



IPC COMMENTS FOR ICANN
On
Post-Expiration Domain Name Recovery Recommendations
For ICANN Board Consideration

The Intellectual Property Constituency (“IPC”) is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests 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 Post-Expiration Domain Name Recovery Recommendations for ICANN Board Consideration posted for comment on August 15, 2011 at <http://www.icann.org/en/public-comment/pednr-board-recommendations-15aug11-en.htm> (the “final report”).

Introduction

Initially, the IPC thanks the PENDR Working Group and the GNSO Council for their hard work in developing and assessing the recommendations and resolutions below. However, the IPC is concerned with the lack of feedback from the PENDR Working Group on our comments of April 21, 2011 regarding the Proposed Final Report. The IPC submitted several comments to the Working Group that were acknowledged in the Final Report, but we did not receive any response from the Working Group on why nearly all IPC comments were rejected. If the PENDR Working Group considered the IPC comments in archived face-to-face discussions or on the group’s email list serve, then such deliberations should have been cited in the final report. Accordingly, the IPC welcomes the opportunity to reiterate our comments and we are hopeful that they will assist the Board of Directors in considering these issues.

Comments

Recommendation #1 General	
WG Proposed Final Report 02/21/11	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.

<p>IPC Comment 04/21/11</p>	<p>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.</p>
<p>WG Final Report 06/13/11</p>	<p>Recommendation #1: No Change.</p> <p>Rationale: This definition is required due to the potential confusion over who is eligible to renew if WHOIS is changed after expiration, a possibility allowed for in many registration agreements.</p>
<p>GNSO Council Resolution 07/21/11</p>	<p>Point 1: "... 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 but not at the explicit request of the registrant, the RNHaE is the entity ..."</p> <p>Note under point 13: 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 GNSO Council, therefore, recommends that such considerations are taken into account as part of the implementation of these recommendations, once adopted.</p>
<p>IPC Comment 09/15/11</p>	<p>The IPC echoes the GNSO council's 7/21/11 resolution noting that 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. In particular, with respect to recommendation #1, the IPC reiterates its comment that the definition of the RNHaE must be revised to reflect that the registrant of a 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 the Final Report.</p>

<p>Recommendation #2 Post Expiration Behavior and Ability to Renew</p>	
<p>WG Proposed Final Report 02/21/11</p>	<p>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. Notwithstanding, the Registrar may delete the domain at any time during the Auto-renew grace period.</p>

IPC Comment 04/21/11	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.
WG Final Report 06/13/11	<p>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 by the registrar, to the extent that the registry permits such interruptions, and the domain must be renewable by the RNHaE until the end of that period (...)”</p> <p>Rationale: This ensures that for at least an 8-day period following expiration, the domain will cease to operate as it did prior to expiration. The WG believes that this failure to function may be one of the more effective methods of getting a registrant’s attention. Although 8 days is set as a minimum, there is nothing to prevent a Registrar from providing a longer period such as most registrars do today. The WG notes that it deliberately allowed for a floating 8 day period to allow for the various registrar business models and potentially competitive business continuity services. The recommendation has been updated to reflect that the registrar is responsible for interrupting the DNS, noting that there might be cases, such as for example .tel, where the registrar might not be permitted to interrupt the DNS.</p>
GNSO Council Resolution 07/21/11	Point 2: “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 prior to expiration.”
IPC Comment 09/15/11	The IPC continues its support of this resolution and would reiterate its two additional recommendations. First, the 8-day minimum period should be a fixed amount of time that all registries most comply with. This will help afford additional predictability and stability for registrants, so that they do not have to deal with multiple different time frames. 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 process.

Recommendation #3 Post Expiration Behavior and Ability to Renew	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	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.
WG Final	Recommendation #3: If at any time after expiration when the Registered Name is still

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GNSO Council Resolution 07/21/11	Point 3: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC continues its support of this resolution and would reiterate its suggestion that the landing website must be informational in nature and should not be used for monetization purposes.

Recommendation #4 Post Expiration Behavior and Ability to Renew	
WG Proposed Final Report 02/21/11	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.]
IPC Comment 04/21/11	Comment #3: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #4: 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. (Charter Question 1) Rationale: Currently a change to WHOIS may, depending on the specifics of a Registrar's system, prohibit the RNHaE from renewing the Registered Name.
GNSO Council Resolution 07/21/11	Point 4: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution.

Recommendation #5 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	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.
WG Final Report 06/13/11	Recommendation #5: No changes made by the Working Group.
GNSO Council Resolution 07/21/11	Point 5: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution and would reiterate its suggestion that Registrars be prohibited from using a pricing model based upon an auction or other similar demand-based bidding system.

