Final Report on

Proposals for Improvements to the

Registrar Accreditation Agreement

STATUS OF THIS DOCUMENT

This Final Report is submitted to the GNSO Council on 18 October 2010 from the Joint GNSO-ALAC RAA Drafting Team describing proposals related to the Registrar Accreditation Agreement.

SUMMARY

This report is submitted to the GNSO Council for its consideration in evaluating certain proposals related to Registrar Accreditation Agreement (RAA). This Final Report describes the recommendations from the Joint GNSO-ALAC RAA Drafting Team for producing a Registrant Rights and Responsibilities Charter and for identifying topics for possible additional future amendments to the RAA.

1.   Executive Summary

1.1 Background

In 2009, the GNSO Council recommended to the ICANN Board that it approve a new form of Registrar Accreditation Agreement (RAA) negotiated between Staff and Registrars in consultation with others in the Community.[1]   However, in its resolution adopted 27-0 in March 2009, the GNSO Council conditioned its recommendation on the beginning of work on further RAA amendments.   As a result, the GNSO Council formed a joint drafting team with members of the At-Large Community (known as the RAA Drafting Team) to conduct further work related to proposals for improvements to the RAA.   This drafting team included ICANN staff and registrar representatives. The RAA Drafting Team was tasked with (a) drafting a charter comprised of registrant rights, and (b) developing a specific process and timeline to move forward with additional potential future amendments to the RAA. To accomplish these tasks, the RAA Drafting Team divided into two subteams, which worked independently to produce these recommendations.

This Final Report to the GNSO Council describes the recommendations endorsed by a consensus of the respective subteams on (i) the proposed form of a Registrant Rights and Responsibilities Charter, and (ii) describing the potential topics for additional amendments to the RAA, as well as a proposal for next steps for the GNSO Council to consider in determining whether to recommend a new form RAA to be adopted by the ICANN Board.

1.2 Preliminary Conclusions on the Registrant Rights and Responsibilities Charter

There is unanimous consensus among the members of SubTeam-A that ICANN should adopt a Registrant Rights and Responsibilities Charter substantially similar to the form

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[1] For more information on the process utilized by Staff to develop the 2009 RAA, please refer to:
http://www.icann.org/en/topics/raa/

described on **Annex D**.   This proposed Registrant Rights and Responsibilities Charter is intended to serve as a starting point for use by ICANN under Section 3.15 of the RAA, which states that:

> 3.15 In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

Since Section 3.15 specifies that the content is to be developed in consultation with registrars, SubTeam-A recommends that ICANN commence its consultation process with Registrars to finalize and publish a webpage that includes the content of the Registrant Rights and Responsibilities Charter, as such content may be modified following the consultation with registrars.

In addition, SubTeam-A acknowledges that additional work may be conducted by members from the At-Large Community relating to an "aspirational charter," which would reflect rights or principles reflecting rights that should be afforded to registrants in connection with the registration of domain names. To the extent that this work identifies principles that are not currently reflected in the RAA, SubTeam-A encourages the submission of those principles to be submitted as additional topics for consideration in future RAA amendment discussions.

1.3 Preliminary Conclusions on the Additional Amendments to the RAA

SubTeam-B recommends that the topics identified in Subsection 4.3 below be considered for potential amendments to the RAA, and that the next steps in this process be as summarized in subsection 5 below.

2.   Background, Process, and Next Steps

2.1 Background

The [Registrar Accreditation Agreement](#) (RAA) is the contract that governs the relationship between ICANN and its accredited registrars (a directory of accredited registrars can be found at http://www.internic.net/regist.html). Its provisions also have significant impacts on registrants and other third parties involved in the domain name system.

Because the domain name market has undergone changes in recent years and the number of ICANN accredited registrars and domain name registrations have grown significantly, the community recognizes that amendments may need to be made to this important agreement from time to time.

In March 2007, Dr. Paul Twomey, President and CEO of ICANN, called for a comprehensive review of the RAA and the accreditation process.[2] The results of that review ultimately produced a new form of RAA (2009 RAA) which was approved by the GNSO Council and the At-Large Advisory Committee, and adopted by the ICANN Board on 21 May 2009.

The proposed form 2009 RAA was controversial, with some community members supporting it and others insisting that it had not gone far enough to address serious concerns.

