

COALITION FOR ONLINE ACCOUNTABILITY

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COMMENTS ON NEW GTLD REGISTRY AGREEMENT

June 11, 2013

The Coalition for Online Accountability (COA) offers the following comments on two specifications attached to the Proposed Final New gTLD Registry Agreement, see <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-05feb13-redline-29apr13-en.pdf>.

COA consists of eight leading copyright industry companies, trade associations and member organizations of copyright owners (listed below). COA and its participants have engaged actively in many aspects of ICANN's work since the inception of the organization, including more than 20 formal submissions regarding the new gTLD program. COA commented on the preceding draft of the new gTLD Registry Agreement on February 26, 2013.¹ For further information, see www.onlineaccountability.net.

Specification 4, Registration Data Publication Services

A newly added provision (Section 1.4) makes it clear that registry operators may provide more registration data than the minimum required by the specification. This is a positive change. However, the new provision forbids registry operators from offering greater transparency and accountability through such additional data outputs unless ICANN approves it. This condition is unjustified. If there is a good reason for it, ICANN should spell that out, and should make this condition subject to a requirement that ICANN not unreasonably withhold such approval.

The entirety of section 1.10 has been deleted, thus eliminating any obligation by registry operators to implement any "new or revised model for gTLD data directory services that may be adopted by the ICANN Board of Directors after public comment based upon the recommendations of the Expert Working Group on gTLD Directory Services." It is discouraging to see ICANN retreating so rapidly and completely from its initial promotion of the Expert Working Group as the linchpin to resolving the persistent problems plaguing Whois, problems that have if anything worsened throughout the many years that ICANN has had stewardship of

¹ http://www.onlineaccountability.net/pdf/2013_Feb26_COA_comments_on_new_gTLD_registry_agreements.pdf

American Society of Composers
Authors & Publishers (ASCAP)

Entertainment Software Association (ESA)

Software & Information Industry Association (SIIA)

Broadcast Music Inc. (BMI)

Motion Picture Association of America (MPAA)

Time Warner Inc.

Recording Industry Association of America (RIAA)

The Walt Disney Company

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this critical Internet resource. It now appears that the Expert Working Group will simply provide one input to a future Policy Development Process on registration data services, which will be initiated by the ICANN Board at some unstated point in the future, and which will likely drag on for years, like most PDPs.²

The deletion of section 1.10 contrasts starkly with the addition of a new second paragraph in section 1, requiring each registry operator to “implement a new standard [developed by the IETF] supporting access to domain name registration data” within “135 days after it is requested to do so by ICANN,” with no indication that any action at all by the ICANN Board, nor any opportunity for public comment, will be involved. We urge that section 1.10 be reinstated, especially if the new paragraph just described is retained.

In Section 1.11, COA once again suggests that the provision be expanded to require registry operators to provide links to any cross-registry registration data directory service operated by or on behalf of ICANN (such as the Internic service called for by the Whois Policy Review Team). See our February 26 comments at page 4.

Specification 11, Public Interest Commitments

A proposed change to section 1 deletes the requirement that registry operators do business only with registrars that have signed up to the most recent version of the Registrar Accreditation Agreement, confining that rule only to the current situation involving the 2013 RAA. Either this reflects an unfounded belief that the 2013 RAA is the pinnacle of perfection for registrar accreditation, or else it gives registries unjustified influence over future enhancements to the minimum standards registrars are required to meet. This change deprives ICANN of a powerful tool to encourage registrars to sign up to improved standards, unless it can also persuade registries to narrow the spectrum of registrars with which they do business. The proposed deletion should not be made.

Respectfully submitted,

Steve Metalitz, counsel to COA

² An ICANN staff compilation last year indicated the median elapsed time for a PDP was 639 days. <http://gns0.icann.org/basics/pdp-timeline-2-24may12-en.pdf>. This calculation ends at the moment of a Board vote on the PDP output and excludes all the time needed for implementation.