

COALITION FOR ONLINE ACCOUNTABILITY

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COMMENTS ON PROPOSED REVISED RAA

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The Coalition for Online Accountability (COA) appreciates this first opportunity to comment on the proposed revisions to the Registrar Accreditation Agreement (RAA). See <http://www.icann.org/en/news/public-comment/proposed-raa-07mar13-en.htm>.

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 through the Intellectual Property Constituency. For further information, see www.onlineaccountability.net.

COA endorses the comments submitted by the Intellectual Property Constituency (IPC), and like IPC reserves the right to supplement or modify these comments during the reply period.

In addition, COA offers the following comments on portions of the proposed revised RAA not addressed in the IPC comments:

(1) COA urges that the entire proposed revised RAA be compared against the list of high and medium priority items identified for change in the RAA by the GNSO-ALAC joint drafting team in October 2010¹, and that that comparison be made public. Many of the items listed below relate to points identified in that drafting team report.

(2) With regard to the proposed Registration Data Directory Service (Whois) Specification:

(a) COA strongly supports inclusion of a data item identifying the reseller, if any, associated with a registration (see section 1.4.2). This should include contact points for the reseller. In general, as recommended by the GNSO-ALAC drafting team, there should be greater transparency in registrar disclosure of resellers and vice versa, including disclosure to registrants and to the public.

(b) COA also strongly supports the requirement to include a link to the ICANN Whois Data Problem Reporting System (or its successor) in registrar Whois output

¹ See <http://gns0.icann.org/issues/raa/raa-improvements-proposal-final-report-18oct10-en.pdf>, at 20-22.

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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(section 1.4.2). The link should be required to be accompanied by the phrase “To report inaccurate or incomplete data in this report:” or words to that effect.

(c) Regarding the text of section 1, COA’s view is that any directive from ICANN for registrar to implement a new directory service in accordance with a standard promulgated by IETF in the future must be issued only after a full opportunity for public comment on the standard and whether ICANN should require it. This is not simply a technical decision that should be made by ICANN staff without public input after an opportunity to review and discuss the IETF output. While it may not be necessary to spell this out in the Specification itself, COA advocates that doing so in order to prevent any confusion on this score.

(3) While strongly supportive of the requirement in proposed Section 3.7.7 that registrars enforce compliance with the provision of the registration agreement, COA wishes to stress that this requirement must itself be vigorously audited and enforced by ICANN if it is to be meaningful. Furthermore, registrars should be required to provide ICANN with copies of their then-current standard registration agreements, and to respond to reasonable ICANN inquiries regarding their enforcement of those agreements, in order to ensure full compliance with section 3.7.7.

(4) The abuse contact available to the general public under section 3.18.1 should be subject to requirements similar to those applicable to the law enforcement agency abuse contact under section 3.18.2. For instance, the RAA should include time limits or service level agreements concerning how quickly the registrar must respond to abuse complaints that come in through the non-law enforcement channel, and how fast the registrar must take necessary and appropriate action. While the time limit need not necessarily be the same as the 24 hours provided in the case of law enforcement complaints, it should be short and require prompt action. Sources other than law enforcement play a critical role in combating many forms of illegal online activities that are facilitated through registration and use of domain names; indeed, were only official law enforcement agencies empowered to gain prompt cooperation from registrars on their complaints, these efforts to protect Internet users, consumers and other parties would be far less effective than they are. The RAA should reflect this fact.

(5) The revised RAA section 5 should give ICANN the authority to impose, as sanctions for violations of particular RAA provisions, curative measures going beyond standard RAA requirements. For example, a registrar found to have breached its obligations regarding responsiveness to reports of false Whois data could be required to implement an enhanced tracking system for such complaints.

(6) With respect to assignment of registrar accreditation (section 7.3.1), while we agree that assignment to another accredited entity that already (and in a compliant manner) acts as a registrar poses fewer risks than assignment to a third party not currently engaged in the registrar business, we disagree that such a transaction should automatically be approved unless ICANN formally objects within 10 calendar days. Registrar operations are not always fungible. An entity that satisfactorily processes registrations in open registries would not necessarily be competent to do so for a registry that depends on registrars to administer complex restrictions on who is entitled to register. Similarly, a registrar accredited to sponsor registrations in a registry catering

primarily to registrants who use one script might not have the capacity to do so for other registries that mainly employ a different script. Issues of competition and consumer trust also might be involved that cannot be fully resolved in 10 days and without any opportunity for investigation. Thus, proposed clause (ii) of section 7.3.1 should be revised to allow for a reasonable, if more limited, review before such an assignment is deemed approved.

Thank you for considering the views of COA.

Respectfully submitted,

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Counsel to COA