

# **GNSO Issues Report on Post-Expiration Domain Name Recovery**

## **STATUS OF THIS DOCUMENT**

This is the Issues Report on Post-Expiration Domain Name Recovery requested by the At-Large Advisory Committee (ALAC).

## **SUMMARY**

This report is submitted to the GNSO Council on 5 December 2008 in response to a request received from the ALAC pursuant to a Motion proposed and carried during the ALAC teleconference meeting on 14 October and request subsequently submitted on 20 November 2008.

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# 1. Executive Summary

## 1.1 Background

- This report is submitted in response to the [request](#) (see annex I) from the At-Large Advisory Committee (ALAC) for an Issues Report on Post-Expiration Domain Name Recovery.
- In this request ALAC alleges that current measures aimed at recovering an expired domain name 'have proven to be ineffective' and asserts that 'the loss of a domain name can cause significant financial hardship to the registrant, and that harm can increase with the time required to recover the name. Less concrete harm in the form of damaged reputation and permanently lost business is also relevant'. Furthermore, the ALAC considers previous attempts to instil predictability for post-expiration domain recovery 'not successful'.
- In order to understand the current process better and identify potential issues that might exist for post-expiry domain recovery, an overview of the current life cycle of a gTLD Domain Name, and more specifically the post-expiration grace periods, has been provided in Chapter three.

## 1.2 Summary of Current Process and Staff Analysis

- The Redemption Grace Period (RGP) is not a consensus policy and therefore not binding on all registrars, although many registrars do offer RGP. Few domain names seem to enter RGP because they are not deleted by the registrar; but instead their registrations are sold, auctioned and/or transferred to a third party during the preceding Auto-Renew Grace Period when the registrant fails to renew. Registrars may offer an auto-renewal policy to registrants to renew a domain name following expiration and/or share the profits of a sale or auction with the registrant, but registrars are not obligated to do so.
- The Registrar Accreditation Agreement (RAA) does contain a number of provisions outlining the obligations of registrars to communicate the details of their deletion and auto-renewal policies to new registrants. However, it is not always obvious what certain terms and conditions might entail and it is possible that registrants may not fully understand the implications of certain clauses in their contracts. It is current practice for many registration agreements to include a clause in which the registrar obtains the right

to renew and transfer the domain name to the registrar through a subsidiary or affiliate or a third party and/or redirect the domain name following expiration.

- There is no requirement during the Auto-Renew Grace Period to put the domain name on hold, which might result in the registrant only realising the domain name has expired after it moves into RGP or after the domain name registration has been sold to another registrant.
- It is currently not possible to change registrars during RGP.

### 1.3 Staff Recommendations

- ICANN staff recommends the GNSO Council to initiate a PDP to review and consider changes to the Expired Domain Deletion Policy or develop a new consensus policy addressing:
  - Whether adequate opportunity exists for registrants to redeem their expired domain names
  - Whether expiration-related provisions in typical registration agreements are clear and conspicuous enough
  - Whether adequate notice exists to alert registrants of upcoming expirations
  - Whether additional measures need to be implemented to indicate that once a domain name enters the Auto-Renew Grace Period, it has expired (e.g. hold status, a notice on the site with a link to information on how to renew, or other options to be determined)
  - Whether, and if so, how best to enable the transfer of a domain name in RGP.On the latter point, the GNSO Council might want to consider whether this should be investigated in the context of the upcoming Inter-Registrar Transfer Policy PDP C, 'IRTP Operational Rules Enhancements'.
- In addition, ICANN staff recommends that any subsequent policy development effort engaged in by the Council pursue the availability of further information from ICANN compliance staff to understand better how those provisions that are currently part of the RAA such as the obligation to provide details of the deletion and auto-renewal policy, as well as information on the web site on the fee charged for the recovery of a domain name during the RGP, are enforced.
- Furthermore, the GNSO Council could consider enhancements, which would highlight more clearly or visibly the provisions of the contract in relation to auto-renew and expiration policies. It should be noted that ICANN staff does not recommend that this be

included in a PDP as it is at the discretion of the registrar to decide which services to offer as long as within the scope of consensus policies and it is the obligation of the registrant to understand what he or she signs up to. A [previous Chair of the GNSO noted](#) in this context that ‘perhaps ICANN and the GNSO can assist with providing authoritative information on the policies and processes of domain name registration to these [consumer protection] organisations’.

#### **1.4 Is the issue within scope of GNSO policy making?**

- Post-expiration domain name recovery involves the allocation and assignment of domain names. ICANN is also responsible for policy development reasonably and appropriately related to these technical functions. As explained further in Chapter 5 below, the issue is within the scope of ICANN’s mission statement. As post-expiration domain name recovery concerns gTLDs, the issue is within the scope of the GNSO to address.

