 2.3 provides as follows:

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.

RAA 4.3:

RAA Subsection 4.3 <<http://www.icann.org/registrars/ra-agreement-17may01.htm#4.3>> sets forth the “Manner of Establishment of New and Revised Specifications and Policies.” RAA 4.3.1 provides as follows:

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.

Appendix II

Consultation on Registrar Accreditation Agreement Amendments: Synthesis of Public Comments Received

(Originally published on 23 October 2007)

Consultation on Registrar Accreditation Agreement Amendments: Synthesis of Public Comments Received

The ICANN Board of Directors adopted a resolution at the San Juan meeting that directed 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” and to “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.”

To this end, staff opened a public comment period on the ICANN website to solicit initial public input (<http://www.icann.org/topics/raa/>) with the understanding that such input would be synthesized for discussion with the Registrar Constituency. This document is intended to provide such a synthesis. This summary will take into consideration comments received during the initial period from 30 July through 10 September 2007.

A total of 53 public comments/recommendations were received during the initial period, with three individuals contributing the majority of comments (copies of all submissions can be found at <http://forum.icann.org/lists/raa-consultation/>). The Intellectual Property Constituency submitted a redlined version of the RAA to reflect changes it recommended. A subsequent submission from the At-Large Advisory Committee (ALAC) was also received and its recommendations are also included in this summary.

While the recommendations suggest a sincere interest in change, many of the comments fell outside of the scope of RAA amendments. Because the Board directed staff to solicit comments on “proposed changes to the RAA, registrar accreditation process, and related policies”, some of the comments cover qualifications and policy issues that would not be directly addressed through RAA amendments. Some comments were more general in nature or fell outside the scope of the ICANN-registrar relationship in other ways. All comments are listed, but this summary attempts to isolate those items that will facilitate the discussion on RAA amendments at this time. While staff wishes to provide for the broad range of input received, some form of classification was deemed necessary to focus the discussion for the purpose of amending the RAA. It is possible that some of the suggestions listed below could fall into more than one category – and views may differ on how the suggestions should be classified, so attention should be given to the content of each recommendation, not only its classification.

For those recommendations that may fall outside the scope of RAA amendments, ICANN wishes to work with interested community members in order to promote constructive ideas. ICANN will explore different fora for the subsequent discussion.

All comments have been numbered to provide ease of reference.

A. The following suggestions are in line with the initial amendment proposals and have been taken into consideration in drafting language that is being negotiated between the registrars and ICANN.

1. ICANN should govern terms for sales of registrars to new owners
2. Require groups of registrars to be responsible for actions of individual registrars
3. Require Data Escrow of privacy services data
4. Enhance requirements of registrars for behavior of resellers
5. Require operator skills training
6. Training recommendation for skills testing to help thwart spam
7. Registrar is responsible for behavior of resellers, including any penalties
8. Require resellers to indicate the name of the registrar on its website
9. Provide for termination of a registrar for actions of its affiliates
10. Provide for graduated sanctions
11. Add a change of control provision that permits ICANN to audit for compliance following a change of control
12. Add a control of affiliates provision that extends the agreement to affiliates
13. 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.
14. ICANN should require that any registrar that sells through resellers have binding agreements with their resellers that pass through registrar's duties to registrants.
15. 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.

B. The following suggestions may be feasible to include as revisions to the RAA and will be included in discussions between the registrars and ICANN.

1. RAA should allow for arbitration of damages instead of sanctions, like registry agreements
2. The leasing of an accreditation should be addressed by the RAA (without necessarily impacting traditional reseller arrangements)

3. Expand the data escrow terms to allow use of the data to resolve disputes between ICANN and the registrar (“The escrow shall further provide that ICANN may use data held in escrow to protect registrant rights in the event of Registrar default of the terms of this Agreement and otherwise to confirm performance with the terms of this agreement. ICANN shall not disclose any information maintained in escrow to anyone other than the Registered Name Holder, except in connection with any dispute between ICANN and the Registrar concerning the Parties’ performance of their obligations under this Agreement. “)
 4. Add a compliance audit provision (“ICANN may at its discretion and for reasonable cause at any time audit a Registrar or any Affiliate of Registrar to determine compliance with this Agreement or with representations made in the Registrar Accreditation Application.”)
 5. 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.
- C. Suggestions were submitted concerning Accreditation Requirements, which should be considered separately from the RAA amendment discussions. These will be pursued as part of a larger discussion concerning the qualification requirements to be an ICANN accredited registrar.
1. Devise new criteria in accreditation process to eliminate applicants that exist only as paper entities
 2. Use economic studies to determine if changes in accreditation requirements could be instituted to remove barriers to entry by applicants in the developing world
- D. This group of recommendations includes issues that are currently being addressed in other ICANN fora or are covered by an existing policy, proposal, or items that will be considered as enhancements to existing practices and procedures, but that do not require RAA amendments.
1. Registrars should provide challenge mechanism to correct Whois identity theft (Legal and Policy options already exist)
 2. Curtail domain tasting - two comments (Under consideration by the GNSO)
 3. Transfer of domain names between registrars should happen “seamlessly” within 24 hours (Inter-Registrar Transfer Policy exists to govern transfers; Transfer Policy is under review by GNSO)
 4. Only actual registrant information should be displayed in Whois - not privacy services (Under consideration in the present Whois policy discussion)
 5. Registrars and registries should be prohibited from selling Whois check (name availability lookup) data (SSAC is conducting a review of this possible practice)

