At-Large Registrant Rights and Responsibilities Working Group
Time: 17:00-18:00
Meeting Room: Roma

MEETING AGENDA (current as of Sunday June 23)

1. Report from subgroup on "lawyer's review" of the May 10, 2002 "Registrar Advisory Concerning WHOIS Data Accuracy" (http://www.icann.org/en/news/announcements/advisory-10may02-en.htm)

2. Evaluate proposed rewrite in Prague of RAA 3.7.8 (which is referred to in the above "Registrar Advisory Concerning WHOIS Data Accuracy" document). Taken together, 3.7.8 and the advisory are the key legal loopholes that prevent contractual enforcement of WHOIS data accuracy. Once this loophole is closed, and only then, does it make sense to address "registrant responsibilities" to provide accurate WHOIS data.

3. Collaborate with WHOIS review team and other interested participants on a statement that could possibly be endorsed by ALAC that ICANN move its contractual compliance department out from under ICANN legal. (Garth Bruen, Carlton, Evan, JJ, Beau, Olivier working on this now).

4. Collaborate with the WHOIS review team and other interested participants on a statement that could possibly be endorsed by ALAC to appoint an investigative panel to review the structure of the compliance department, and submit a formal report to the public. (Taking a decision now and at the meeting).

5. Collaborate with the WHOIS review team and other interested participants on a statement that could possibly be endorsed by ALAC to appoint a liaison to the RAA contractual negotiations process from either this WG or the WHOIS WG. It no longer makes sense for workgroups of this sort to exist outside the contractual negotiation process.

6. A review of the current updates/additions to the RAA itself (see URL above), so that this WG can move forward from Prague on creating a detailed list of rights and responsibilities for registrants, operating from a current document (so please try to read the docs before Prague).

7. Assign a sub-work team to write the list and propose it to the community for feedback.

Background: What's broken in 3.7.8? In short, there is no obligation of a Registrar to delete a domain with a false WHOIS record nor is there an obligation to correct the record. Because there is no obligation, a Registrar cannot be held in breach for failing to do so. So there is in fact no authority for ICANN to enforce against inaccuracy. This is stated on page 79 of the WI RT final report (icann.org/en/about/aoc-review/whois/final-report-11may12-en) and detailed here: circleid.com/posts/20120312_icanns_contract_not_enforceable_on_whois_accuracy

It is important to understand that unlike other parts of the RAA there are four (4) parties to 3.7.8:

1. ICANN

2. The Registrar

3. The domain owner/registrant

4. The complainant

The complainant is pure public interest. The process is completely driven from outside by non-contracted parties and non-consumers. Says Garth Bruen, "This is the crossroads. Is this an Internet we all participate in or an Internet which is imposed on us? As long as 3.7.8 is enforced either at the discretion of ICANN or the discretion of the Registrar we are living in an imposed Internet."

Will making domain deletions mandatory reduce the rights of domain owners? The situation is in fact unchanged. Domain owners have no recourse in the current scheme either.

This is something the RRRWG should recommend, a due process for deleted or suspended domains.

The current Draft RAA (prague44.icann.org/meetings/prague2012/presentation-draft-2012-raa-03jun12-en.pdf) changes some of the language in 3.7.8 but does not specifically fix these issues. The new 3.7.8 refers to a WHOIS ACCURACY PROGRAM SPECIFICATION (prague44.icann.org/meetings/prague2012/presentation-whois-accuracy-03jun12-en.pdf). Some of the language in this document should be moved directly into 3.7.8, specifically item 5. In general, revised language should state that making failure to follow the policy is a breach offense but also absolving a registrar who properly follows policy.

Proposed draft language takes section 5 from the WHOIS ACCURACY PROGRAM SPECIFICATION to replace most of the last section of the existing 3.7.8 and uses language from the 2003 advisory (icann.org/en/news/announcements/advisory-03apr03-en.htm), which is already "policy", to replace the term "reasonable steps."

The proposed language [authored by Garth Bruen]:

"Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, investigate by promptly transmitting to the registrant the inquiries concerning the accuracy of the data that are suggested by RAA Subsection 3.7.7.2. The inquiries should be conducted by all commercially practicable means available to the registrar: by telephone, e-mail, and postal mail. Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate the Registered Name Holder's Registration or place such registration on clientHold and clientTransferProhibited. The sponsoring Registrar is responsible for maintaining and presenting to ICANN Compliance all communication records occurring during the complaint period. Registrars executing this policy properly shall not be held at fault."