2009 Registrar Accreditation Agreement

Presenters

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What's Covered in This Tutorial

- New 2009 RAA
  - When, where, why, how and who (+ incentives)
  - What (changes from 2001 version & new provisions

- Key Consensus Policies
  - IRTP
  - UDRP

- From a Compliance Perspective

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Disclaimer

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When, Where & Why

- Adopted by ICANN Board on 21 May 2009

- Available on the ICANN website
  (http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm)

- Reasons for New RAA
  - Reflect changes and address concerns in DNS
  - Enhance protections for domain registrants
  - Clarify and streamline certain contractual terms

How

- RAA is result of an extensive stakeholder consultation and several public comment processes over a period of 26 months

Who Is Required to Sign 09 RAA

- Every new registrar

- Every existing registrar upon renewal of its current accreditation

- All other registrars (in good standing) may sign the 2009 RAA at any time prior to renewal

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Incentives to Sign 09 RAA

- Automatically grants registrar a new 5 year term from date of signing (subject to early termination)

- FY09-10 transaction fee decreased from US$0.20 to US$0.18 in FY 09/10

- Registrar variable fee reduced by 10% in FY 09/10

- Distinctive list of 09 RAA registrars will be posted on ICANN and InterNIC websites

- Availability of Accreditation Certificate in registrar's local language

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What - Key Changes

- Enhanced enforcement tools to ensure full compliance with RAA and ICANN policies

- New sanctions for non-compliance

- New requirements for registrar contact info

- Additional audit and data escrow requirements

- New requirements for reseller agreements

- Administrative and procedural changes

What - Key Changes on Fees

- Incentives
  - US$4,000 annual fee can be paid in quarterly installments
  - US$500 per TLD fee has been removed

- Sanctions
  - Interest at 1.5% per month for late payments

New Registrar Obligations

- Information Requirements
  - Must provide ICANN with updated list of its directors and officers
  - Accurate contact details on website
  - Acquiring controlling entity reporting requirement and statement of compliance
  - Additional info within 15 days of ICANN request

New Registrar Obligations

- Registration by Registrars – Must comply with all obligations of the registrant pursuant to the RAA

- New Data Escrow Requirement – Registrar must either:

  – Escrow data provided by customer of any privacy service or licensee of any proxy registration service offered by registrar or its affiliated companies, or

  – Display a conspicuous notice to such customers at the time of election of such service that their data is not being escrowed

New Registrar Obligations

- Contractual Relationship with Resellers:
  - Registration Agreement used by reseller shall include RAA provisions and consensus policies
  - Reseller is prohibited from using ICANN logos or representing themselves as accredited by ICANN without written permission
  - Reseller must identify the sponsoring registrar to customer inquiry
  - Registrars shall take steps against non-compliant resellers and have the right to terminate reseller agreement

New Registrar Obligations

- Registrar Skills Training & Testing
  - Must complete a training course on RAA and ICANN policy obligations when it becomes available

- Registrant Rights & Responsibilities
  - Must provide link to any ICANN-published webpage on any registrar business-related website

New Liability Provisions

- Group Liability
  - Registrar may be held responsible (i.e., in breach of the 2009 RAA) if an affiliated registrar's accreditation has been terminated
    - As a result of misconduct that materially harmed consumers or the public interest; and
    - A second affiliated registrar has pursued the same course of conduct after the termination that resulted in the affiliate termination

New Liability Provisions

- Licensee Contact Information Disclosure
  - Under the 2001 RAA, a registered name holder licensing use of a registered name must accept liability for harm caused by wrongful use of the registered name
    - UNLESS the licensor promptly discloses the identity of the licensee to a party providing the registered name holder reasonable evidence of actionable harm

- 2009 RAA clarifies that
  - Licensor must also promptly disclose the current contact information provided by the licensee

Administration & Procedural Changes

- Arbitration Stay
  - If registrar initiates litigation or arbitration against the termination of its RAA by ICANN, the termination will no longer be automatically stayed for an additional 30 days
  - Upon request from Registrar - Panel shall order a stay of termination or suspension if it doesn't harm the consumer or public interest or, upon appointment of a 3rd party to manage the registrar's operation until the final decision is rendered

Administration & Procedural Changes

- New Notice Provisions under 2009 RAA
  - Notice requirement has been modified to allow the notice of a new policy or specification via email and posting on the ICANN website
    - As in 2001 RAA, Registrar will be afforded a "reasonable period of time to comply" with that specification or policy
  - Parties must notify the other within 30 days of any change in contact information

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Formal Incorporation of Consensus Policies Language

- Whois Marketing Restriction Policy
  - Sections 3.3.6.3 and 3.3.6.5 under Registrar Obligations, Public Access to Data on Registered Names

