

RAA Critical Issues Analysis: DATA RETENTION & WHOIS

This document provides the views of the Registrar Stakeholder Group Negotiating Team (the “Registrar NT”) on the status of negotiations related to data retention.

1. Data Retention.

- a. Retention Period. Consistent with fair information practice principles and the laws of many countries, the registrar proposal establishes two different retention periods: (i) the life of the registration plus two years, or (ii) a minimum of six months. The nature of the data determines the applicable retention period. The six month minimum period was selected to provide a level playing field corresponding to the maximum retention period established in several EU member states transposing DIRECTIVE 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.¹ ICANN would establish a “life + 2” standard for all data.
- b. Retention Detail. ICANN’s language requires registrars to collect and maintain highly detailed and sensitive payment information, including the name of the financial institution, bank routing number, any and all account numbers and associated expiration dates, security codes, and addressing information. Retention and use of this kind of information, misuse of which could result in material harm (e.g., identity theft) to the account holder, is regulated by myriad laws and by payment industry standards. Accordingly, the NT proposes to limit collection and retention obligations on means and source of payment information to that which is reasonably necessary for the Registrar to process the Registration transaction, or a transaction number provided by a third party payment processor.
- c. Scope. The ICANN language imposes collection and retention requirements on services that fall outside of the RAA. The ICANN accreditation process should not be used as a “bootstrap” to regulate other product and services offerings. Accordingly, the NT proposal is intended to limit the reach of the RAA data collection and retention requirements to services that are directly related to a specific registration and subject to the RAA.
- d. See Chart 1, which shows the changes made by ICANN to the Registrar NT proposed language.

2. WHOIS Verification

- a. ICANN’s language would prohibit address resolution prior to verification. The Registrar NT proposal would permit registrations and address resolution to proceed, subject to verification within a short period following registration.
- b. The ICANN proposal requires both email and telephone verification. The Registrar NT proposal would implement email verification immediately, permitting further enhancements consistent with community input and impact assessment.
- c. See Chart 2, which shows the changes made by ICANN to the Registrar NT proposed language.

¹ That Directive requires EU member states to obligate communication service providers to retain certain communications traffic data for a period of not less than six months and not more than two years. A number of member states have chosen to limit the retention period to six months. The Directive has been challenged in a number of member states, and in those countries, six months may exceed the length of retention permitted under applicable data protection laws.

CHART 1.

ICANN Changes (1 June 2012) to Registrar NT Data Retention Proposal

DATA RETENTION SPECIFICATION

1. ~~To~~Except to the extent ~~permitted~~prohibited by applicable law, during the Term of this Agreement, for each Registered Name sponsored by Registrar within a gTLD, Registrar shall collect and securely maintain in its own electronic database (as updated from time to time) the data specified below ~~for the duration specified below:~~

- 1.1. Registrar shall collect the following information from registrants at the time of registration of a domain name (a "Registration") and shall maintain that information for the life of the Registration plus two years:

- ☐ First and last name or full legal name of registrant;
- ☐ First and last name or, in the event registrant is a legal person, the title of the registrant's administrative contact, technical contact, and billing contact;
- ☐ Postal address of registrant, administrative contact, technical contact, and billing contact;
- ☐ Email address of registrant, , administrative contact, technical contact, and billing contact;
- ☐ Telephone contact for registrant, -, administrative contact, technical contact, and billing contact;
- ☐ WHOIS information, as set forth in the WHOIS Appendix Specification;
- ☐ Types of domain name services purchased for use in connection with the Registration.

- 1.2. ~~Registrar shall collect and maintain the following information for no less than one hundred and eighty (180) days following the relevant interaction:~~

- ☐ Information regarding the means and source of payment reasonably necessary for the Registrar to process the Registration transaction, or a transaction number provided by a third party payment processor;
- ☐ Log files, billing records, or, to the extent commercially practicable, other records containing communications source and destination information, including, depending on the method of transmission: (1) Source IP address, HTTP headers, (2) the telephone, text, or fax number; (3) email address, Skype handle, or instant messaging identifier, associated with communications between Registrar and the registrant about the Registration;
- ☐ Log files or to the extent commercially practicable, other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration.

