

De-Accredited Registrar Transition Procedure

0.1. In consultation with the community, ICANN developed this procedure for managing transition of gTLD domain name registrations from a de-accredited registrar to an accredited gaining registrar. The process was posted for public comment and approved by the ICANN Board of Directors on 1 October 2008. As was directed by the Board <<http://www.icann.org/en/groups/board/documents/minutes-01oct08-en.htm>>, the procedure is periodically reviewed and amended by Staff for improvement.

0.2. Along with ICANN's registrar and registry data escrow, emergency back-end registry operator, and contractual compliance programs, this procedure is intended to enhance protection of registrants; it is not intended to generate revenue to ICANN. A graphical representation of this procedure is provided as Appendix A.

1. Introduction

1.1. Upon the termination or expiration of a registrar's Registrar Accreditation Agreement (RAA) or its Registry-Registrar Agreement (RRA), the registrations sponsored by the de-accredited registrar must be transitioned to a competent accredited registrar. In the past, such transitions have generally been accomplished through a "bulk transfer," as described in Part B of the Inter-Registrar Transfer Policy <<http://www.icann.org/en/resources/registrars/transfers/policy-01jun12.htm>>, and have required the cooperation of the "losing" (de-accredited) registrar because the losing registrar was the sole source of registration data necessary to identify registration rights in the affected domain names.

1.2. With the implementation of the Registrar Data Escrow (RDE) program <<http://www.icann.org/en/news/announcements/announcement-2-09nov07-en.htm>> ICANN has a greater ability to enable a transition of names, even where the de-accredited registrar is not cooperative in a bulk transfer. As of 30 May 2013, nearly all registrars are enrolled in the RDE program, representing 99.9% of domain names in the gTLD space.

This procedure is intended to be used by ICANN to facilitate the transition of registrations of de-accredited registrars whether the necessary registration data is immediately available to ICANN or not.

1.3. This process has been invoked by ICANN staff in facilitating the transition of registrations in dozens of cases of de-accreditation. It was developed from learning by staff in previous registrar de-accreditations (including both voluntary and involuntary terminations) and with input provided by the community at the Registrar Termination workshop hosted in Delhi, India at the February 2008 ICANN meeting. (Transcript, presentation slides, and summary of participant comments available at: <http://delhi.icann.org/node/53>.) Through the workshop in Delhi, community members provided several well-considered ideas for addressing particular scenarios that could be encountered upon the de-accreditation of a registrar. Although many of the suggestions have been incorporated into this procedure, some of the suggestions are not currently implementable due to existing policy limitations or a need for further development of long-term solutions. This procedure is periodically reevaluated and adapted as warranted by ICANN's experience with its use.

2. De-Accredited Registrar Transition Procedure

2.1. The De-Accredited Registrar Transition Procedure generally does not become operative until a registrar's RAA or RRA has been finally terminated because each agreement gives registrars certain rights to, for example, cure a breach or contest a termination. Nevertheless, before the procedure is invoked, ICANN will have taken steps to help ensure as smooth a transition as possible, by conducting an assessment of the availability of registration data (either through the registrar data escrow program or otherwise) and working with registries to ensure registrations are not deleted due to the actions or inaction of a de-accredited registrar.

2.2. Under Part B of the Inter-Registrar Transfer Policy (the "Transfer Policy"), the sponsorship of all gTLD registrations of one registrar may be transferred in bulk to another registrar (a "bulk transfer") where a registrar is no longer accredited as a registrar or no longer operational in a particular gTLD and ICANN approves the bulk transfer. Under the

Transfer Policy, the bulk transfer can only be effected where the gaining registrar is accredited and operational (with a registry-registrar agreement in force) for the respective TLD(s) and where ICANN certifies to the registry operator that “the transfer would promote the community interest, such as the interest in stability that may be threatened by the actual or imminent business failure of a Registrar.”

3. Voluntary Bulk Transfers

3.1. When a registrar’s RAA or RRA is terminated or not renewed, it may often be in the best interests of registrants and at-large users of the Internet for ICANN to permit the de-accredited registrar to designate a “gaining registrar” to receive a bulk transfer of its names. Such a transition could help minimize customer confusion while ensuring that the gaining registrar receives as much customer and registration data from the losing registrar as possible. Moreover, a voluntary transition generally involves the least amount of friction in the process.

3.2. In some cases, however, a voluntary transition is not possible or practical because either the losing registrar is uncooperative or because its designation of a gaining registrar would not serve the community interest. By way of example, a proposed transfer might not be in the community’s interest if the gaining registrar is not in good standing with its ICANN obligations or where the losing registrar appears to be using the termination of its RAA as a vehicle for avoiding its obligations to ICANN or its customers by transferring the registrations to an affiliated registrar without satisfying the outstanding obligations.