- Expired Domain Deletion Policy
  - Section 3.7.5(subsections 3.7.5.1-3.7.5.7) under Registrar Obligations, Business Dealings, Including with Registered Name Holders

Key Consensus Policies

- The next part of this presentation will focus on two key ICANN Consensus Policies which registrars are obligated to comply with under the 2009 RAA:

- **Inter-registrar Transfer Policy**

  – RAA Section 4.1 requires compliance

- **Uniform Domain Name Dispute Resolution Policy**

  – RAA Section 3.8 requires compliance

Inter-Registrar Transfer Policy

- Key basis for policy: Registered Name Holders must be able to transfer their domain name registrations between registrars

  – Transfer processes must be clear and concise

Inter-Registrar Transfer Policy

- All requests to transfer a domain name to a new registrar must be handled according to the policy procedures
  - Transfer Policy: http://www.icann.org/en/transfers/policy-en.htm
  - Forms: http://www.icann.org/en/transfers

IRTP – Importance of FOA

- The Gaining Registrar must:
  - use an FOA to initiate transfer
  - retain, and produce a written or electronic copy of the FOA within 5 days, if requested by a Losing Registrar
- Failure to provide FOA is grounds for reversal by the Registry Operator or the Dispute Resolution Panel

Inter-Registrar Transfer Policy

- Registrar of Record may deny a transfer request ONLY in specific instances

- Must provide Registered Name Holder and potential Gaining Registrar with the reason for denial

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Inter-Registrar Transfer Policy

- Instances when requested transfer may not be denied include – *but not limited to* –
  - Circumstances of nonpayment or default
  - No response from the Registered Name Holder or Administrative Contact
  - Domain name in Registrar Lock Status
  - Domain name registration time constraints

Inter-Registrar Transfer Policy

- Registrar must not employ transfer process as a mechanism to secure payment for services from a Registered Name Holder

- Exceptions
  - Case of non-payment for previous registration periods if the transfer requested after the expiration date, or
  - Case of non-payment of the current registration period, if transfer is requested before expiration date

Uniform Domain Name Dispute Resolution Policy

- Sets terms and conditions for the resolution of a dispute over registration and use of domain name
  - Incorporates Rules for UDRP

- Registrars required to comply under Sec. 3.8
  - Registrar is required to cancel, transfer or make changes to domain names under specific circumstances
  - Establishes limitations on transfers during dispute
  - Establishes deadlines and notice requirements for responding to registrant request for transfer/cancellation & compliance with a Panel's decision
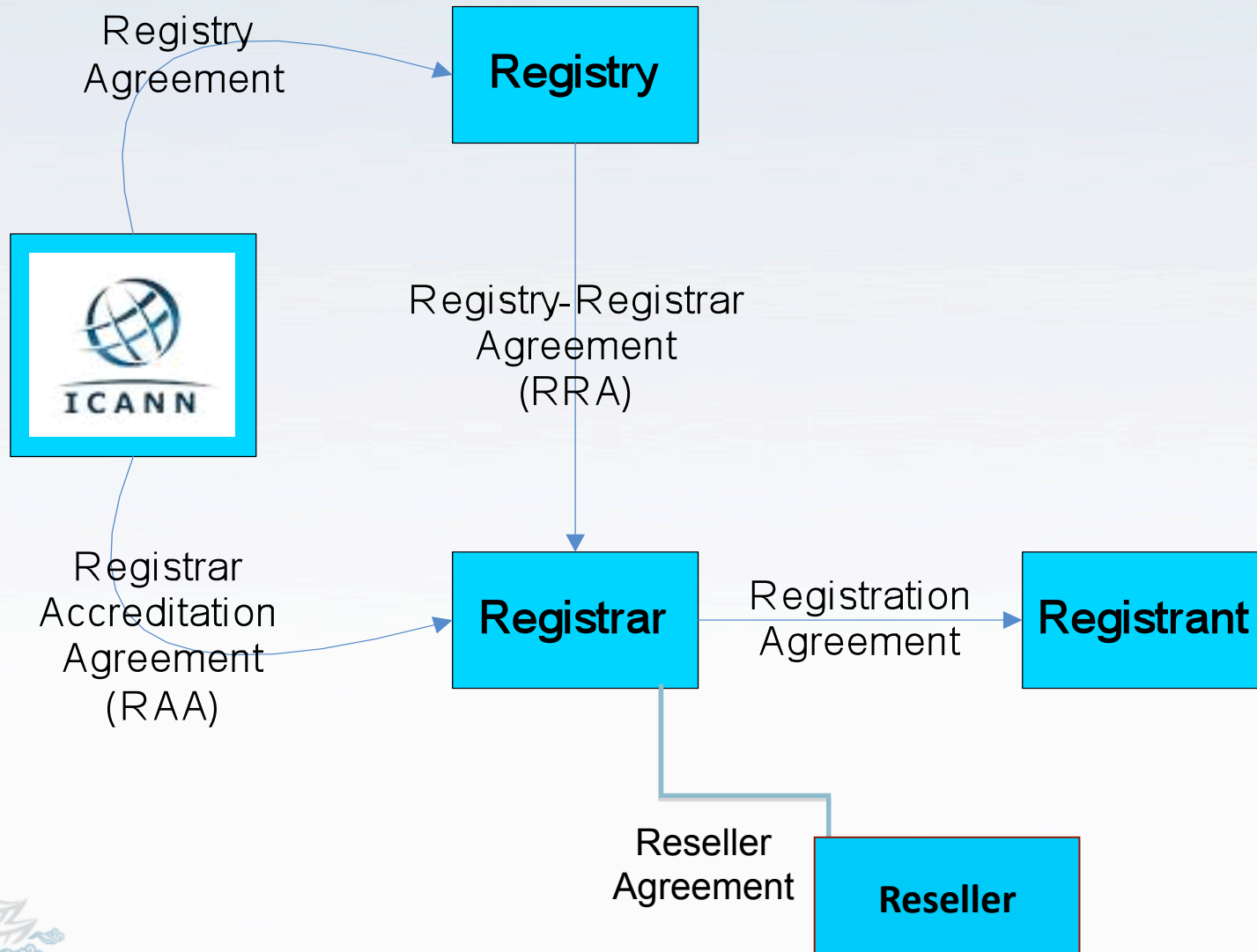
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Questions & Answers