6. Registrars should be sanctioned if they don't release Auth-Info codes in a timely manner; registrants should be permitted to acquire Auth-Info codes directly from registry; registries may need to be made "thick" (Policy exists covering the provision of Auth-Info codes)
7. Mandate an opt-out provision to let registrants keep their information out of bulk access data (Under consideration in the present Whois policy discussion; also dealt with by Registrar Constituency RAA amendment proposal)
8. Impose a means for contacting underlying registrant when privacy/proxy service is used (Under consideration in the present Whois policy discussion)
9. Adopt a registrar Code of Conduct (Provision already exists in RAA; requires consensus of registrars to adopt a Code of Conduct)
10. ICANN should post registrar violations by name (ICANN's Compliance escalation procedures contain provisions for publication of violations under certain circumstance)
11. Require registrars to include a link for reporting bad Whois in the Whois lookup record that links to ICANN's WDPRS
12. Convene an accreditation workshop (Such a workshop has been scheduled for the ICANN meeting in LA)
13. Add a provision that spells out terms under which a registrar can substitute contact details in the Whois record for the actual Registered Name Holder and that facilitates timely resolution of problems involving those names (Under consideration in the present Whois policy discussion)
14. Require registrar to provide contact information for licensed domain names (Under consideration in the present Whois policy discussion)
15. Require registrar to provide "accurate" and "valid" contact details that are regularly checked by the registrar and requires registrar to respond to third party inquiries concerning names under management within 24 hours (Under consideration in the present Whois policy discussion)
16. 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's Compliance unit has such procedures)
17. 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. (Online complaint filing exists, while the Translation Policy is under development to address a variety of translation needs)
18. 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's Compliance unit has an annual audit schedule for registrars)

19. Using automated electronic means (e.g. search engines), ICANN should identify and combat abuses of the "ICANN accredited" logo by unaccredited parties. (ICANN regularly monitors uses and aggressively challenges abuses of its logos)
 20. 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. (Under consideration in the present Whois policy discussion)
 21. 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. (ICANN's Translation Policy is under development to address a variety of translation needs)
 22. ICANN should establish procedures to follow when a registrar has failed, to select one or more other registrars to which to transfer the registrants. (Procedures for handling of registered names managed by failed registrars are under discussion)
 23. ICANN should establish procedures to verify that registrars are properly escrowing data, by spot checks and other means. (ICANN's registrar data escrow program has such provisions)
 24. Add the right to inspect registrars in order to police use of the ICANN name and reputation (Inspection rights already exist in the RAA)
- E. ICANN is structured so that major policy decisions with broad impact are arrived at through a bottom-up consensus process. The following suggestions are considered by staff either to be under discussion in the context of a Consensus Policy already or, otherwise because of their nature, could/should be handled through the Consensus Policy process. Adopted Consensus Policies are enforced through the RAA.
1. ICANN should establish or provide a dispute resolution mechanism for unauthorized changes of registrant
 2. ICANN should require registrars to verify registrant identity
 3. Registrars should be prohibited from registering and otherwise acquiring domain names and should be divested of domain name registrations
 4. ICANN should create a registrar shared database of "invalid" domain names
 5. Require adherence to Consensus Policy - eliminate post expiration loopholes (Staff note: Consensus Policy compliance enforcement already exists, further

limitations to existing policy would require the adoption of additional Consensus Policies)

6. ICANN should assure that a centralized Whois be established that is searchable to benefit UDRP complainants
 7. ICANN should reconvene the Technical Steering Committee to introduce competition into the RGP
 8. Require verification by mail of a registrant's address prior to activating domain name
 9. Establish registrar action deadlines for dealing with registrant non-compliance
 10. Enable registrars to do mass deletions of names registered by proven serial spammers and block attempts at future registrations
 11. Contact data should be verified at the time of collection.
 12. 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."
 13. 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 Auth-Info codes and the like when required.
 14. 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.
- F. The remaining suggestions may not be suitable as amendments to the RAA either because they cannot be feasibly implemented as RAA provisions, because the issue is best addressed through the freedom and choice available to registrants as they select a registrar, or because they are beyond ICANN's mission and scope. To the extent feasible registrars or other parties may be in a position to implement some of these recommendations.
1. ICANN should limit disclaimers in registration agreements and require registrars to accept some legal liability
 2. ICANN should require standardized Acceptable Use Policy in registration agreements to address criminal fraud
 3. Registrars should be required to offer a 30 day auto-renew grace period after expiration of a registration

4. ICANN should take steps to ensure impartial, equal, and fair access by preventing special access to domain speculators
5. Revoke domain names that are sold for more than “face value”
6. Restrict the number of domain names that can be registered by a single entity in a specified period of time
7. ICANN should disallow domain name parking
8. Expired domain names should be available to original registrant for an extended period of time
9. Unauthorized registrar switching (“domain name slamming”) should be prevented
10. Actual registrant should control name, not a third party registration service
11. ICANN should publicly display all registrar officers and directors, particularly when a registrar’s accreditation is terminated
12. ICANN should include penalties from registrars to registrants for poor service as an enforcement tool
13. ICANN should create penalties for registrars to discourage typosquatting
14. Create common RAA and Whois requirements across all TLDs (including ccTLDs)
15. Registrars should be required to offer DNSSEC
16. ICANN should require registries to notify ICANN when accounts become under-funded; ICANN must issue Public Alerts when this occurs
17. Terms of Service Agreements should not be used to circumvent Consensus Policies
18. By Code of Conduct or RAA, registrars should heed security-driven recommendations
19. 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.
20. 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.
21. 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).
22. 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.

