

VIRTUALAW LLC

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By E-Mail

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

Re: Proposed Final 2013 RAA/Statement of Registrants' Rights and Responsibilities:

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA). ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

These comments reflect our views on the "Proposed Final 2013 RAA" that was posted for public comment on April 22, 2013 at <http://www.icann.org/en/news/public-comment/proposed-raa-22apr13-en.htm>.

Executive Summary

The current draft statement of Registrants' Rights and Responsibilities (RRR) is deficient in scope. We prefer the alternate version proposed to ICANN by the Non-Commercial Stakeholders Group (NCSG) and propose that a modified version of it be adopted as the final RRR. As a document intended to provide guidance to all registrants, especially those lacking a sophisticated understanding of their rights and responsibilities, it is important that the RRR reflect the input of registrants represented by such entities as the NCSG and the ICA as well as of registrars.

Discussion

The ICA strongly supports the concept of a standard statement of RRR that all accredited registrars must provide a link to. However, the current draft RRR (available at <http://www.icann.org/en/resources/registrars/raa/proposed-registrant-rights-responsibilities-22apr13-en.pdf>) is insufficient in scope. This deficiency perhaps reflects the fact that it was drafted by registrars without input from registrants or entities representing them.

As an RRR starting point, we prefer the proposed draft submitted by ICANN's NCSG on May 14, 2013 and available at <http://forum.icann.org/lists/comments-proposed-raa-22apr13/msg00010.html>. We have modified and added some provisions of that draft -- and have also included, for the sake of comprehensive treatment and balance, some important provisions of the current registrar-developed draft RRR.

We would propose that ICANN adopt this modified RRR statement in lieu of the current draft RRR; modifications and additions to the NCSG draft are indicated below (deletions in [brackets] and additions in **boldface**):

Registrants' Rights and Responsibilities

Registrants of domain names depend on the DNS to provide stable online location-pointers for their speech, association, commercial, and non-commercial activities. Registrants derive rights and responsibilities from applicable law as well as from the web of ICANN-based contracts **and relevant policies**. As a matter of policy, ICANN should ensure that its contracts **and the parties bound by them** can support a wide range of lawful and innovative end-user activities and free **and open** communications.

Registrants shall have the right to:

- Reliable neutral resolution of registered domain names;
- No suspension or termination of registration without due, disclosed process;
- **Administration of UDRP disputes and other ICANN-adopted rights protection mechanisms (RPMs) in a uniform and neutral manner by arbitration entities that are effectively overseen by ICANN;**
- Privacy in the provision and display of registration data;
- Fair and non-discriminatory treatment from ICANN, Registrars and Registries;
- No censorship of domain use, content, or communications through Registries or Registrars;
- Timely **and secure** transfer of registered domain names between Registrars;
- Renewal (or choice not to renew) domain name registrations on clearly disclosed terms.

To not be subject to false advertising or deceptive practices by their Registrar or through any proxy or privacy services made available by their Registrar. This includes deceptive notices, hidden fees, and any practices that are illegal under the consumer protection laws of the relevant jurisdictions of their registrar or the registrant's domicile.

To accomplish that, registrants shall be entitled to accurate and accessible information about:

- The identity of their ICANN Accredited Registrar;
- The identity of any proxy or privacy service provider affiliated with their Registrar;
- The terms and conditions under which Registrant information is revealed by a proxy or privacy service provider;

- The terms and conditions under which Requests are relayed to Registrants by a proxy or privacy service provider (without revealing of the identifying information);
- The Registrar's terms and conditions, including **clear and conspicuous disclosure of pricing information and other key terms and conditions**, applicable to both Registrar services and any proxy/privacy services offered by the Registrar;
- Clear **and conspicuous** identification of any changes to the Registrar contract and/or the terms of the proxy/privacy agreement, to which they will be held on continuation or renewal of the domain name;
- Notice of the customer support services offered by the Registrar and its proxy/privacy service providers, and how to access them, including means to raise concerns and resolve disputes;
- Instructions that **are readily understandable and** explain the Registrar's processes for registering, managing, transferring, reviewing and restoring domain name registrations, including any proxy/privacy services that may be available from the Registrar.

Registrants have the responsibilities:

- **To comply with their Registrar's posted terms and conditions and with applicable Registry and ICANN policies.**
 - **To assume responsibility for the use of their domain name.**
 - **To provide accurate WHOIS and other required information.**
- To be contactable, **to maintain current Registrar account data, and to respond to registrar inquiries within a reasonable time**; or to provide an alternative such as allowing the registrar to suspend registration upon an unresponded-to allegation of abuse;
- Not to use the domain name for abuse of the DNS (to be defined more specifically: e.g., specific DNS attacks, deliberate malicious distribution of malware, or criminal activity); and
- Not to **commit intentional trademark infringement ("cybersquat" [() as defined in the UDRP and enforced through it and other ICANN-adopted RPMs).**

Conclusion

The adoption of an RRR that provides a clear, comprehensive and balanced recitation of rights and responsibilities is an important objective. Therefore, the current draft RRR should be replaced by an improved document.

We hope that ICANN finds our views useful Thank you for considering them in this important matter affecting the general understanding of the basic rights and responsibilities of domain registrants.

Sincerely,



Philip S. Corwin

Counsel, Internet Commerce Association