## 2. Objective

- This report is submitted in response to the request from the At-Large Advisory Committee (ALAC) for an Issues Report on Post-Expiration Domain Name Recovery as expressed in its [request](#) (see annex I).
- In this context, and in compliance with ICANN Bylaws requirements:
  - a. The proposed subject raised for consideration is post-expiration domain name recovery.
  - b. The identity of the party submitting the issue is the At-Large Advisory Committee.
  - c. How that party is affected by that issue: "At-Large" is the name for the community of individual Internet users who participate in the policy development work of ICANN. The ALAC request requesting this issues report states that:

'ICANN's mission is to "coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems." The ICANN Bylaws list 11 core values that should guide ICANN's decisions and actions in furtherance of its mission.

Enabling predictable post-expiration recovery of domain names while at the same time allowing for innovation in domain registration involves the following core values:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
  6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
  7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.'
  9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
- d. Support for the issue to initiate a PDP: The motion to request an issues report was adopted by consensus by ALAC on 14 October 2008.

## 3. Background

### 3.1 Background

- At a teleconference on 14 October 2008, the At-Large Advisory Committee (ALAC) voted to request an Issues Report on the subject of registrants being able to recover domain names after their formal expiration date. The [motion](#) called for the draft request to be revised during the Cairo ICANN meeting before submission to the Generic Names Supporting Organisation (GNSO).
- The ALAC formed a small Working Group to work on this [request](#), which was adopted unanimously on 5 November 2008.
- The request was submitted to the GNSO Council on 20 November 2008.

### 3.2 Request for Issues Report

- The ALAC request asks for 'the creation of an Issues Report on Post-expiration Domain Name Recovery by the original registrant'.
- The request alleges that current measures aimed at recovering an expired domain name 'have proven to be ineffective'.
- The request asserts that 'the loss of a domain name can cause significant financial hardship to the registrant, and that harm can increase with the time required to recover the name. Less concrete harm in the form of damaged reputation and permanently lost business is also relevant'.
- As the ALAC request considers previous attempts to instil predictability for post-expiration domain recovery 'not successful', it notes a number of 'desired outcomes' it would like to see coming from a possible policy development process, including:
  - Domains are guaranteed to be recoverable by the original registrant for a specific period immediately following expiration (nominally 30-45 days), during which the registration may not be sold or auctioned.
  - If the domain name resolves for web access, the page to which it resolves must identify the domain name as a post-expiration domain name and provide details on how the name can be recovered.
  - Following expiration, e-mail should not be delivered or bounce with an appropriate error code.

- Any other services normally accessible via the domain name must no longer be accessible.
- The cost of recovering the name during the EGP should be predictable i.e. published and not depend on the perceived resale or auction value of the domain name.
- The mechanism to transfer a domain name during the recovery process should be possible, documented and published.
- If a domain name is ultimately deleted, the RGP must be offered to registrants, and the pricing should be predictable.
- There should be an ability to change registrars during the RGP recovery.
- The term 'published' means the information must be readily locatable on the registrar's web-site.
- In addition to the desired outcomes, attachment 1 outlines a number of issues related to domain expiration and recovery, namely:
  - Notices of expiration were sent and received, but the registrant did not take timely action.
  - Notices were sent but not consciously received by the registrant, typically because they were treated as spam, or the e-mail address still existed but was not being checked.
  - Auto-renewal had been requested by the registrant, but at renewal time, there were insufficient funds available or the credit card on file was not accepted.
  - Notices were attempted to be sent, but could not be delivered, either due to mail system malfunction or out-of-date registration contact information.
  - The registrar did not send the required notices due to system malfunction or deliberate inaction.
  - The registrant is using a privacy service and that service does not forward the expiration notices.
  - Auto-renewal has been requested but was not carried out by the registrar (or privacy service).
  - The domain has been hi-jacked and contact information changed, allowing the transfer of the domain to another registrar.
  - The domain may never have been registered in the "registrant's" name. This is particularly prevalent in the cases where a domain name is bundled into a hosting agreement by a reseller.



### 3.3 Current Post-Expiration Grace Periods and Practices

- In order to understand the current process better and identify potential issues that might exist for post-expiry domain recovery, an overview of the current life cycle of a gTLD Domain Name (see figure 1), and more specifically the post-expiration grace periods, are described in this section.
- A number of elements described below are part of the [Expired Domain Deletion Policy](#) (EDDP, see annex II) which is a consensus policy that revised the domain registration expiration provisions in ICANN's Registrar Accreditation Agreement in December 2004.