Ultimately, the GNSO Council came together on a resolution that, while acknowledging that the proposed form 2009 RAA represented an improvement of the then-existing form of RAA, also recognized that additional amendments would be needed in the future.   Because the proposed changes in the 2009 RAA included several important compliance and enforcement tools for ICANN, the GNSO Council recommended that the ICANN Board approve and implement them as quickly as possible.   As part of the same resolution, however, the GNSO formed a joint drafting team with members of the At-Large Community, whose task would be

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[2] See http://www.icann.org/en/announcements/announcement-21mar07.htm. As ICANN CEO Paul Twomey stated in this announcement, "What has happened to registrants with RegisterFly.com has made it clear there must be comprehensive review of the registrar accreditation process and the content of the RAA." For background on RegisterFly, see http://www.icann.org/en/announcements/factsheet-registerfly-registrars-26mar07.pdf.

to conduct further work related to improvements to the RAA.   The RAA Drafting Team was asked to: (a) draft a charter identifying registrant rights and responsibilities; and (b) develop a specific process and timeline to identify additional potential amendments to the RAA on which further action may be desirable.   The text of the GNSO Council Resolution appears in **Annex A**. This additional work to be conducted by the RAA Drafting Team received the support of the Registrar Constituency, which agreed to participate on a good faith basis on anticipated next steps for amending the RAA.

On 28 May 2010, the RAA Drafting Team published its Initial Report on Improvements to the RAA and opened a public comment period.[3] A summary of the public comments received on the Initial Report appears in **Annex I**.   SubTeam A's response to the comments received pertaining to the Registrant Rights and Responsibilities Charter are included in **Annex J.** SubTeam B's response to the comments received pertaining to possible additional amendments to the RAA are included in **Annex K.**

This Final Report to the GNSO Council describes the work product of the RAA Drafting Team regarding (a) the recommended form of a Registrant Rights and Responsibilities Charter, and (b) identification of the potential RAA amendment topics and the recommended next steps for determining how to amend the RAA.

Several endorsements related to the Initial Report have been provided to the RAA Drafting Team. During their meeting of 25 May 2010, the At-Large Advisory Committee (ALAC) by consensus endorsed a draft version of the Initial Report on Proposals for Improvements to the Registrar Accreditation Agreement. In addition, the Government Advisory Committee (GAC) issued their endorsement of the law enforcement proposals for amendments to the RAA in their Brussels Communiqué. Specifically, the Brussels Communiqué states that:

"An absolute majority of GAC members made the following statement:

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[3] For information on the Public Comment Forum on the Initial Report, please see: http://www.icann.org/en/public-comment/public-comment-201007-en.htm#raa-improvements2010

1. The GAC encourages the Board, the RAA Working Group and registrars to work with law enforcement agencies to address their concerns and implement necessary changes without delay.

2. Following from the GAC's Nairobi Communiqué, the GAC requests an update of progress on consideration of these proposals, including the Board's consideration of the due diligence recommendations.

3. Based on the deliberations in Brussels and the previous meetings, the GAC endorses the proposals from law enforcement agencies to address criminal misuse of the DNS, noting that implementation of these proposals must respect applicable law and respect all requirements concerning the processing of personal data, such as privacy, accuracy and relevance.

Some countries felt that further efforts need to be deployed to clarify these proposals."

2.2   Approach Taken by the RAA Drafting Team

The RAA Drafting Team operated under a charter approved by the GNSO Council on 3 September 2009 (see **Annex B**).   Steve Metalitz and Beau Brendler served as Co-Coordinators of the RAA Drafting Team.   The Drafting Team organized into two distinct teams to accomplish the tasks required under the Charter. SubTeam-A was tasked with developing the recommended form of the Registrant Rights and Responsibilities Charter, and SubTeam-B was tasked with identifying the potential topics for additional amendments to the RAA and recommended next steps for the GNSO Council as it determines whether to recommend amendments to the RAA.

2.3   Members of the RAA Drafting Team

The RAA Drafting Team consisted of individuals representing a broad range of interests within the GNSO and At-Large Communities.

