Expand Scope of Authority to Terminate Accreditation

ISSUE: D.1	Expand scope of authority to terminate accreditation	
Priority:	RAA Final Report (Medium Priority Item)	
Issue /Request	LEA: To RAA paragraph 5.3.2.1, language should be added to the effect "or knowingly and/or through gross negligence permit criminal activity in the registration of domain names or provision of domain name WHOIS information…" RAA -DT 1) Incorporate two provisions in RAA Section 5.3 that establish ICANN's right to immediately terminate the RAA when a Registrar either: (1) abandons or ceases to conduct business as a registrar; or (2) repeatedly and willfully has been in fundamental and material breach of its obligations at least three times within any twelve month period. 2) Insert a new RAA Section 5.3.8 as follows: "Registrar repeatedly and willfully has been in fundamental and material breach of its obligations at least three times within any twelve month period." 3) Three Times is an excessive threshold • "or (ii) Registrar shall have been repeatedly and willfully in fundamental and material breach of its obligations at least three (3) times within any twelve (12) month period." 4) Clause 5.3.2.1 is at the mercy of lengthy appeals processes which place the registrant community at risk while legal dramas unfold – intermediate measures are required. 5) The Draft Registrar Disqualification Procedure contains language that potentially could be incorporated into the RAA at section 5.3. D.2 Streamline arbitration process in cases of dis-accreditation RAA-DT: 1) Insert the following language in RAA Section 5.6: "There shall be one arbitrator agreed by the parties from a list of AAA arbitrators, or if the parties cannot agree within fifteen calendar days of the AAA request that the parties designate an arbitrator, the AAA shall choose and appoint an arbitrator, paying due regard to the arbitrator's knowledge relating to the domain name system. 2) Amend the RAA to allow ICANN to terminate or suspend a registrar's accreditation if a stay has not been ordered within ten business days after the filing of the arbitration.	**Source:** LEA Original Request to RAA-DT RAA-DT Final Report
Notes	Additional information regarding requests: N/A	**Source:**
Discussion Points	**Description**	**Date Discussed**
	The negotiating teams discussed amending the RAA to give ICANN the right to terminate (in addition to existing suspension rights) for repeated, willful, fundamental and material breach.	2 Dec 2011
	The negotiating teams discussed the addition of a suspension right to Section 5.3.2.1 of the RAA. Discussion of draft implementation language.	2 Dec 2011
	Discussion of whether draft implementation language enhances ICANN's termination rights.	8 Dec 2011
	Discussed including additional language related to ICANN's right to terminate the RAA.	20 Dec 2011
	ICANN to clarify the issues with law enforcement representatives re: criminal provision of Whois data.	17 Jan 2012
	Discussion of the breadth of the request and whether it could lead to a contributory negligence standard for intermediaries.	17 Jan 2012
	Discussion of additional suspension remedy and notice to be placed on registrar's website regarding suspension; suggestion that notice is optional rather than required. Discussion of updating termination for bankruptcy language to conform to new gTLD language.	27 Jan 2012
	Discussion of LE language and identifying ways of narrowing the request related to "knowingly or through gross negligence" permitting criminal activity, such as through court determinations or judgments.	15 Feb 2012
		15 Feb 2012
		15 Feb 2012
Proposed Text	Open	
Status /Outcome	Under Discussion	
Explanation	Open	
COMMENTS:	Comments may be submitted using the "Add Comment" feature below.	

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