IRT Discussion Draft v 6

Privacy and Proxy Service Provider
Suspension, De-Accreditation and Transition Procedure

In consultation with the community, the ICANN organization developed this procedure for managing notifications to customers ~~who have registered gTLD domain names~~ using an accredited privacy or proxy service provider for gTLD domain names that is being suspended or de-accredited, either voluntarily or involuntarily.

This process was posted for public comment on ==[date].== The procedure may be periodically reviewed and amended by ICANN for improvement and operational efficiencies.

This procedure is intended to enhance protection for domain name registrants and customers of proxy and privacy services. When a provider's accreditation agreement is terminated or not renewed, it may often be in the best interests of its customers and at-large users of the Internet for ICANN to permit the de-accredited provider to designate a "gaining provider" to receive a bulk transfer of its customers' names. Such a transition could help minimize customer confusion while ensuring that the gaining provider receives as much customer and registration data from the losing provider as possible. Moreover, a voluntary transition procedure generally involves a less disruptive customer experience.

However, in some cases a voluntary transition is not possible or practical because either the losing provider is uncooperative or because its designation of a gaining provider does not serve the community interest. While recognizing the potential benefits of a voluntary bulk transfer, this procedure balances the interests in ICANN's decision to approve or deny a proposed voluntary bulk transfer.

1. Introduction
    1.1 Upon a termination or expiration of a privacy or proxy service provider's accreditation agreement, Registration Data Directory Service records that include the provider's contact information to conceal underlying customer data are considered inaccurate, triggering registrar obligations to correct the inaccuracy(s) or suspend the registration, pursuant to the WHOIS Accuracy Program Specification of the 2013 Registrar Accreditation Agreement (RAA) and Section 4.3 of the Privacy and Proxy Service Provider Accreditation Policy.

    1.2 Final Recommendations developed by the Privacy and Proxy Service Provider Accreditation Issues Policy Development Working Group directed that reasonable safeguards to ensure that a customer's privacy is adequately protected upon a de-accreditation of a customer's privacy or proxy service provider—including when transfer of a customer's domain name(s) is involved—should be integral to the rules governing the de-accreditation process.[1] This included a recommendation that customers should be notified in advance of a privacy or proxy service provider's de-accreditation.

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[1] See Final Report, p. 17.

1.3 Upon the occurrence of any of the circumstances set forth in Section 5.5 of the PPAA, ICANN may, in ICANN's sole discretion, upon delivery of a notice pursuant to Subsection 5.7.2 of the PPAA, elect to suspend the provider's accreditation and ability to provide the services for any ~~new registrations~~ customers for gTLD domain names following the delivery of such notice for a period of up to twelve (12) months following the effective date of such suspension. Suspension of a provider does not preclude ICANN's ability to issue a notice of termination in accordance with the notice requirements of Section 5.6 of the PPAA.

2. Customer Notifications in the Event of De-Accreditation
    2.1 When a privacy or proxy service provider is de-accredited, either voluntarily or involuntarily, the provider must send a written notification to each of its customers via email at least 30 calendar days prior to the effective date of the termination of the PPAA with ICANN.

    2.2 When a provider is de-accredited in exigent circumstances pursuant to Section 5.5.7 or 5.5.8 of the Privacy and Proxy Service Provider Accreditation Agreement, the provider must send a written notification to each of its customers via email pursuant to the timeline designated by ICANN.

    2.3 The provider must send ICANN a copy of this written notification to confirm ~~and confirmation~~ that the notification was distributed to each ~~impacted~~ customer in conformance with Section 2.1 or 2.2, above.

    2.4 The written notification to each customer must state, in clear and conspicuous terms, that:
        2.4.1 The provider will no longer be accredited by ICANN to offer privacy and proxy services, effective [insert effective date].
        2.4.2 The provider's accreditation by ICANN to offer new Privacy and Proxy Services has been suspended until the termination goes into effect, effective [insert effective date] (if relevant).
        2.4.3 As a result of this de-accreditation, the provider will no longer be authorized to provide the service that conceals the customer's identifying information in the Registration Data Directory Service.
        2.4.4 Customers have the right to transfer their domain name registration(s) to a new privacy or proxy service provider and/or registrar, subject to the requirements in the Transfer Policy, Consensus Policies and Temporary Policies. Information about the domain name transfer process is available at https://www.icann.org/resources/pages/registrars/transfers-en.
        2.4.5 If the customer elects to transfer, there could be additional requirements if ~~domain~~ there is ~~associated with~~ a Change of Registrant as defined by ICANN's Transfer Policy.
        2.4.6 If no action is taken by the customer to initiate a transfer to a new provider and/or registrar, the customer's contact information could be published in the Registration Data Directory Service. If the customer's contact information is not published in the Registration Data Directory Service, the domain name registration could be suspended pursuant to the sponsoring registrar's

registration agreement and/or terms of service, because the registration information listed in the Registration Data Directory Service will be deemed inaccurate upon the termination of the provider.

