



IPC COMMENTS FOR ICANN
On
Proposed Final Report on the Post-Expiration Domain Name Recovery
Policy Development Process

The Intellectual Property Constituency (“IPC”) is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Proposed Final Report on the Post-Expiration Domain Name Recovery Policy Development Process posted for comment on February 21, 2011 at <http://www.icann.org/en/public-comment/#pednr-proposed-final-report> (the “Report”).

Introduction

Initially, the IPC thanks the PEDNR working group for its hard work in developing the proposed recommendations. The IPC believes that the issues surrounding Post-Expiration Domain Name Recovery are important and that the proposed recommendations are a solid first step in working toward possible solutions to these issues. However, it is the IPC’s position that certain recommendations listed in the Report require clarification and/or refinement before they can adequately address the identified concerns. Accordingly, the IPC welcomes the opportunity to offer these comments and we hopeful that these comments will assist the working group in moving these recommendations forward.

Comments

Recommendation #1: Define “Registered Name Holder at Expiration” (RNHaE) as the entity or individual that was eligible to renew the domain name registration immediately prior to expiration. If the domain name registration was modified pursuant to a term of the Registration Agreement authorizing the modification of registration data for the purposes of facilitating renewal, the RNHaE is the entity or individual identified as the registrant immediately prior to that modification.

Comment #1: In general, the IPC agrees with this recommendation and believes it will assist in eliminating some of the confusion and gaming that has occurred in the post-expiration renewal

process. The IPC asserts that the definition of the RNHaE must be revised to reflect that the registrant of the domain name registration does not include a registrant that has lost a Uniform Rapid Suspension ("URS") proceeding. Such suspended domain names should follow a different set of processes than as specified in this Proposed Final Report.

Recommendation #2: For at least 8 consecutive days, at some point following expiration, the original DNS resolution path specified by the RNHaE, at the time of expiration, must be interrupted and the domain must be renewable by the RNHaE until the end of that period. This 8-day period may occur at any time following expiration. At any time during the 8 day period, the Registered Name Holder at Expiration may renew the domain with the Registrar and the Registrar, within a commercially reasonable delay, will cause the domain name to resolve to its original DNS resolution path.

Comment #2: The IPC agrees with this recommendation but would nevertheless like to raise two issues. First, it would appear reasonable to modify the floating 8-day term into a strict and easily identifiable term for RNHaE. Second, recommendation #2 should be revised to reflect that for a domain name suspended under the URS, the informational web page need not be interrupted or is exempt from this recommendation.

Recommendation #3: The RNHaE cannot be prevented from renewing a domain name registration as a result of WHOIS changes made by the Registrar that were not at the RNHaE's request. [Final wording will need to exempt cases where renewal will not be disallowed due to fraud, breach of registration agreement or other substantive reasons.]

Comment #3: The IPC agrees with this recommendation.

Recommendation #4: All unsponsored gTLD Registries shall offer the Redemption Grace Period (RGP). For currently existing unsponsored gTLDs that do not currently offer the RGP, a transition period shall be allowed. All new gTLDs must offer the RGP.

Comment #4: The IPC agrees with this recommendation. However, the Report clearly states that the "implementation details" for the RGP "vary in different gTLDs". Given this reality, the IPC believes this recommendation should be revised to also recommend a standardized RGP implementation across all gTLDs. Without such standardization, the IPC is concerned that additional confusion will be created in this process.

Recommendation #5: If a Registrar offers registrations in a gTLD that supports the RGP, the Registrar must allow the Registered Name Holder at Expiration to redeem the Registered Name after it has entered RGP.

Comment #5: The IPC agrees with this recommendation.

Recommendation #6: The registration agreement must include or point to any fee(s) charged for the post-expiration renewal of a domain name. 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.

Comment #6: The IPC is in agreement with this recommendation and in particular the working group's rationale that pricing must be disclosed. The IPC would further suggest that Registries and Registrars be prohibited from using, even if disclosed, a pricing model based upon an auction or other similar transaction whereby the RNHaE's price is subject to the demand of third-parties bidding on the domain name.

Recommendation #7: In the event that ICANN gives reasonable notice to Registrar that ICANN has published web content providing educational materials with respect to registrant responsibilities and the gTLD domain life-cycle, and such content is developed in consultation with Registrars, Registrars, who have a web presence, shall provide a link to the webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies.

Comment #7: The IPC agrees with this recommendation; however, we believe the working group should also recommend that registrars be required to include a reasonably prominent link to the "Domain Life-Cycle" document in question within renewal reminder emails to registrants.

Recommendation #8: ICANN, with the support of Registrars, ALAC and other interested parties, is to develop educational materials about how to properly steward a domain name and how to prevent unintended loss. Once developed, Registrars are expected to link to or host that information on its web site, and send to the registrant in a communication immediately following initial registration as well as in the mandated annual WHOIS reminder. Such information should include a set of instructions for keeping domain name records current and for lessening the chance of mistakenly allowing the name to expire. [Need to refine wording: expression "include a set of instruction" to include pointing to appropriate location where instructions can be found; pointing to ICANN registrant education site.]

Comment #8: The IPC supports this recommendation, but we believe this recommendation should be revised by deleting the wording “are expected to” and inserting the term “must”.

Recommendation #9: The registration agreement and Registrar web site (if one is used) must clearly indicate what methods will be used to deliver pre- and post-expiration notifications, or must point to the location where such information can be found. What destination address/number will be used must also be specified, if applicable.

Comment #9: The IPC agrees with this recommendation.

Recommendation #10: Subject to an Exception policy, Registrar must notify Registered name Holder of impending expiration no less than two times. One such notice must be sent one month or 30 days prior to expiration (± 4 days) and one must be sent one week prior to expiration (± 3 days).). If more than two alert notifications are sent, the timing of two of them must be comparable to the timings specified. It is the intention to have an exception policy, allowing the Registrar to substitute alternative notification patterns, but this still needs to be defined.

Comment #10: The IPC agrees with the timeframes for notice set forth in this recommendation; however, the IPC has no opinion with regard to the proposed exception policy. The IPC will need to review any such policy before providing a comment.

Recommendation #11: Notifications of impending expiration must include method(s) that do not require explicit registrant action other than standard e-mail receipt in order to receive such notifications.

Comment #11: The IPC agrees with this recommendation.

Recommendation #12: Unless the Registered Name is deleted by the Registrar, at least one notification must be sent after expiration.

Comment #12: The IPC agrees with this recommendation but suggests that the recommendation be revised to state that any such post-expiration notice must contain explicit information setting forth the proper procedure for the RNHaE to renew the domain name.

Recommendation #13: If at any time after expiration when the Registered Name is still renewable by the RNHaE, the Registrar changes the DNS resolution path to effect a different

landing website than the one used by the RNHaE prior to expiration, the page shown must explicitly say that the domain has expired and give instructions on how to recover the domain.

Comment #13: The IPC concurs with this recommendation on the rationale. However, the IPC would caution that the landing website should not be permitted to be additionally used for advertising purposes, click-through monetization or otherwise generating traffic to the benefit to the registrar, affiliates or third parties.

Recommendation #14: Best Practice: If post-expiration notifications are normally sent to a point of contact using the domain in question, and delivery is known to have been interrupted by post-expiration actions, post-expiration notifications should be sent to some other contact point associated with the registrant if one exists.

Comment #14: The IPC agrees with this recommendation.