ICANN At Large RAA Working Group

Statement on Revisions to the
Registration Contracts and Procedures

DRAFT 4

September 13, 2007

The At-Large RAA working group, on behalf of the ALAC. hereby submits a set of proposals and recommendations for the ongoing process of revision of the Registrar Accreditation Agreement, as well for policies, procedures and operational activities that pertain to it, and to domain name registration contracts and procedures in general. These proposals descend from the set of questions that ICANN's CEO posted to the public on March 21, 2007, and from the subsequent discussions in the ICANN community.

Principles

In response to the CEO's request, we propose the following definition of the scope and purpose of the RAA: *"To define and regulate the gTLD domain registration market, providing a framework that ensures free and fair market competition among registrars, while establishing the requirements necessary to foster the stability of the Domain Name System and protect its users."*

We think that ICANN, in its role as de-facto regulator of the DNS, has the responsibility to ensure the good functioning of this market, including a proper balance among innovative and diverse commercial practices, the stability of the service, and the protection of the final users. Since the entire point of registries and registrars is to enable registrants to enter their domains into the DNS, the interests of registrants should be the paramount consideration.

We also note that while market competition brings a number of advantages, for example in terms of pricing dynamics, it can also cause a cost-cutting race to the bottom, or encourage aggressive marketing and customer relationship practices that tend to confuse customers or to stifle their ability to make a free and informed choice. For this reason, we encourage ICANN to experiment with alternate registration models; for example, especially for small TLDs, the registry and the registrar functions could be performed by a single, non-profit operator, operating for the public good, as used in several ccTLDs.

Issues

1. Enforcement

PROBLEM:

The RAA contains specific duties that registrars are required to perform, many of which are intended for the protection of registrants. But, as became apparent during the Registerfly affair, ICANN has no enforcement tools short of lawsuits and revocation of a registrar's accreditation.

PROPOSED ACTIONS:

- The revised RAA should contain a range of incentives and remedies short of revocation, such as public admonishment, fines, and temporary suspension of new registration privileges.

- ICANN should define internal procedures to monitor registrar compliance, accept public reports of problems and non-compliance, and engage in corrective actions in a timely fashion.
- ICANN should consider transferring the burden of enforcing the RAA from itself to domain name
  registrants by making domain name registrants third-party beneficiaries of the RAA.

2. Compliance assessments for registrars

PROBLEMS:

The Registerfly case showed that ICANN has no process to identify registrars that are failing to comply with the RAA, or to get early notice of a registrar whose service is deteriorating or failing.

PROPOSED ACTIONS:

- ICANN should continue to conduct regular assessments of the compliance of each registrar, either directly or through third parties, using a standardized checklist that verifies the compulsory behaviors (e.g. compliance with applicable ICANN policies), the average levels of service (e.g. technical performance, average rate and speed of response to customer inquiries), and a set of performance indicators that could warn about possible problems (e.g. degradation over time in new registration and transfer-away rates). Compliance should be verified at least once a year.

- ICANN should establish an online method specifically to accept complaints about registrar behavior; while ICANN cannot generally solve individual problems, consumers can still receive pointers to useful information in various languages, and to appropriate consumer protection agencies and organizations. This mechanism would allow ICANN to extract aggregated information to recognize developing problems with registrars.

- Using automated electronic means (e.g. search engines), ICANN should identify and combat abuses of the "ICANN accredited" logo by unaccredited parties.

3. Information given to registrants about domain registrations

PROBLEM:

Registrants do not always know what they are entitled to do with their domain names. In case problems arise with their registrar, they do not always know that they have the right to transfer the names to another registrar, or how to do that in practice. Also, often they do not know about the existence of a redemption grace period, or about other policies that affect them. In some cases, even the real name and identity of the registrar they are using is unclear from the registrar's website.

PROPOSED ACTIONS:

- Add a clause in the RAA to require registrars to show a standardized description of registrant rights, to be provided by ICANN in different languages, as an appendix to the contract at the time of registration, and also to make it available in the registrant's domain management interface whenever available. Such obligation should also be passed onto resellers.

- Add a clause in the RAA so to require registrars to clearly state the name under which they are accredited by ICANN and the number of their accreditation contract, at the time of registration and on the invoices / receipts related to the registration.

4. Roles and responsibilities of the registrant's contacts

PROBLEMS:

Registrants are not always aware of the meaning and use of the various sets of information that are asked to them at the moment of registration. When they often rely on third parties such as resellers and web hosts to manage the registration of their domains, they are unable to protect themselves from misbehavior by these third parties, or simply by mistakes and failures in the process. Even when doing the registration themselves, they may put the stability of their domain at risk by misunderstanding the role of the different contacts and providing inappropriate information. This is exacerbated by the lack of clarity and uniformity across registrars and TLDs about the actual meaning of the "registrant", "administrative contact", "technical contact" and "billing contact".