23. 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.
24. Registrars obtaining top grade evaluations should be allowed to display a specific mark on their website.
25. 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.
26. ICANN should have an inexpensive program to accredit resellers.
27. ICANN should consider including resellers in the compliance and rating evaluations described above.
28. 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.
29. 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.

Appendix III

Summary Analysis of Public Comments Received

(Originally published on 20 October 2008)

Summary/analysis of public comments received

- * To: "raa-consultation@xxxxxxxx" <raa-consultation@xxxxxxxx>
- * Subject: Summary/analysis of public comments received
- * From: Kieren McCarthy <kieren.mccarthy@xxxxxxxx>
- * Date: Mon, 20 Oct 2008 15:14:02 -0700

[Posted on behalf of Chief Registrar Liaison Tim Cole by ICANN's general manager of public participation, Kieren McCarthy]

RAA CONSULTATION ON PROPOSED CHANGES

SUMMARY OF PUBLIC COMMENTS

The public comment period for the Draft Proposed Changes to Registrar Accreditation Agreement was open from 18 June 2008 until 4 August 2008. At that time the At Large Advisory Committee requested a special extension for the purposes of providing an opportunity for input from non-English speaking members. Documents were translated into French and Spanish and additional consultation with staff was held. (Note: subsequently documents were also translated into Portuguese, Japanese, Chinese and Korean.)

At the time this summary was prepared, staff has a draft of ALAC's comments, but they had not yet been voted upon by the full body. In the interest of moving this process forward, the summary has been prepared with the assurance that the final ALAC document will not differ substantially with what has been submitted to date. (Note: ALAC has since adopted the statement.)

A total of 29 distinct submissions were received (including the ALAC draft noted above and a second comment from the Business Constituency that came in after the deadline).

Eight comments were detailed comments specific to the amendments, and with the exception of Danny Younger, came from entities, rather than individuals, including: the Department of Commerce National Telecommunications and Information Administration (DOC), Business Users Constituency (BUC), Coalition Against Domain Name Abuse (CADNA), Intellectual Property Constituency (IPC), the Internet Committee of the International Trademark Association (INTA), the Internet Commerce Association (ICA), and the At Large Advisory Committee (ALAC). Brief summaries of each of these submissions follow in the order

received.

Remaining comments did not pertain directly to these amendments and this subject matter. Eighteen of the comments solely expressed objections to registrars “warehousing” domain names upon expiration and made no other observations or comments about proposed changes to the RAA. Some of these comments noted that such behavior is anti-competitive and should be addressed through the RAA.

One individual called for greater anti-spam enforcement efforts while another expressed concern about the Whois conflict with privacy laws and another proposed that “ICANN should provide direct, secure way to search available domain names”.

USG Department of Commerce

This letter focused on the proposed revisions that provide for data escrow of the underlying customer data of privacy and proxy services offered by registrars and resellers. Concern was expressed that any recognition of such services amounts to an “endorsement of proxy services” before adequate study has been conducted and, therefore, is inconsistent with GAC principles and ICANN’s commitment to enforce Whois policy. The letter stresses the importance of protecting registrants and escrowing all registrant data.

Danny Younger

Mr. Younger approves of the registrant rights and responsibilities provision and the escrow of privacy/proxy customer data (but objects to an opt-out clause). Most comments in this submission are critical of the process used to arrive at the set of proposed amendments and assert that the current set of proposed amendments does not go far enough and should not be accepted until further work and input from wider audience is considered. Specific comments: ICANN should exercise “zero tolerance” and terminate registrars after a single “willful fundamental and material contract breach”; sanctions language is inadequate; ICANN should consider “whether the competitive registration model should ultimately be scrapped”.

Business Users Constituency

Approved of arbitration stay provision; registrant rights and responsibilities provision; reseller provisions (but should be expanded to include sub-domain registrars); data retention requirements.

Disapproved of the opt-out option for data escrow of privacy/proxy customer data; making permanent the temporary fee policy that registrars can add new registries without fees; provision requiring use of ICANN accredited registrars

by registries; removal of references to the DOC as premature.

Recommended stronger Whois enforcement; clarification about registry cooperation in any sanctions program; better definitions of certain terms used, such as common control, officers & directors, and notice provision timing.

Coalition Against Domain Name Abuse

Approved of graduated suspension sanctions; data retention requirements; affiliated registrar sanctions (but term should be better defined); audit provision (but 15-day notice should be removed); registrant rights and responsibilities (developed with entire ICANN community); arbitration stay provision; financial sanctions (but should be stronger and easier to impose); registration by registrars - holding to same standard approved, but warehousing should be explicitly prohibited on unfair competition basis; approved of holding resellers to standards, but should establish criteria for what constitutes a reseller that should include sub-domain registrars.

