



8 Jul 2010

Draft Advisory on the Registrar Accreditation Agreement

Please accept the following comments in response to ICANN's publication of a Draft Advisory on subsection 3.7.7.3 of the RAA. ¹ Go Daddy reserves the right to future comments on this issue and our positions include, but are not necessarily limited to, the text herein.

Overview

Go Daddy recognizes the challenges associated with coordinating uniform procedures among privacy and proxy services, particularly considering these entities are not signatories to the RAA, nor are they bound by ICANN consensus policy. But while this Advisory seeks to eliminate confusion, we believe it will have the opposite effect, and introduce additional confusion and inconsistent outcomes.

Ambiguous and Undefined Terms

The advisory contains many terms that are poorly defined, and therefore open to inconsistent interpretation. Examples include "reasonable evidence," "prompt" identification, and "wrongful use." The ambiguity contained in these key phrases will undermine the objective of the Draft Advisory.

Furthermore, we are not comfortable with the notion that ICANN Staff should unilaterally define these terms without the involvement of the community, as they are likely to be referenced in other policy efforts (UDRP, Registration Abuse, etc.) Any efforts to create discrete definitions of these terms should be undertaken by a working group or drafting team.

ICANN is not a party to Registration Agreements

The RAA is a bilateral agreement between accredited registrars and ICANN, and requires that registrars include certain provisions in their Registration Agreement with gTLD registrants. But aside from mandating some elements of language, ICANN is not a party to these Registration Agreements. Therefore, this Advisory could be interpreted as ICANN offering legal advice or interpretation on a Registrar-Registrant contract. We do not believe it is appropriate for ICANN to do so, nor is this within the scope of its remit.

Conclusions

While we welcome the efforts of ICANN Staff to foster clarity and uniformity in this area, we believe that issuing this Advisory at this time would have the opposite effect. It presumes the results of initiatives in other areas, including potential WHOIS research, UDRP reviews, RAA Amendment discussions, and Registration Abuse policy work. The Advisory could be misconstrued as a legal opinion on an agreement to which ICANN is not a signatory. And it is reliant upon terms and concepts that are undefined, and require an in-depth review by the ICANN community as a whole.

We therefore recommend that ICANN refrain from issuing an Advisory on this subject until these issues are resolved, and we would welcome the opportunity to participate in this effort.

Sincerely,
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1. <http://www.icann.org/en/announcements/announcement-14may10-en.htm>