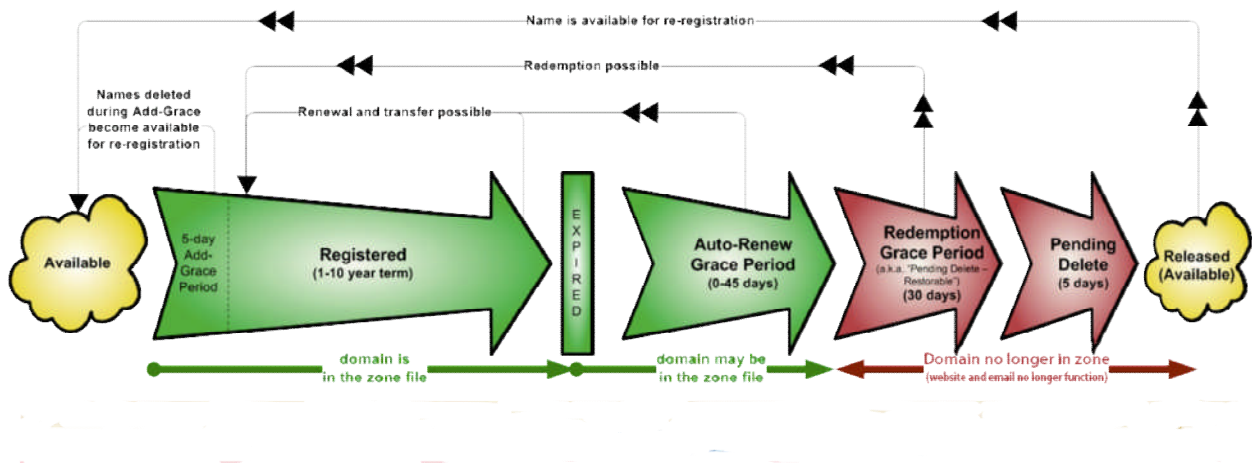


Figure 1 – Life Cycle of a gTLD Domain Name

#### 3.3.1 Prior to Expiration

- Under the terms of the Registrar Accreditation Agreement (RAA) as modified by the EDDP, a Registrar 'shall provide notice to each new registrant describing the details of their deletion and auto-renewal policy', including any changes made to this policy during the term of the registration agreement.
- The RAA furthermore specifies that the registrar should clearly display on its web-site 'details of Registrar's deletion and auto-renewal policies' and 'state, both at the time of registration and in a clear place on its website, any fee charged for the recovery of a domain name during the Redemption Grace Period'.
- The Registrar is required to send at least two notices or reminders to the registrant to alert the registrant that their domain name is about to expire and what needs to be done

in order to renew it. In practice, most registrars will send more than two notices to the registrant.

- Some registrars provide an optional automatic renewal service to registrants, by which the domain name gets automatically renewed prior to expiration.

### 3.3.2 Auto-Renew Grace Period

- The Auto-Renew Grace Period is a specified number of calendar days following an auto-renewal. An auto-renewal occurs if a domain name registration is not renewed by the expiration date; in this circumstance the registration will be automatically renewed by the registry the first day after the expiration date. Often the registrar's account is assessed the registry renewal fee at that time, though some registries may not assess a fee on the registrar until after the auto-renew grace period ends. The current length of the Auto-Renew Grace Period is 45 days, but a registrar can opt to delete the domain name prior to then.
- During the Auto-Renew Grace Period, a domain name might resolve normally, stop resolving or resolve to a registrar-designated IP address which hosts a parking, "under construction" or other temporary page. In the latter case, the registrant will likely have agreed to this option at the time of initial registration as one of the provisions of the registration agreement. A review of the registration agreements of the [top 10 domain registrars](#) covering over 66% of domain names, shows that seven registration agreements contain such provisions, one registration agreement does not have a provision in place but in the FAQ it is mentioned that the domain name is parked following expiration and two registration agreements do not contain such a provision.
- If a domain is deleted within the Auto-Renew Grace Period and the Registry has already assessed a renewal fee on the Registrar, the sponsoring Registrar at the time of the deletion will receive a credit from the registry of the renewal fee. The domain immediately goes into the Redemption Grace Period (see next section).
- A domain can be renewed within the Auto-Renew Grace Period. The account of the sponsoring Registrar at the time of the additional extension will be charged by the registry for the additional number of years the registration is extended.
- If a domain is transferred within the Auto-Renew Grace Period, the losing Registrar is credited with the registry renewal fee and the year added by the Auto-Renew operation is cancelled. The expiration date of the domain is extended by one year up to a total

maximum of ten and the gaining Registrar is charged by the registry for that additional year.