Disapproved of removal of references to the DOC as premature; the opt-out option for data escrow of privacy/proxy customer data.

Recommended that the provision requiring registrar to re-verify contact information of registrants should be made more specific with outlined enforcement steps; establish fixed schedule for updating registration information (Whois); create a central repository of “true” Whois information.

Intellectual Property Constituency

Approved of reseller provisions (but did not consider them strong enough or well defined; identity of registrar should be easier to find).

Disapproved of audit provision as “anemic”; graduated sanctions that can only be imposed under “extremely restrictive circumstances”; group liability provisions that are “unjustifiably limited”; privacy/proxy provisions appear to legitimize “irresponsible business models”; the opt-out option for data escrow of privacy/proxy customer data.

Recommended revisions on proxy/privacy services to clarify obligations under licensing provision (RAA sub-section 3.7.7.3) specifically requiring the release of information when presented with evidence of actionable harm and requiring such services to provide real points of contact; provision to address registration by registrars of names through “dummy entities controlled by registrar”.

Criticized “closed negotiations” - broader community input should be sought (not just those who are contracted parties); terms should be better defined (e.g., affiliate companies, reseller; privacy/proxy services; conspicuous

notice). In general the IPC encouraged ICANN to refer to the original redline it submitted during the first public comment period (more details about this were provided in the INTA comments below).

Internet Committee of the International Trademark Association

Recommended a number of items, most of which come from the IPC redline provided in an earlier public comment period: Objected to “special consideration” given to registrars that register domain names themselves - all registrations should be subject to the same requirements; Whois accuracy provision should require registrars to cancel registrations for failure to correct inaccurate information; Affiliated registrar provision needs better definitions and disclosure requirement and the standard for joint liability is too high; “Registrar services” needs to be defined to limit circumstances under which a registrar can register names (such definition should exclude proxy services); provision is needed to strengthen ICANN’s ability to exert quality control over use of its trademark; provision should be in place to require registrars to provide and maintain accurate contact information for the registrar; reseller provision should include requirement of disclosure of registrar to any third party and should require registrar to terminate reseller agreement for uncured breaches of the provision (not optional); expand the contract termination provisions of RAA sub-section 5.3 to apply to registrar affiliates; Change of Control language needs to be better defined to cover all possible scenarios and to close “loophole” for acquisition of registrars; relevant ownership restrictions may be needed for potential cross ownership of registries and registrars; proxy and privacy services should be defined.

Internet Commerce Association

Approved of audit provision (but should extend notice requirement to 30 days); monetary sanctions (but maximum should be treble damages not 5 times); late payment penalties; registrar as registrant provision; supports changes to the arbitration stay provision, but would remove requirement that registrar must request a third party to operate registrar business and leave the determination up to the arbitrator; supports data escrow of privacy/proxy customer data (but objects to an opt-out option); change of ownership provision; notice provision (but should have firm compliance dates, not “reasonable period of time”).

Disapproved of making permanent the temporary fee policy that registrars can add new registries without fees; objects to registrant rights and responsibilities provision if it is created only in consultation with registrars (instead, it should only be considered if created in full consultation with the community); registrar training provision unnecessary - enforcement should be used to assure understanding of policies, not training; provision requiring use of ICANN accredited registrars by registries (new gTLDs may warrant alternatives); removal of references to the DOC as premature.

Recommended stronger reseller provisions - should require full disclosure of registrar; should require release of data to registrar for any breach; registrars should be affirmatively required to monitor activities of its resellers to assure they are compliant; ICANN must establish a limit on the degree to which national law can preempt Whois or data retention requirements to avoid “a race to the bottom”.

At Large Advisory Committee

Approved of the audit provision, but advance notice should be limited; group liability provision, but it should be stronger and not require “serial misconduct” to apply.

Disapproved of the opt-out option for data escrow of privacy/proxy customer data;

Recommended better definitions of monetary sanctions and when they apply; registrars should be required to disclose any deviation from a standard set of contract terms to enhance consumer understanding and choice; requirement for registrars under compliance review to refrain from using logo or seal; warehousing should be addressed; requirements should be established to ensure that services paid for by registrants are actually provided (e.g., multi-year registrations); registrars should be prevented from changing Whois information because of a dispute with the registrant; ICANN should limit disclaimers by registrars that are not in compliance; should require standardized Acceptable Use Policy in registration agreements; enforce and make public results of dispute mechanisms; require all registrars to offer DNSSEC. Finally, ICANN should undertake a separate review of the accreditation process itself with results made public.

Conclusion

This summary should not be considered a full and complete recitation of every comment, concern, or recommendation contained in the public comments. It is an attempt to capture in broad terms the nature and scope of the comments. In several instances (particularly in comments submitted by some individuals concerned with domain warehousing, by the Department of Commerce, Danny Younger, the Business Constituency, CADNA, the Intellectual Property Constituency, INTA, ICA, and ALAC) substantial written comments were submitted to elaborate on and support the positions presented. This summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional.

Next Steps

Staff will now proceed to consult with the GNSO on the proposed amendments, public comment and implementation options so that the GNSO can advise the Board.

Appendix IV

Full Version of RAA Containing Redlines of All Proposed Changes

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.

