

GoDaddy Comments Regarding the Proposed Final 2013 RAA

Please accept the following comments in response to the call for Public Comment regarding the Proposed Final 2013 RAA¹. GoDaddy reserves the right to future comments on this issue and our positions include, but are not necessarily limited to, the text herein.

Overview

As an ICANN Accredited Registrar since 2000 and regular participants in the 2009 and 2013 RAA negotiations, we welcome the opportunity to contribute the following comments that address some specific concerns we have with certain provisions currently proposed.

First, however, we would like to thank ICANN for its diligent efforts during negotiations. We also appreciate that going forward the currently proposed 2013 RAA will eliminate continuous negotiations, provide stability for registrars at renewal, and provide uniformity for/with the new gTLDs through certain common provisions and obligations.

RAA Section 6. Amendment and Waiver

Section 6.5 of the RAA deals with the manner in which a Rejected Amendment may still be adopted and become effective. Section 6.5.2 reads:

“the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;”

We appreciate ICANN's attempt to inject a presumption of strict scrutiny that would place a heavy burden on ICANN to make a case of “Substantial and Compelling Reason in the Public Interest” to justify the Rejected Amendment. Our concern is that there is no specified standard of review for determining when a reason will be deemed “in the public interest,” or the degree to which it will be found to be “substantial and compelling.” It appears that the only accountability mechanisms provided are consultation with the Working Group and posting for public comment.

It is true that Section 6.6 provides another opportunity for the Working Group and/or Registrars themselves to attempt to address the “Substantial and Compelling Reason in the Public Interest” identified by the ICANN Board of Directors, and Sections 6.7 and 5.8 allows for dispute resolution. Again however, the revisions lack a specific standard of review to govern how a “Substantial and Compelling Reason in the Public Interest” will be evaluated. In addition, with these terms and procedures left undefined, it is difficult to understand how ICANN would be able to continue to provide “thorough and reasoned explanation of decisions taken, the rationale thereof, and the sources of data and information on which ICANN relied,” as promised following recommendation 7.2 of the first Accountability and

¹ <http://www.icann.org/en/news/public-comment/proposed-raa-22apr13-en.htm>

Transparency Review Team².

As a result, we believe that in the interest of appropriate accountability this update requires further work and definition. Additionally, we suggest that the Amendment proposal, which is mirrored in the new Registry Agreement, should be considered by the current Accountability and Transparency Review Team.

Consensus Policies and Temporary Policies Specification

Section 1.4 and 1.4.3 reads:

“1.4. In addition to the other limitations on Consensus Policies, they shall not:

1.4.3. Modify the provisions in the Registrar Accreditation Agreement regarding terms or conditions for the renewal or termination of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN;”

We believe that during the current RAA negotiations it was understood that in addition to the renewal and termination conditions, the amendment (Section 6) and negotiation (Section 7.4) processes would also not be subject to Consensus Policy development. We suggest that 1.4.3 should be modified to read:

“1.4.3. Modify the provisions in the Registrar Accreditation Agreement regarding terms or conditions for the renewal, termination, amendment, or negotiation processes of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN;”

We feel that this is a critical modification that will improve the predictability of this new RAA for both Registrars and ICANN.

Whois Accuracy Program Specification 1.d and 1.e

ICANN's desire to improve the accuracy of Whois data collected and stored is understandable, and is shared by Registrars. However, we are concerned that the cross-field validation that is required in sections 1.d and 1.e cannot be implemented fairly, consistently, or equitably for either Registrars or Registered Name Holders. The information required is not consistently available. As a result, if not implemented properly, the required validation could create unfair regional and economic barriers for Registered Name Holders and Registrars. In addition to recent public statements by the ICANN CEO regarding the lack of service providers in some regions³, we remind ICANN of Core Value number 8 in its Bylaws:

“8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.”

² <http://www.icann.org/en/news/public-comment/atrt-final-31dec10-en.htm>

³ <http://domainincite.com/12181-chehade-commits-to-grow-the-number-of-domain-registrars-in-africa>

ARTICLE II of ICANN's Bylaws, Section 3. NON-DISCRIMINATORY TREATMENT also states;

“ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.”

We recognize that the RAA Transition process calls for further work on this issue, and we are committed to working with ICANN and other registrars to ensure that this is implemented in a fair, consistent, and equitable manner.

Conclusion

We appreciate the opportunity to share our concerns regarding these provisions. We look forward to working collaboratively with ICANN and others in the Community to address them and finalize a new RAA that will benefit the entire community and strengthen our industry as a whole.

Thank you,

James Bladel
Senior Director, ICANN Policy
GoDaddy