

SUMMARY OF PUBLIC COMMENT ON INITIAL REPORT ON PROPOSALS FOR IMPROVEMENTS TO THE REGISTRAR ACCREDITATION AGREEMENT

Disclaimer

This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. This summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional. The comments may be viewed in their entirety at: <http://forum.icann.org/lists/raa-improvements2010/>

I. Summary and analysis of public comments for the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement

Comment period ended:	30 July 2010
Summary published:	12 August 2010
Prepared by:	Margie Milam, Senior Policy Counselor

II. BACKGROUND

In March 2007, Dr. Paul Twomey called for a comprehensive review of the RAA and the accreditation process. The results of that review ultimately produced a new form of RAA (2009 RAA) which was approved by the GNSO Council and the At-Large Advisory Committee, and adopted by the ICANN Board on 21 May 2009.

In approving the 2009 RAA, the GNSO Council conditioned its recommendation on the beginning of work on further RAA amendments. The GNSO Council formed a joint drafting team with members of the At-Large Community (known as the RAA Drafting Team) to conduct further work related to proposals for improvements to the RAA. Various stakeholders submitted proposals for amendment topics that were carefully evaluated by the RAA Drafting Team, including, representatives of the law enforcement community, the Intellectual Property Constituency, and ICANN Staff.

The Initial Report to the GNSO Council describes the recommendations on (i) the proposed form of a Registrant Rights and Responsibilities Charter, and (ii) potential topics for additional

amendments to the RAA, as well as a proposal for next steps for the GNSO Council to consider in determining whether to recommend a new form RAA to be adopted by the ICANN Board.

III. SUMMARY ANALYSIS AND CONTRIBUTIONS

Ten contributions were received in the Public Comment Forum. Only one Stakeholder Group and one Constituency submitted statements on the RAA Initial Report. These statements are provided in **Annex A** of this Summary.

The following contributors participated in the Public Comment Forum:

<u>Name:</u>	<u>On Behalf of:</u>
Clarke Walton	Registrar Stakeholder Group
J.Scott Evans	Intellectual Property Constituency, Commercial Stakeholder Group
Andy Coombs	International Anti-Counterfeiting Coalition
Phil Corwin	Internet Commerce Association
Claudio DiGangi	International Trademark Association
Alan Greenberg	Individual
Debra Hughes	American Red Cross
George Kirikos	Leap of Faith Financial, Inc.
Jeff Williams	Individual
Jerry Upton	Messaging Anti-Abuse Working Group

Most commentators were supportive of the Initial Report and recognized the difficult task faced by the RAA Drafting Team.

Most comments were supportive of the recommendations for a Registrant Rights Charter, and the call for additional work to be conducted on the “aspirational charter.” One commentator observed that the Registrant Rights and Responsibilities Charter should be revised to remove any legal conclusions embodied in the proposed language.

With regards to the high priority amendment issues, there was general support for preserving the priority levels allocated by the RAA drafting team, with some suggestions of expanding the list of high priority amendments to include additional issues. Many commentators support the principle that the RAA should be enforceable by third parties.

Of the commentators that addressed the “next steps” portion of the Initial Report, most support a negotiation process that includes parties other than the Registrars and ICANN.

IV. GENERAL COMMENTS

A tremendous amount of work has been performed to date by the participating members from both SubTeam-A and SubTeam-B and the Registrar Stakeholder Group (RrSG) is thankful for such extensive community participation. *Registrar Stakeholder Group Statement submitted by Clarke Walton, Advocate 3 Aug 2010.* Alan Greenberg commends the Joint

GNSO/ALAC RAA Drafting team for a comprehensive report on a difficult subject. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.* The IACC applauds the efforts by ICANN to grapple with serious and systemic issues associated with the domain name space, many of which can only be effectively addressed through comprehensive amendment of the RAA. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Leap of Faith states that it has a hard time taking the Initial Report seriously. It's lengthy, but seems to be more of a "laundry list" of concerns that are not prioritized and seem to come out of left field in many cases. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