- There is no obligation in the RAA or EDDP for the Registrar to return the domain name to the original registrant during the Auto-Renew Grace Period, should the registrant decide it would like to renew the domain name. However, registrars do have the option to offer this possibility. The conditions for renewal are normally outlined in the auto-renewal policy of the respective registrar. In practice, most registrars have an auto-renewal policy in place, which allow the registrant to renew a domain name after the expiration date.
- If the domain name is deleted, it automatically enters the RGP. It should be noted though, and this is one of the concerns expressed by ALAC; some domain names never reach the RGP because their registrations are sold, auctioned or transferred to another party which, the ALAC asserts, cannot be prevented by the original registrant. Many registration agreements provide for the right of renewal by the registrar and transfer of ownership to the registrar through a subsidiary or affiliate or a third party in case the original registrant does not renew the domain name. In practice, registrars may offer the possibility for the original registrant to renew the domain name registration as part of their auto-renewal policy and/or share in the profits of a sale or auction of the domain name.
- Rob Hall, a registrar representative in a 2007 tutorial offered at the ICANN public meeting in Lisbon on '[How the Marketplace for Expiring Names Has Changed](#)', noted that 'if the domain has any value over \$6, they're no longer entering the redemption grace period', but the domain name is kept by the registrar. As a result, 'the individual registrars are in fact becoming the de facto registry for that domain name. The only place you can get it is at that registrar'.
- During the Auto-Renew Grace Period, a domain name can be transferred to another registrar as outlined in the '[Policy on Transfer of Registrations between Registrars](#)'.

### 3.3.3 Redemption Grace Period (RGP)

- Following a rising tide of problems and complaints relating to deletion of domain-name registrations, in 2002 ICANN developed the Redemption Grace Period (RGP) for unsponsored TLDs to prevent unintentional deletions. It should be noted that the RGP was not established by an ICANN consensus policy and it is therefore at the sole discretion of the registry and registrar whether to offer or not to offer the Redemption Grace Period service. In practice it is believed that most registrars offer this service.

- The RGP is a 30-day registry "hold" period for all domain names deleted by registrars. This hold period is designed to allow registrars the ability to "restore" names that were deleted accidentally or without the intent of the registrant.
- During this 30-day period, the deleted name will be placed on REGISTRY-HOLD, which will cause the name to be removed from the zone. The domain name, therefore, will not function/resolve. This feature is intended to ensure notice to the registrant that the name is subject to deletion at the end of the Redemption Grace Period, even if the contact data the registrar has for the registrant is no longer accurate.
- During the Redemption Grace Period, the original registrant can redeem its registrations through the registrar. Registrars can redeem the name in the registry for the original registrant by paying renewal fees, plus a service charge, to the registry operator. Any party requesting redemption is required to prove its identity as the original registrant of the name.
- The RAA states that the registrar must have 'both at the time of registration and in a clear place on its website, any fee charged for the recovery of a domain name during the Redemption Grace Period'.
- It is currently not possible to transfer a domain name in RGP to another registrar; the domain name can only be recovered by the existing registrar.

### **3.3.4 Pending Delete**

- A domain name is placed in PENDINGDELETE status if it has not been restored during the Redemption Grace Period. A domain name cannot be recovered or transferred by anyone at this point. A domain name is deleted from the registry database a specified number of calendar days after it is placed in PENDINGDELETE status. The current length of this Pending Delete Period is five calendar days. Once the domain name has been deleted from the registry database, it becomes available for registration by a new registrant.

## **3.4 Renewal and Expiry Rates**

- According to the Verisign 'Domain Name Industry Brief' of September 2008 'the renewal rate for .com and .net averaged 74 percent for the first quarter of 2008. Renewal rates have historically been in the mid-70 percent range over the last few years. [...] Whether

a domain name resolves to a Web site is a key factor in the renewal rates since domain names that resolve to Web sites are more likely to be renewed’.

- It is estimated that anywhere between 20,000 and 65,000 domain names are deleted every day (see <https://www.snapnames.com/faqs.jsp>, <http://www.pool.com/>).

## 4. Staff Analysis and Recommendations

### 4.1 Analysis

- The RGP was intended to stop names from being re-registered immediately after being deleted in error. The EDDP was intended to stop registrars from allowing registrations to remain registered and active indefinitely following the expiration of the original registration agreement. While both work as originally intended, they do not address concerns raised by the ALAC that some registrants may not have sufficient notice or opportunity to recover expired domain names. In addition, the RGP is not a consensus policy and therefore not binding on all registrars, although many registrars do offer RGP. Also the practice is becoming more common whereby domain names, especially those of value, never enter the RGP because they are not deleted, but the registrations are sold, auctioned and/or transferred to a new registrant before that time. It should be noted that many registrars do offer RGP. Many registrars do offer an auto-renewal policy with the possibility for registrants to redeem their domain name, and/or offer the possibility to share in the profits of the sale or auction of the domain name. However, this is a voluntary decision by the registrar, they are not obligated to do so.
- The RAA does dictate that registrars ‘shall provide notice to each new registrant describing the details of their deletion and auto-renewal policy’, including any changes made to this policy during the term of the registration agreement. In most cases, details relating to the deletion and auto-renewal policy are included in the registration agreement, which is a document that is expected to be read and understood by registrants before signing. As noted before, it is current practice at many registrars that this agreement includes a clause in which the registrar obtains the right to renew and transfer the domain name to the registrar through a subsidiary or affiliate or a third party and/or redirect the domain name following expiration. A prospective registrant could always review the registration agreements of multiple registrars in order to find the conditions that fit best with his or her needs, but it is not always obvious at the outset what certain terms and conditions might entail (e.g. a parked page – does this include advertising, does it link to another content page, is it the original domain with an expiration banner?). In addition, registrants may not fully understand the implications of

certain clauses in the contracts, especially those relating to expiration. Some registrants also may not be focused on term related to expiration at the time of signing.