3.3. While recognizing the potential benefits of a voluntary bulk transfer, the De-Accredited Registrar Transition Procedure employs a balancing of interests in ICANN’s decision to approve or not approve a proposed voluntary bulk transfer. The considerations in this decision include, without limitation: whether the gaining registrar is in good-standing with its ICANN obligations, whether the gaining registrar is operational and experienced in managing the affected TLDs, whether there is a relationship between the losing registrar and gaining registrar that could allow abuse or gaming of the proposed bulk transfer, whether the losing registrar would continue to manage the registrations as a reseller for the gaining registrar or otherwise be involved in the

management of the names and customers, and whether, as a result of the bulk transfer, obligations to ICANN and the losing registrar's customers are likely to be satisfied.

3.4. In weighing all considerations, ICANN may either approve the voluntary bulk transfer by announcing the approval to the involved registrars and registries, or deny the requested transfer, by giving the losing registrar another opportunity to name a gaining registrar or proceeding to designate a gaining registrar without deference to the losing registrar's suggestion. If ICANN approves the voluntary transfer, the approval could be conditioned on satisfaction of certain conditions (e.g., payment of outstanding ICANN invoices or registry fees).

Failure by the registrars to satisfy the approval condition(s) could result in the withdrawal of ICANN's approval of the transfer, leaving ICANN to select a gaining registrar itself.

4. Involuntary Bulk Transfers

4.1. The RAA provides ICANN a license to use or transfer registrar data to provide registrar services upon termination of a registrar's accreditation agreement. Where a de-accredited registrar does not cooperate with ICANN's transition efforts or ICANN does not approve the proposed gaining registrar in a voluntary bulk transfer, ICANN must select a gaining registrar to manage the orphaned registrations. During the terminated registrar workshop in Delhi, some participants suggested options for transition that would parcel out registrations across multiple registrars. Although such alternatives might be necessary in the event no one registrar is operational in all affected TLDs or when other challenges make a single bulk transfer impractical, one bulk transfer is the preferred course of action, to avoid potentially confusing registrants and to minimize complications in the transfer process.

5. Availability of Registration Data

5.1. In order to effect a transfer of registrations from one registrar to another, the gaining registrar must have at least basic registration data in order to be able to identify registrants and process registration

updates, such as renewals, contact changes, and nameserver updates. Outside the RDE program, a handful of tools are available that would help permit identification of registrants where a de-accredited registrar does not cooperate with a bulk transfer.

5.2. When a voluntary bulk transfer is not possible, ICANN must assess the extent to which registration data is available to it (or more accurately, to the potential gaining registrar). Because such data could come from a variety of sources, its completeness and integrity will need to be analyzed by ICANN to determine whether to proceed to selection of a gaining registrar or whether other courses of action must be considered.

5.3. If registration data is unavailable or deemed unreliable, ICANN may:

5.3.1. initiate litigation or arbitration to obtain registration data to facilitate a transfer through this procedure;

5.3.2. attempt to collect Whois / registration data;

5.3.3. allow the de-accredited registrar to continue limited operations to be able to service existing customer needs (by processing renewals and updates but not new registrations, for example);

5.3.4. negotiate an arrangement with the de-accredited registrar to obtain its cooperation with a bulk transfer;

5.3.5. allow registrations to expire on their expiration dates;

5.3.6. instruct registries to delete names (in limited and unique situations, such as, for example, where it appears the names are all test-registrations with no beneficial owner); or

5.3.7. pursue more than one of these potential options or a different alternative altogether.

5.4. If ICANN is satisfied with the availability and quality of registration data, it will proceed to the Gaining Registrar Selection Process.

6. Gaining Registrar Selection Processes

6.1. Because there are many factors that influence the transition of names from a de-accredited registrar, the gaining registrar selection process will follow one of two tracks. The two tracks include: (1) a full competitive application process and (2) a fast-track process in which ICANN selects a registrar from a pre-qualified registrar pool. The determination of which process to use will be made at the discretion of ICANN Staff in weighing all of the relevant considerations. Those considerations are generally intended to balance the complexity and costliness of a bulk transfer against its potential value to prospective gaining registrars, while prioritizing the protection of affected registrants.

6.2. The full application process is favored in cases in which:

- 6.2.1. there are greater than 1,000 registrations involved;
- 6.2.2. reliable registration data is believed to be available;
- 6.2.3. more than a small handful of unique registrants is involved;
- 6.2.4. there is potential value that could be realized through a competitive bid process; and
- 6.2.5. a lack of exigent circumstances suggests an orderly transition would be likely, despite the additional time the full application process might take.

6.3. The fast-track selection process would be favored in cases in which:

- 6.3.1. there are fewer than 1,000 domain names;
- 6.3.2. available registration data is incomplete or unreliable;
- 6.3.3. several gTLDs are involved, but with few registrations;

6.3.4. the costs involved in transitioning the registrations might reasonably be expected to exceed the value of the potential new business for the gaining registrar; and

6.3.5. timing constraints or exigent circumstances could impair a successful transition if the full application process were used.