The GNSO resolution passed in March 2009 with the stated intent of having the recommendations by the end of July 2009. A year later, we have an Initial Report. This is not meant as a criticism of the Drafting Team(s) - in retrospect, the target date was euphorically optimistic. But it should be a wake-up call to push forward with the process with due haste. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

V. REGISTRANT RIGHTS AND RESPONSIBILITIES CHARTER.

The Red Cross strongly encourages ICANN to more clearly define the purpose of the Registrant Rights and Responsibilities Charter, by providing detailed, meaningful guidance that will produce benefits to registrants and the public. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Leap of Faith is very disappointed by the lack of progress on a registrant rights charter. Indeed, the working group appears to have given up, thereby failing registrants entirely. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

The proposed Registrants rights "charter" seems very silly and a waste of time, because as Annex D plainly states "The summaries provided here do not override or replace the actual terms as written in the RAA or the related policies and specifications." If this "charter" is to have any value, it should work the other way around, namely that registrant rights are enumerated in one place and any other document/policy cannot conflict with that charter. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

A. Support for further work on Aspirational Charter

The IPC is supportive of the call for the development of a Registrant's Rights and Responsibilities Charter as outlined in Chapter 3, section 2 of the Initial Report and supports the further work by the At-Large Community and other constituents, on the proposed "aspirational charter" described in Chapter 3, section 1 of the Initial Report. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

While the Initial Report acknowledges that additional work may be conducted by members from the At-Large Community relating to an aspirational charter, INTA notes that such additional work should include participants from the entire community. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

The Internet Commerce Association (ICA) urges swift adoption of a Registrant Rights and Responsibilities Charter so long as superfluous legal opinions and inappropriate references to retail price regulation have been removed from its text; and also suggests that the Charter be supplemented by the addition of a concise Executive Summary. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

INTA strongly agrees that registrant rights and responsibilities should be more clearly defined and that such rights and responsibilities should be enumerated in the RAA rather than being contained in a separate Charter. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While the Registrant Rights and Responsibilities Charter is very detailed, it only details rules already in existence and therefore the Charter may not prove terribly useful. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While an “Aspirational Registrant Rights and Responsibilities Charter” is a lofty goal, its effect on the reality of fighting online malicious behavior is nebulous. A more detailed and specific enumeration of such “aspirations” is necessary in order to make the RAA an effective document and tool in ensuring the security and stability of the on-line community. *Comments of the American Red Cross, submitted by Debra Hughes, on 30 July 2010.*

ICA agrees with the approach taken in the proposed Charter to list all current rights and responsibilities, while leaving consideration of an “aspirational charter” that reflects idealized rights and principles to future development in the context of additional RAA amendments or the GNSO policy development process, as appropriate. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

B. Principles in the Aspirational Charter.

The principles enumerated in the Aspirational Charter should be subject to analysis and future recommendations. INTA notes that some of these rights ought to be enjoyed, not only by registrants, but by members of the public, whether or not they are domain name registrants. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Regarding Principle-1: (Registrants should...have accurate, current and complete contact and locative information regarding their registrar)

While registrants may need contact information for their own registrar, members of the public need access to information that is necessary and sufficient for legal service on any registrar, including an email address to which UDRP complaints can be sent. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

It is critical for both registrants and members of the public to have access to accurate contact information regarding a registrar such that malicious behavior can be identified and legal service performed if necessary. Nothing in this provision outlines how registrants can ensure that they are in possession of accurate, current and complete contact information regarding their registrar or other registrars, or how that information may be made available to the public seeking to combat malicious behavior. At a minimum, this provision should specify

how and where registrars must provide and publish their contact information so that it is available to registrants and the public. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-2: (Registrants should be the sole entity capable of asserting and changing ownership information for their domain)

INTA agrees with this principle, subject to exceptions such as for transfer of ownership ordered as the result of a UDRP or other legal proceedings. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Provisions must be made so that ownership information can be changed by parties other than the registrant if required by law or other contracted responsibilities (*i.e.* transfer as the result of a UDRP proceeding). *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-3: (Registrants should have ample opportunity to renew their existing domain(s) at the same rates as new domains")