The RAA Drafting Team was comprised of the following individuals:

From the GNSO Community:

Name	Affiliation	SubTeam
Nacho Amadoz	RySG	A
Dev Anand	NCSG	B
David Cake	NCSG	B
Karen Banks	NCSG	A
Elisa Cooper	RrSG	B
Phil Corwin	CBUC, CSG	A, B
Paul Diaz	RrSG	A
Avri Doria	NCSG	A, B
William Drake	NCSG	A
Chuck Gomes	RySG	A, B
Statton Hammock	RrSG	B
Tatyana Khramtsova	RrSG	B
Adrian Kinderis	RrSG	A
Konstantinos Komaitis	NCSG	A
Phil Lodico	CBUC, CSG	A
Rebecca Mackinnon	NCSG	A
Steve Metalitz	IPC, CSG	B
Michele Neylon	RrSG	A, B
Mike Rodenbaugh	CBUC, CSG	B
Kristina Rosette	IPC, CSG	B
Wendy Seltzer	NCSG	A
Marc Trachtenberg	IPC, CSG	B
Tim Ruiz	RrSG	B
Stephane van Gelder	RrSG	A

From the At-Large Community:

Name	Affiliation	SubTeam
Sébastien Bachollet	At Large	A
Victorio Bertolo	At Large	A
Beau Brendler	At Large	A
Dharma Dailey	At Large	A
Hawa Diakite	At Large	A
Lutz Donnerhacke	At Large	A

Antonio Medina Gomez	At Large	A
Alan Greenberg	ALAC	A
Cheryl Langdon-Orr	ALAC, Chair	A, B
Evan Leibovitch	At Large	A
Daniel Monastersky	At Large	A
Shiva Muthusamy	At Large	B
Andrés Piazza	At Large	A
Holly Raiche	At Large	B
Sergio Saline	At Large	A
Carlton Samuels	At Large	A
Baudouin Schombe	At Large	A
Rudi van Snick	At Large	A
Danny Younger	At Large	B

Acronym Key:

CBUC- Commercial Business Users Constituency
CSG- Commercial Stakeholder Group
ALAC- At-Large Advisory Committee
IPC-   Intellectual Property Constituency
NCSG-   Non-Commercial Stakeholder Group
RrSG- Registrar Stakeholder Group
RySG- Registry Stakeholder Group

The attendance sheet can be found in **Annex C**.

The email archives can be found at http://forum.icann.org/lists/gnso-raa-dt/, for the RAA Drafting Team as a whole, http://forum.icann.org/lists/gnso-rrc-a/ for the SubTeam-A, and http://forum.icann.org/lists/gnso-raa-b/ for the SubTeam-B.

2.4 Proposed Next Steps

The RAA Drafting Team recommends that the GNSO Council and the ALAC review and evaluate and take action on the recommendations contained in this Final Report

With regard to the recommendations regarding the Registrant Rights and Responsibilities Charter, the RAA Drafting Team recommends that ICANN proceed to the next phase for implementing the Registrant Rights and Responsibilities Charter, which includes commencement of the consultation process with Registrars to finalize the content related to

the Registrant Rights and Responsibilities Charter. Initiation of this process is necessary to produce the webpage that Registrars would link to, based upon the initial work of the RAA Drafting Team as described in this Report.

With regard to the work regarding the additional amendments to the RAA, SubTeam-B recommends that the topics identified in Subsection 4.3 be accorded priority consideration for possible amendments to the RAA, and that the process spelled out in Subsection 5 be undertaken to carry this out.

3.   Development of the Registrant Rights and Responsibilities Charter

3.1 Deliberations of SubTeam-A

Initially, members SubTeam-A, which were assigned the task of developing a Registrant Rights and Responsibilities Charter, held differing opinions regarding the scope of the task assigned to the RAA Drafting Team.   Some members envisioned the Charter to be a document declaring basic rights that should be afforded to registrants by registrars in connection with domain name registrations.   Others viewed the Charter as an inventory of current obligations and responsibilities under the RAA related to registrants.

After review of the relevant sections of the RAA, the RAA Drafting Team determined that only existing rights and obligations as currently specified in the 2009 RAA related to registrants should be included in the Registrant Rights and Responsibilities Charter.

