



ICANN RAA Public Comment

On June 18, ICANN posted proposed revisions to the Registrar Accreditation Agreements (RAA). CADNA now welcomes the opportunity to provide public comment on the proposed amendments, and has provided the following reflections on the document:

As an overview, CADNA would like to point out that because amendments to the RAA should be research-based and data-driven, it would be helpful to see a release of information on the considerations behind the proposals in order to foster a better understanding of them. Clarification of the processes involved in carrying out the proposed provisions would likewise contribute to the policy development process. For example, when the RAA states that there will be mandatory training of registrar representatives to ensure better registrar understanding of ICANN policies and RAA requirements, there should be an explanation of how and by whom these training materials will be created. It is only through this sort of transparency that ICANN can prove its dedication to representing diverse interests and achieving broad participation and involvement.

A review of the RAA has been needed for some time and we applaud the community for achieving this first step in the process. While it is positive to see many new and needed components added to the RAA, there are still areas of great concern.

CADNA is in support of the following new provisions:

Section 2.1 - Sanctions and Suspension of Registrars

- CADNA approves of the addition of compliance enforcement tools to the RAA; this punitive power allows ICANN to take decisive action against bad actors and will foster a more stable and secure Internet.

Section 3.4.4 - Registrar Information Retention Requirements

- CADNA supports clarifying data retention requirements for registrars since they result in more uniform practices for registrars.

Sections 3.11 - Obligations of Registrars Under Common Controlling Interest

- Ensuring that registrars shoulder some responsibility in policing their affiliates is an important step towards making enforcement of the domain name space more manageable and efficient. Since it is clear that the registrar is in breach of their accreditation agreement if their affiliate is engaged in “misconduct that materially harmed consumers or the public interest” or similar offenses, the RAA is adding a layer of proactive prevention for the benefit of Internet users.
- When the RAA refers to an “affiliated” registrar, the term should be defined broadly to include entities that have overlap in officers, directors or executives, as well as entities that share “common control.” This definition should be made clear in this Section.

Section 3.14 - Registrar Audit Provision

- Requiring that registrars comply with contractual compliance audits and allow site visits for ICANN creates the looming possibility of oversight, which will be an incentive for registrars to abide by ICANN policies.

The Coalition Against Domain Name Abuse, Inc.
2122 P Street, NW | Suite 300
Washington, D.C. 20037
+1 202.223.9252

- We recommend that the requirement of 15 days notice be removed. Prior notice of an audit defeats its purpose as a tool for validation of compliance.

Section 3.15 - Registrant Rights and Responsibilities

- Providing the public with a clear list of registrants' rights and responsibilities is clearly in line with the goal of maintaining open and transparent Internet governance, which should be encouraged.
- In order for this to be an effective tool, the document should be created in consultation with the entire ICANN community so that all of interests are represented. Creating the document solely within the realm of contracted parties would not be effective.

Section 5.3 - Arbitration Stay

- The deletion of the automatic 30-day stay of termination for registrars is a welcomed change to the RAA since it should quicken the process of terminating non-compliant registrars and better protect the online community at large. There are adequate protections for registrars within this agreement and as long as registrars abide by the contract set forth, there should no need for a stay.

Section 5.7 - Registrar's Monetary Liability for Breaches of the RAA

- The RAA currently limits the punitive damages expected from registrars to any accreditation fees that were owed to ICANN. This proposed RAA amendment makes non-compliance a greater financial risk, but we do not believe that it is a strong enough deterrent.
- CADNA recommends that the registrars be liable for all fees owed or paid to ICANN over the course of 12 months prior to the breach. If the registrar has been operational for less than a 12-month period, a 12-month fee will be quantified based on an average of how many months the registrar has been in existence.
- The amendment on monetary liability, as well as the amendment on sanctions and suspensions, appears to provide ICANN with enforcement options that go beyond termination of the registrar contract. However, CADNA has concerns that the proposed language is too narrow to provide ICANN with any real ability to police those registrars who do not abide by their contractual duties but may not rise to the incredibly tough standard of "repeated, willful AND material" breaches of the agreement. ICANN should therefore consider adding language to the redraft that would provide ICANN with the ability to impose more lenient, accessible sanctions on registrars who violate their contractual duties.

CADNA has concerns with the following provisions:

Section 3.3.7 - Deletion of Oversight of the United States Department of Commerce

- CADNA believes that it is premature to remove references to the Department of Commerce (DoC) (which is also apparent in Section 5.9.1) until the successful conclusion of the Joint Project Agreement (JPA) with the DoC.

Section 3.4.1 - Registrar Data Escrow Requirements

- The second option should not be a viable one in the RAA. In order to provide for accountability, registrars should be required to escrow the underlying customer data for every registration. This is an important tool for trademark enforcement in the domain name space; retaining contact information allows for recourse in the case of a breach of contract.
- For the same reasons that CADNA is in favor of deleting language that would allow registrars to opt out of holding contact information in escrow, the Coalition is also in favor of adding language to Section 3.4.1 that would establish a fixed schedule for the update of Registered Names by the registrar. As it stands, the RAA requires that a registrar's electronic database be updated from "time to time." Because Whois data is crucial for maintaining accountability on the Internet, Registered Name databases should be renewed periodically.
- We believe that a central repository of all "true" Whois information should be created and managed so that in times of dispute or issues of law, such information is readily available from a 3rd party rights holder that is not financially connected to the potential abuser.

Section 3.7.7 - Registrations by Registrars

- The amended RAA should contain provisions that seek to prevent the warehousing of domains by registrars or affiliated companies. It seems as though this section, without a provision for prevention, would allow registrars the leeway to simply hold on to expired domain names without releasing them back into the "available names" pool. Individuals and companies entitled to fair access to an online presence through the registration of domain names could be undermined by this failure to protect against registrar warehousing. In addition, registrars have unfair competitive positions compared to that of consumers and thus should be prevented from registering domain names unrelated to their businesses for their own profit.
- CADNA does, however, appreciate that the RAA holds registrars to the same obligations as any other Registered Name holder; this reflects the Coalition's ardent support for creating and maintaining a fair and balanced governing policy.

Section 3.7.8 - Re-verification of Information

- This clause would have a greater impact if it clarified what taking "reasonable" steps would entail. By being more specific, this section of the RAA would be more effective in demanding adherence to the policy.
- Not only should the "periodic verification" of the contact information be standardized in the RAA, but the steps for enforcement should be outlined as well.

Section 3.12 - Contractual Relationships with Resellers

- Aimed at protecting registrants who are customers of resellers, these provisions would oblige resellers to follow ICANN policies and fulfill requirements such as the data escrow requirements outlined in Section 3.2.
- This Section needs to contain language that provides criteria for what constitutes a "reseller"; subdomain registrars, for example, should fall into this category and be required to abide by the RAA.



ICANN RAA Public Comment

CADNA hopes that ICANN will take advantage of this period of public comment to understand the concerns of its Internet constituencies. These constituencies have diverse points of view, a wealth of experience in maneuvering within the domain name space and can provide important perspectives and know-how on Internet governance. ICANN and the Internet community would be well served to incorporate these perspectives into the RAA.