Recommendation #6 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	Comment #9: The IPC agrees with this recommendation
WG Final Report 06/13/11	Recommendation #6: No changes made by the Working Group. Rationale: Registrants should be told ahead of time how the Registrar will communicate with them.
GNSO Council Resolution 07/21/11	Point 9: 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. Under B: The notification method explanation (see recommendation #9) should include the

	registrar's email address from which notification messages are sent and a suggestion that registrants save this email address as a safe sender. to avoid notification emails being blocked by spam filter software. (PEDNR Recommendation #11)
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution.

Recommendation #7 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	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.
WG Final Report 06/13/11	Recommendation #7: 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. (Charter Question 3) It is the intention to have an exception policy, allowing the Registrar to substitute alternative notification patterns, but this still needs to be defined.
GNSO Council Resolution 07/21/11	Point 7: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution.

Recommendation #8 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	Recommendation #12: Unless the Registered Name is deleted by the Registrar, at least one notification must be sent after expiration.
IPC Comment 04/21/11	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.

WG Final Report 06/13/11	Recommendation #8: Unless the Registered Name is renewed or deleted by the Registrar, at least one notification to the RNHaE, which includes renewal instructions, must be sent after expiration.
GNSO Council Resolution 07/21/11	Point 8: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC agrees with this resolution.

Recommendation #9
Registrar Disclosure and Expiration Warning

WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	Comment #11: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #9: No changes made by the Working Group. Rationale: Notifications must not solely be done by methods, which require explicit Registrant action to receive, the most common being the requirement to log onto the Registrar domain management system to receive notifications.
GNSO Council Resolution 07/21/11	Point 9: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC agrees with this resolution.

Recommendation #10
Registrar Disclosure and Expiration Warning

WG Proposed Final Report 02/21/11	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.
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IPC Comment 04/21/11	Comment #14: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #10: No changes were made by the Working Group. Rationale: Today, message sent to the registrant after expiration typically go to the same address that is used prior to expiration. If that address uses the domain in question, and that domain is now intercepted by the Registrar (as is typically the case), the message will not be deliverable. The Working Group did not feel that it was practical to mandate how this should be fixed, but felt that it was important that Registrars consider the situation.
GNSO Council Resolution 07/21/11	Under B: 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.
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution.

Recommendation #11 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	Not in proposed final as 'individual' recommendation, but related to Recommendation #14 in proposed final.
IPC Comment 04/21/11	Comment #14: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #11: Best Practice: the notification method explanation (see recommendation #9) should include the registrar's email address from which notification messages are sent and a suggestion that registrants save this email address as a 'safe sender' to avoid notification emails being blocked by spam filter software. (Charter Question 3) Rationale: See Recommendation #10.
GNSO Council Resolution 07/21/11	Under B: "best practices": No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC agrees with this resolution in conjunction with recommendation number 12.

Recommendation #12 Registrar Disclosure and Expiration Warning	
WG Proposed Final Report 02/21/11	Not in proposed final as 'individual' recommendation, but related to Recommendation #14 in proposed final.
IPC Comment 04/21/11	Comment #14: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #12: Best Practice: Registrars should advise registrants to provide a secondary email point of contact that is not associated with the domain name itself so that in case of expiration reminders can be delivered to this secondary email point of contact. (Charter Question 3) Rationale: See Recommendation #10.
GNSO Council Resolution 07/21/11	Under B: "best practices": No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC agrees with this Resolution in conjunction with recommendation number 11.

Recommendation #13 Redemption Grace Period (RGP)	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	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.
WG Final Report 06/13/11	Recommendation #13: With the exception of sponsored gTLDs, all 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. As part of the implementation, ICANN Staff should consider the Technical Steering Group's Implementation Proposal (see http://icann.org/en/meetings/bucharest/redemption-topic.htm) Rationale: Although most current unsponsored gTLDs Registries currently offer the RGP service,

	there is no such obligation, nor is it required in the new gTLD Applicant Guidebook.
GNSO Council Resolution 07/21/11	Number 10: No changes made by the GNSO Council.
IPC Comment 09/15/11	<p>It still is unclear why all sponsored gTLDs have been excluded from the requirement to offer the Redemption Grace Period. Sponsored gTLDs should not be excluded without sufficient justification</p> <p>The Working Group's Final Report recognizes the IPC and INTA recommendation for a standardized RGP, but gives no rationale for the Working Group's decision to reject this advice.</p> <p>If the Technical Steering Group's Implementation Proposal referenced by the Working Group was intended to serve as standardized criteria for the RGP, then the Working Group should have referred to it as "part of a standardized implementation." The Board should clarify this point by implementing a standardized RGP across all gTLDs.</p>