Nevertheless, SubTeam-A acknowledges the additional work being conducted by the At-Large Community relating to an "aspirational charter," which would reflect rights or principles reflecting rights that should be afforded to registrants in connection with the registration of domain names.   The Aspirational Charter is intended to be a "living document" that can be updated from time to time to reflect changes in the domain name industry that affecting registrants.

The current version of the [Aspirational Charter](#) appears below:

Aspirational Registrant Rights

Registrants should

1. have accurate, current and complete contact and locative information regarding their registrar
2. be the sole entity capable of asserting and changing ownership information for their domain
3. have ample opportunity to renew their existing domain(s) at the same rates as new domains
4. protect their trade name against unauthorized use
5. refuse the transfer of their personal information to unauthorized bodies
6. expect ICANN to enforce its agreements with registrars

It is important to note that SubTeam-A did not attempt to achieve a consensus that these proposed principles *should be* included into an aspirational charter, since this work is outside the drafting team's remit. However, to the extent that the work conducted by the At-Large community to produce an [Aspirational Charter](#) identifies principles regarding rights that are not currently afforded to registrants, the RAA Drafting Team recommends that the GNSO Council authorize additional work to determine if these principles should be subject to analysis and future recommendations. For example, public comment could be solicited to determine if this list of principles is comprehensive or should otherwise be modified. A working group could be chartered to determine whether to include some of these principles as additional topics in future RAA amendment discussions, or whether a PDP should be initiated to create a consensus policy to establish rights reflected in the [Aspirational Charter](#) that may not be available to registrants today. SubTeam-A also recommends that the GNSO Council support and encourage participation in cross-community activities underway with the At-Large Community and with other groups that have formed since the Nairobi ICANN meeting to address consumer and end-user issues within ICANN.

3.2 Recommended Form of the Registrant Rights and Responsibilities Charter

There is consensus among the members of the RAA Drafting Team that ICANN should adopt a Registrant Rights and Responsibilities Charter in the form described on **[Annex D](#).**

The text of the Registrant Rights and Responsibilities Charter is based in part on the Plain Language Guide to the RAA developed by Staff at the request of the ALAC.[4] The proposed Registrant Rights and Responsibilities Charter provides some "plain language" summarization of terms related to Registrant Rights and Responsibilities as set out in the RAA, for posting on Registrar websites. While some of the terms included in the RAA do not specifically refer to registrants, those terms are included because of the potential import to understanding registrar/registrant relations. The proposed Registrant Rights and Responsibilities Charter also

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[4] The Plain Language RAA is available for review at:
. http://www.icann.org/en/registrars/non-lawyers-guide-to-ra-agreement-15feb10-en.htm

summarizes registrant rights and responsibilities that arise within ICANN Consensus Policies and specifications, as those policies and specifications are incorporated into the RAA.

The proposed Registrant Rights and Responsibilities Charter inventories the provisions in the 2009 RAA relating to registrants and is intended to serve as the origin of the document referred to in the Section 3.15 of the RAA, which states that:

> 3.15 In the event that ICANN gives reasonable notice to Registrar that ICANN has published a webpage that identifies available registrant rights and responsibilities, and the content of such webpage is developed in consultation with registrars, Registrar shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

Since Section 3.15 specifies that the content is to be developed in consultation with registrars, the RAA Drafting Team recommends that ICANN commence its consultation process with registrars to finalize the content related to the Registrant Rights and Responsibilities Charter and publish the website for use by registrars.

4. Potential Topics for Additional Amendments to the RAA

4.1 Deliberations of SubTeam-B

This chapter provides an overview of the deliberations of SubTeam-B conducted both by conference call as well by as e-mail threads.

SubTeam-B's work focused on several areas of review and analysis. Initially, SubTeam-B solicited topics for possible RAA amendments from the ICANN community. This was accomplished through review of submissions solicited by members of the SubTeam-B and through a workshop conducted during the ICANN meeting in Seoul, Korea.[5] During the

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[5] For more information on the RAA Drafting Team's meeting at the ICANN Seoul, Korea, please refer to: http://sel.icann.org/node/7372

solicitation process, several groups submitted amendment proposals for consideration, including suggestions from the law enforcement community, the Intellectual Property Constituency, Danny Younger, and ICANN staff, which presented its detailed proposal identifying additional suggestions for amendment topics to improve the RAA. David Giza, ICANN Senior Director of Contractual Compliance, participated in the SubTeam-B and provided explanations of how the Staff proposals could benefit ICANN's future compliance efforts and could streamline ICANN's processes related to the RAA.

