

Draft: Registrar Disqualification Procedure

Background

The Statement of Registrar Accreditation Policy (the "Accreditation Policy," adopted 4 March 1999, see http://www.icann.org/en/registrars/policy_statement.html) establishes the standards applied by ICANN in granting gTLD registrar accreditation. In addition to setting minimum qualifications, the Accreditation Policy describes "matters potentially leading to ineligibility" for accreditation, including disqualification of a "registrar or registry administrator, or any officer, director, manager, employee, or owner (including beneficial owners) from being an ICANN-accredited registrar or registry administrator" in accordance with procedures established by ICANN. This Registrar Disqualification Procedure (the "Procedure") establishes and documents those procedures.¹

The Registrar Disqualification Procedure is intended to enhance protection of registrants² by preventing potential bad actors from causing repeated harm to registrants and other stakeholders in the domain name space, such as registries and users of the Internet at large. This Procedure will not replace other accreditation compliance enforcement mechanisms already available to ICANN under the Registrar Accreditation Agreement ("RAA," see <http://www.icann.org/en/registrars/ra-agreement-17may01.htm>), such as termination of accreditation.

This draft Procedure has been developed by ICANN staff and is being posted for public comment for 30 days prior to implementation to ensure broad community input.

1. Circumstances That May Trigger The Registrar Disqualification Procedure

1.1. In order for a person or entity to be considered for disqualification under the Procedure, there must generally have been a triggering circumstance or event ("Triggering Action"). Although a Triggering Action will invoke the Procedure and initiate consideration of an individual or entity's possible disqualification, it will not always result in a disqualification.

1.2. Any of the following Triggering Actions may cause invocation of the Procedure:

1.2.1. De-accreditation of a registrar due to termination of its RAA by ICANN.

¹ This Procedure is only intended to address conduct by registrars and people and entities affiliated with registrars. Conduct by registry administrators falls outside the scope of this Procedure, as ICANN is establishing registry qualification criteria through other initiatives.

² The term "registrants" includes beneficial users of domain names, such as through Whois privacy and proxy services and similar licensing arrangements for the purposes of the Procedure.

- 1.2.2. Failure by a registrar to cure a breach of the RAA within the designated cure period (following formal notice of breach from ICANN), regardless of whether the breach results in termination of the RAA.
- 1.2.3. Termination of a registrar's Registry-Registrar Agreement ("RRA") with any gTLD registry due to material breach of the RRA.
- 1.2.4. Non-renewal or voluntary termination of the RAA while the registrar is not in good standing with regard to ICANN obligations and without remedying outstanding obligations within a reasonable period of time after expiration or termination.
- 1.2.5. Action by a registrar that threatens or compromises the security or stability of the domain name system.

2. People And Entities Potentially Subject To Disqualification

- 2.1. A registrar or any current or former officer, director, manager, employee, or owner (including beneficial owners) of a registrar may potentially be subject to disqualification from registrar accreditation or registry administration under this Procedure, as described below:

2.1.1. Registrar Company, Directors, and Officers

- 2.1.1.1. The registrar company and directors and officers³ of the company will be considered for potential disqualification in all cases where the Procedure has been triggered.

2.1.2. Registrar Employees and Managers

- 2.1.2.1. Registrar managers and employees⁴ will be considered for potential disqualification if ICANN has reason to believe they caused, directed, or supervised any of the circumstances described in section 3.1 below.

2.1.3. Registrar Owners

- 2.1.3.1. Owners of a registrar, whether direct owners or beneficial owners (e.g., through holding companies or other arrangements),⁵ will be considered for potential

³ Because variation exists internationally among definitions of an "officer," the Procedure will consider as officers those within a company who would ordinarily have authority to act on behalf of the company, such as a president; chief executive officer; chief financial officer; anyone who has executed an RAA, appendix to the RAA, or other agreement with ICANN on behalf of the registrar; anyone who has represented him or herself to ICANN as an officer, and others similarly positioned.

⁴ Contractors and others who perform(ed) services on behalf of the registrar are considered "employees" for the purposes of this Procedure.

⁵ When used in this Procedure, the term "owner" includes beneficial owners.

disqualification where (a) the owner is or was ostensibly involved in the management of the registrar, even if not in a formal role or capacity or (b) the owner holds or held a majority interest in the registrar company (either directly or beneficially).