- We welcome any questions/comments you may have on the 2009 RAA and/or key Consensus Policies

- From this point the tutorial will focus on compliance-related issues

From a Compliance Perspective

- Registrar's obligations to ICANN - RAA
- Registrar's obligations to 3rd parties
  - Contractual
  - Non-contractual

ICANN/ Registrar/3rd Parties

Registry
Agreement

Registry

Registry-Registrar
Agreement
(RRA)

Registrar
Accreditation
Agreement
(RAA)

Registrar

Registration
Agreement

Registrant

Reseller
Agreement

Reseller

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Registrar's Obligations (to 3ʳᵈ Parties)

- Contractual
  - Registrar – Registry Agreement
  - Registration agreement with registrants
  - Reseller agreement with resellers (new)
  - Data escrow agreement with escrow agent
- Non-contractual (local & international laws)
  - General public, other registrars, IP attorneys, law enforcement agencies…

Registrar's Obligations under RAA

- May be categorized:
  - Fees
  - Data
  - Operational
  - Corporate
  - Administrative & procedural

Different Types of Data Obligations

- Collect, & update (3.4.1)

- Submit (deposit)
  - To registry operators (3.2.1)
  - To data escrow agent (3.6)

- Provide access
  - Public query-based (port 43 & web based) (3.3.1)
  - Third party bulk (via access agreement) (3.3.6)

- Maintain, retain and make available (3.4.2 & 3.4.3)

Different Scopes of Data

- Different scope (elements):
    - Registry Data (Subsection 3.2.1)

    - Whois data (Subsection 3.3.1 .1 - 3.3.1.8)

    - RDE data (Subsection 3.4.1)

    - Data required to be retained by registrars for 3 years (Subsection 3.4.2.1. – 3.4.2.3)

Compliance Measures

- Under 2009 RAA, ICANN may conduct Registrar Audits
  - By requesting documents from registrars and/or
  - By conducting site visits
  - ICANN must provide at least 15 days notice
- ICANN may inspect & copy all data and records (Section 3.4.2) – existing

Planned Registrar Audits

Schedule – 2010		
January - March	**April - June**	**July - September**
Primary Contact Information, Phase 1	Public Contact Information, Phase 2	Non-Implementation of UDRP Arbitration Panel Decisions , Phase 2
IRTP (Inter-Registrar Transfer Policy), Phase 1 (Development)	1. IRTP, Phase 2 (Implementation) 2. Non-Implementation of UDRP Arbitration Panel Decisions, Phase 1 (Development)	RDE
1. RDE (Registrar Data Escrow) 2. Registration Agreement (with registrants)	RDE	RDE

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Consumer Complaints (Jan-Sept 09)
Total = 9,304