PROPOSED ACTIONS:

- Develop a clear and uniform document describing the roles, requirements and use of the different contacts, that could be used as a reference document by registrants and by third parties registering domain names on their behalf, also in case of controversies between them.

- Contact data should be verified at the time of collection.

5. Transfer procedures and fees

PROBLEMS:

Registrars have an interest in making transfers away from them as hard as possible, and thus many of them require burdensome non-automated or paper-based procedures, impose artificial "transfer fees", or fail to respond to transfer requests. This thwarts competition and lowers the average service level on the market. We note that this situation in similar markets (e.g. mobile phone numbering) has been solved by regulators by centrally imposing fair fees and procedures for the change of service operator.

PROPOSED ACTIONS:

- While the obligations of registrars for what regards transfers are implicit in their obligations to abide by ICANN consensus policies, we think that, given the extreme importance of this policy, it would be useful to add a clear reminder in the RAA, under the form of a clause saying something like "The registrar recognizes the right of the registrants to transfer their domain names to other registrars, according to the policies established by ICANN, and commits to make the process of transferring domain names as simple and quick as possible, and not to unreasonably stifle this opportunity in any way."

- We ask ICANN staff to prepare a summary of the current practices, fees and burdens imposed on registrants by a significant sample of registrars. (The ALAC is ready to ask for an Issues Report if necessary).

- We ask that the GNSO Transfer Policy include specific requirements to enable transfer of domain names. Registrants should be able to process a transfer entirely through the services of the gaining registrar and/or the registry, without the need for action by the losing one, including obtaining Authinfo codes and the like when required.

- We ask that the GNSO Transfer Policy forbid losing registrars to require an extra fee or paperwork to transfer their domain names. Since the entire transfer process can be automated, its operational cost is so low to be covered by the registration fee, and there is no cost justification for extra fees.

- We ask that ICANN provides official translations of the transfer forms and rules into major languages; the registrant should be able to perform the entire procedure in his/her native language, if it is one of the supported ones.

6. Rating of registrars

PROBLEMS:

Customers have no way to ascertain the reliability and quality of service of various registrars.

PROPOSED ACTIONS:

- ICANN should appoint a separate entity, targeted with the task of conducting compliance assessments similar to those delineated in Compliance above. A suitably independent entity could do the assessments both for the purpose of ICANN's compliance verification activity, and for the purpose of releasing ratings. Consumers Union, an ALS in the United States with extensive experience in product ratings, has expressed willingness to assist.

- The delegated entity should continue to conduct assessments at least once a year, and should produce a graded rating published on ICANN's website and on a specific page aimed at final consumers, and disseminated over the Internet through outreach and information campaigns.

- Registrars obtaining top grade evaluations should be allowed to display a specific mark on their website.

- Registrars obtaining a very low grade should be immediately subject to specific corrective measures by ICANN, and, if appropriate, to sanctions according to the compliance provisions of the RAA.

7. Reseller relations with registrants and registrars

PROBLEMS:

Many domain name registrations are made through online domain registration services that are not accredited by ICANN, but rely on an ICANN-accredited registrar to perform the actual registration ("resellers"). Some resellers have a specific contract with the registrar(s) they use; some others don't. While it is clear that resellers that do not have contractual agreements with registrars are not accountable, even indirectly, to ICANN, those that do can be indirectly affected by the RAA.

PROPOSED ACTIONS:

- ICANN should require that any registrar that sells through resellers have binding agreements with their resellers that pass through registrar's duties to registrants.

- ICANN should have an inexpensive program to accredit resellers..

- ICANN should consider including resellers in the compliance and rating evaluations described above.

8. Failure or closure of a registrar

PROBLEMS:

Operational failure or bankruptcy of a registrar can stop the correct functioning of the domain registrations of its customers, up to the point of making the domain names inaccessible and letting domains expire despite registrant's attempts to renew them. If a registrar voluntarily closes, the

consequences to its registrants are similar to those of registrar failure.

We commend ICANN on its recent actions to establish registrar data escrow, a key element in recovering from a registrar failure.

PROPOSED ACTIONS:

- ICANN should define criteria to determine when a registrar has failed, such as failure to process transfers and registrations in a timely fashion. Voluntary closure of a registrar should be treated as failure unless the closing registrar has taken action to transfer all of its registrants to other registrars.

- ICANN should establish procedures to follow when a registrar has failed, to select one or more other registrars to which to transfer the registrants.

- ICANN should establish procedures to verify that registrars are properly escrowing data, by spot checks and other means.

- ICANN should use the results from the compliance and rating assessments, as well as any other available information, to monitor which registrars appear subject to possible failure in the near future.

9. Proxy registrations

PROBLEMS:

Proxy registration services provide an inexpensive and useful level of privacy for registrants, but can make it impossible to detect the actual registrant of a domain name in case of registrar failure.

PROPOSED ACTIONS:

- The RAA should include the proposed amendment that requires that when registrars are aware that a registration is performed by a proxy, the escrowed registrant data must include the information for the actual registrant, unless the actual registrant opts out.