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March 28, 2013

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comments-proposed-raa-07mar13@icann.org

Re: Web.com Public Comment on Proposed 2013 Registrar Accreditation Agreement

Dear Ms. Eisner:

Web.com Group, Inc. (“Web.com”) and its wholly owned subsidiaries, Network Solutions and Register.com (the first and second ICANN Accredited Registrars respectively), submit this letter for your review, consideration and action as it pertains to the proposed 2013 Registrar Accreditation Agreement (“RAA”).

Introduction:

Web.com has been in the business of helping our customers establish their online presence for over 15 years. Following our acquisition of Register.com and Network Solutions, we have become one of the largest domain name Registrars in the world with approximately 3 million customers. Web.com offers a variety of TLDs and a full suite of domain-name services, including registration, management, renewal, expiration protection and privacy services. As a publicly traded company, Web.com’s services are heavily regulated and scrutinized by both shareholders and governmental authorities around the world, and Web.com must abide by stringent laws regarding fiduciary duty, data security, confidentiality, and privacy.

Let me begin by stating that Web.com greatly appreciates the efforts of the Registrar Stakeholder Negotiating Team (“Registrar NT”) and supports the current position of the Registrar NT. See Registrar NT public comments, available at <http://forum.icann.org/lists/comments-proposed-raa-07mar13/msg00000.html>. We also appreciate the acknowledgement by ICANN that “ICANN and the Registrar NT are likely to continue discussions regarding the areas where the specifications remain open”, signaling that formal negotiations have not yet concluded. And finally, we appreciate the opportunity to provide the following comments regarding the proposed RAA.

I. Section 6.3: Amendment and Waiver

Web.com supports the position articulated by the Registrar Stakeholder Group (“RrSG”) on the proposed Registry Agreement, and especially those comments relating to ICANN’s authority to unilaterally amend the RAA. See RrSG public comments, available at <http://forum.icann.org/lists/comments-base-agreement-05feb13/pdfrd3iq6Ucmm.pdf>. We oppose expansion of ICANN’s proposed right to impose new obligations on contracted parties without consent. As the February 5th RrSG comments clearly articulated, the “picket fence” provisions in the RAA already provides ICANN with a manner in which to impose temporary and/or consensus policy on registrars. Web.com recommends that ICANN revert to using the contractual language outlined in Article 4 of the 2009 RAA and, more specifically, subsection 4.3.4, which states:

“4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety (90) days, the Board shall reaffirm its temporary establishment every ninety (90) days for a total period not to exceed one (1) year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

We agree with the RrSG that the proposed language, which empowers the ICANN Board to make unilateral changes to the RAA, creates an unnecessary level of risk and uncertainty for commercial operators such as Web.com. See Web.com reply comments on the revised Registry Agreement, available at <http://forum.icann.org/lists/comments-base-agreement-05feb13/pdfPniT0cYJhK.pdf>.

While we recognize that “ICANN has presented the amendment language as a proposal, a starting point for the conversation,” we respectfully request that ICANN delete this proposed change from the RAA. Indeed, if “perpetual” renewal terms are the true source of concern for ICANN, then perhaps greater attention should be dedicated to the term and termination provisions in the RAA, as opposed to insertion of a unilateral amendment provision.

II. Section 3.3: Public Access to Data on Registered Names

Web.com supports the Registrar NT Proposed Text for Section 3.3.1 which limits the provision of an interactive web page and a port 43 Whois service (each accessible via both IPv4 and IPv6) to any gTLD operating a “thin” registry.

We also agree “that in the case of thick registries, the provision of port 43 Whois service duplicates a Registry-provided service and is not meaningfully useful by third parties.” Requiring both Registrars and “thick” Registries to provide free public query-based port 43 access creates duplicative efforts and unnecessary expenses for all parties. It also creates uncertainty as to the authoritative source for the port 43 Whois service, exacerbated by rare instances where inconsistent registration data exists at the Registry and Registrar levels. Given the fact that the Registry Operator is considered the TLD authority, it is our contention that this requirement should remain solely in the Registry Agreement and not the RAA. Therefore, we respectfully request that ICANN accept the Registrar NT’s proposed change to the RAA.

III. Section 3.3.6: Third-party Bulk Whois Access

Web.com requests the removal of the third-party bulk access obligations outlined in Section 3.3.6 of the proposed RAA. The competitive circumstances underlying the bulk access mandate (the existence of a single registrar model) no longer exist, thus this provision is no longer relevant. Upon removal of this provision, we would not oppose an ability by ICANN to re-impose the requirement in response to changes in the competitive landscape.

In addition, under Section 3.3 of the Proposed RAA, Registrars are already obligated to provide free public query-based access to up-to-date data pertaining to all active Registered Names. As outlined in Article II above, provision of this data is also duplicative as it pertains to “thick” registries.

IV. Section 3.14: Obligations Related to Proxy and Privacy Services

Web.com does not support the proposed language in Section 3.14 which obligates Registrars to “...comply with any ICANN-adopted Specification or Policy that establishes a Proxy Accreditation Program” and “agree to comply with the Specification on Privacy and Proxy Registrations attached hereto” [Emphasis Added]. As it stands, this accreditation program language is unclear, open-ended, and ambiguous. The open-ended nature of ICANN’s proposed language might impose new obligations on contracted parties absent their consent and cause

unintended costs or consequences. Any revisions to the RAA falling outside of the picket fence require Registrar consent, and otherwise should adhere to consensus policy development processes as determined via the multi-stakeholder model.

We recognize that the “Specification of Privacy and Proxy Registrations ... is intended to be an interim mechanism” and “will be replaced by a Proxy Accreditation Program, once developed.” See Summary of Changes to Draft RAA, available at <http://www.icann.org/en/resources/registrars/raa/proposed-agreement-summary-changes-07mar13-en.pdf> (March 7, 2013). However, Web.com requests that ICANN tighten up its proposed language, in lieu of the phrase “**any** ICANN-adopted Specification or Policy,” to clearly define a Specification on Privacy and Proxy Registrations as agreed upon by the contracted parties or adopted through a Consensus Policy Development Process.

V. Section 6.7.2: Amendment and Waiver

Web.com supports the Registrar NT Proposed Text for Section 6.7.2 which defines the term “Registrar Approval” and we respectfully request that ICANN accept this proposed change to the RAA.

Conclusion:

In closing, Web.com supports the multi-stakeholder governance model utilized by ICANN and believes that Accredited Registrars play a vital role in the distribution and management of domain names. The RAA negotiations have served as a reminder to all stakeholders that they must remain diligent to ensure appropriate actions are taken to manage and maximize efficiencies within the community which in turn will keep costs to a minimum for all parties. It is critical that these RAA items are addressed and appropriate action is taken to ensure success so that we can continue to support an environment that represents the interests of all participants.

Sincerely,

Robert C. Wiegand
Senior Vice President
Web.com Group, Inc.