To the extent that this provision implies that ICANN can set registrar pricing it is entirely inappropriate and outside ICANN's purview. ICANN is not and was never intended to be a retail pricing regulator for domains and has no authority to regulate the prices set by individual registrars for domain registrations and renewals, nor the prices paid for domains in the thriving secondary market. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

This principle seems well intentioned but ineffective. A simple change to clarify that a registrant must be given opportunity to renew at the same rate at which that registrant registered would be helpful. Also, it may be useful to provide a guarantee of rapid portability so that names can be transferred to a new registrar. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

It is crucial that Red Cross not be subject to undue rate increases for the renewal of domain names. This provision is likely to be ineffective at preventing registrars from applying relatively expensive "standard" rates for renewal after offering initial registration as a discount. Red Cross recommends that such language be amended to clarify that excessive rate hikes are prohibited or that when faced with a rate increase, registrants have the option to switch registrars with a guarantee of rapid transfer completion by the registrar. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle- 4: (Registrants should protect their trade name against unauthorized use")

It might be better conceived as "Registrant should have the right to implement mechanisms to protect their trade names ..." For example, registrars are individually and collectively able to publish what is being registered and to whom. Mandating publication of that information, perhaps in a format that can be aggregated by third parties, will allow service providers to set up watches and similar services. It may even, over time, enable 'waiting periods' whereby those with a right to a domain may contest any registration or put the

registrant on notice that bad-faith use of the domain will not be allowed. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

The Red Cross believes that this provision could be clarified to ensure that mechanisms are in place so that registrants can protect their trade names from unauthorized use and the public from misleading and malicious online behavior. As written, this provision does not provide sufficient guidance as to the rights protection mechanisms available to registrants. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle- 5: ("Registrants should refuse the transfer of their personal information to unauthorized bodies")

This provision should be modified to read: "Registrants should have the right to refuse [or prohibit, or prevent]..." The revised wording permits an opt-in (or even an opt-out) privacy policy. In any event, this principle should apply only to personal information other than what is contained in WHOIS, which should remain publicly available as it has been throughout the history of the domain name system. This provision should convey that registrars cannot distribute non-WHOIS personal information without registrant permission, unless the registrar is obligated to disclose the information pursuant to the RAA, a binding court order or a decision by a panel as set out in ICANN policies. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

This principle should not outweigh the need for a safe and secure online community. The Red Cross recommends this provision be amended such that it is clear that engaging in malicious online behavior will result in a forfeiture of this right and that WHOIS contact information for registrants will be provided to the public upon request in the event that malicious behavior needs to be stopped. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Regarding Principle-6: (*Registrants should expect ICANN to enforce its agreements with registrars*).

Registrants (and perhaps the public) should have something resembling a cause of action against ICANN and any registrar for the breach of agreements, because those agreements are meant to protect registrants and the public at large. The only way to ensure these protections are in place is to allow the public to assert them, such as something akin to the UDRP. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

While registrants may expect ICANN to enforce its agreements, there is little recourse for registrants to ensure such enforcement. As the enforcement of such agreements can serve as an effective tool in combating malicious online behavior, the Red Cross would like to see some language added or changes made to the RAA that would allow for registrants (and perhaps the public) to have a form of recourse to ensure that the terms of ICANN's agreements with its registrars are properly enforced. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

ICA disagrees with including this principle in the Aspirational Charter. Registrants today have every right to "expect ICANN to enforce its agreement with registrars". Listing this as a

future, aspirational right implies that it is acceptable for ICANN to fail to adequately enforce the current RAA – but that is entirely unacceptable. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

C. Suggested corrections to the Registrant Rights and Responsibilities Charter

The Charter contains certain conclusions of law that have no place in such a summary document. For example, the Charter states:

*“As the RAA is between ICANN and a registrar, **no one else** – including a Registered Name Holder – **may sue ICANN or the Registrar to claim a breach of the RAA.** (Emphasis added)”*

Likewise, the Charter also states:

“[T]he Registered Name Holder cannot dispute the UDRP provider’s ability to hear a dispute that is otherwise properly brought under the UDRP.”