2. Registrar shall maintain WHOIS data in accordance with the requirements of the WHOIS Accuracy Program, as set forth in the WHOIS Accuracy Program Specification.
3. This Appendix Specification may be modified ~~in accordance with Sections [insert] of the Registrar Accreditation Agreement.~~ by ICANN from time to time after consultation with the Registrar Stakeholder Group (or its successor), provided that such updates are commercially practical with respect to the registrar industry, taken as a whole.

Registrar NT Notes on Changes

Registrars proposed two- tiered retention schedule: (1) life of registration + 2 years for certain data and (2) 6 months of sensitive financial data and log data; in each case as permitted by applicable law. ICANN has rejected in favor of single "life +2" standard. It is not clear why ICANN has changed the applicable law language.

ICANN proposes retention requirements to apply to ALL services offered by a registrar – INCLUDING services not subject to the RAA.

ICANN has not identified "other records." Limiting obligation as proposed by Registrar NT permits standard to change as technology does, without creating unquantifiable risks.

ICANN proposes unilateral amendment rights, notwithstanding proposed amendment process.

CHART 2:

ICANN Changes (1 June 2012) to Registrar NT Whois Accuracy Proposal

Registrar NT Notes on Changes

WHOIS ACCURACY PROGRAM SPECIFICATION

Registrar agrees to implement the requirements set forth in this Specification, as well as any ~~reasonable and~~ commercially ~~practicable~~practical updates to this Specification that are developed by ICANN ~~and~~in consultation with the Registrar Stakeholder Group during the Term of the RAA. Registrar also agrees to implement changes to this Specification that become binding on Registrar as Consensus Policies or under the amendment process specified in the RAA.

ICANN proposes unilateral amendment rights, notwithstanding proposed amendment process.

1. Except as provided for in section 3 below, ~~upon receipt of a registration request by a non-validated registrant~~prior to allowing new registrations to resolve, Registrar will:
 - a. Validate the presence of data for all fields required ~~for a particular country or territory~~ under Subsection 3.3.1.
 - b. Validate that all email addresses are in the proper format according to RFC 5322 (or its successors).
 - c. Validate that telephone numbers are in ~~a~~the proper format ~~such as~~according to the ITU-T E.123 notation for international telephone numbers (or its successors).
 - d. Validate that postal addresses are in a proper format for the applicable country or territory as defined in UPU S42 address templates (as they may be updated) or other standard formats.
 - e. Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is made available to Registrars.
 - f. Verify the Registered Name Holder's email address by sending an email requiring an affirmative response through a tool-based authentication method such as providing a unique code that must be returned in a manner designated by the Registrar. If Registrar does not receive an affirmative response, Registrar shall either verify the contact information manually or [suspend] the registration request.
 - g. Verify the Registered Name Holder's telephone number by either (i) calling or sending an SMS to the Registered Name Holder's telephone number providing a unique code that must be returned in a manner designated by the Registrar; or (ii) calling the Registered Name Holder's telephone number and requiring the Registered Name Holder to provide a unique code that was sent to the Registered Name Holder via web, email or postal mail. If Registrar does not receive an affirmative response, Registrar shall either verify the contact information manually or cancel the registration request.

Registrar NT proposal required verification within a short period after registration. ICANN proposal requires verification prior to name resolution.

Registrar NT proposal permitted registrars to modify data field and number formatting consistent with local standards.

ICANN proposal requires telephone number verification in addition to email verification, again prior to resolution.

2. Except as provided in Section 3 below, within fifteen (15) calendar days after receiving any changes to contact information in Whois, Registrar will validate/verify

the changed fields in the manner specified in Section 1 above.

3. Registrar is not required to perform the above validation/verification procedures in Section 1(a) through 1(g) above, if Registrar has already successfully completed the validation/verification procedures on the identical contact information at any time ~~and has no information suggesting that the contact information is incorrect (e.g., bounced emails)~~ within the preceding 12 months.
4. Registrar must re-verify the Registered Name Holder's email address at least once every 12 months as described in Section 1.f (for example by requiring an affirmative response to a Whois Data Reminder Policy notice).
45. Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate the Registered Name Holder's Registration or place such registration on clientHold and clientTransferProhibited. ~~The same applies in case the initial validation is not completed~~

ICANN proposal requires annual re-verification of email and telephone number; even if registrar has no reason to believe that the information is incorrect. Note that the Registrar NT proposal would require reverification in response to a bounce notification on an annual WHOIS accuracy email .