The resulting compilation matrix, hereinafter referred to as the "RAA Matrix," yielded a list of 100+ separate amendment topics submitted for consideration. A copy of the complete compilation produced by SubTeam-B is included in **Annex E.** In addition, the substantive submissions delivered by the Intellectual Property Constituency, the law enforcement community, Danny Younger, and ICANN Staff are included in **Annex F**.

Recognizing the difficulty of working with a list of over 100+ amendments, SubTeam-B conducted further analysis to condense the list as reflected in the RAA Matrix. SubTeam-B Drafting Team filtered the list by categorizing the amendment topics into three levels of priority (high, medium, and low).   SubTeam-B also further condensed the RAA Matrix by identifying those topics that are currently under active consideration by another GNSO working group. In addition, members of the Sub Team-B were invited to mark topics which they believed should be more appropriately addressed through a PDP effort to develop a new Consensus Policy, rather than through an RAA amendment.   SubTeam-B further filtered the RAA Matrix by consolidating redundant and overlapping topics. Finally, Sub-team B winnowed its initial list of High Priority topics to produce the list of proposed topics for amendments contained in this Final Report.

4.2 Evaluation of the Law Enforcement Related RAA Proposals

RAA proposals from members of the law enforcement community received considerable interest from the Government Advisory Committee (GAC) as well as from the press.[6]   In its communiqué[7] to the ICANN Board during the Nairobi meeting (the "Nairobi Communiqué"), the GAC noted that the law enforcement proposals were favourably viewed by the high tech crime experts in the G8 and Interpol. The Nairobi Communiqué further stated that it hoped that the RAA Working Group would examine the proposals from law enforcement and take them into consideration during their work on the amendments.

In addition, Janis Karklins (GAC Chair) forwarded to the GNSO Council a GAC letter to the ICANN Board regarding the law enforcement recommendations. This GAC letter forwarded numerous letters of support for the law enforcement recommendations from the G8, Interpol, and Council of Europe Project on Cybercrime "Message from the Octopus Conference." Copies of these communications are included in **Annex G**.

SubTeam-B carefully considered the law enforcement proposals which were highlighted in the Seoul workshop session. These proposals were the subject of one of Sub-Team-B's regular calls which was attended by a representative of the law enforcement team that developed them. While, for reasons explained below, the law enforcement recommendations were not incorporated unchanged into SubTeam-B's ultimate recommendations, the proposals were quite influential in the process to develop topics, and SubTeam-B appreciates the time and effort they represent on behalf of the law enforcement agencies involved.

4.3 Proposed List of Potential Topics for Additional Amendments to the RAA

The Chart below depicts the results of the SubTeam-B's analysis on topics for potential additional amendments to the RAA that merit further consideration, and which were assigned a "High Priority" Status. Please note that the SubTeam-B was not asked, nor did it attempt, to

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[6] See for example,
http://www.pcworld.com/article/191735/law_enforcement_push_for_stricter_domain_name_rules.html. The proposals, contained in Annex F, were endorsed by national law enforcement representatives from six countries.

[7] The GAC's Nairobi communiqué is posted at: http://gac.icann.org/communiques/gac-2010-communique-37.

achieve a consensus that these proposed amendment topics *should be* included in a new form RAA. Instead, the list is intended to serve as a *starting point* for additional topics to be considered, debated, and either accepted or rejected through the next phase of the GNSO Council's deliberations as it determines whether to recommend a new form of RAA for consideration by the ICANN Board.

A few observations may be helpful in understanding what is, and what is not, included in the "High Priority" list:

First, the twelve topics on the list are not themselves presented in order of priority (i.e., the first one listed is not presented as the top priority, the second one listed as the second priority, etc.). SubTeam-B concluded that all twelve topics should be considered, as a matter of High Priority, for the next round of RAA amendments.

