



Minutes: BC Members Call on Registration Accreditation Agreement on May 2nd, 2013: 11 am EST (3 pm UTC)

Attendees:

Elisa Cooper	Ron Andruff	Mark Sloan
Steve DelBianco	Emmett O’Keefe	Susan Kawaguchi
Chris Chaplow	Philip Corwin	Bill Smith
Zahid Jamil	Richard Friedman	Benedetta Rossi – BC Secretariat.
Jimson Olufuye	Anjali Hansen	
Janet O’Callaghan	Yvette Miller	
Angie Graves	Jim Baskin	

Apologies:

John Berard
Stéphane Van Gelder

1. Introduction – Steve DelBianco, Vice Chair – Policy Coordination

Steve DelBianco:

- Introduced the call and the agenda for the discussion on RAA.
- Three part outline:
 1. Privacy and proxy specs
 2. WHOIS
 3. Registrant rights enforcement
- Comments are due the 13th of May.

2. Privacy and Proxy Specs

Steve DelBianco:

- Privacy and proxy specs is a two-page specification on the way the privacy and proxy registrations have to be managed. This is meant to be temporary because they’re supposed to be a community driven process to define an accreditation process for privacy and proxy providers.
- Susan Kawaguchi will provide some input on this subject.
- Steve noted one item on the privacy proxy spec which states that there’s no service level for how quickly or in what way the privacy proxy provider has to relay the communication to the protected registrant and then present him with evidence of actionable harm how they have to reveal the data to the complainant.

The ICANN GNSO “Business Constituency”



Elisa Cooper:

- Elisa applauded the fact that they’re addressing this and laying down some guidelines stating that registrars should post on their Web sites what their policies and procedures. But this is basically all that this new agreement is requiring, is that the registrars describe what their policies and procedures are, what the procedure for reveal is, what the procedure for relaying communications is.
- There is no specificity as to what the time period for that to occur is. There’s nothing that’s prescriptive in terms of how it should be done.
- Elisa would like the BC to ask for the timeframes for the registrar to ensure that the information on WHOIS is revealed, in order for ICANN’s compliance team to do something about it if it’s not occurring.

Steve DelBianco:

- Steve noted that in the previous RAA, the obligations of a privacy proxy provider to do relay and reveal were based into one provision in the RAA under which the failure to do an adequate relay and reveal meant that the registrar became liable for activities of a registrant.
- Steve asked Anjali Hansen, BC rapporteur on this issue and BC members on the call if this is still the case in the new RAA.

Elisa Cooper:

- Believes this is still the case that if the information were not revealed, the responsibility for the domain would fall to the privacy or proxy provider.

Steve DelBianco:

- Noted that in Section 3.7.7.3 on Page 13 of the RAA Agreement, it is stated that a registered name holder licensing the use of a name shall accept my ability for harm caused unless it discloses the current contact information within seven days to a party providing them evidence of actionable harm.
- Pages 13 and 14 of the proposed RAA indicate that there is a seven day reveal.
- Steve asked BC members who have spent time trying to track down a registrant who was hiding behind a privacy proxy, whether they believe that seven days is an appropriate time to reveal when you’ve presented evidence of actionable harm.
- Steve noted that this specification is not in the RAA document’s section on specification on privacy and proxy, but buried in the registrar agreement.
- Should the BC ask that this specification incorporate the seven day time performance on 2.45?

Elisa Cooper:

- Supports this approach, otherwise it would be confusing.



Steve DelBianco:

- Part of BC recommendation is to bring that seven day performance spec over into the privacy and proxy specification and then ask the question why isn't there a spec for a relay which is two items above it in the list?
- Why isn't there a similar spec anywhere on how many days a privacy proxy provider has to do the relay? The relay is just taking the email that you sent in and then relaying it to the secret contact information that the privacy proxy provider has.

ACTION ITEM: Anjali Hansen, BC Rapporteur on this issue, is taking notes on proposed recommendations to draft.

Chris Chaplow:

- Suggested that the the BC should ask ICANN to require that the privacy proxy provider provide an acknowledgement to the person providing the complaint, then the acknowledgement would say we have relayed your information to the protected registrar.

