



EN

AL-ALAC-ST-0613-01-00-EN

ORIGINAL: English

DATE: 4 June 2013

STATUS: Final

## AT-LARGE ADVISORY COMMITTEE

### ALAC Statement on the Proposed Final 2013 RAA

#### Introduction

Carlton Samuels, ALAC member from the Latin American and Caribbean Islands Regional At-Large Organization (LACRALO) and ALAC Executive Committee Vice-Chair, and Holly Raiche, ALAC member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO) and APRALO Chair, composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists.

On 13 May 2013, this Statement was posted on the [At-Large Proposed Final 2013 RAA Workspace](#).

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of the ALAC to send a Call for Comments on the draft Statement to all At-Large members via the [ALAC Announce Mailing List](#).

On 23 May 2013, a version incorporating the comments received was posted and the Chair requested that Staff open a five-day ALAC ratification on the Statement.

On 4 June 2013, Staff confirmed that the online vote resulted in the ALAC endorsing the Statement with 12 votes in favor, 0 votes against, and 0 abstentions. You may review the result independently under: <https://www.bigpulse.com/pollresults?code=3184unhm7SZmCzLNxSA5AGaQ>

The Chair then requested that the Statement be transmitted to the Public Comment process, copying the ICANN Staff member responsible for this Public Comment topic.

#### Summary

1. We recognize the efforts to forge a stronger clause on conditions for changing the relationship midstream, including termination of the agreement. This development has our full endorsement, although it would have been helpful if some examples of 'material breach' were enumerated.
2. Some have argued the intent in this clause undermines the bottom-up multi-stakeholder model on which ICANN is built. We disagree and take a different and more benign view of the role reserved for ICANN as the public benefit corporation. Indeed, there might be exceptional circumstances in which ICANN would have to take unilateral action - part of being prepared for unknown unknowns.
3. The ALAC was among those who condemned the severe restrictions placed on some stakeholder parties from the negotiating sessions and even at this stage, we remain convinced it was unwise to exclude the community from even an active 'watching brief' of the negotiations especially for a contract intended to convey consensus policies and around which so many stakeholder interests converge. We deplore the flagrant lack of transparency in this process.
4. We applaud the contractual obligation imposed on Registrars to support future development in Whois specifications, inclusive of an ability to develop centralized Whois service across all Registrars.

The original version of this document is the English text available at <http://www.atlarge.icann.org/correspondence>. Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

# ALAC Statement on the Proposed Final 2013 RAA

## Introduction

The ALAC extends its congratulations to all parties on completion of the [Registrar Accreditation Agreement \(RAA\) negotiations and the accompanying documents \(the Contract\)](#).

The [ALAC Statement on the Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification](#) outlined a position which generally supported ICANN's posture on certain contentious issues even as we signaled our qualified acceptance. While we are inclined to support all the major accompanying documents with the Contract, we regret that some areas, such as the Privacy/Proxy Specifications, did not go further in defining registrant rights and obligations that would conserve the public interest.

## Overall Structure and Process

The structure of this contract competently delineates commitments of ICANN and Registrars as well as the issues that require strong agreement, thus bringing much needed clarity on its purpose. We recognize the efforts to forge a stronger clause on conditions for changing the relationship midstream, including termination of the agreement. This development has our full endorsement, although it would have been helpful if some examples of 'material breach' were enumerated.

We give our full support for the Consensus Policies and Temporary Policies Specification. In the matter of the so-called 'right to unilaterally amend the RAA,' we believe the updated construct per Clause 6.5 incorporates additional safeguards and attracts our endorsement. Nevertheless, some have argued the intent in this clause undermines the bottom-up multi-stakeholder model on which ICANN is built. We disagree and take a different and more benign view of the role reserved for ICANN as the public benefit corporation. Indeed, there might be exceptional circumstances in which ICANN would have to take unilateral action - part of being prepared for unknown unknowns.