Second, a number of suggestions, including many in the law enforcement proposals, addressed the criteria for becoming an accredited registrar, and called for greater due diligence in vetting applicants wishing to become an accredited registrar. SubTeam-Beam fully agrees that improvements in the due diligence process are essential. However, SubTeam-B saw its remit as limited to the RAA, that is, to the statement of responsibilities of registrars once they had become accredited. Accordingly, it omitted these suggestions from its High Priority list. Instead, it recommends that ICANN staff give these suggestions serious consideration as it works on improvements to the accreditation process so that only responsible applicants achieve accreditation. Staff informed SubTeam-B that the law enforcement proposals focused on due diligence issues were being taken into account in updating the registrar accreditation application. An updated application was released September 10, 2010. (See http://www.icann.org/en/announcements/announcement-10sep10-en.htm).

Third, as SubTeam-B debated a number of suggestions, it considered whether the suggested changes could be achieved through more vigorous compliance efforts by ICANN under the 2009 RAA. In this regard, SubTeam-B paid particular attention to the views of ICANN compliance staff, as well as the experiences of currently accredited registrars regarding

compliance efforts. ICANN compliance staff noted that several suggested amendment topics may be better addressed through utilization of the enhanced tools included in the 2009 RAA rather than through further RAA amendments. Where it appeared from this discussion that a particular amendment might better be handled as a compliance matter, SubTeam-B sought to note that in the matrix, and excluded that suggestion from its High Priority list. However, SubTeam-B also recommended that these excluded suggestions be reviewed in a second phase of consideration of RAA improvements, in order to verify whether or not the compliance tools of the 2009 RAA text have proven adequate to achieve the goals which these proposed amendments sought to accomplish.

Finally, as directed by its charter, SubTeam-B sought to "flag any topics that may require further analysis as to impact on consensus policy." SubTeam-B identified a few examples of suggested topics that should be flagged in this way, and it excluded all of them from its High Priority list. SubTeam-B recognized, however, that the decision to exclude a particular topic from negotiation as part of an RAA amendment process, on the ground that it should instead be diverted to the policy development process for creating consensus policies, is ultimately a decision beyond its remit.

The final version of the following List of High Priority Topics reflects limited changes to items 1, 3, 7, and 11 made by SubTeam-B in response to public comments. Other responses by SubTeam-B to these comments appear in **Annex K**.

List of High Priority Topics

Item No.	Description	Cross-reference (RAA matrix)	Comments
1	Prohibition on registrar cybersquatting	1.1 through 1.5; comment summary section VI(N)	May include accelerated termination
2	Malicious conduct – registrar duty to investigate	3.1 – 3.3; 3.6	"Duty of registrars to investigate and report to ICANN on actions taken in response to report received from credible third party demonstrating illegal malicious conduct involving DN"
3	Designation and publication of technically competent point of contact on malicious conduct issues, available on 24/7 basis	3.4; 3.5; 5.4	Requirement for registrars; possible requirement for resellers and proxy-privacy services
4	Registrar disclosure of privacy/proxy services made available in connection with registration; and responsibility of registrar for compliance by such services	5.2	Could also apply to such service made available by resellers. Includes, but not limited to, alter ego services
5	Obligations of privacy/proxy services made available in connection with registration re data escrow; Relay function; Reveal function	5.1; 5.3; 5.5; 5.6; 5.7; 5.10	See following item for privacy/proxy services not made available in connection with registration
6	Registrar responsibility for cancellation under appropriate circumstances of registrations made by other privacy/proxy services for noncompliance with Relay and Reveal	5.8; 5.10	This applies to proxy services not offered by the registrar in connection with registration, i.e., independent services. This is where Relay or Reveal function requirements for these services could be spelled out

7	Define circumstances under which registrar is required to cancel registration for false Whois data and set reasonable time limits for registrar action	6.1; 6.6; comment summary section VI(G)	Currently, registrar may cancel, but is not required to do so
8.	Require PCI compliance in registration process	6.9	Or similar pre-existing standard that would assist in verification of registrants
9	Define "reseller" and clarify registrar responsibility for reseller compliance	7.0; 7.1	
10	Require greater disclosure of registrar affiliates/multiple accreditations	9.1; 9.2	Could also apply to "major" resellers (if defined)
11	Require greater disclosure of registrar contact information, information on form of business organization, officers, etc.	9.3; 9.4; comment summary section VI(I)	Information to be verified and stamped with date of last verification
12	Clarification of registrar responsibilities in connection with UDRP proceedings	15.3	Focus is on timelines for registrar response both at beginning and at end of process