- Registrars are required to send at least two notices to registrants before each domain name expires, informing them about the upcoming expiration and how to renew the domain name. However, there is no requirement during the Auto-Renew Grace Period to put the domain name on hold as happens during the RGP. This might result in the domain name resolving normally, even after expiration. Some registrars may include a banner or notice on the (parked) web-site indicating it has expired, but again, this is not an obligation. The registrant may not realise that the domain name has expired until after it moves into RGP or after the registration has been sold to another registrant who changes the content of the site.
- It is currently not possible to change registrars during RGP. However, it might be worthwhile to investigate whether it would be appropriate to make this option available to registrants in the context of the '[Policy on Transfer of Registrations between Registrants](#)'. It would facilitate matters such as in the case where a reseller is not responsive to the request from the registrant to recover the domain name and could promote increased competition in the marketplace.

## 4.2 Recommendations

Taking the above into account, ICANN staff recommends that the GNSO Council initiate a PDP to review and consider changes to the Expired Domain Deletion Policy or develop a new consensus policy addressing:

- Whether adequate opportunity exists for registrants to redeem their expired domain names
- Whether expiration-related provisions in typical registration agreements are clear and conspicuous enough
- Whether adequate notice exists to alert registrants of upcoming expirations
- Whether additional measures need to be implemented to indicate that once a domain name enters the Auto-Renew Grace Period, it has expired (e.g. hold status, a notice on the site with a link to information on how to renew, or other options to be determined)
- Whether, and if so, how best to enable the transfer of a domain name in RGP.

On the latter point, the GNSO Council might want to consider whether this should be investigated in the context of the upcoming Inter-Registrar Transfer Policy PDP C, 'IRTP Operational Rules Enhancements'.

In addition, ICANN staff recommends that any subsequent policy development effort engaged in by the Council pursue the availability of further information from ICANN compliance staff to understand better how those provisions that are currently part of the RAA such as the obligation to provide details of the deletion and auto-renewal policy, as well as information on the web site on the fee charged for the recovery of a domain name during the RGP, are enforced.

Furthermore, the GNSO Council could consider enhancements, which would highlight more clearly and visibly the provisions of the contract in relation to auto-renew and expiration policies. It should be noted that ICANN staff does not recommend that this be included in a PDP as it is at the discretion of the registrar to decide which services to offer as long as within the scope of consensus policies and it is the obligation of the registrant to understand what he or she signs up to. A [previous chair of the GNSO noted](#) in this context that 'perhaps ICANN and the GNSO can assist with providing authoritative information on the policies and processes of domain name registration to these [consumer protection] organisations',

#### **4.3 ALAC Desired Outcomes**

In relation to the desired outcomes stated by ALAC in its request, ICANN staff notes that while most, if not all, outcomes might be achieved by the recommendations identified by the ALAC, it would be helpful for all parties concerned to engage in a more fulsome dialogue on the extent and detailed nature of the concerns to determine whether these are shared desired outcomes and if so, how these could best be addressed in policy work going forward, including a more robust discussion of the merits and drawbacks of various solutions to address agreed concerns. The GNSO Council might consider such an activity, which could take the form of one or more public workshops at an upcoming ICANN meeting, for example, as a precursor for the launch of a PDP as it would help to define and focus the policy development process on one or more specific proposed changes. While this could also be explored by a working group following the launch of a PDP, staff recommends further fact finding first to figure out what policy options might exist, and then conduct a PDP



to assess the impact of those policy options and confirm community support for a preferred policy choice.

## 5. Is the issue within scope of GNSO Policy Making?

In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO, ICANN Staff and the General Counsel's office have considered the following factors:

### Whether the issue is within the scope of ICANN's mission statement

The [ICANN Bylaws](#) state that:

"The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
  - a. Domain names (forming a system referred to as "DNS");
  - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and,
  - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions."

Post-expiration domain name recovery involves the allocation and assignment of domain names. ICANN is also responsible for policy development reasonably and appropriately related to these technical functions. Under items 1a and 3 above, the issue is within the scope of ICANN's mission statement. As post-expiration domain name recovery concerns gTLDs, the issue is within the scope of the GNSO to address.

**Whether the issue is broadly applicable to multiple situations or organisations**

A consideration of the issues surrounding post-expiration domain name recovery would be broadly applicable to multiple situations or organisations, including each existing gTLD under contract with ICANN, each of 900+ accredited registrars, and a diversity of existing and potential registrants. Note however that a consensus policy resulting from the policy development process would only be applicable to contracted parties (registries and registrars).

**Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates**

Completion of policy development work on issues surrounding post-expiration domain name recovery would affect future gTLDs, future registrars, and potential business or non-commercial entities which have not as yet entered the market.

**Whether the issue will establish a guide or framework for future decision-making**

The outcome of a policy development process will have lasting value as precedent, although the particular circumstances of the market will continue to evolve, and will thus establish a framework for future decision-making on related issues.

**Whether the issue implicates or affects an existing ICANN policy**

The issue does affect an existing ICANN policy, namely the [Expired Domain Deletion Policy](#) and the [Policy on Transfer of Registrations between Registrars](#) (only relating to the question of a transfer of a domain name in RGP). A list of consensus policies is available at <http://www.icann.org/general/consensus-policies.htm>.

Based on the above, the General Counsel finds that the proposed issue is within scope of the ICANN policy process and within the scope of the GNSO.

ICANN staff recommends that the Council move forward on a policy development process, including further fact-finding and research as described above to provide more data and further insights to assist policy development and illuminate potential policy options. Staff resources can be made available to support these research activities and objectives.

## Annex I – ALAC Request for Issues Report

### Request for Issues Report on Post-expiration Domain Recovery

The At-Large Advisory Committee requests the creation of an Issues Report on Post-expiration Domain Recovery by the original registrant<sup>1</sup>.

Note: for the purposes of this document, the term “registrar” refers to both registrars and their resellers.

Note: for the purposes of this document, the term “expiration” refers to the date showing as the domain “expiration date” effective during the preceding year. The reason for such cumbersome wording is the provision in many Registrar-Registrant agreements such as the following example which could result in the domain name never actually expiring: *“Should you choose not to renew your domain name during any applicable grace period, you agree that we may, in our sole discretion, renew and transfer the domain name to a third party on your behalf (such a transaction is hereinafter referred to as a “Direct Transfer”).”*

Over the years, ICANN has implemented several measures aimed at ensuring that a domain that had recently expired could be recovered by its original registrant. These measures have proven to be ineffective. Registrars have developed means of circumventing them to make both the possibility of recovery, and the price of such recovery, quite unpredictable.

A short summary of the issues related to domain expiration and recovery is included in Attachment 1.

If a registrant does not renew its domain name before the registration’s expiration date, the registrant may first become aware of the non-renewal when its website is not accessible or its e-mail does not work. Typically a web URL will now resolved to a parked page which may

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<sup>1</sup> In the context of this document, the “registrant” is the entity that has the benefit of the original registration and not a proxy service or other intermediary that may be reflected in whois data.

or may not give an indication that the domain name has expired and could be recovered, or the process for such recovery. Most likely the page will have pay-per-click links, with the subject matter somehow related to the domain name or the content of the original site. It is also possible that the web/e-mail could continue to work during this period, providing no indication at all that the domain has expired.

When a registrant tries to recover a domain following the expiration and before deletion, some combination of the following may occur:

- The domain may be recoverable, but the price may be set based on the registrar's perceived market value of the domain, and/or the amount of time that has elapsed since expiration.
- The domain may have already been transferred, sold or auctioned and is no longer available.
- The domain name has been deleted and the Registrar does not offer redemption under the RGP, or the RGP is offered, but at an excessive price.

### **Consequences of "Lost" Domain Names**

A 2002 ICANN Discussion Paper on Redemption Grace Periods

(<http://www.icann.org/en/registrars/redemption-proposal-14feb02.htm>) summarized the impacts of lost domain names on registrants (described as consumers).

*To consumers (individuals, businesses, non-commercial organizations, and governmental and educational entities), the consequences of an unintentional domain registration deletion can be devastating. If a domain is deleted and re-registered by a third party, the original registrant's web, e-mail and other Internet services will, in the best circumstances, simply stop working. Worse still is the potential for e-mail and web traffic intended for the original registrant to be redirected to and captured by a third party whose intentions may not be benevolent. In many cases the prior registrants of names find that "their" domains have been pointed to content they find to be distressing. (For example, in some cases deleted church-group domain names have been re-registered and directed to adult-content sites.) Some registrants of expired domains are interested primarily in profiting from a*

*mistaken deletion by obtaining click-through revenue the domain will draw. Others have demanded ransom for return of inadvertently deleted names that they re-register; they sometimes enhance the ransom value by placing content on the site calculated to harm the former registrant.*

The loss of a domain name can cause significant financial hardship to the registrant, and that harm can increase with the time required to recover the name. Less concrete harm in the form of damaged reputation and permanently lost business is also relevant. For non-commercial domain names, the impact can also be significant; examples include sites serving networks for parents of terminally ill children, political campaigns and a host of others. Moreover the time and cost to recover a domain can be substantial, particularly if those who have taken over a domain have found that it draws high traffic. If a name is ultimately not recoverable, the harm to the registrant may be very large.

