



**Comment on potential
changes to liability
insurance requirements
for registrar
accreditation**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

The Business Constituency (“BC”) appreciates the opportunity to provide comments on ICANN’s proposal to eliminate, reduce or otherwise modify commercial liability insurance requirements in both the 2009 and 2013 Registrar Accreditation Agreement (RAA).

The BC is supportive of ICANN’s efforts to promote the DNS industry in regions that have typically been underserved. However, we firmly believe that the existing commercial general liability (CGL) insurance requirement is fundamental and ensures registrar accountability and beneficial protections of both consumers and business interests. In addition, the BC firmly believes that the CGL insurance requirement remains essential, even with new compliance and data escrow policies required by the 2013 RAA.

The public comment request asked for input on the following questions.

1. *Are there valid reasons why ICANN should continue to require CGL insurance?*

Yes. To cite a concrete example, the BC is concerned that changes to CGL requirements could minimize or even eliminate the effectiveness of 2013 RAA obligations that indicate acceptance of liability for unlawful conduct. Specifically, Section 3.7.7.3 of the 2013 RAA that states:

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. ***A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm.***

If CGL requirements are eliminated or minimized then the effectiveness of this and perhaps other registrar obligations would be called into question.

2. *Has any registrar gTLD or ccTLD registry found CGL coverage useful in running their businesses?*

No comment.

3. *Are there alternatives to CGL insurance that would provide similar or better protections for registrants that could be instituted either as new contractual requirements or as "best practice" recommendations?*

The BC believes that it would be beneficial if ICANN could provide a list of CGL insurance providers so that registrars can more easily comply with the requirement.

4. *If the CGL requirement is maintained, is the \$500,000 limit appropriate?*

Yes.

5. *If ICANN eliminates the CGL requirement, should the elimination apply to all registrars or should "waivers" be granted only on a case-by-case basis?*

The BC believes the CGL requirement should not be eliminated. For registrars in underserved regions where the cost of the CGL requirement may be unduly burdensome, the BC recommends that ICANN consider providing a credit against registrar fees to help pay CGL liability premiums. These credits should be granted on a case-by-case basis based on a concrete and mutually agreed definition of Underserved Regions.

To summarize, the BC believes that the existing commercial general liability (CGL) insurance requirement is sufficient and should not be reduced or eliminated. For registrars in underserved regions where the cost of the CGL requirement may be unduly burdensome, the BC recommends that ICANN consider providing a credit against registrar fees to help pay CGL liability premiums. Lastly, ICANN should provide a list of CGL insurance providers so that registrars can more easily comply with the requirement

This comment was drafted by Alex Deacon with assistance from Elisa Cooper and Steve DelBianco, and was approved in accord with our charter.