Summary of RAA Negotiations to Address Law Enforcement Recommendations
24 September 2012

		Summary of LE Recommendation	Status of Negotiation and Notable Issues
(red/yellow/green)	**1**	Registrar duty to investigate reports of illegal conduct, including responding to reports from law enforcement, and providing a system to track complaints	• Agreement in principle regarding making abuse points of contact available, timely response and posting tracking process. • Amendments drafted, nearly final. • Future discussion to focus on registrar proposal for authentication of law enforcement representatives seeking expedited information, and potential jurisdictional issues.
(red/yellow/green)	**2**	Registrar shall not engage in activities or conduct that results in: (i) a conviction by a court of competent jurisdiction of a felony or other serious offense related to financial activities; (ii) a judgment by a court of competent jurisdiction that Registrar has committed fraud or breach of fiduciary duty; (iii) the Registrar being the subject of a judicial determination that is the substantive equivalent of those offenses (i)-(ii); or (iv) the Registrar knowingly and/or through gross negligence, permitting criminal activity in the registration of domain names or in the provision of domain name WHOIS information, after failing to promptly cure such activity after notice thereof.	Referring to specific sections: • (i-iii) essentially already in the termination section of the agreement • (iv) Registrars and ICANN agree that a finding of "knowingly" or "gross negligence" requires some kind of judicial determination; future discussion to focus on level of "finality" required/appropriate. • ICANN is requesting stronger termination rights within the agreement, including in the context of cybersquatting; registrars have responded favorably. Further discussion is required with respect to the standard (national law or governmental regulation or some extra-legal definition of cybersquatting) to be applied.

Key:

(pink/yellow/green)	Agreement in Principle; language may still need to be finalized.	(pink/yellow/green)	Discussions ongoing; a portion of item is at risk of not being finalized.
(red/yellow/green)	Parties cannot reach agreement on item.		

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	3		Registrar collection of data regarding registrations in addition to the language already collected.	• ICANN and registrars are in agreement in principle on a two-tiered retention schedule (6 mos from creation for some elements of data and 2 years after life of registration for all other data). • Final language is still being negotiated to account for excessive volumes of data. • Primary discussion now is on definition of process for a registrar to demonstrate that some retention obligations would put it in conflict with applicable laws.
	4		Registrars abuse contact – posting of contact information and having a contact available around the clock	• Agreement that a specific abuse contact will be made available as well as a commitment for a timely for response. • See item 1 further information.

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	5	Publication of registrar information, including contact details, as well as regular updates to ICANN regarding changes in registrar business information	• Agreed. The RAA (3.17.1) will now require registrars to provide updates to ICANN of the type of information that is required upon application for accreditation. Registrars have agreed to publish some of this information on their own website and to make the remaining information available for ICANN to publish in a central site such as Internic.
	6	Disclosure of affiliated registrars and affiliated businesses	• The updating requirement in response to item 5 requires this disclosure. • Registrars have agreed to provide this information to ICANN for publication in a central site such as Internic . • Negotiations are focusing on the scope of definition of affiliated registrars and businesses.

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⬤	**7**	Privacy and Proxy Services – Escrow, Reveal and Relay	• Agreement in principle that ICANN accreditation of proxy services can be adopted. Once implemented, registrars would only accept registrations through privacy or proxy services if those services are accredited. • ICANN is asking for escrow of all underlying data in the interim period. Registrars have agreed as it relates to registrations through Registrar; further discussion required with respect to escrowed data for registrations through resellers. Registrars are concerned that resellers may be reluctant to provide this data to registrar, and prefer that this requirement become effective as of the date an accreditation program is available. Alternatively, registrars are willing to obligate resellers to deposit this information into a separate escrow. • ICANN and the registrars heard in Prague that work towards and accreditation system should begin now, not wait for a new RAA. ICANN and the registrars convened a joint team to develop straw-man proposal on an accreditation system, for community input and discussion. A session will be held in Toronto to get some initial community input as the work begins.