ICA disagrees with that statement to the extent that a UDRP provider has unilaterally elected to institute an expedited or other altered form of the UDRP under its Supplemental Rules or by other means that no longer provides a registrant with a reasoned decision or a reliably uniform process, and the ICA believes that a registrant would have standing to dispute the provider’s ability to hear a dispute under those circumstances even if the action has been properly brought by the complainant. The Charter should be restricted to reciting and explaining a registrant’s rights and responsibilities under the current UDRP without venturing into the area of legal opinions. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

VI. Topics for RAA Additional Amendments

A. General Observations

The IPC also wishes to publicly state its general support for the list of topics for further amendments to the Registrar Accreditation Agreement (“RAA”) set forth in Chapter 4, Section 3 of the Initial Report. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

The high priority issues listed in the report are indeed high priority, and it would be good to see quick progress. This is all the more so in light of the recommendation to handle issues that are eligible for consensus policy via PDPs, a process which itself typically takes years, and the fact that as the RAA is interpreted, it can take up to five years to implement a new version. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

It is critical to differentiate *policy development* from *policy implementation*. Only a PDP undertaken under auspices of the GNSO is the proper means of developing new policy. While the RAA does implement certain policies, and may do so again in the future, its amendment process can never be a proper vehicle for policy development. *Philip S. Corwin, Counsel, Internet Commerce Association, 30 July 2010.*

B. Third Party Enforcement

Leap of Faith agrees with Section 18 (privity of contract). Registrants need to be able to hold ICANN accountable, but ICANN goes out of its way to make this difficult or impossible.

Note how TM holders were given the UDRP, even though TM holders are not a party to a contract between ICANN, a registrant or a registrar. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

Registrants and the public must have processes to ensure their rights are adequately protected and enforced under the RAA. The public faces problems with some registrars involved with cybersquatting and other forms of malicious online activity. Registrants and third parties must have rights which are able to be asserted against not only their own registrar, but against all registrars. *INTA Internet Committee Comments, submitted by Claudio DiGangi on 30 July 2010.*

Registrants and the public should have a right to enforce the RAA, or at the least be considered a third party beneficiary to the Agreement. Registrants and third parties must be able to assert their rights not only against their own registrar, but against other registrars who may be harboring and/or abetting malicious online activity. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

C. Resellers

Alan Greenburg strongly supports the 9th high priority topic to define reseller and clarify responsibilities. He supports the wording of the IPC and Law Enforcement proposals to make it explicit the resellers must comply with ALL registrar requirements that are delegated to them. Prior to the 2009 RAA, resellers were not mentioned in the RAA, and one could assume that resellers would have to adhere to any rules associated with the registrar tasks that they perform. In the 2009 RAA, Section 3.12 explicitly assigns certain responsibilities to resellers, and some registrars have claimed that this means that those responsibilities not mentioned are de facto excluded. As a result, adding Section 3.12 could be viewed as having effectively weakened the RAA. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

D. Compliance

The RAA only provides protections to registrants and Internet users insofar as its provisions are enforced. It is essential that every provision be written to permit meaningful verification of compliance, and that ICANN develop and implement its compliance verification strategy in parallel with the RAA modifications. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Although not currently an RAA issue, it is also important to note that ICANN Compliance has always said that since ICANN has no contracts with resellers and therefore cannot take actions against them, they do not focus any attention on reseller issues. They are correct that they have no right to audit or otherwise force disclosure of information from resellers. But that can take action through the appropriate registrar. And there is nothing to stop compliance from doing audits using publicly available information (such as web pages) and then following up with registrars if needed. The lack of a definitive list of all resellers should not stop ICANN from at least doing spot checks or investigations based on complaints. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

