**Business Constituency Comments on the Proposed Final 2013 RAA (Registrar Accreditation Agreement)**

DRAFT May 14, 2013

**Introduction**

[contributed by Ron Andruff] The Business Constituency hereby provides comments on the proposed Final 2013 Registrar Accreditation Agreement. The BC appreciates the efforts of ICANN and the Registrar Negotiating Team to address the concerns that have been raised by the stakeholder groups.

The BC supports an RAA that will protect the public interest and ensure registration of domain names by Internet users in a legal, transparent, and secure manner, as well as one that provides for mechanisms that will assist in combatting fraud, phishing and other forms of illegal activity.

With so many new obligations, the BC recommends that ICANN ensure that its compliance team is properly staffed to enforce the new RAA.

The BC also commends ICANN for requiring registrar training to educate all registrars about the RAA requirements pursuant to section 3.14, so that they fully understand how to comply with the new agreement.

As a procedural and drafting matter, many BC members have raised the concern of how difficult it has been to follow and provide comments on this RAA. The RAA is unduly complicated and lengthy with myriad cross-references to specifications, other policies and standards. The Amendment and Waiver Section (section 6) is particularly convoluted. At a minimum, the BC recommends that the RAA include a Table of Contents listing the RAA provisions and a Table of Specifications, and incorporate both into one document, with hyperlinks to other policies and standards referenced therein, so that the RAA is easier to comprehend and navigate. Also, we note that some of the specifications are set forth in the definitional section of the RAA and others are not and recommend that they should all be set out in the RAA in a similar fashion in a manner that clearly depicts their content. There are additional definitions in section 6 which a reader doesn’t even know about until the end of section 6 is reached, so we would recommend at a minimum referencing the definitional section number when the defined words are first encountered.

In addition to the general comments noted above, the BC has the following specific comments on the RAA and certain Specifications:

**Comments on the RAA**

Comment on Section 3: Registrar Obligations

The BC recommends that registrar be obligated within a specific time frame of seven (7) days to update Registered Name data upon receiving any updates to the data elements set forth therein.

The BC recommends that section 3.7.7.2 be amended to state that “willful provision of inaccurate or unreliable information . . . “shall constitute a material breach of the Registered Name Holder-registrar contract and” **shall result in** “suspension and/or cancellation of the Registered Name registration.” Such suspension/cancellation should not, in the BC’s opinion, be discretionary under the breach circumstances described.

The BC recommends adding a provision (perhaps between 3.7.3 and 3.7.4) that states: “Registrar, and any Proxy Privacy Provider it makes available, are prohibited from engaging in false advertising or deceptive practices, including deceptive notices, hidden fees, and any other illegal practices that are illegal under any applicable consumer protection laws.” This would ensure that the protections afforded in section 3 of the Registrant’s Rights and Responsibilities are clearly set forth in the RAA.

**[Question for BC:** Should registrars be required to re-verify Whois information periodically, e.g., on an annual basis or another time frame? Currently, verification is required when a new registrant applies for domain name; when the registrar is notified of inaccurate Whois information; or upon transfer. If the BC thinks registrars should have an obligation to do a re-verification every year or so, we should add that into the RAA 3.7.8 and specification, as follows:

The BC also recommends that the second section of section 3.7.8 be amended to state: “In addition, notwithstanding anything in the Whois Accuracy Program Specification to the contrary, Registrar shall abide by any Consensus Policy requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar **and** (b) periodic re-verification of such information.” **[Currently, the provision has “or” and I substituted “and” in the event BC would want to require periodic/annual/etc. re-verification]**

**Question: what is section 3.3.6 referring to? Examples?**

Comment on Section 5: Term, Termination and Dispute Resolution

**Question for BC:** Should we comment on the fact that registrars aren’t required to adopt any updated RAA, but rather can stay with the same RAA as long as they are not in breach of the current RAA? There are two scenarios: (1) ICANN negotiate in the future for a completely new, updated RAA in which case, some registrars could opt not to sign the new RAA (I think that’s not an optimal situation) or (2) any changes to the current RAA are made via the amendment process and all current registrars will have to abide by amendments (except under specific exemptions). If we comment on this issue, I propose a change to section 5.3.