In cases where a claim can be made that the entity taking over a domain name is violating the Intellectual Property rights of the original registrant, there may be recourse under the UDRP. However, many small enterprises and individuals do not pursue relief under the UDRP.

In many cases, the registrants are providing a variety of services to the community at large, and with the redirection of a domain name, the services are no longer available. The impact of the loss of these services on which the end user relies can vary from minor inconvenience or annoyance to major impact on their livelihood if such services were a necessary input into their own business.

## Relevance to ICANN's Mission

According to ICANN's bylaws, ICANN's mission is to “coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.” The ICANN Bylaws list 11 core values that should guide ICANN's decisions and actions in furtherance of its mission.

Enabling predictable post-expiration recovery of domain names while at the same time allowing for innovation in domain registration involves the following core values.

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

## Desired Outcomes

Previous attempts to ensure predictability in post-expiration domain recovery have not been successful. Possibly, this is because they have been process-based instead of outcome-based. As a result, we now have a Redemption Grace Period in place, but even for registrars that pass the right on to registrants, it is rarely applicable. We have an Auto-renew Grace Period, but it has been circumvented by registration contractual terms.

The ALAC supports the following outcomes:

1. Domains are guaranteed to be recoverable by the original registrant for a specific period

immediately following expiration (nominally 30-45 days) – the Expiration Grace Period – EGP. They may not be sold or auctioned during the EGP. Note that this is NOT a recommendation to create an Expiration Grace Period. The term and the acronym EGP are used here purely as a shorthand in the following points.

2. If the domain name resolves for web access, the resultant home page must identify the domain name as a post-expiration name and provide details on how the name can be recovered. Such a page should not include pay-per-click links, advertising, or other similar content. The name must not resolve, directly or indirectly, to its original IP address(es); specifically, the original web site must not be accessible via the domain name.
3. During the EGP, e-mail must either not resolve or bounce with an appropriate error code, but under no conditions be delivered to the original owner or another recipient.
4. Any other services normally accessible via the domain name must no longer be accessible.
5. The cost of recovering the name during the EGP must be fixed<sup>2</sup> and published.
6. The mechanism to change registrars during the recovery process must be documented and published.
7. If a domain is ultimately deleted following the EGP, the RGP must be offered to registrants, and the pricing must be fixed and published.
8. There should be an ability to change registrars during the RGP recovery.
9. The term “published” means the information must be readily locatable on the registrar’s web site.

Although not an issue within the scope of a PDP, ICANN must have in place procedures for addressing registrar or reseller failure to abide by expiration-related processes, and must facilitate procedures for addressing registrant complaints with respect to such processes (timely investigation is critical).

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<sup>2</sup> By “fixed” we mean that the cost does not vary over time or based on the perceived resale/auction value of the name.



## Attachment 1 (to the ALAC Request for Issues Report): Summary of Domain Expiration and Recovery Issues

Historically, a domain was registered for a specific period of time. Near the end of the period, the registrar was (and still is) required to notify the registrant of this expiration. If the domain was not renewed, the registrar would eventually notify the registry to delete the domain. The timing of “eventually” could be as little as zero days and was not limited. On deletion, the domain name would re-enter the pool of available domains and could be re-registered by the original owner or by someone else.

In 2002, the ICANN Board approved the Redemption Grace Period (RGP). Under the RGP, a deleted domain would not re-enter the available pool but would be placed in a hold status for 30 days with the intention of allowing the original registrant, through the registrar, to have the domain restored and renewed. There were registry fees associated with the process, which could be marked up by the registrar. The RGP has been voluntarily implemented by all unsponsored gTLDs [with the possible exception of .name].

Concurrent with the Board discussion of the RGP a DNSO/GNSO PDP was started looking at domain deletion issues (<http://www.dnso.org/dnso/notes/20030617.DeletesTF-report.html>) including whether more specific rules should apply to when a registrar must delete an expired domain name. As a result, in 2004, ICANN announced such a policy. The announcement (<http://www.icann.org/en/announcements/announcement-21sep04-2.htm>) read:

*Today ICANN announced the implementation of the Expired Domain Deletion Policy (EDDP). This consensus policy defines a uniform deletes practice that registrars must follow at the time of domain name expiration, as well as specific requirements for registrar handling of expired names that are subject to a UDRP dispute.*

*The EDDP was developed through ICANN's Generic Names Supporting Organization in response to concerns in the community about registrar practices in regards to deletion of expired names. In the past, some registrars have held on to domain registrations that the original registrant did not act to renew. With the new policy in place, all ICANN-accredited registrars will be required to delete domain*

*names by the conclusion of the 45 day auto-renewal period that follows the expiration of a domain name, unless the registrant has consented to have the domain names renewed.*

*Names deleted by registrars at the conclusion of any registrar grace period following expiration will continue to be subject to the Redemption Grace Period (RGP). The RGP is a thirty (30) day registry "hold" period for all domain names deleted by registrars. This hold period is designed to allow registrars the ability to "restore" names that were deleted accidentally or without the intent of the registrant.*

In short, a registrar was required to delete the name within 45 days, after which the RGP would kick in.

