

## SUMMARY OF REGISTRAR TERMINATION AND DEACCREDITATION PROCESS

Prepared for the PPSAI Working Group (8 November 2014)

### I. STEPS BEFORE TERMINATION IS ACTUALLY EFFECTED

#### General Note:

*Please refer to the overall Compliance Approach at <https://www.icann.org/en/system/files/files/overall-03oct14-en.pdf>, and the Formal Resolution Process at <https://www.icann.org/en/system/files/files/formal-resolution-19jun13-en.pdf>. These were developed in consultation with the community, and we are not aware of any community concerns arising since the implementation over two years ago. **Should the PPSAI WG consider recommending a compliance process for P/P providers, we advise that the WG recommend following the current process** (to ensure consistency for all contracted parties and to avoid community confusion).*

#### **What is the process that is followed?**

The general process has two phases: informal and formal. The informal phase consists of the issuance of 3 notices, each with usually 5 business days to respond. If the contracted party is not able to demonstrate compliance, the formal process begins. A notice of breach is issued (and published on icann.org), and the registrar has 21 days/15 business days (depending upon the applicable RAA version) to cure. The cure period differs for registries based upon the contract. If the registrar does not cure, then a notice of suspension or termination will result. Registrars may request arbitration, but we do not believe this has happened, and certainly not since May 2012. We can check with our colleagues in the Legal Department to confirm this if the WG wishes.

Once a registrar's contract is terminated, the Registrar Services team is then responsible for dealing with the de-accreditation issues arising from the termination (including implementing the De-accredited Registrar Transfer Procedure, or DARTP).

#### **What are the most common grounds for termination?**

Please see the Formal Notices (Enforcement) section of the ICANN Contractual Compliance Performance Report, which contains the last 13 months of enforcement activity (<https://features.icann.org/compliance/enforcement-notices>). Compliance is willing to compile a further report based on other metrics or covering a longer period, if requested by the WG.

#### **Has ICANN received registrant complaints regarding de-accreditation of a registrar?**

ICANN does receive complaints and follow up from registrants for de-accredited registrars for a variety of reasons. This includes confusion regarding the transition (e.g. they did not request to change registrars), difficulty contacting the de-accredited registrar, and concerns regarding the new registrar (issues with transfer, not agreeing to use the new registrar).

While ICANN publishes information about registrar de-accreditation on [icann.org](http://icann.org), there is no formal communication otherwise to registrants of the de-accredited registrar.

## II. THE REGISTRAR DE-ACCREDITATION TRANSFER PROCEDURE (DARTP)

ICANN's procedure for transferring gTLD domain names from a de-accredited registrar to an accredited gaining registrar was also developed in consultation with the community and approved by the ICANN Board in 2008, with periodic review. Please see the latest version at <https://www.icann.org/en/system/files/files/dartp-11jul13-en.pdf> for the full procedure. The procedure is intended to provide protection to registrants in the event of the de-accreditation of the registrar with whom they had registered their domain names<sup>1</sup>.

Transfers are generally done in bulk. Where in the past this required the cooperation of the de-accredited registrar who was the sole source of registrant information determining registration rights, the implementation of the Registrar Data Escrow (RDE) program has given ICANN greater flexibility to implement bulk transfers even without the cooperation of the de-accredited registrar. The RAA provides ICANN with a license to use or transfer registrar data to provide registrar services in the event of de-accreditation of a registrar.

Although the DARTP does not become operative until the actual termination of a registrar's contract, the need to ensure a smooth transition means that even prior to that date ICANN will have conducted an assessment of the availability of registrant data (e.g. through the RDE program) and started working with registries to try to ensure that registrations are not accidentally deleted due to the action or inaction of the de-accredited registrar.

The requirements for a bulk transfer are specified by the Inter-Registrar Transfer Policy Part B (IRTP-B). While a voluntary bulk transfer is often preferred as being the least frictionless option, there are instances where this may not be in the best interests of the community. ICANN weighs several factors in deciding whether or not to approve a voluntary bulk transfer, e.g. the experience and good standing of the gaining registrar, any relationship between it and the losing registrar that might lead to gaming of the system, whether the losing registrar would continue to be involved in managing the names registered (e.g. as a reseller), and whether as a result of the transfer obligations to ICANN and the registrants are likely to be fulfilled.

Where a voluntary bulk transfer is not possible, ICANN has to analyze the extent to which registration data is available to it in order to assess whether to select a gaining registrar or take another appropriate course of action. These could include initiating litigation or arbitration, attempting to collect Whois data, negotiating with or allowing the de-accredited registrar to continue to provide limited services, allowing registrations to expire, or in unique situations (such as where all the registrations appear to be "test" registrations) instructing registries to delete the registrations.

ICANN may select the gaining registrar through either a "fast track process (using a pool of pre-qualified registrars) or through a full competitive application process.

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<sup>1</sup> As of 30 May 2013, almost all registrars representing 99.9% of all gTLD registrations had signed up to the RDE program.

Upon the completion of a bulk transfer, ICANN will post a notice to its website, an example of which can be seen here: <https://www.icann.org/news/announcement-2-2013-12-04-en>. Under the IRTP, the gaining registrar can choose to lock the registrations for up to 60 days, but not all will do so.

Please refer to the flow chart here (Appendix A to the DARTP) for a graphical depiction of the process: <https://www.icann.org/en/system/files/files/dartp-11jul13-en.pdf>.