7. Full Competitive Application Process

7.1. The first step in the full competitive application process is a solicitation of bids. ICANN will transmit an application to all registrars via email that will provide a transparent scoring rubric. Scoring will be based on factors such as the ability to technically manage the transition of registrations in a timely manner and capacity to provide reliable customer service to new registrants.

7.2. The application questions are intended to test whether the prospective gaining registrar will:

7.2.1. be able to quickly transition registrations and customer information into its registrar operations to be able to provide timely service to the newly acquired registrants;

7.2.2. be able to demonstrate prior experience in managing a portfolio of registrations/customers comparable to those of the de-accredited registrar;

7.2.3. have available sufficient customer service staff to timely respond to customer service requests during and following the bulk transfer;

7.2.4. be accredited and operational in all applicable gTLDs and in good-standing under its RAA;

7.2.5. have experience in and knowledge of bulk transfer procedures;

7.2.6. have documented procedures in place to resolve potential disputes of domain name control or registration rights;

7.2.7. be experienced as a customer-facing / “retail” registrar business (if applicable);

7.2.8. have experience in managing second-level internationalized domain names (if applicable);

7.2.9. be able and willing to provide ICANN with regular status reports; and

7.2.10. provide adequate compensation for the portfolio of customers/registrations.¹

7.3. While these criteria will guide ICANN’s selection of a gaining registrar, they are not intended as inflexible rules. That is, an applicant who meets most of the criteria may nevertheless be considered to be the gaining registrar, and similarly, unique circumstances may require consideration of additional factors not listed here.

7.4. In reviewing the applications received, ICANN will score the applications according to the provided scoring rubric. The scoring rubric will set threshold scores, so that all registrars who score above the same threshold score will be deemed tied. In the event of such a tie, the registrar that offers the greatest compensation for the registrations will be selected as the gaining registrar. (In the event that no applications are received or no qualified applicants apply, ICANN will utilize the pre-qualified registrar transition pool described in section 8 below.)

7.5. In considering the relative qualification of applicants, ICANN will evaluate each applicant’s application, as well as any other information potentially available to ICANN, such as historical compliance data and documented customer complaints. ICANN may take into account any relevant factors, such as the location and size of the applicant (relative to the de-accredited registrar), the applicant’s perceived ability to

¹ This procedure is not intended to create a new form of revenue for ICANN. To the extent payment is received as part of a bulk transfer, ICANN will apply funds against any debt owed by the registrar to ICANN and forward the remaining funds, if any, to the de-accredited registrar.

timely provide customer service in the language of the de-accredited registrar's customers, the general solvency, stability, and reputability of the applicant, as well as the overall perceived professionalism of the applicant's operations.

8. Fast-track (Pre-qualified Registrar Pool) Process

8.1. Where the balance of factors described in section 6 are deemed to not warrant use of the full application process and in cases in which no registrars bid during the application process, ICANN will choose a gaining registrar from the pre-qualified registrar pool.

8.2. Any ICANN-accredited registrar can apply to be a part of the pre-qualified pool by responding to a standardized questionnaire. Registrars who request to join the pool will be pre-qualified by ICANN and will not need to fill out any additional questionnaires or applications in the event they are selected to be a gaining registrar through this process. (Registrars who wish to apply in competitive application rounds must still complete the application, like any other applicant.) Registrars can leave the pool at any time.

8.3. When selecting a registrar from the pre-qualified pool, ICANN may hand-select a gaining registrar it believes will best meet the needs of the affected registrants or it may select a gaining registrar using a round-robin (first in, first out) approach. The goal in this process is to transfer the registrations to the most appropriate gaining registrar in the pool and spread the opportunities around in an equitable fashion.

8.4. Registrars who are selected to receive a bulk transfer through the fast-track process will not be penalized or negatively impacted in any way in future transfers in which the full competitive application process is used. To the contrary, experience with bulk transfers might positively impact a registrar's likelihood of being selected in a competitive application round.

9. Alternatives When No Gaining Registrar is Identified

9.1. If no qualified gaining registrar can be identified through the gaining registrar selection processes described above, ICANN may:

9.1.1. temporarily operate the registrar and establish a deadline by which all registrants must transfer their names out;

9.1.2. operate the de-accredited registrar indefinitely by providing unlocking and auth-info code services to registrants;

9.1.3. retain the services of a registrar back-end service (or back-end and front-end service) provider either temporarily or indefinitely;

9.1.4. compensate a registrar to receive the bulk transfer;

9.1.5. offer a temporary accreditation to potential gaining registrars; or

9.1.6. allow names to be deleted upon expiration.

9.2. These alternatives reflect, to varying degrees, handling of a “worst-case” scenario. It is expected that, in nearly every de-accreditation, an orderly transition, through one of the Gaining Registrar Selection Processes described above, will be likely.

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Appendix A