ACTION ITEM: This recommendation needs to be added to Anjali's draft recommendation.

Steve DelBianco:

- Steve drew BC members' attention to a particular line in the RAA agreement: "This specification may not be modified by ICANN or a registrar." Steve asked BC members on the call whether they believe the BC should challenge that statement and suggest that the specification itself also ought to be subject to the amendment process and agreed to.
- Should the BC object to that unilateral lockout?
- Steve believes that the BC should challenge this and state that the BC does not agree that this spec, which is new, should be locked down and be immune from the special amendment process described in Section 6 of the RAA.

Elisa Cooper & Anjali Hansen:

- Support adding this comment to the BC's recommendation.

Ron Andruff:

- Noted that the Working Group is in fact a body that's constituted by the registrars and they will include others that the registrars deem that they may like to invite to join that working group.
- The working group is basically registrars sitting around a table and making a determination without any other member of the community present.
- The BC should therefore comment on the nature of the working group that explicitly excludes members of the community like the BC.



Elisa Cooper:

- Noted that the RAA is a contract between ICANN and the registrars and therefore it is normal for this contract to be negotiated between the registrars and ICANN, since they are the two only signatories for the contract.
- ICANN is supposed to be working in the public interest, so it's normal for the contract to not be negotiated by others who are not part of the contract.

Ron Andruff:

- In response to Elisa's comment, Ron mentioned that the party of the contract is the user.
- That's what keeps ICANN accountable.
- Everyone on the community has a right to raise their voice and bring it forward on any issue and so to have a contract that's done between two parties, that's not the way ICANN works.
- The two signatories aren't necessarily the only parties negotiating this contract. Everybody should be involved in this contract because the end user ultimately is the one who we're trying to serve here.

ACTION ITEM: Ron Andruff will draft a concern for the BC to address regarding the exclusive nature of the Working Group.

3. WHOIS:

Steve DelBianco:

- Steve noted that Samantha Eisner told the BC in Beijing that if we wanted to retain Port 43 in regards to bulk access to WHOIS, the BC should mention it quickly since she claimed it is being removed.
- Steve opened a queue to find out if BC members want Port 43 access to be retained.

Elisa Cooper:

- Two things in the contract related to WHOIS:
 1. This contract states that the registrars will not have to provide bulk access to thick registries. Elisa believes that this is fine because the thick registries have to provide Port 43 as a requirement because for new gTLDs they are going to have to be the thick registries. So requiring the registrar and the registry to both provide thick WHOIS for the same data is duplicative.
 2. The contract provides for a removal of access to bulk WHOIS. Every registry is required to sell their WHOIS for \$10,000 in bulk, but none of the registrars have actually mentioned they were selling it.
- Port 43 is essentially a method by which you can get access to full contact information. New gTLD registries have to provide thick information. Backing up thick information refers to all of the information in a WHOIS record. It means the registrant, the technical contact, the



admin contact and all of the contact information, address, email, phone, and etcetera. All of that information must be captured now by the registry for new gTLD registries.

Zahid Jamil:

- Zahid mentioned the verification process in the agreement, and noted that this is one of the issues he sees.
- Even law enforcement was concerned with the verification aspect, where the registrars are only supposed to verify either the email address or the telephone number.
- Zahid mentioned that the verification process should be bumped up to ensure both the phone and email address are verified.
- There should be an ongoing affirmative obligation for registrars to re-verify data because at the moment they only do it upon actual notice of changes.

Steve DelBianco:

- The next bullet under WHOIS wonders whether the BC should comment in support of or asking for more clarity on the basis of suspending a registration based on the willful provision of inaccurate or unreliable WHOIS.
- It's in the Registrar Accreditation Agreement under 3.7.7.2. on page 13.

Elisa Cooper:

- Elisa believes this bullet point should be stronger.
- If there was a willful provision of inaccurate data it should result in suspension; it shouldn't just be a basis.

Steve DelBianco:

- It says that willful provision is a material breach and be a basis for suspension or cancellation. Do the words, "material breach" and "basis for suspension" compel them to suspend or just give them an excuse to suspend?
- Elisa believes that this wording does not create the obligation to suspend.