E. Registrar Business dealings with Registrants

The report section on "Registrar Business Dealings with Registrants" starting on page 39 makes it sound as if the "Registered Name Holder" is a single entity. Most registration agreements allow the registrar to unilaterally reassign a Registered Name to itself or a related or unrelated third party at any time after expiration. It is unclear if such transfers are in fact in compliance with section 3.7.4 of the RAA, but regardless, the ORIGINAL Registered Name Holder (that is, the one on record just prior to expiration) is not accorded the rights as described in this section. As a result, this section of the report does not really represent reality. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

ICA supports further consideration of High Priority suggestions for RAA amendments so long as matters of cost, practicality, registrant privacy, and interface with relevant national laws are adequately addressed; and that contemplated amendments fall within the "picket fence" provision of the RAA that separates matters that are appropriate for RAA amendment from policy changes that must be considered through the GNSO policy development process (PDP). *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

F. Privacy/Proxy Services

ICA endorses further consideration of proposals that proxy/privacy services promptly forward allegations of illegal conduct to registrants, and that registrars promptly advise registrants of security breaches that may have compromised their account information. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

The Red Cross strongly supports changes and amendments to ensure access to domain name contact information, especially in the case of private or proxy registrations, as it is critical to stop the public from being harmed by malicious online conduct associated with fraudulent solicitations for charitable donations. It does not appear that the proposed changes to the RAA or the Registrant Rights and Responsibilities Charter provide any useful means for combating malicious online conduct and easing the discovery of the source of such behavior. The RAA should require every registrar to implement a fair and clear process that is enforced by ICANN, for disclosure of the identity and contact information of the licensee of the domain name. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

While many proposed changes to Whois proxy/privacy services were given high priority, matrix item 5.11 (Restrict Proxy/Privacy Services to only non-commercial purposes) did not get prioritized. This is an oversight that should be rectified by raising matrix item 5.11 to medium priority. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

G. Improvements to WHOIS

In High Priority Issue-7, the RAA needs a time limit for registrars to act on invalid Whois information, so ICANN can verify both whether a registrar responds and whether the

response is timely. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Not found in the "high priority" list of topics on page 18 is the designation of a legal contact in the WHOIS. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

Having Verified WHOIS would have been a step in the right direction. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

H. Need for Additional Sanctions/Penalties

Sanctions should also apply when reverse domain name hijacking cases occur in UDRPs. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

I. Registrar Contacts

For those items that require registrars to provide contacts or other information, it would be very desirable for ICANN to publish the information provided by the registrars and the last time it was verified. This would include, for example, item HP3, the 24/7 technical contact, and item HP11, the registrar's contacts, officers, and business information. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

J. Registrar Transfers

No registrar should transfer or otherwise use for any purpose other than those determined by the registrant without the registrant first approving such a transfer and/or requested such a transfer. *Jeff Williams, individually, 8 July 2010.*

K. 60-day lock following registrant change

ICANN's current interpretation of the 60-day lock following registrant change that some registrars are doing appears to be incorrect. This needs to be revisited. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

L. Grace period considerations

If a registrant is late or re-registering his domain name at or near the time of renewal, some notice to that registrant at least 15 days prior and 10 days after the expiration date should be allowed before the original registrant's domain name can be sold or otherwise utilized. *Jeff Williams, individually, 8 July 2010.*

M. Registrant Records

All records regarding that registrants registered domain names should be viewable and updatable for accuracy etc. by the registrant only via a similar mechanism. *Jeff Williams, individually, 8 July 2010.*

N. Cybersquatting

Registrars should be prohibited from engaging in "cybersquatting." However, ICA strongly questions whether there is a need for a contractual definition of this term aside from a

cross-reference to the UDRP, given that registrars act in the capacity of registrants when they manage their own domain portfolios. Registrars acting in that capacity should be prohibited from and face sanctions for intentionally infringing on the trademark rights of others, but any definition of cybersquatting must reference and track the UDRP and be limited solely to the type of infringement for which the UDRP provides an administrative remedy. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

