Business Constituency (BC) Comment
on RDAP Amendments to
Registrar Accreditation Agreement and Registry Agreement

16-Nov-2022

Scope
This document provides input from the ICANN Business Constituency (BC) on the proposed amendments to the Registrar Accreditation Agreement (RAA) and Registry Agreement (RA) for the implementation of RDAP currently out for Public Comment.

Background
The BC has previously submitted comments pertaining to RDAP:
- RDAP and Thick WHOIS BC comment 2016
- ePDP Phase 2 BC comment 2021

Comments

RDAP Profile - access to nonpublic data and legal/natural differentiation

As stated in our previous comments, the BC continues to believe one of the key benefits of RDAP (as compared to WHOIS) is the technical functionality that enables authenticated / gated access to nonpublic data. While it is a step in the right direction to require Contracted Parties (CP) to implement RDAP, the BC believes that it is even more paramount that the community continue to work together to develop policy dictating parameters of authenticated access via RDAP. Without required guidelines regarding access to nonpublic data, this RDAP functionality will unfortunately remain unused.

The BC would also like to take this opportunity to again state that the differentiation between natural and legal persons should be encouraged. While it is our understanding that the RDAP profile does provide for a standardized data element to provide such differentiation, the BC is concerned that CPs will not voluntarily make standard use of such field.

Sunsetting WHOIS

The BC appreciates the 18 month post amendment period before the sunsetting of WHOIS. This period should hopefully provide sufficient time to educate the community on the use of RDAP. The BC encourages ICANN to begin educational outreach on this topic as soon as possible.

RA BRDA change

The BC fully supports the change to the RA that will permit ICANN Org to use registry Bulk Registration Data Access (BRDA) information to study - and more importantly to report on - domain name registrations and security threats as part of OCTO's DAAR effort.

<u>Eliminating Web-based lookup for users/consumers requirements</u>

Registrar Requirements: The web-based lookup requirement is being eliminated from RAA Section 3.3.1. It proposes the deletion of "an interactive web page, and". Today, WHOIS lookups are done on every registrar's website because of this RAA requirement. The BC believes that there is no reason that the transition to RDAP should require the elimination of WHOIS based lookup requirements on the registrar's website.

The proposed elimination goes beyond what is necessary to implement the transition to RDAP and raises significant consumer protection issues. A consumer would have to know to go to ICANN's look-up tool to make such a request, which makes it much more difficult for the consumer to identify the owner of a domain name. There will only one place to conduct a whois lookup, which raises concerns regarding redundancy, rate limits, and questions regarding whether ICANN is able to handle the volume of lookups expected. If ICANN's systems go down – there would be no place for consumers to turn to. In addition, web-based lookups are often in languages other than Latin scripts.

We are also concerned that ICANN has not made any commitments regarding the output from the look-up tool, such as whether any SLAs would apply, whether the output will be readable, or whether they'll ensure that ICANN's tool will not be blocked by registrars. Experience with the current tool at lookup.org has been mixed – which does not give the ICANN community assurance that this tool will be an effective replacement for the web-based lookups offered by registrars. Unfortunately, the current tool frequently displays unformatted, unreadable information, is blocked by registrars, and imposes unreasonable rate-limits.

As a result, the BC strongly recommends that Sections 3.3.1 and 3.3.9 be updated to continue to require a free, publicly available interactive web page RDS lookup service on the registrar's website.

Registry Requirements: The proposed amendments to the Base gTLD Registry Agreement (Specification 4, Section 1.4.1) also eliminate the requirement for a free-public query web-based Directory Services after the WHOIS Services Sunset Date. This proposal raises the same consumer protection concerns, and is extremely troubling.

As a result, the BC strongly recommends that this language be updated to confirm that web-based lookup services will continue to be required for all gTLD registries.

<u>Links in Section 3.16 of RAA</u>

The BC is also concerned about the changes to Section 3.16. ICANN has changed the link by which registrars must provide registrants with summaries of RAA and Consensus Policies.
Originally it linked to: https://www.icann.org/resources/pages/responsibilities-2014-03-14-en, which is a comprehensive description of each of the major terms of the RAA so that consumers could understand ICANN's requirements applicable to registrars in simple, non-legalese language.

However, instead of updating that page to reflect recent changes in the agreements and policies, it simply replaced them with a much shorter document (https://www.icann.org/resources/pages/benefits-2013-09-16-en) that falls short of the requirements in 3.16. ICANN had created the more detailed document after the ALAC had asked for plain language summaries- which helps consumers understand the obligations that apply to domain name registrars

(see https://atlarge.icann.org/advice_statements/9051and https://www.icann.org/resources/newsletter/update-2010-03-01-en - 19).

As a result, the BC recommends that ICANN update the links in Section 3.16 to new content that fully explains the RAA agreements and policies.

This comment was drafted by Crystal Ondo, Rajiv Prasad, and Margie Milam.
It was approved in accord with our charter.