Recommendation #14 Redemption Grace Period (RGP)	
WG Proposed Final Report 02/21/11	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.
IPC Comment 04/21/11	Comment #5: The IPC agrees with this recommendation.
WG Final Report 06/13/11	Recommendation #14: The Working Group made no changes. Rationale: This ensures that the registrant will be able to redeem a domain name if it is deleted and if the Registry offers the RGP service.
GNSO Council Resolution 07/21/11	Point 11: The GNSO Council made no changes.
IPC Comment 09/15/11	The IPC maintains its agreement with this resolution.

Recommendation #15 (Charter Question 5) Whether to Allow the Transfer of a Domain Name During the RGP.	
WG Proposed Final	<p>No Recommendation made by the Working Group.</p> <p>Charter Question 5: Some argued that if transfer during the RGP is not allowed, then if the</p>

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IPC Comment 04/21/11	No comment made by the IPC.
WG Final Report 06/13/11	Recommendation #15: The Working Group recommends that a transfer of a domain name during the RGP should not be allowed. (Charter Question 5) Rationale: The need is significantly reduced based on the recommendation to have the RGP mandatory for Registrars coupled with the complexity and possible adverse effects of allowing such transfers.
GNSO Council Resolution 07/21/11	Point 12: A transfer of a domain name during the RGP should not be allowed. (No changes made by the GNSO Council.)
IPC Comment 09/15/11	The IPC agrees with this Resolution.

Recommendation #16 Registrant Education and Awareness	
WG Proposed Final Report 02/21/11	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.]
IPC Comment 04/21/11	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".
WG Final Report 06/13/11	Recommendation #16: ICANN, in consultation with Registrars, ALAC and other interested parties, will develop educational materials about how to properly steward a domain name and how to prevent unintended loss. Such material may include registrant responsibilities and the gTLD domain life-cycle and guidelines for keeping domain name records current. (Charter Question 2) 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

	<p>instructions can be found; pointing to ICANN registrant education site.]</p> <p>Rationale: Insufficient registrant understanding and education was identified as a significant problem and any attempt to address it will lower the number of problems experienced by registrants.</p>
GNSO Council Resolution 07/21/11	Under C: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC continues to support this resolution, but we believe that it should be revised to read, "Such materials <i>will</i> include" rather than "Such materials <i>may</i> include," so that clearer guidance is provided to ICANN staff.

Recommendation #17 Registrant Education and Awareness	
WG Proposed Final Report 02/21/11	<p>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.</p>
IPC Comment 04/21/11	<p>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.</p>
WG Final Report 06/13/11	<p>Recommendation #17: In the event that ICANN gives reasonable notice to Registrars that ICANN has published web content as described in Recommendation 16:</p> <ol style="list-style-type: none"> 1. Registrars, who have a web presence, must provide a link to the ICANN content 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. 2. Registrars may also host similar material adapted to their specific practices and processes. 3. Registrar must point to the ICANN material in a communication sent to the registrant immediately following initial registration as well as in the mandated annual WHOIS reminder. (Charter Question 2) <p>Rationale: Insufficient registrant understanding and education was identified as a significant problem and any attempt to address it will lower the number of problems experienced by registrants.</p>
GNSO Council Resolution 07/21/11	Point 13: No changes made by the GNSO Council.

IPC Comment 09/15/11	The Working Group's Final Report recognizes the IPC and INTA recommendation for "a reasonably prominent link to the 'Domain Life-Cycle' document in question with renewal reminder emails to registrants", but the Working Group gave no rationale for the its decision to reject this advice.
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Recommendation #18 Monitoring and Follow Up	
WG Proposed Final Report 02/21/11	Not in Working Group's proposed final report.
IPC Comment 04/21/11	No IPC comments were possible.
WG Final Report 06/13/11	Recommendation #18: The Working Group recommends that ICANN Compliance be requested to provide updates to the GNSO Council on a regular basis in relation to the implementation and effectiveness of the proposed recommendations, either in the form of a report that details amongst others the number of complaints received in relation to renewal and/or post-expiration related matters or in the form of audits that assess if the policy has been implemented as intended.
GNSO Council Resolution 07/21/11	Under D: No changes made by the GNSO Council.
IPC Comment 09/15/11	The IPC supports this resolution, and further suggests that ICANN Compliance be requested to provide updates to the GNSO Council on a regular basis in specific relation to RGP implementation and "special consideration[s] 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."