Comment on Section 6: Amendment and Waiver

**[Bill Smith has raised concerns about the Working Group but never provided a draft comment. He is worried that the WG will be exclusive and not allow for stakeholder input. However, I am not as concerned since any amendment of new provisions proposed ICANN and the WG must still be subject to public comment. See, e.g., section 6.3, 6.5.5, 7.4.3, 7.4.4.4 (may need to insert “for public comment” after “Posting Period” in first sentence) and 7.4.5.1.] There are a few places where we should make it clear that any proposed amendments and negotiations are subject to public comment which I have indicated below.]**

The BC recommends that upon first use of terms defined in section 6.10, such term be followed by a parenthetical stating that the term is defined in section 6.10. For example, in the first sentence of section 6.2, state: “. . . ICANN shall first consult in good faith with the Working Group **(defined in section 6.10.5)** . . . .”

The BC recommends that where the term “Specification 1” is used, the actual name of the Specification be used instead to avoid confusion. See, e.g., sections 6.4 and 7.4.5.2.

The BC recommends that public/stakeholder comment be provided for in section 6.6. **[Question, should stakeholders have a say regarding requests for exemptions from certain provisions of the RAA requested by a registrar pursuant to 6.8? If so, we should ask for ability for public comment on such exemptions.]**

**Comments on Privacy-Proxy Specifications**

The BC applauds the negotiating team for adding a specification addressing the issue of privacy-proxy procedures. The BC notes, however, that the specification only requires that registrars require P/P Providers to post their privacy-proxy terms and conditions on their websites and does not require specific content of what those terms and conditions must entail. The BC would like to see specific content requirements of the terms and conditions as to the following issues:

* Specify under what circumstances, pursuant to section 2.4.3, the P/P Provider will relay communications from third parties to the P/P Customer. The BC recommends that the P/P Provider be required at a minimum to relay any communications alleging illegal conduct or consumer fraud (e.g., infringement of intellectual property rights).
* Specify under what circumstances and which time frame, pursuant to section 2.4.5, the P/P Provider will be required to reveal the Whois information of the P/P Customer. The BC recommends that if illegal activity is alleged, that the P/P Provider be required to reveal the Whois information and that this revelation occur within seven (7) business days to conform to section .
* The BC would also recommend that the P/P Provider be required to relay any covered communication within **[three (3)]** business days to the P/P Customer. In addition, the BC requests that the specification require that the P/P Provider confirm such relay **within 24 hours** to the person submitting the report of abuse.

The BC is also concerned that there is no means by which to amend the P/P specification. It could be several years before this specification is replaced by a Privacy and Proxy Accreditation Program. Therefore, the BC recommends that in the meantime, there should be an ability to amend this specification as may be considered necessary by the parties and stakeholders.

**Comments on Whois Accuracy Program Specification**

The BC recommends that the first paragraph of this specification insert “in accordance with section 6 of the Registrar Accreditation Agreement” after Registrar Stakeholder Group to ensure that public comment are accounted for.

The BC is concerned that registrars not be allowed to activate a domain name registration until after contact information is verified.

[Contributed by Zahid Jamil] The current draft allows the domain name to resolve for 15 days without verification before any action such as suspension and/or cancellation takes place with respect to a failure of verification.  This essentially provides cybercriminals a long 15 day window within which to use a domain name without providing verification hence, avoiding scrutiny or action by the Registrar.  Keeping in mind the serious risks identified by SSAC 025 with respect to Fast Flux name exploitation, allowing such a long window would only further assist not hinder exploitation of domain names by cybercriminals.

Therefore, the BC recommends that section 1 be amended to read: “Except as provided in Section 3 below, **prior to** (1) the registration of a Registered Name . . . .”

The BC also believes it is best practice for registrars to verify contact information by email and telephone. Thus, the BC recommends substituting “and” for “or” at the end of section 1.f(i).

**Question for BC: should there be a requirement added that registrars should re-verify contact info periodically, e.g., annually? If so, that requirement should be added to this specification. Should we cite GAC Advice on Safeguards here?**

**Comments on Data Retention Specification**

The BC recommends that section 2 of this specification be clarified that public comments will be allowed when ICANN posts its proposed final data retention specification.

**Other Comments**

[Elisa Cooper suggested 2 additional overarching points:

1)      With so many new registrar obligations, we are hopeful that ICANN Compliance is properly staffed to enforce the new agreement.

2)      We would encourage ICANN to proactively educate all registrars of the new requirements, so that they all understand the new obligations and can comply with the new agreement. ]

[Anjali asks whether domain hijacking might be addressed in the context of the RAA?  Scenario:  registrant lets his domain lapse, someone else snaps it up and then requires $7,000 for the registrant to get it back.  Real story which happened to a BBB board member.  Any options for redress?]