While ICA has no issue with the establishment of registrar response timelines in connection with UDRP proceedings, this matter is most appropriately considered in the context of general, balanced UDRP reform. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

O. Enhancing the RAA to address Malicious Conduct

The Red Cross urges ICANN to consider the role the RAA has and can have in effectively combating malicious behavior online. *Comments of the American Red Cross, submitted by Debra Hughes on 30 July 2010.*

Leap of Faith disagrees with many of the high priority topics, e.g. "malicious conduct" is better suited to the courts, rather than making the registrars become the court and police for all claimed "abuse" on the internet. The duty should be to have WHOIS accuracy, and then let private parties, police, etc. handle things in the real world. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

In many cases, the police want too much information. Privacy laws exist in various countries, as do laws that limit the scope of a police "search." A proper balance needs to be maintained. Search warrants should be required. Also, jurisdiction needs to be properly handled and respected. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

P. Priorities Assigned to the Amendment Topics

Since medium and low priority items will have a reduced likelihood of being immediately incorporated into a revised version of the RAA, it is critical that the most urgent items remain in the high priority category. We also assume that the high priority list will not remain meaningful and useful if allowed to grow beyond its initial size of twelve items. *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Reviewing the list of twelve high priority items on pages 18 and 19, MAAWG concurs with the authors of the Initial Report that items HP2 through HP11 from the high priority list should properly receive top. These are "common sense" items that we believe most would already expect to be part of the RAA. With respect to the remaining two items that might ultimately comprise a twelve-item high priority slate, items MP3 and MP5 from the medium priority list should be elevated from the medium priority list to the high priority list (if necessary displacing current high priority items HP1 and HP12 to keep the size of the high priority list manageable). *Comments of the Messaging Anti-Abuse Working Group (MAAWG), submitted by Jerry Upton on 28 July 2010.*

Regarding the issues raised by law enforcement as topics to be assigned priority in a future round of negotiations, the IACC joins with the law enforcement community in identifying these issues as key issues requiring urgent attention in any new round of RAA amendments. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Turning to the one dozen High Priority Topics listed, ICA is in general agreement that these are matters worthy of further consideration. We certainly agree that registrars should be prohibited from engaging in “cybersquatting. However, we strongly question whether there is a need for a contractual definition of this term aside from a cross-reference to the UDRP, given that registrars act in the capacity of registrants when they manage their own domain portfolios. We certainly agree that registrars acting in that capacity should be prohibited from and face sanctions for intentionally infringing on the trademark rights of others, but any definition of cybersquatting must reference and track the UDRP and be limited solely to the type of infringement for which the UDRP provides an administrative remedy. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

Q. Comments on the RAA Matrix

Although it is impossible to comment on every idea included in the RAA Matrix, some of the input is simply preposterous. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

ICA questions whether there is a need for a Registrar Code of Conduct as registrars are sophisticated business entities and certainly should understand their contractual rights and responsibilities under the RAA. They therefore stand in a different position than registrants, many of whom are not familiar with the RAA and will therefore benefit from adoption and publication of the Rights and Responsibilities Charter discussed above. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

ICA endorses further active consideration of two matrix items:

- No. 5.3, to amend the RAA to require privacy/proxy services to forward allegations of malicious conduct, cybersquatting, and other illegal conduct to their customers
- No. 10.3, which would require a registrar to promptly notify ICANN of any security breaches affecting the registrar or its systems, and to notify registrants when there is reasonable evidence that their accounts have been the subject of unauthorized access

Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.