In addition, SubTeam-B identified the following topics which were assigned a "Medium Priority" for the GNSO Council to consider. Essentially, this list covers those topics that the sub-team, in preparing its matrix, initially assigned as "High Priority," but which were later culled in the process of condensing and focusing the topics list. The "Medium Priority" List consists of the following:

1. Spell out "verification" process registrars are required to undertake after receiving report of false Whois data (Matrix item 6.1)

2. Require links to Whois Data Problem Reporting System on Whois results pages and on registrar home page (Matrix items 6.2, 6.3)

3. Service Level Agreement on Whois availability (Matrix item 6.7)

4. Registrar to disclose resellers and vice versa (Matrix items 7.2, 7.3)

5. Expand scope of authority to terminate accreditation (Matrix items 8.1-8.4)

6. Require registrars to report data breaches (Matrix item 10.3)

7. Streamline arbitration process in cases of dis-accreditation (Matrix item 12.1-12.4)

8. Streamline process of adding new gTLDs to accreditation (Matrix items 13.1-13.2)

9. Registrar responsibilities for acts of affiliates (Matrix item 14.1)

10. Staff to draft registrar code of conduct if registrars fail to do so by time certain (Matrix item 17.1)

5. Recommended Next Steps for Evaluation of the Proposed RAA Amendment Topics

5.1 SubTeam-B's Deliberations on the Next Steps

SubTeam-B evaluated the options available to the GNSO Council in its further review and evaluation of the proposed RAA Amendment topics described in this Final Report. To assist

the SubTeam-B in this phase of its work, ICANN Staff assisted the SubTeam-B in understanding implementation options and processes under the RAA to amend and develop a new form of RAA. These options are described in the Memorandum attached as **Annex H.** Some members of SubTeam-B do not agree with certain Staff opinions found in the Memorandum.

After considerable discussion, SubTeam-B was not able to arrive at a unanimous consensus position on next steps. As evaluated by the Chair, the discussion showed that there was strong support, among a range of SubTeam members, for the first proposed process listed below. There was significant opposition to this first proposed process, consisting primarily of registrar representatives participating in the SubTeam. These SubTeam-B members supported, instead, the second proposed process listed below. The main difference between the two proposed processes is how representatives of non-parties to the RAA contract should participate in the negotiations on amendments to the RAA. The first proposed process provides that representatives of affected third parties could participate as observers during direct negotiations and be consulted on the final terms decided by the contracting parties to the agreement (Registrars and ICANN). The negotiating parties and observers also would provide periodic reports on the progress of the negotiations. The second proposed process keeps the direct negotiations between the parties to the contract but also provides for reporting back to the community during the process.   Both processes provide for public comment for all proposed contract terms.

Several SubTeam-B members declined to support either proposed process, stating that representatives of registrants, commercial and non-commercial users and other affected ICANN Stakeholders should be full participants in the negotiation.

In the following subsection, the two proposed processes are set out, along with brief supporting statements.

5.2 Recommended Next Steps.

A. Strong Support

SubTeam-B recommends that the GNSO Council follow the process outlined below. This recommended process described below received the strong support of the members of SubTeam B.

Proposed Process A

1. Prioritized list of topics goes to GNSO council (i.e., final form of this report). Staff and council review may filter out topics that fall under consensus policy.
2. Negotiations begin with negotiation group consisting of Staff, the Registrars (as a whole, not individually), and certain observers representing the interests of affected non-parties to the agreement.
3. During negotiations, if Staff and Registrars agree, parties may vote to hold discussion on specified topics in executive session (excluding observers), then reporting back to the full negotiation group re progress.
4. Negotiating group reports [to GNSO and ALAC, or to the public] periodically (such as monthly) on status and progress. Negotiating group is expected to make bracketed text, and/or agreed items, available for public comment and feedback.
5. Negotiating group reviews comments and continues negotiations and repeat step 4 as necessary.
6. Staff and Registrars, after consultation with observers, determine when full final draft of new RAA is ready to be posted for public comment.
7. GNSO Council reviews and considers public comments and votes on approval of the RAA. GNSO Supermajority Vote to be obtained in favor of the new form.
8. If Council approves, the new RAA goes to Board for approval.
9. If Council does not approve, goes back to negotiation team with appropriate feedback for reconsideration. Repeat from step 6.