[1.20 "Affiliated Registrar" is another ICANN accredited registrar that operates under a common controlling interest.](#)

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. Notwithstanding the above and except in the case of a good faith disagreement concerning the interpretation of this Agreement, ICANN may, following notice to Registrar, suspend Registrar's ability to create new Registered Names or initiate inbound transfers of Registered Names for one or more TLDs for up to a twelve (12) month period if (i) ICANN has given notice to Registrar of a breach that is fundamental and material to this Agreement pursuant to Subsection 5.3.4 and Registrar has not cured the breach within the period for cure prescribed by Subsection 5.3.4, or (ii) Registrar shall have been repeatedly and willfully in fundamental and material breach of its obligations at least three (3) times within any twelve (12) month period.

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.

2.4 Use of ICANN Accredited Registrars. In order to promote competition in the registration of domain names, and in recognition of the value that ICANN-accredited registrars bring to the Internet community, ICANN has ordinarily required gTLD registries under contract with ICANN to use ICANN-accredited registrars, and ICANN will during the course of this agreement abide by any ICANN adopted specifications or policies requiring the use of ICANN-accredited registrars by gTLD registries.

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 ICANN, 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.

Deleted: the United States Department of Commerce

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. Also, Registrar shall either (1) include in the database the name and postal address, e-mail address, and voice telephone number provided by the customer of any privacy service or licensee of any proxy registration service offered or made available by Registrar or its affiliate companies in connection with each registration or (2) display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed.

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.

3.4.4 Notwithstanding any other requirement in this Agreement, Registrar shall not be obligated to maintain records relating to a domain registration beginning on the date three (3) years following the domain registration's deletion or transfer away to a different registrar.

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 [\(except for domains registered by the Registrar for the purpose of conducting its Registrar Services where the Registrar is also the Registered Name Holder, in which case the Registrar shall submit to the following provisions and shall be responsible to ICANN for compliance with all obligations of the Registered Name Holder as set forth in this Agreement and ICANN policies established according to this Agreement\):](#)

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 current contact information provided by the licensee and](#) the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

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).

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. Payment of the yearly fee shall be due within thirty (30) days after invoice from ICANN, provided that Registrar may elect to pay the yearly fee in four (4) equal quarterly installments.

Deleted: 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

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 For any payments thirty (30) days or more overdue, Registrar shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law from later of the date of the invoice or the date the invoice is sent pursuant to Section 5.11 of this Agreement. 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.

3.11 Obligations of Registrars under common controlling interest. Registrar shall be in breach of this Agreement if:

(i) ICANN terminates an Affiliated Registrar's accreditation agreement with ICANN (an "Affiliate Termination");

(ii) Affiliated Registrar has not initiated arbitration challenging ICANN's right to terminate the Affiliated Registrar's accreditation agreement under Section 5.6 of this Agreement, or has initiated such arbitration and has not prevailed;

(iii) the Affiliate Termination was the result of misconduct that materially harmed consumers or the public interest;

(iv) a second Affiliated Registrar has pursued, after the Affiliate Termination, the same course of conduct that resulted in the Affiliate Termination; and

(v) ICANN has provided Registrar with written notice that it intends to assert the provisions of this Section 3.11 with respect to Registrar, which notice shall identify in reasonable detail the factual basis for such assertion, and Registrar has failed to cure the impugned conduct within fifteen (15) days of such notice.

3.12 Obligations of Third-Party Resellers. If Registrar enters into an agreement with a reseller of Registrar Services to provide Registrar Services ("Reseller"), such agreement must include at least the following provisions:

3.12.1 Reseller is prohibited from displaying the ICANN or ICANN-Accredited Registrar logo, or from otherwise representing itself as accredited by ICANN unless it has written permission from ICANN to do so.

3.12.2 Any registration agreement used by reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service.

3.12.3 Reseller shall identify the sponsoring registrar upon inquiry from the customer.

3.12.4 Reseller shall ensure that the identity and contact information provided by the customer of any privacy or proxy registration service offered or made available by reseller in connection with each registration will be deposited with Registrar or held in escrow or, alternatively, display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed. Where escrow is used, the escrow agreement will provide, at a minimum, that data will be released to registrar in the event reseller breaches the reseller agreement, and such breach is harmful to consumers or the public interest. In the event that ICANN makes available a program granting recognition to resellers that escrow privacy or proxy registration data as detailed above, and reseller meets any other criteria established by ICANN in accordance with its Bylaws, reseller shall be permitted to apply to ICANN for such recognition.

3.12.5 To the extent that Registrar is obligated to provide a link to an ICANN webpage, as detailed in subsection 3.15 below, Reseller also shall be under an obligation to provide such linkage.

3.12.6 If Registrar becomes aware that such a Reseller is in breach of any of the provisions of Section 3.12 of this Agreement, Registrar shall take reasonable steps to notify the Reseller that it is in breach of the reseller agreement and that Registrar has the right to terminate such agreement.

3.13 Registrar Training. Registrar's primary contact as identified in Subsection 5.11 below or designee (so long as the designee is employed by Registrar or an Affiliated Registrar) shall complete a training course covering registrar obligations under ICANN policies and agreements. The training course will be developed in consultation with registrars. The course will be provided by ICANN at no expense to Registrar, and shall be available in an online format.

