

On behalf of the International Anti-Counterfeiting Coalition (IACC), we are pleased to provide comments on the Registrar Accreditation Agreement Proposed Amendments (“RAA Amendments”). The IACC has been actively engaged in the ICANN process on this issue, in part through its membership in the Intellectual Property Constituency and through the public comment process.

Although the IACC is generally supportive of the changes introduced by ICANN, and especially those which are designed to give ICANN greater flexibility in modifying the RAA in future, the IACC’s comments will focus on those that address the WHOIS requirements, specifically including the proposed interim specification on proxy and privacy services.

The IACC strongly supports ICANN’s efforts to fulfill its mandate, including its trusteeship of the WHOIS system, through the RAA process. As the IACC has repeatedly noted in the past, existing agreements have all too often exposed loopholes that have seriously undermined the WHOIS database and encouraged registrars and their proxies to achieve end-runs around the requirements of WHOIS accuracy and accessibility which are so necessary to stability, integrity and transparency of the Internet. The changes proposed in the draft RAA Amendments posted by ICANN represent a constructive step in the right direction and, in many ways, an elegant compromise between ICANN’s responsibilities and ICANN’s ongoing policy development processes concerning some of these same issues.

WHOIS Verification

The IACC applauds ICANN’s efforts to correct deficiencies in the quality of WHOIS information and, in particular, addition of the proposed added specification to on WHOIS verification. The IACC offers the following comments as areas for possible improvement.

First, given tools available to registrars, a deadline for validation and verification does not need to be nearly so long as the proposed 15 days. In either event, the potential harm from permitting a registration to resolve to an active website for more than two weeks without having secured required verification and validation is clearly excessive.

Second, the IACC supports proposals to make account holder information subject to verification. Such a provision will advance interests of transparency and accountability sought to be achieved through the WHOIS system.

Third, the IACC supports the language which provides that registrars must take action to block resolution of domain names where registrations based on false contact data. The specification should expressly provide that it does not prevent a registrar from taking action at any time when it has a reasonable basis to believe that false contact data was supplied. The specification should also expressly state that nothing prevents a registrar from taking appropriate action for any other reason consistent with its terms of service or contract with registrants.

Proxy/Privacy Specification

The IACC strongly believes that the proposed specification to address proxy/privacy services should be included in the RAA Amendments. The IACC has repeatedly posted comments concerning the serious issues raised by such services and their effect at undermining the entire WHOIS system. The IACC believes that ICANN’s insertion of the proposed interim specification is an essential “stopgap” to address a serious problem during the unknown amount of time it will take to introduce a permanent solution

through ongoing policy development processes which will (thereafter) have to be implemented through further RAA amendments.

Notwithstanding this support, the IACC offers three comments on specific language which – it believes – can be improved and render the interim specification more effective in achieving its intended purposes.

First, there appears to be a discrepancy between paragraphs 2 and 3 of the proposed specification. While paragraph 2 appears to suggest the specification should equally apply to “affiliates” and “resellers”, the language of paragraph 3 is not equally clear. This language should be reconciled to make clear that "Registrar" includes "Resellers and Affiliates".

Second, the specification does not impose any obligation upon privacy/proxy providers to verify such information. A failure to so provide may undermine effectiveness of this specification. Whois verification may be frustrated if registrants can use a proxy registration where no verification is required.

Third, the five day window for fulfillment of the relay obligation is far too long. A limitation where legal prohibition prevents relay is present, but given the ongoing injury which may be involved and the means of communication available, there is no reason for a delay of "up to five days" before relaying notices received by privacy/proxy services.

With these improvements, the proposed interim measures can go a long way towards minimizing the issues pending development of a more permanent and comprehensive policy to address privacy/proxy services.