



Reply Comments re Proposed 2013 RAA

June 4, 2013

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization submits the following reply comments concerning the proposed 2013 Registrar Accreditation Agreement (RAA).

IPC's comments in the initial round (see <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdf0V2pGxIfGl.pdf>), filed May 13, focused largely on the serious shortcomings of the April 24 draft Specification on Proxy and Privacy Registrations, which omits any requirement for verification of contact data submitted by beneficial or "true" registrants who employ proxy services.¹ IPC notes that similar concerns were raised by several other commenters:

- The International Trademark Association's Internet Committee noted that this specification "has at the final hour been robbed of its enforceability," and called on ICANN to "ensur[e] that privacy/proxy services are equally subject to the same verification obligation that applies to registrars." See <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdfKyVFpWBi8R.pdf> at 3-5.
- A broad coalition of 18 music industry organizations from around the world noted their "dismay" at the draft specification, recommended amendments to "ensure that proxy services [registrars] (or their resellers) control verify customer contact data," and provided concrete data on the scope of the problem that the specification fails adequately to address (at least half of the top 40 sites that have given rise to music copyright infringement complaints to Google -- over 10 million complaints in all -- are registered through proxy services). See <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdfGXTwbheW5y.pdf>.
- Comcast/NBCUniversal expressed concern that "the holes in ICANN's largely unregulated network of proxy registration services" remain open for exploitation by bad actors. See <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdfezxaFQgSh0.pdf>.²

¹ IPC generally supports the comments filed May 31 by the Business Constituency. We note that a number of the BC's suggestions parallel those made by IPC in its March 28 comments on the March 7 draft of the RAA. See <http://forum.icann.org/lists/comments-proposed-raa-07mar13/msg00012.html>. As stated at the outset of our May 13 comments, at this stage we confined our comments to "the areas [of the draft RAA] that have changed since the 7 March 2013 posting." For the avoidance of doubt, IPC reaffirms its support for the changes called for in its March 28 comments (very few of which were adopted), and incorporates that submission by reference into this one.

² See also comments of General Electric Company, posted today at <http://forum.icann.org/lists/comments-proposed-raa-22apr13/msg00018.html>.

Thus there is strong support for the proposition that the Proposed 2013 RAA should not be finalized until the modest but important changes proposed by IPC in the redline attachment to its initial round comments are made. We recognize that the longer-term solution may lie in a strong ICANN accreditation program for proxy registration services. But the pace of any progress toward such a program is imperceptible; and the last-minute revision (April 24) that sunsets the entire proxy specification on January 1, 2016 strongly suggests that the status quo may be with us for as long as the next thirty months.³ IPC renews its earnest request that the “giant step backward” which the April 24 draft of the specification represents be reversed, so that proxy services controlled by registrars or resellers will be required to verify customer data, and that the registrars involved will be contractually accountable for systematic failures of these services to abide by their stated policies for acting on complaints of abuse.

IPC also notes that a few comments submitted by registrars or their representatives complain about the so-called “cross-field Whois validation” requirement of paragraph 1(e) of the Whois Accuracy Program Specification, including some vague intimations that, because it is not possible to carry out such validation for registrants in every single country of the world, requiring it to be done for registrants in any country risks violating ICANN core values of non-discrimination and neutrality, or will cause “disenfranchisement” of registrants.⁴ See GoDaddy comment, <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdfOQBzSnC1U.pdf>, at 2-3; Registrar Stakeholder Group comment, <http://forum.icann.org/lists/comments-proposed-raa-22apr13/pdfH8JihylRWk.pdf>, at 1. Such concerns are, at best, overblown. If, as the RrSG asserts, “the notion of across-field Whois validation is a dramatic change to the registration of domain names,” that is only true because, for more than a decade, ICANN neglected its responsibilities as steward of the public database of domain name registration data, and took almost no effective steps to enforce the requirement for Whois data accuracy. If registrants are no longer free to degrade Whois with fictitious street addresses, city names, or postal codes, without fear of detection or consequence, that change may be “dramatic,” but it is also long overdue. We hope that the complaints expressed in these comments are not the harbingers of foot-dragging in implementation of the 2013 RAA, and that if they are, ICANN will no longer tolerate such behavior.

Finally, we note that other commenters echo IPC’s concern that the severely debilitated amendment procedures unveiled in the latest 2013 RAA draft could undermine ICANN’s ability

³ IPC strongly supports the call by the GAC, in its Beijing communique, “to accelerate the implementation of accreditation programs for privacy and proxy services for Whois.” See https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2 item 2a, page 5. But the fact that ICANN has taken no announced steps toward such a program since a hastily-prepared workshop was held at the Toronto ICANN meeting almost eight months ago underscores the need for stronger interim safeguards than the current diluted version of the proxy specification now provides.

⁴ As a threshold matter, since ICANN has already decided, on the stated ground of other “pending work,” not to consider any suggestions to strengthen the Whois Accuracy Program Specification in general, and cross-field validation in particular, it could not in good faith give any credence now to proposals to weaken these “WHOIS related obligations.” See IPC initial round comments at 5, n.4. While IPC still believes that ICANN’s refusal to consider comments on this Specification, as first announced April 22 in the final sentence of its “Report of Public Comments” on the March 7 comment round, see <http://www.icann.org/en/news/public-comment/report-comments-proposed-raa-22apr13-en.pdf>, is unjustified on the merits and contradictory to its stated commitment to fair public comment processes, we trust that ICANN will not now add bad faith to the mix.

to carry out its public interest mandate. See INTA comments at 6-7. In this regard, we look forward to ICANN's response to the questions posted on page 4 of our initial round comments concerning how the revised amendment process could be used to implement a Board-approved registration data directory model, if opposed by registrars.

Respectfully submitted,

INTELLECTUAL PROPERTY CONSTITUENCY, per Steve Metalitz, Vice President