3.14 Registrar Audits. Registrar shall, upon no less than fifteen (15) days notice and as part of any reasonable contractual compliance audit, (1) timely provide the documents and information known by Registrar necessary to demonstrate compliance with the terms of this Agreement; and (2) permit ICANN to conduct site visits in compliance with all applicable laws to assess compliance with the terms of this Agreement, provided that ICANN, in its notice, states the specific compliance audit that it intends to conduct. ICANN shall not disclose Registrar confidential information gathered through such audits except as expressly permitted by an ICANN specification or policy. If such specification or policy permits such disclosure, ICANN will provide Registrar no less than fifteen (15) days notice of its intent to disclose such information. Such notice shall include to whom and in what manner ICANN plans to disclose such information.

3.15 In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

3.16 Registrar shall provide on its web site its accurate contact details including a valid email and mailing address.

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) 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 notice of the establishment of a specification or policy under Subsection 4.3 is e-mailed to Registrar and posted on the ICANN website at <www.icann.org/general/consensus-policies.htm> in which to comply with that specification or policy, taking into account any urgency involved.

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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. Upon the execution of this agreement, Registrar shall provide ICANN with a list of the names of Registrar's directors and officers. Registrar also shall notify ICANN within thirty (30) days of any changes to its list of directors and officers.

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 (15) 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. 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 (5) 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.

Deleted: 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.

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 (3) arbitrators: each party shall choose one (1) arbitrator and, if those two (2) 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 (90) 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 or suspension of Registrar's ability to create new Registered Names or initiate inbound transfers of Registered Names under Section 2.1 above, Registrar may at the same time request that the arbitration panel stay the termination or suspension until the arbitration decision is rendered. The arbitration panel shall order a stay: (i) upon showing by Registrar that continued operations would not be harmful to consumers or the public interest, or (ii) upon appointment by the arbitration panel of a qualified third party to manage the operations of the Registrar until the arbitration decision is rendered. In furtherance of sub-clause (ii) above, the arbitration panel is hereby granted all necessary authority to appoint a qualified third-party to manage the operations of the Registrar upon the Registrar's request and if the panel deems it appropriate. In selecting the third-party manager, the arbitration panel shall take into consideration, but shall not be bound by, any expressed preferences of Registrar. 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.

Deleted: , 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.

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 and, except in the case of a good faith disagreement concerning the interpretation of this agreement, reasonable payment to ICANN for the reasonable and direct costs including attorney fees, staff time, and other related expenses associated with legitimate efforts to enforce Registrar compliance with this agreement and costs incurred by ICANN to respond to or mitigate the negative consequences of such behavior for registered name holders and the Internet community. In the event of repeated willful material breaches of the agreement, Registrar shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

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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.

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5.9 Assignment; Change of Ownership or Management.

5.9.1 Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld.

Deleted: ., 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

5.9.2 To the extent that an entity acquires a controlling interest in Registrar's stock, assets or business, Registrar shall provide ICANN notice within thirty (30) days of such an acquisition. Such notification shall include a statement that affirms that Registrar meets the ICANN-adopted specification or policy on accreditation criteria then in effect, and is in compliance with its obligations under this Agreement. Within thirty (30) days of such notification, ICANN may request additional information from the Registrar establishing compliance with this Agreement, in which case Registrar must supply the requested information within fifteen (15) days. Any disputes concerning Registrar's continued accreditation shall be resolved pursuant to Subsection 5.6.

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. Except as provided in Subsection 4.4, all notices to be given under this Agreement shall be given in writing at the address of the

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appropriate party as set forth below, unless that party has given a notice of change of address in writing. Each party shall notify the other party within thirty (30) days of any change to its contact information. 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.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Appendix V

