

I believe that the Intellectual Property Constituency comment deserves further elaboration: Moreover, this posting is in the spirit of the planned change to the Public Comment process, a Comment/Reply Cycle (<http://www.icann.org/en/public-comment/public-comment-enhancements-ii-31aug11-en.htm>).

I am writing this comment solely on my own behalf, but in light of the understanding of the issues gained while acting as Chair of the PEDNR WG and having participated in process of replying to the last round of Public Comments. These comments are in line with and perhaps expand on those found in the WG's replies to the last round of Public Comments - <https://community.icann.org/download/attachments/9405459/PEDNR+Public+comment+review+tool+-+Final+-+8+June+2011.pdf?version=1&modificationDate=1307530348000>.

As WG Chair, I can give full assurance that the WG did carefully consider all of the comments and fully debated them. Those interested can consult the MP3s and Transcripts of the WG's final meetings - <http://gns0.icann.org/calendar/index-2010.htm>.

All of that being said, I truly appreciate the level of detail with which the IPC examined and provided comments on the final report and its predecessors.

### **Recommendation #1 – RNHaE definition**

The IPC reiterates their position that the definition of Registered Name Holder at Expiration (RNHaE) should be revised so that the registrant of a domain name registration does not include a registrant that has lost a URS proceeding.

Reply: The WG agreed with the earlier IPC comments in relation to this issue. It did not feel that it was within its scope or skill set to proposed exact words to reflect this need, and moreover, at the time that the report was issued, it was not clear exactly what the details of the proposed URS would be. The WG therefore included the following note to ensure that those on ICANN staff with the full knowledge of the UDRP, the proposed URS and other processes which could impact a registrants rights must take these into account when drafting the RAA amendments addressing the WG Recommendations as well as the final language of the URS and any future UDRP changes.

Note: The WG recognizes that some of these recommendations may need special consideration in the context of existing provisions in the Uniform Dispute Resolution Policy (UDRP), the proposed Uniform Rapid Suspension System (URS) or exceptions due to fraud, breach of registration agreement or other substantive reasons and the WG, therefore, recommends that such considerations are taken into account as part of the implementation of these recommendations, once adopted.

### **Recommendation #2 – Minimum 8 day period to renew**

The IPC feels that the floating 8-day period should be a fixed amount of time, and presumably not floating, providing predictability to registrants

Reply: The WG believed that it was important to give Registrars the flexibility to implement the minimum requirement to address different business models that they may have (ranging from those who might implement just the 8 days at the start of the expiration period to those who will maintain a period as long as 40 days). Moreover, since the 8 days was a *minimum* which many of the WG believed would be expanded by many Registrars, there would always be variations. Strict predictability would result in the least-common denominator being forced on all Registrars which was not felt to be desirable

### **Recommendation #3 – Intercept web site**

The IPC feels that any web site used by Registrars to intercept web traffic after expiration should be informational in nature and should not be used for monetization purposes.

Reply: Many users on the WG would be delighted to have seen this as an outcome, but the WG felt that such a recommendation was outside of its scope, since the required ability to recover a domain name does not hinge on whether the intercept site is purely informational or is also used for monetization purposes.

### **Recommendation #5 – Disclosure of post-expiration renewal pricing**

The IPC believes that Registrars should be prohibited from using a pricing model based upon an auction or other similar demand-based bidding system.

Reply: This was the intent of the WG. The Recommendation states:

If the Registrar operates a website for registration or renewal, it should state, both at the time of registration and in a clear place on its website, any fee(s) charged for the post-expiration renewal of a domain name or the recovery of a domain name during the Redemption Grace Period.

The WG received confirmation from ICANN staff that the expression “state ... any fee(s) charged...” implies that the fees must be stated as a specific number of dollars or appropriate monetary unit and cannot float based on an action measuring the potential value of the domain name. The WG presumed that the implementation of the Recommendation will make that clear beyond any doubt.

### **Recommendation #13 – RGP for Registries**

The IPC believes that the RGP should be required of all Registries and should not exempt Sponsored Registries. The IPC further stated that the RPG process should be standard for all Registries.

Reply: Sponsored registries were excluded because it was not clear that there was a problem to be solved by including them, and moreover, it is within the rights and responsibilities of the sponsoring entity to create such a requirement if there is a need.

Although there appears to be a relatively standardized implementation of the RGP across those Registries that offer it, that process is not currently detailed in all registry agreements or in the RSTEP processes documenting the service. On the suggestion of ICANN staff, the WG recommended that the Technical Steering Groups implementation proposal for the RGP be considered in setting up the new formal requirement for an RGP. The outcome of the implementation will presumably provide a sufficient level of specificity on the required RGP service.

#### **Recommendation #16 – Educational materials contents**

The IPC feels that “Such material *may* include registrant responsibilities and the gTLD domain life-cycle and guidelines for keeping domain name records current.” should read “Such material *will* include...”.

Reply: This is perhaps better wording. However, I am not 100% sure that the examples listed are the best ones and feel confident that with the ALAC and others involved, the planned educational site will at the very least meet the intent of this recommendation.

#### **Recommendation #17 – Dissemination of educational material**

The IPC feels that Registrars should be required to point to the Domain-Life-Cycle document in renewal notices.

Reply: The WG felt that the details of this were better left to Registrars. The Domain-Life-Cycle document will be, at best, a summary of what a Registrar must do, but there will be many variations amongst Registrars, and at renewal time, it would be better to tell the registrant exactly what the details are in their particular case. My understanding is that the WG had no way to phrase this in a way that would guarantee predictable results, so felt it best to leave the requirement unstated.

#### **Recommendation #18 – PDP Implementation and follow-up**

This was a new recommendation not present in the draft report. The IPS supports this recommendation but further suggested that ICANN Compliance be requested to provide updates to the GNSO Council in relation to the RGP and in relation to the final recommendation implementation with regard to the UDRP, URS, fraud, and breach of registration agreement or other substantive reasons.

Reply: The WG did not feel that this level of specificity was required. GNSO Councillors will always be in a position to request further details from ICANN staff if they feel that the requested reports are not sufficient.