VII. Next Steps for RAA

The IPC strongly believes that parties affected by the terms of the RAA should have a formal role in the future negotiations of any amendments to the agreement. At a minimum, the IPC believes that such parties should be allowed to participate as observers to the negotiations. *IPC Statement submitted by J.Scott Evans, 3 Aug 2010.*

The RAA is a chief concern for registrars and the RrSG welcomes opportunities to participate in further discussions with the community as the process for proposed RAA Improvements

advances. *Registrar Stakeholder Group Statement submitted by Clarke Walton, Advocate 3 Aug 2010.*

The IACC strongly believes that Proposed Process "A" is the appropriate process for further deliberations relating to the amendment of the RAA. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

A significant contributory factor for the failure of the initial amendments to address these key topics of critical importance to the Internet community can be attributed to the misguided belief the negotiation of the RAA is a private negotiation involving private rights. This is clearly not the case. The fact the RAA addresses rights of third parties not part of the RAA (registrants, intellectual property rights owners, among others) constitutes an explicit recognition that stakeholders not party to the RAA are directly affected by its terms. The failure to adequately include those stakeholders in discussions concerning the RAA does this do a serious injustice to the broader issues affecting the entire Internet user community and it reflects a fundamental mistake regarding ICANN governing role in managing the domain name space. *Comments of the International Anti-Counterfeiting Coalition, submitted by Andy Coombs on 11 July 2010.*

Alan Greenburg believes that the wording in both Option A and B implicitly biases the outcome. They describe the two parties who must negotiate as Staff and Registrars. But it is not "Staff" who is one of the signatories of the contract, it is "ICANN". The responsibility to negotiate and sign has been delegated to certain ICANN staff, but that is a policy decision within ICANN. If ICANN chooses to have as its negotiating team, someone from ICANN legal services, the ICANN Chief Registrar Liaison, and several people representing ICANN Stakeholder Groups or Advisory Councils, that should be an internal ICANN decision. *Alan Greenburg, submitted in his individual capacity, 3 Aug 2010.*

ICA endorses proposed Process B as the most reasonable and efficacious means to facilitate further consideration of potential RAA amendments. *Philip S. Corwin, Counsel, Internet Commerce Association 30 July 2010.*

The RAA should not be negotiated behind closed doors at present, as it affects registrants. *Comments of Leap of Faith Financial Services, submitted by George Kirikos on 8 July 2010.*

ANNEX A
STAKEHOLDER GROUP/CONSTITUENCY STATEMENTS

Registrar Stakeholder Group Position Regarding Improvements to The Registrar Accreditation Agreement

BACKGROUND

The Registrar Stakeholder Group (“RrSG”) has been asked to provide feedback regarding the Initial Report for Improvements to the Registrar Accreditation Agreement (“RAA Improvements”). This position paper captures the overall sentiment expressed by the RrSG Executive Committee members who provided feedback about this matter. Due to time constraints, however, no formal vote regarding this position paper was taken.

RrSG POSITION

The RrSG appreciates the effort of the RAA Improvements Drafting Team. A tremendous amount of work has been performed to date by the participating members from both SubTeam-A and SubTeam-B and the RrSG is thankful for such extensive community participation.

The RAA is a chief concern for registrars and the RrSG welcomes opportunities to participate in further discussions with the community as the process for proposed RAA Improvements advances.

CONCLUSION

The opinions expressed by the RrSG in this position paper should not be interpreted to reflect the individual opinion of any particular RrSG member.



IPC COMMENTS FOR ICANN
On
Initial Report On Proposals For Improvements To The Registrar Accreditation Agreement

The Intellectual Property Constituency ("IPC") is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement posted for comment on 28 May 2010 (the "Initial Report").

The IPC is supportive of the call for the development of a Registrant's Rights and Responsibilities Charter as outlined in Chapter 3, section 2 of the Initial Report and supports the further work by the At-Large Community and other constituents, on the proposed "aspirational charter" described in Chapter 3, section 1 of the Initial Report. The IPC also wishes to publicly state its general support for the list of topics for further amendments to the Registrar Accreditation Agreement ("RAA") set forth in Chapter 4, Section 3 of the Initial Report. Lastly, the IPC strongly believes that parties affected by the terms of the RAA should have a formal role in the future negotiations of any amendments to the agreement. At a minimum, the IPC believes that such parties should be allowed to participate as observers to the negotiations.

In closing, the IPC would like to extend its thanks and appreciation to the members of the joint ALAC-GNSO RAA Drafting team for their efforts on these issues.