Chart Comparing RAA Proposed Revisions with Existing

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
1	Enforcement Tools	
1a Registrar Audit Provision	New proposal – no existing language	<p>Insert new RAA Subsection 3.14:</p> <p>3.14 Registrar Audits. Registrar shall, upon no less than fifteen (15) days notice and as part of any reasonable contractual compliance audit, (1) timely provide the documents and information known by Registrar necessary to demonstrate compliance with the terms of this Agreement; and (2) permit ICANN to conduct site visits in compliance with all applicable laws to assess compliance with the terms of this Agreement, provided that ICANN, in its notice, states the specific compliance audit that it intends to conduct. ICANN shall not disclose Registrar confidential information gathered through such audits except as expressly permitted by an ICANN specification or policy. If such specification or policy permits such disclosure, ICANN will provide Registrar no less than fifteen (15) days notice of its intent to disclose such information. Such notice shall include to whom and in what manner ICANN plans to disclose such information.</p>
1b Sanctions & Suspension	<p>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.</p>	<p>Modify RAA Subsections 2.1 and 5.7:</p> <p>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. Notwithstanding the above and except in the case of a good faith disagreement concerning the interpretation of this Agreement, ICANN may, following notice to Registrar, suspend Registrar’s ability to create new Registered Names or initiate inbound transfers of Registered Names for one or more TLDs for up to a twelve (12) month period if (i) ICANN has given notice to Registrar of a breach that is fundamental and material to this Agreement pursuant to Subsection 5.3.4 and Registrar has not cured the breach within the period for</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
	<p>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.</p>	<p>cure prescribed by Subsection 5.3.4, or (ii) Registrar shall have been repeatedly and willfully in fundamental and material breach of its obligations at least three (3) times within any twelve (12) month period.</p> <p>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 and, except in the case of a good faith disagreement concerning the interpretation of this agreement, reasonable payment to ICANN for the reasonable and direct costs including attorney fees, staff time, and other related expenses associated with legitimate efforts to enforce Registrar compliance with this agreement and costs incurred by ICANN to respond to or mitigate the negative consequences of such behavior for registered name holders and the Internet community. In the event of repeated willful material breaches of the agreement, Registrar shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.</p>
1c Group Liability	New proposal – no existing language	<p>Add 2 new subsections to RAA:</p> <p>1.20 “Affiliated Registrar” is another ICANN accredited registrar that operates under a common controlling interest.</p> <p>3.11 Obligations of Registrars under common controlling interest. Registrar shall be in breach of this Agreement if:</p> <p>(i) ICANN terminates an Affiliated Registrar's</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
		<p>accreditation agreement with ICANN (an “Affiliate Termination”);</p> <p>(ii) Affiliated Registrar has not initiated arbitration challenging ICANN's right to terminate the Affiliated Registrar's accreditation agreement under Section 5.6 of this Agreement, or has initiated such arbitration and has not prevailed;</p> <p>(iii) the Affiliate Termination was the result of misconduct that materially harmed consumers or the public interest;</p> <p>(iv) a second Affiliated Registrar has pursued, after the Affiliate Termination, the same course of conduct that resulted in the Affiliate Termination; and</p> <p>(v) ICANN has provided Registrar with written notice that it intends to assert the provisions of this Section 3.11 with respect to Registrar, which notice shall identify in reasonable detail the factual basis for such assertion, and Registrar has failed to cure the impugned conduct within fifteen (15) days of such notice.</p>
1d Registrar Fees	<p>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 (30) days after invoice from ICANN.</p> <p>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</p>	<p>Modify RAA Subsections 3.9.1 and 3.9.3:</p> <p>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. Payment of the yearly fee shall be due within thirty (30) days after invoice from ICANN, provided that Registrar may elect to pay the yearly fee in four (4) equal quarterly installments.</p> <p>3.9.3 For any payments thirty (30) days or more overdue, Registrar shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law from later of the date of the</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
	<p>confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).</p>	<p>invoice or the date the invoice is sent pursuant to Section 5.11 of this Agreement. 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).</p>
<p>1e Registrations by Registrars</p>	<p>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:</p>	<p>Modify RAA Section 3.7.7:</p> <p>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 (except for domains registered by the Registrar for the purpose of conducting its Registrar Services where the Registrar is also the Registered Name Holder, in which case the Registrar shall submit to the following provisions and shall be responsible to ICANN for compliance with all obligations of the Registered Name Holder as set forth in this Agreement and ICANN policies established according to this Agreement):</p>
<p>1f Arbitration Stay</p>	<p>5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:[...]</p> <p>This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen (15) 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</p>	<p>Modify RAA Subsections 5.3 and 5.6:</p> <p>5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:[...]</p> <p>This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen (15) 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. 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</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
	<p>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 (5) 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.</p> <p>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 (3) arbitrators: each party shall choose one (1) arbitrator and, if those two (2) 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 (90) 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</p>	<p>Agreement for five (5) 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.</p> <p>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 (3) arbitrators: each party shall choose one (1) arbitrator and, if those two (2) 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 (90) 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 or suspension of Registrar's ability to create new Registered Names or initiate inbound transfers of Registered Names under Section 2.1 above, Registrar may at the same time request that the</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
	<p>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.</p>	<p>arbitration panel stay the termination or suspension until the arbitration decision is rendered. The arbitration panel shall order a stay: (i) upon showing by Registrar that continued operations would not be harmful to consumers or the public interest, or (ii) upon appointment by the arbitration panel of a qualified third party to manage the operations of the Registrar until the arbitration decision is rendered. In furtherance of sub-clause (ii) above, the arbitration panel is hereby granted all necessary authority to appoint a qualified third-party to manage the operations of the Registrar upon the Registrar's request and if the panel deems it appropriate. In selecting the third-party manager, the arbitration panel shall take into consideration, but shall not be bound by, any expressed preferences of Registrar. 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.</p>
2	Registrant Protections	

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
<p>2a Private Registrations & Registrar Data Escrow Requirements</p>	<p>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 - 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.</p>	<p>Modify RAA Subsection 3.4.1:</p> <p>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. Also, Registrar shall either (1) include in the database the name and postal address, e-mail address, and voice telephone number provided by the customer of any privacy service or licensee of any proxy registration service offered or made available by Registrar or its affiliate companies in connection with each registration or (2) display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed.</p>
<p>2b Registrant Rights and Responsibilities</p>	<p>New proposal – no existing language</p>	<p>Insert new RAA Subsection 3.15:</p> <p>3.15 In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.</p>
<p>2c Contractual Relationships with Resellers</p>	<p>New proposal – no existing language</p>	<p>Insert new RAA Subsection 3.12:</p> <p>3.12 Obligations of Third-Party Resellers. If Registrar enters into an agreement with a reseller of Registrar</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
		<p>Services to provide Registrar Services (“Reseller”), such agreement must include at least the following provisions:</p> <p>3.12.1 Reseller is prohibited from displaying the ICANN or ICANN-Accredited Registrar logo, or from otherwise representing itself as accredited by ICANN unless it has written permission from ICANN to do so.</p> <p>3.12.2 Any registration agreement used by reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service.</p> <p>3.12.3 Reseller shall identify the sponsoring registrar upon inquiry from the customer.</p> <p>3.12.4 Reseller shall ensure that the identity and contact information provided by the customer of any privacy or proxy registration service offered or made available by reseller in connection with each registration will be deposited with Registrar or held in escrow or, alternatively, display a conspicuous notice to such customers at the time an election is made to utilize such privacy or proxy service that their data is not being escrowed. Where escrow is used, the escrow agreement will provide, at a minimum, that data will be released to registrar in the event reseller breaches the reseller agreement, and such breach is harmful to consumers or the public interest. In the event that ICANN makes available a program granting recognition to resellers that escrow privacy or proxy registration data as detailed above, and reseller meets any other criteria established by ICANN in accordance with its Bylaws, reseller shall be permitted to apply to ICANN for such recognition.</p>