Unfortunately, before the policy was implemented, some registrars began changing their user agreements to allow them to take over or transfer expired domains to other parties, thereby allowing the name to be monetized, and/or sold or auctioned. In *some* cases, the original registrant receives a percentage (ranging up to 80%) of the sale price. By immediately monetizing these names, their value can be gauged.

If an original registrant attempts to recover their name, the registrar *may* make it available at some price if it has not yet been irrevocably sold.

Registrants may unintentionally allow their domain names to expire for many reasons. These include:

- Notices of expiration were sent and received, but the registrant did not take timely action.
- Notices were sent but not consciously received by the registrant, typically because they were treated as spam, or the e-mail address still existed but was not being checked.
- Auto-renewal had been requested by the registrant, but at renewal time, there were insufficient funds available or the credit card on file was not accepted.
- Notices were attempted to be sent, but could not be delivered, either due to mail system malfunction or out-of-date registration contact information.
- The registrar did not send the required notices due to system malfunction or deliberate inaction.

- The registrant is using a privacy service and that service does not forward the expiration notices.
- Auto-renewal had been requested but was not carried out by the registrar (or privacy service).
- The domain has been hi-jacked and contact information changed, allowing the transfer of the domain to another registrar.
- The domain may never have been registered in the “registrant’s” name. This is particularly prevalent in the cases where a domain name is bundled into a hosting agreement by a reseller.

Some of these reasons may implicate registrar violations of ICANN and/or customer agreements, but enforcement is often difficult or impossible.

## Annex II – The Expired Domain Deletion Policy

### Expired Domain Deletion Policy - Posted: 21 September 2004

The Expired Domain Deletion Policy is a revision to the domain registration expiration provisions in ICANN's Registrar Accreditation Agreement. Pursuant to a Consensus Policy recommendation from the GNSO Council, and as approved by the ICANN Board of Directors, the following changes to the obligations in the RAA will apply beginning 21 December 2004. (These requirements retroactively apply to all existing domain name registrations beginning 21 June 2005.) These revised contractual provisions will be applicable to all registrars pursuant to the Consensus Policies provision (§4.1) in the Registrar Accreditation Agreement. A new form of the agreement including these revisions will be posted shortly.

Section 3.7.5 currently reads as follows:

"Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy."

Beginning on 21 December 2004, Section 3.7.5 will be replaced with the following language:

3.7.5 At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to consent that the registration be renewed within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration by the end of the auto-renew grace period (although Registrar may choose to cancel the name earlier).

3.7.5.1 Extenuating circumstances are defined as: UDRP action, valid court order, failure of a Registrar's renewal process (which does not include failure of a registrant to

respond), the domain name is used by a nameserver that provides DNS service to third-parties (additional time may be required to migrate the records managed by the nameserver), the registrant is subject to bankruptcy proceedings, payment dispute (where a registrant claims to have paid for a renewal, or a discrepancy in the amount paid), billing dispute (where a registrant disputes the amount on a bill), domain name subject to litigation in a court of competent jurisdiction, or other circumstance as approved specifically by ICANN.

3.7.5.2 Where Registrar chooses, under extenuating circumstances, to renew a domain name without the explicit consent of the registrant, the registrar must maintain a record of the extenuating circumstances associated with renewing that specific domain name for inspection by ICANN consistent with clauses 3.4.2 and 3.4.3 of this registrar accreditation agreement.

3.7.5.3 In the absence of extenuating circumstances (as defined in Section 3.7.5.1 above), a domain name must be deleted within 45 days of either the registrar or the registrant terminating a registration agreement.

3.7.5.4 Registrar shall provide notice to each new registrant describing the details of their deletion and auto-renewal policy including the expected time at which a non-renewed domain name would be deleted relative to the domain 's expiration date, or a date range not to exceed ten days in length. If a registrar makes any material changes to its deletion policy during the period of the registration agreement, it must make at least the same effort to inform the registrant of the changes as it would to inform the registrant of other material changes to the registration agreement (as defined in clause 3.7.7 of the registrars accreditation agreement)."

3.7.5.5 If Registrar operates a website for domain name registration or renewal, details of Registrar's deletion and auto-renewal policies must be clearly displayed on the website.

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

3.7.5.7 In the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant. If the complainant renews or restores the name, the name will be placed in Registrar HOLD and Registrar LOCK status, the WHOIS contact information for the registrant will be removed, and the WHOIS entry will indicate that the name is subject to dispute. If the complaint is terminated, or the UDRP dispute finds against the complainant, the name will be deleted within 45 days. The registrant retains the right under the existing redemption grace period provisions to recover the name at any time during the Redemption Grace Period, and retains the right to renew the name before it is deleted.