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	8		ICANN Accreditation of Proxy and Privacy Services	• See item 7. • ICANN and registrars have agreed and begun to draft the framework for an accreditation system to serve as a basis for future policy development wokon this topic.
	9		Accountability of Resellers – Resellers must be held completed accountable to all provisions of the RAA.	• Agreement in principle and near final language, subject to further discussions regarding interim escrow of privacy/proxy service registrations (See Item 8 above).
	10		Registrar validation of registrant data	• ICANN and Registrars have one major difference remaining on validation of Whois data. • Registrars are willing to undertake post-registration validation of either email or telephone number, at the election of the registrar. Law enforcement representatives have requested verification of both email and phone number. • Agreement in principle has been reached regarding re-verification of data, though clarification of the events that give rise re-verification are under discussion. • Negotiations continue to incorporate a review of the

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				Whois verification specification at a time after it's been in operation for 12 months. In addition, ICANN and registrars are commencing discussions to consider the possibility of launching a pre-verification resolution test pilot.
⬤		11	Whois service level agreements, with uptime minimums and specifying data update requirements.	• A Whois SLA appendix remains under negotiation, and there is agreement in principle to some form of SLA. • The registrars have requested that the obligation to provide a registrar-operator Whois service be limited to "thin" registries (i.e., .com and .net), as "thick" registries provide centralized public data to Whois data. Registries in the New gTLD Program are required to be "thick" and follow service level agreements.
⬤		12	Expansion of grounds of termination of RAA for criminal convictions, including "knowingly and/or through gross negligence permit criminal activity in the registration of domain names or provision of domain name WHOIS information…"	• See item 2.

Additional Registrar Requests

NOTE: For all items below, the concessions made in these areas are dependent upon reaching agreement on a full contract.

- **Amendment Process:** The Registrars propose the adoption of an amendment process that would require ICANN to negotiate directly with Registrars (as a group) and allow the Registrars to vote for adoption of amendments. The proposed amendments would then be posted for public comment. Registrars are currently considering various alternatives relating to the percentages of registrars required for approval of any amendment, which is key to understanding this provision. ICANN is currently reviewing this proposal and considering additional mechanisms to allow for review to address, for example, Whois Review Team proposals without having to resort to a full amendment process.

- **Removal of Port 43 Whois Requirements for TLDs with thick Whois:** The Registrars request removal of Port 43 Whois Requirements because of the redundancy with thick Whois requirements at the Registry level in new gTLDs. ICANN is rejecting any change in this area at this time, however ICANN has invited Registrars to produce a position paper to support this request, and open the item for public discussion.

- **Consensus Policy Development:** The Registrars have proposed to modify the Consensus Policy provisions of the RAA to align it with the Consensus Policy provisions of the Registry Agreement for New gTLDs. ICANN is reviewing the proposal and considering whether amending this section would have any unintended effects.

- **Automatic Accreditation in New Registries:** The Registrars propose that Registrars shall be automatically accredited to serve as a registrar within all registries, subject to entering into an RRA with the Registry. ICANN agrees that this is a preferred path when new gTLDs are introduced.

Additional ICANN Requests

- **Heightened Termination and Compliance Tools:** ICANN is proposing that it be given the express option – at its discretion – to terminate a registrar or to suspend a registrar's ability to receive new registrations as part of its compliance tools. A suspension could transition into a termination at ICANN's election. Repeated material violations of the RAA would be a new grounds for termination. The Registrars have largely accepted this request and language is nearly finalized.

- **Streamlined Arbitration:** To combat the delays that ICANN has faced in prior arbitrations, ICANN is requesting that only one arbitrator be required to hear disputes, instead of the three currently required. The Registrars appear to have agreed to this request.

- **Limitation of Time for Request for Stays:** While a Registrar will still have the opportunity to request a stay of arbitration, ICANN is requesting a time limitation for the arbitration provider to rule on the stay. This will address a weakness identified in prior RAAs. The Registrars appear to have agreed to this request.

- **Revocation in Changed Marketplace**: ICANN is requesting the inclusion of a clause that would allow the revocation of RAAs in the event that the domain name registration market changes so fundamentally that it no longer makes sense to perpetuate the model that has been in place for years. The Registrars have rejected this clause.