



Comments Posted: Mar 28, 2009

During the Registrar Constituency meeting in Mexico City, Staff committed to hold a teleconference with members of the registrar community to discuss this draft procedure. This has not yet occurred, and we request that the Public Comment period on this issue be extended at least two weeks following the conclusion of that call.

In the event that the Public Comment period is not extended beyond Mar 28, please accept the following initial comments in response to ICANN's Draft Registrar Disqualification Procedure.<sup>1</sup>

In general, we welcome efforts to identify unwelcome individuals and organizations within the Registrar community, and for ICANN to intervene before any lasting harm is done to Registrants, gTLD Registries, and other Registrars.

Nevertheless, we have numerous concerns with the draft procedure as it is currently written. ICANN should consider significant revisions and/or clarifications to this Draft Procedure before proceeding with its adoption / implementation.

#### 1. Clarification of Triggering Actions

The Triggering Actions defined in sections 1.2 are insufficiently defined, and require additional clarification and definition. For example, consider the following:

*1.2.3: "Termination of a registrar's Registry-Registrar Accreditation Agreement ("RRA") with any gTLD registry due to material breach of the RRA."*

In the event that the "material breach" is in dispute, this section could be read to give precedence to the registry position in all situations.

## 2. Narrow the Scope of Affected Individuals

In its current form, the Draft Procedure identifies "*(any) officer, director, manager, employee (including contractors), or owner (including beneficial owners)...*" as individuals subject to potential disqualification in the event of a triggering action. It is not difficult to envision scenarios in which unknowing employees or owners would be subject to disqualification resulting from the conduct of others.

To be considered for disqualification, an individual must be shown to have:

- (a) knowledge and awareness of the triggering action; and
- (b) the ability to remedy the triggering actions during the prescribed cure period, but failed to do so; and
- (c) derived some personal benefit from the triggering action.

By ensuring that any disqualification procedure is applied only to those individuals who meet all three criteria, ICANN can focus on those truly culpable and in a position to benefit. Individuals who are minimally involved in the triggering actions will avoid being considered for disqualification.

## 3. Define and Publish Review and Appeals Procedures

Sections 3 and 4 describe the material facts that ICANN will consider during a disqualification review, and the mitigating circumstances that will determine the duration of the disqualification. Both areas require additional definition to eliminate any unclear language, such as "permanent or irreparable harm to registrants," and "reckless disregard."

Also, it is not clear how each of the circumstances described in section 4.2 will contribute (lengthen or shorten) the duration of the disqualification. This is particularly true with respect to section 4.1, which seems to establish one year as the minimum length of a disqualification period.

## 4. Conduct a Comprehensive legal analysis on the implications of disqualification

ICANN-accredited registrars operate in many jurisdictions around the globe, and under a variety of different labor regulatory environments. Is ICANN clear on all the potential consequences of disqualifying an individual from working in their field or area of expertise? Similarly, section 5.3 calls for a "list of all disqualified individuals and entities [to be] displayed on ICANN's website." If the individual listed on this so-called "wall of shame" disputes the circumstances of the disqualification, then ICANN is in the position of impugning his or her professional reputation.

5. Ascertain if all elements of this Procedure are still necessary under the proposed RAA Amendments

Concurrent to the development of this draft procedure, several amendments to the RAA have been adopted by the GNSO council and are open for public comment. This set of amendments includes many additional registrar compliance options for ICANN, including conditions for terminating accreditation. Assuming that these amendments are ultimately adopted by the ICANN Board, will certain elements of this draft procedure be obsoleted?

Sincerely,  
GoDaddy.com, Inc.

A handwritten signature in black ink, appearing to read "Tim Ruiz".

Tim Ruiz  
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Corporate Development and Policy  
GoDaddy.com, Inc.

1. <http://icann.org/en/registrars/draft-disqualification-procedure-27feb09-en.pdf>
2. [http://www.icann.org/en/registrars/policy\\_statement.html](http://www.icann.org/en/registrars/policy_statement.html)