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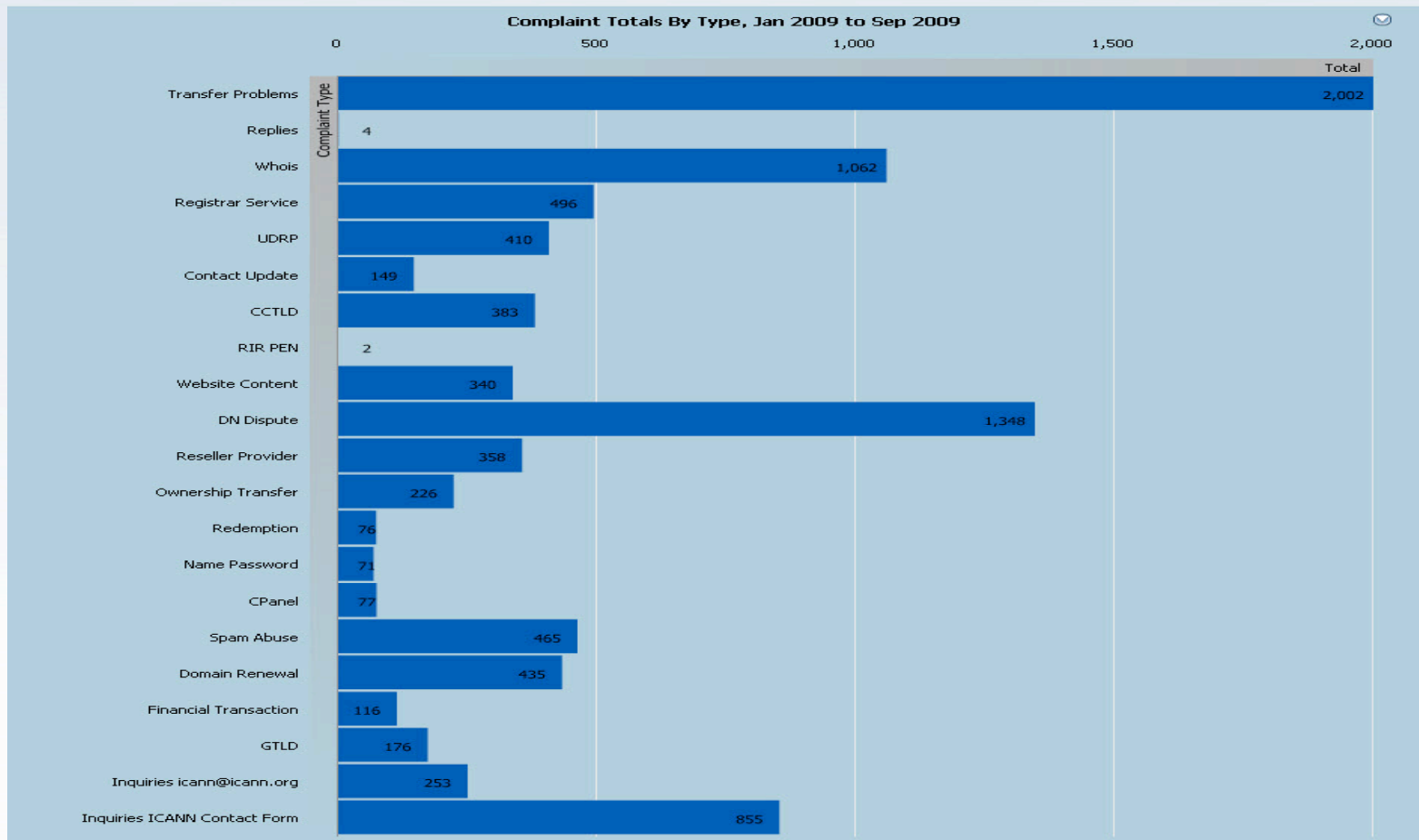
Escalated Enforcement Actions - When

- Audit activities reveal non-compliance
  - See slide on Audit Activities 2010
- Complaints received by ICANN reveal non-compliance
  - 9,304 Consumer Complaints Processed (Jan-Sept 2009) but not all related to compliance issues or warranted escalated action

Enforcement Actions

- RDE

- Whois: investigation, website & Port 43 Services

- Accreditation fees

- UDRP

- IRTP

- EDDP

- Unauthorized use of ICANN's logo

Contractual Compliance Enforcement Activity (Jan-Oct 2009)

- 16 Registrar Accreditation Agreement (RAA) Terminations and Non-renewals
    - 9 Terminations
    - 7 Non-renewals
- 184 Breach Notices Transmitted
- 4,290 Enforcement Actions

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New Compliance Sanctions

- Under 2001 RAA only sanction available for a breach/non-compliance is termination of accreditation

- 2009 RAA authorizes additional sanctions:
  - Suspension of ability to create new registrations and inbound transfers under some or all gTLDS for up to 12 months
  - Registrar potentially liable for ICANN's reasonable enforcement costs (capped at 5 times the enforcement costs)

Avoid Being Part of The Statistics

- 40 Registrars Terminated or Non-Renewed since 2003
  - 24 (6 years: 2003 – 2008)
  - 16 (10 months: Jan – Oct 2009)

Questions & Answers

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How to Request the 2009 RAA

Complete and email back the form available at:

http://www.icann.org/en/registrars/

[2009-raa-request-form-en.pdf](http://www.icann.org/en/registrars/2009-raa-request-form-en.pdf)

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Thank You

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