3. Determination of Disqualification

3.1. Direct Involvement by Registrar Owners, Directors, Officers, Managers, and Employees:

ICANN may disqualify an individual or entity (that is subject to potential disqualification, as described in section 2 above) from registrar accreditation and registry administration where:

- 3.1.1.its actions caused or are likely to cause permanent or irreparable harm to registrants;
- 3.1.2.its actions compromised or threatened the security or stability of the domain name system;
- 3.1.3.it yielded financial gain to the registrar or itself through harm to registrants that was intentional or caused by reckless disregard;
- 3.1.4.it made misrepresentations to ICANN or hindered ICANN's efforts to investigate a registrar-applicant's accreditation application or a breach of the RAA;
- 3.1.5.it facilitated the accreditation or other involvement in registrar operations by a person or company that was or would have been ineligible for accreditation or involvement in registrar operations under the Accreditation Policy or this Procedure;
- 3.1.6.it facilitated the accreditation application of the registrar and previously facilitated the accreditation application of a registrar (1) whose RAA was terminated or not renewed by ICANN or (2) who was subject to disqualification under this Procedure; or
- 3.1.7.it failed or refused to cooperate in a bulk transfer of names under management following termination of the RAA or an RRA.

3.2. Imputed Disqualification of Registrar Company, Owners, Directors, and Officers:

Disqualification for registrar accreditation and registry administration may be imputed to individuals and entities (who are subject to potential disqualification, as described in section 2 above), regardless of the extent of their involvement in any of the actions described in section 3.1, as follows:

- 3.2.1.The registrar company may be disqualified under this Procedure if any of the circumstances described in section 3.1 were caused: (a) systematically by the registrar; (b) as the result of registrar company policies or procedures (whether written or not); or (c) by a registrar's owner, director, or officer.
- 3.2.2.In the event a registrar company is disqualified pursuant to this Procedure, the registrar's owner(s), director(s), and officer(s) may also be disqualified unless they demonstrate to

ICANN's satisfaction that they reasonably attempted to prevent or rectify the circumstances that led to the registrar company's disqualification.

3.2.3. In the event a registrar company is disqualified pursuant to this Procedure, and action(s) described in section 3.1 occurred within one year of a prior change in ownership of the registrar, the previous owner of the registrar may also be disqualified under this Procedure.

4. Duration of Disqualification

4.1. Disqualification under this Procedure may be for a term of one year or any longer period of time, and may be permanent.

4.2. The term of disqualification will be based on an evaluation of the totality of the circumstances, which will include consideration of:

4.2.1. The extent of harm or potential harm caused to registrants.

4.2.2. The extent of harm or potential harm to the security or stability of the domain name system.

4.2.3. Costs and resources expended by ICANN attributable to actions of the disqualified individual or entity.

4.2.4. Extent of involvement of the disqualified individual or entity in any of the circumstances described in section 3.1 above.

4.2.5. Duration and pattern: whether there was an ongoing pattern of conduct or whether the conduct was limited in duration or in number of occurrences.

4.2.6. Possibility or perceived likelihood that conduct might be repeated.

4.2.7. Steps, if any, independently taken by the disqualified individual or entity to remedy or mitigate harm to registrants.

4.2.8. Cooperation with ICANN to minimize harm to registrants, including cooperation with efforts to bulk-transfer registrations to a different registrar in the event of de-accreditation.

5. Communication and Review of Disqualification Decision

5.1. After determining that an individual or entity will be disqualified under this Procedure, but at least 30 days prior to publication of the disqualification as described in section 5.3, ICANN will notify the individual or entity of the determination and provide instructions for requesting a staff review of the decision.

5.2. Any individual or entity who has been disqualified under this Procedure may request a review of the disqualification decision at any time. Upon receiving a request for review of a disqualification decision, ICANN will review all statements and documentation submitted by the disqualified individual or entity, and determine whether the decision was proper under this Procedure. ICANN may either rescind or affirm its determination, within ICANN's discretion. Other review mechanisms described in ICANN's bylaws remain available.

5.3. A list of all disqualified individuals and entities will be published on ICANN's website, with the date and term of disqualification.

6. Ongoing Review

6.1. This Procedure will be reviewed periodically by ICANN staff after implementation and revised accordingly.