Bill Smith:

- Doesn't think this wording compels registrar to suspend, but that virtually every registrar will use a couple of things to avoid doing that: One is the fact that they are not compelled and the second thing is there's no definition of willful.

ACTION ITEM: Anjali Hansen will add Bill's point to the BC comments: since there is no definition of willful the BC will say that a basis to suspend is permissive but it does require the suspension and that the BC would respectfully ask that they change this to require suspension.

Steve DelBianco:

- Steve introduced the next point under WHOIS: the fact that in 15 days if they can't validate a brand new registrant's data the question is what happens next? Should the registrations be suspended during the period of so-called manual validation? Because that first 15 days validations are done by email or phone calls.



Elisa Cooper:

- Elisa believes the way this is written is a slippery slope since it comes across that you can manually try to validate the information during the manual validation since you cannot suspend the names because of the way it's worded.
- Elisa proposes that while this manual validation is going the name should be suspended, meaning the name should no longer resolve.

Bill Smith:

- In favor of Elisa's comment, but ensuring that they must contact by email, phone or both on a registration prior to delegating the name into the DNS.
- Bill believes the 15 day requirement is an insane requirement, since if the verification process is going to be effective, it needs to be carried out at the time the change is made, or when a new name is registered.

Zahid Jamil:

- Asked what is the definition of validating and verification? It's either that you send an email and you're supposed to get an affirmative response or you call them by telephone.
- Zahid doesn't believe they would do neither both, nor that they would phone, but would in fact just send an email.
- Is that sufficient for users? Do users feel comfortable that the only verification that registrars will do or they have to do is just send an email and wait for a response? Is that sufficient for the BC?

Steve DelBianco:

- Steve replied to Zahid stating his personal opinion: in the Internet era Steve would prefer to be contacted via email, and would not want the BC to require a phone call.

Bill Smith, Zahid Jamil, Ron Andruff, Susan Kawaguchi, Elisa Cooper

- Supports Zahid's opinion that both methods should be used: email & phone.

Elisa Cooper:

- Asked for Bill Smith's point on having the verification done prior to the name being delegated to be voted for by the BC since it's an important issue.
- In the RAA the name goes live first and they have 15 days to validate. Bill suggested that the name shouldn't go live until the validation occurs.

ACTION ITEM: Zahid Jamil to draft a couple of paragraphs explaining why new registrars should not resolve until verification occurs and add them to Anjali's comment.



Steve DelBianco:

- Final point on WHOIS: the accuracy requirements are only on the registrant data, not on the account holder. So one BC member proposed that the BC require that validation occur not just of the registrant but also the account holder.
- So what do the BC members feel about that? Should we ask for both to be verified?

Elisa Cooper, Bill Smith, Susan Kawaguchi agree that both should be verified.

ACTION ITEM: Bill Smith’s point to be added to BC comments: the BC raises some serious concerns about the understandability of the RAA document for those who will rely on it to know that they have a safe place to register names and use the Internet.

Steve DelBianco:

- There's a new document called the Registrant Rights and Responsibilities.
- Samantha Eisner told the BC in Beijing that this document was motivated by something that Fadi Chehade wanted, written by the registrars, one page long.
- In this document there's one particular registrant right, that a number of BC members have experienced having that right violated in the past.
- The BC needs to decide whether they need some way of clarifying that ICANN must enforce it.
- Right in question: you, the registrant, "You shall not be subject to false advertising or deceptive practices by your registrar or through any privacy or proxy services made available by your registrar. This includes deceptive notices, hidden fees and any practices that are illegal under the consumer protection law of your residence." So they clarify the law.
- The question is does that mean that any violation of the responsibilities agreement are counted or not? Because 3.7.10 doesn't reference the specification in the second half of the sentence.
- Because the obligation says that the registrar has to put on their Website a link to the rights and responsibilities specification. And then it goes on to say, "And shall not take any action inconsistent with the provisions of the agreement."

ACTION ITEM: Anjali Hansen will draft BC comments incorporating all of the comments made by BC members in this call, and send to Elisa & Steve to approve prior to submitting to the BC list.