For the first time, the topics and areas pertinent to the RAA that are within the purview of consensus policy making are finally unambiguously defined. The contract is intended, among other things, to protect and defend the global public interest. The language of Clause 1.4.4 acknowledges said Consensus Policies, or the procedures derived from them, shall not "*Modify ICANN's obligations to not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably.*" The converse is equally true: the language also embraces the notion that there are matters outside of the consensus policy domain for which the Board has a duty of care and is empowered to act in protecting the global public interest. The ALAC fully supports this approach.

That said, the ALAC was among those who condemned the severe restrictions placed on some stakeholder parties from the negotiating sessions and even at this stage, we remain convinced it was unwise to exclude the community from even an active 'watching brief' of the negotiations especially for a contract intended to convey consensus policies and around which so many stakeholder interests converge. We deplore the flagrant lack of transparency in this process.

## Whois

Whois-related matters remain on top of the ALAC agenda for the RAA. The completeness, accuracy and accessibility of Whois data (information required under Clause 3.3.1 of the RAA) is critical for Internet

users: for consumers dealing with online providers of products and services, for trademark holders, for corporate and communications regulators and for law enforcement agencies. The ALAC position is that all 'Whois' information for the actual holder of the domain name, i.e. the beneficial user which is a term in the proposed privacy and proxy specification, should be complete and verified. If verification is not possible, the registration should be suspended.

The ALAC therefore supports the WHOIS Accuracy Program Specification ("the Specification") improvements and the set of requirements imposed on Registrars for the completeness and accuracy of Whois Data.

We fully endorse the requirement compelling Registrars to suspend the registration of the Registered Name Holder in circumstances where the Whois contact information cannot be verified. The ALAC is concerned, however, that the "account holder" is relieved of a similar requirement if there is no affirmative response from the 'account holder'. The ALAC believes that a similar enforcement regime should be instituted and advise suspension of the registration in this case as well. We support the extension of specification requirements to verify contact details of what the specification calls the 'account holder' even as we recognize some challenges with its practical implementation. We understand the intent of the requirement on 'account holders' is to be able to contact Registered Name Holders who may be using privacy or proxy services, or otherwise not be easily contacted through using Whois data. We note 'account holder' identity will vary, depending on corporate arrangements within a Registered Name Holder as well as varying payment arrangements of different Registrars. So that clarity is achieved in these verification requirements, the ALAC recommend that the term 'account holder' should be defined in the Specification as the individual or organization that has the beneficial use of the Registered Name. That will ensure that contact details relating to the actual user of the domain name are available, regardless of varying payment arrangements.

We also note that verification requirements in the Specification include contact information relating to the phone, email and postal address. However, the Whois requirements relating to phone and email contact information are only for the Registered Name Holder's administrative and technical support contacts. (Clauses 3.3.1.7-3.3.1.8) The only contact details required of the 'Registered Name Holder' is for a postal address. The ALAC's position is this too should be harmonized in the specification.

We applaud the contractual obligation imposed on Registrars to support future development in Whois specifications, inclusive of an ability to develop centralized Whois service across all Registrars. The ALAC believes such a development is in the global public interest and one feature of the comprehensive approach required to retain confidence in the domain name system to which we are committed.

## **Privacy/Proxy Services**

The ALAC is [on record](#) supporting a regulated privacy/proxy service for domain name registration. While the Specification is short on details, we welcome the declaration of the intent to formally develop and extend rules governing the provisioning of proxy/privacy services. The ALAC notes and gives full endorsement to this new development that covenants Registrars to account for Resellers under this contract.

Our key advice for all this remains: proxy/privacy service providers should only be accredited to the extent they meet all relevant RAA requirements (including accuracy and verification of Whois information for the beneficial users of the domain name) and they accept strict liability for all other pertinent covenants. Under the circumstances, it seems rational that redress and accounting damages attributable to privacy/proxy services may be best achieved by explicit recognition of third party rights

in this Specification.

## **Conclusion**

On balance, the ALAC accepts this 2013 RAA as marked improvement on the 2009 Agreement and the ALAC looks forward to continued participation in the evolution of a contract consistent with our commitment to be a watchdog of the global public interest. We also strongly believe that all stakeholders, including the ALAC community, should have at least a 'watching brief' on any further development of the RAA and its accompanying documents.