STATEMENT IN SUPPORT:

The last round of amendments to the RAA was negotiated between ICANN staff and registrar representatives in a closed-door process from which all other entities with a stake in the outcome were excluded. This process produced an unsatisfactory result and must be improved to provide a greater level of transparency and accountability. A mechanism must be found to enable genuine dialogue, in the amendment-drafting process itself, among the formal parties to the agreement (ICANN staff and registrars) and the communities within GNSO and ALAC that will be significantly affected by the terms of the agreement. The mechanism must provide a timely and effective means for ensuring that the concerns of these communities are

listened to and responded to, so that they can be reflected in the final agreement. The proposal supported by most of the SubTeam members stakes out a middle ground between full participation as negotiators, and the exclusion from the table that marked the previous process. As observers, the representatives of the interests of affected non-parties would be "in the room" for negotiations, and in a position to engage actively in the needed dialogue. Observers would not have the final decision on the content of the agreement, although they would be consulted on that final decision.   We believe this mechanism would significantly improve the process of developing the next set of needed amendments to the RAA.

B. Significant Opposition

The following proposed process received support from a minority of SubTeam-b members:

PROPOSED PROCESS B

1. Prioritized list of topics goes to GNSO Council (i.e., the final form of this report). Staff and Council review and filter out topics that fall under consensus policy.
2. Negotiations begin with negotiation group consisting of Staff and the Registrars (as a whole, not individually).
3. Negotiating group reports periodically on status and progress. Negotiating group makes bracketed text, and/or agreed items available for public comment and feedback.
4. Negotiating group reviews comments and continues negotiations and repeats Steps 3 and 4 as necessary.
5. Staff and Registrars determine when full final draft of new RAA is ready to be posted for public comment.
6. GNSO Council reviews and considers public comments and votes on approval of the RAA. GNSO Supermajority Vote to be obtained in favor of the new form.
7. If Council approves, the new RAA goes to Board for approval.
8. If Council does not approve, goes back to negotiation team with appropriate feedback for reconsideration. Repeat from Step 6.

STATEMENT OF SUPPORT:

GNSO's formation of RAA SubTeam-B, whose members represent all ICANN community stakeholder groups (see Section 2.3, including a large number of "At Large" representatives), has provided an opportunity for all such groups to provide valuable input regarding the RAA and the amendment process. However, extending that participation to actual direct negotiations between ICANN Staff and Registrars would be both inappropriate and unprecedented. The supporters of Proposed Process A claim that, as "affected parties," they are entitled to actively participate in negotiations and must be consulted on final decisions[8]. This is a highly unusual demand or expectation. Individuals, users, organizations and businesses are "affected" daily by hundreds of agreements to which they are not a contracted party. They do not enjoy, nor do they expect, an invitation to negotiate terms, rights and obligations to which they are not bound. The RAA is a contract between two parties. The negotiation of legal terms is not a policy debate. There is a separate policy development process that should be utilized for any policy issues that the community would like to discuss. Accordingly, third party

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[8] The supporters of Proposed Process A do not explain what they mean by "active participation" or being "consulted on final decisions" though the position of those in support of Proposed Process B is that their participation, regardless of the level, is inappropriate under these circumstances.

participation is inappropriate in this case.

Supporters of Proposed Process B do not wish our position to be unfairly viewed as advocating "secrecy" or a "non-transparent" process. To the contrary, the months-long previous and ongoing participation of all stakeholder groups in the work of SubTeam-B, coupled with the requirement for ICANN and Registrars to make contract terms available for periodic public review and comment, provides adequate transparency and insures that input from outside third parties is solicited and considered in the contract negotiation process.

Finally, while some member of SubTeam-B might hold the opinion that the result of the last round of sweeping changes were unsatisfactory, it should be pointed out that the registrar community has been applauded by others for agreeing to the most recent RAA contract replete with new ICANN enforcement tools, including audits, fines, suspensions, as well as many additional registrar obligations and liability risks.