RAA PROVISIONS COMPARISON

ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
		<p>3.12.5 To the extent that Registrar is obligated to provide a link to an ICANN webpage, as detailed in subsection 3.15 below, Reseller also shall be under an obligation to provide such linkage.</p> <p>3.12.6 If Registrar becomes aware that such a Reseller is in breach of any of the provisions of Section 3.12 of this Agreement, Registrar shall take reasonable steps to notify the Reseller that it is in breach of the reseller agreement and that Registrar has the right to terminate such agreement.</p>
2d Licensee Contact Information Disclosure	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.	3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the current contact information provided by the licensee and the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.
2e Registrar Contact Information	New proposal – no existing language	<p>Insert new RAA Subsection 3.16:</p> <p>3.16 Registrar shall provide on its web site its accurate contact details including valid email and mailing address.</p>
3	Promotion of Stable & Competitive Marketplace	
3a Accreditation by Purchase	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	<p>Modify RAA Subsections 5.3.3 and 5.9:</p> <p>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</p>

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	<p>director is not removed in such circumstances.</p> <p>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.</p>	<p>director is not removed in such circumstances. Upon the execution of this agreement, Registrar shall provide ICANN with a list of the names of Registrar's directors and officers. Registrar also shall notify ICANN within thirty (30) days of any changes to its list of directors and officers.</p> <p>5.9 Assignment; Change of Ownership or Management.</p> <p>5.9.1 Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld.</p> <p>5.9.2 To the extent that an entity acquires a controlling interest in Registrar's stock, assets or business, Registrar shall provide ICANN notice within thirty (30) days of such an acquisition. Such notification shall include a statement that affirms that Registrar meets the ICANN-adopted specification or policy on accreditation criteria then in effect, and is in compliance with its obligations under this Agreement. Within thirty (30) days of such notification, ICANN may request additional information from the Registrar establishing compliance with this Agreement, in which case Registrar must supply the requested information within fifteen (15) days. Any disputes concerning Registrar's continued accreditation shall be resolved pursuant to Subsection 5.6.</p>
3b Operator Skills Training and Testing	New proposal – no existing language	<p>Insert new RAA Subsection 3.13:</p> <p>3.13 Registrar Training. Registrar's primary contact as identified in Subsection 5.11 below or designee (so long as the designee is employed by Registrar or an Affiliated Registrar) shall complete a training course covering registrar obligations under ICANN policies and agreements. The training course will be developed in consultation with registrars. The course will be provided by ICANN at no expense to Registrar, and shall be available in an online format.</p>

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3c Use of ICANN Accredited Registrars	New proposal – no existing language	Insert new RAA Subsection 2.4: 2.4 Use of ICANN Accredited Registrars. In order to promote competition in the registration of domain names, and in recognition of the value that ICANN-accredited registrars bring to the Internet community, ICANN has ordinarily required gTLD registries under contract with ICANN to use ICANN-accredited registrars, and ICANN will during the course of this agreement abide by any ICANN adopted specifications or policies requiring the use of ICANN-accredited registrars by gTLD registries.
4	Agreement Modernization	
4a Notice Provision	<p>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.</p> <p>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.</p>	Modify RAA Subsections 4.4 and 5.11: 4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after notice of the establishment of a specification or policy under Subsection 4.3 is e-mailed to Registrar and posted on the ICANN website at www.icann.org/general/consensus-policies.htm in which to comply with that specification or policy, taking into account any urgency involved. 5.11 Notices, Designations, and Specifications. Except as provided in Subsection 4.4, 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. Each party shall notify the other party within thirty (30) days of any change to its contact information. 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.
4b Remove References to		Modify RAA Subsections 3.3.7 and 5.9:

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ISSUE	CURRENT RAA LANGUAGE	PROPOSED LANGUAGE
Department of Commerce	<p>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.</p> <p>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.</p>	<p>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 ICANN, 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.</p> <p>5.9.1 Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld.</p>
4c Clarify Registrar Data Retention Requirements	New proposal – no existing language	<p>Insert new RAA Subsection 3.4.4:</p> <p>3.4.4 Notwithstanding any other requirement in this Agreement, Registrar shall not be obligated to maintain records relating to a domain registration beginning on the date three (3) years following the domain registration's deletion or transfer away to a different registrar.</p>