

Mr. Steve Crocker, Chairman
Mr. Rod Beckstrom, President
ICANN Corporation
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
USA

San Jose, April 10 2012

Dear Steve and Rod,

PayPal is pleased to offer its comments and suggestions on the staff-prepared document "Draft Roadmap to Implement SAC 051". PayPal recognizes and appreciates the significant effort put forth by the members of SSAC and we support their report.

The Staff document presents three options for implementing SSAC 051 and suggests that a multi-pronged approach be employed. We believe that implementation by any of the proposed mechanisms will take years, given that a replacement protocol does not exist, and that ICANN should focus its efforts on a single approach that will yield not only a short-term solution to the WHOIS problem, but also establish a sound foundation for the future.

With respect to a protocol replacement, ICANN should:

- Encourage gTLD and ccTLD participation within the IETF group developing a WHOIS successor,
- Instruct staff to participate in the IETF group to demonstrate a strong desire for a name replacement and to foster better collaboration with the IETF,
- Encourage participation in an open source effort to develop an implementation of the WHOIS successor protocol,
- Fund an open source effort further demonstrate ICANN's commitment to a replacement for WHOIS and provide contracted parties, and others, with a high-quality, freely available replacement for Port 43 services.

Beyond the technical, PayPal notes that current ICANN policies, contracts, and their implementations are complex leading to misunderstandings and inefficiencies that impact not only ICANN but all members of the community. We believe that in order to address these issues, structural changes must be effected in ICANN's relationship with contracted (and non-contracted) parties.

For example, ICANN has placed policy language in contracts and then permits bilateral negotiation of those contracts, thereby needlessly undermining its community and the multi-stakeholder model. It does so in at least three ways. First, by introducing the possibility of policy change outside of the multi-stakeholder environment. Second, by including policy in fixed-term contracts, policy changes become difficult or impossible until all "current policy" contracts expire. Third, by imposing terms on non-contracted parties (Section 3.7.7 of the 2009

RAA) without the opportunity to negotiate, ICANN demonstrates that not all stakeholders are equal.

PayPal believes these issues must be addressed in order to place policy specification and maintenance where it properly belongs, within the hands of ICANN (the corporation and organization). We further believe that given the current RAA negotiations and requirement to develop a replacement for WHOIS, the time to effect this change is now, and it is long overdue.

As a result of a series of missteps over the past several years, a perception exists that ICANN has abrogated its responsibility as a steward of a public resource, the DNS. PayPal itself is concerned by these events but believes that the changes we outline, would be an effective start to altering that perception.

We strongly recommend aggressively pursuing contract modifications requiring contracted parties to accept:

- Uniform expiration dates,
- Removal of policy language,
- Acknowledgement that all policies are ICANN policies not subject to contract negotiation,
- Reference to specific ICANN policies as modified,
- Reference to current general consensus policy clause, and
- Provision for an "opt-out" window for policy changes. At expiration of window, contracted party has either accepted new terms or is no longer accredited by virtue of "opt-out".

These changes would provide a contract framework that would simplify language and permit timely policy changes without protracted contract negotiations. In addition, they would eliminate the current "two bite" model and replace it with one that is clearly multi-stakeholder and provides equity for all parties.

We thank ICANN for the opportunity to provide these comments. Should additional information be required, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Barrett', with a stylized flourish at the end.

Michael Barrett
Vice President and Chief Information Security Officer