2.4.7 Information about the sponsoring registrar, including the registrar's contact information, is available at [insert link to relevant ~~WHOIS~~ webpage here].

2.5   If the provider becomes aware of a persistent delivery failure of the notification to the customer, the provider must attempt to contact the customer through other available contact information within five (5) calendar days of becoming aware of the persistent delivery failure.

2.6   In addition to the notification described in Section 2.1, the provider must display a clear and conspicuous notice on its website, informing customers that its accreditation has been suspended, as of [X date](if relevant), and that the provider will be de-accredited as of [X date]. This notice must be published at least 30 calendar days prior to the effective date of the termination, or pursuant to the timeline designated by ICANN, if the provider is de-accredited pursuant to Sections 5.5.7 or 5.5.8 of the Privacy and Proxy Service Provider Accreditation Agreement. The website notice should include instructions on how to transfer the domain name to another provider and/or registrar as well as the consequences of inaction.

3.   ICANN Notices Regarding Suspension and/or Termination of Privacy/Proxy Accreditation

ICANN will distribute a notice to all accredited registrars and publish an announcement on its website, which will include the relevant date of the suspension and/or termination, instructions for customers of the terminated provider and additional details to assist the customers including, as applicable, the information identified in Section 2.4 above.

4.   De-Accredited Provider Transition Procedure[2]
4.1   Upon the termination or expiration of a provider's accreditation agreement, the impacted domain name registrations involving the provider shall be transitioned to an accredited provider that is in good standing, unless the customer elects to continue its registration without adding a new provider, resulting in the publication of the customer's identifying information in the Registration Data Directory Service.

4.2   This transition procedure is modeled on ICANN's De-Accredited Registrar Transition Procedure.[3]

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[2] ~~Note to IRT: Previous draft raised possibility of removing this process due to practical challenges. No significant IRT feedback was received on this topic either way. Many IRT members requested additional time to review and consider this document. Considering the potential negative ramifications for customers (up to and including suspension of their names pursuant to RAA requirements or inability to access their domain names), ICANN org proposes to include this transition procedure and modify it as may be necessary after the procedure is tested.~~

[3] https://www.icann.org/en/system/files/files/dartp-11jul13-en.pdf

4.3   The De-Accredited Provider ~~Transfer~~ Transition Procedure generally does not become operative until a provider's PPAA has been finally terminated because the agreement gives providers certain rights to, for example, cure a breach within the breach notice cure period or contest a breach, suspension or termination notice. 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 customer data for a gaining provider (either through the provider data escrow program or otherwise) and consulting with impacted registrars.

4.4   Voluntary Bulk Transfers

   4.4.1   ICANN will apply the following considerations in determining whether to approve or deny a proposed voluntary bulk transfer: a) the gaining provider is in good standing with its ICANN obligations, b) the gaining provider is operational and experienced in managing registrations in the affected gTLDs and in working with the sponsoring registrars, c) there are no apparent risks of abuse or gaming of the proposed bulk transfer as a result of any relationship between the losing and gaining provider, d) the bulk transfer will result in obligations to ICANN being satisfied, and e) the losing provider's customers are likely to be satisfied with the bulk transfer.

   4.4.2~~4~~   In weighing all considerations, ICANN may either approve the voluntary bulk transfer by announcing the approval to the involved providers and registrars, or deny the requested transfer, by giving the losing provider the opportunity to name a different gaining provider or proceeding to designate a gaining provider without deference to the losing provider's suggestion. If ICANN approves the voluntary transfer, the approval could be conditioned on satisfaction of certain conditions, such as payment of outstanding fees or other outstanding ICANN-related obligations.

   4.4.3   If ICANN approves the voluntary transfer, the gaining provider will be required to notify customers within ten (10) business days of the transfer approval and to provide detailed instructions to customers for the continued management of their gTLD registrations under the new privacy and/or proxy service provider.

4.5   Involuntary Bulk Transfers

   4.5.1 The PPAA gives ICANN a license to use or transfer customer data upon termination of a provider's accreditation agreement. Where a de-accredited provider does not cooperate with ICANN's transition efforts or ICANN does not approve the proposed gaining provider in a voluntary bulk transfer, ICANN will select a gaining provider to manage the registrations of orphaned customers who have not elected to continue their domain name registration without a privacy and/or proxy service.

   4.5.2 If customer data is unavailable or deemed insufficient to enable a gaining provider to provide services for the customers, ICANN may:

Commented [AB2]: Note to IRT: Added to ensure timely notice to customers.

4.5.2.1 Initiate litigation or arbitration to obtain customer data to facilitate a transfer through this procedure;

4.5.2.2 Attempt to collect customer data through available sources;

4.5.2.3 Allow the de-accredited provider to continue limited operations to service existing customer needs (by allowing access to relevant services attached to the impacted domain name(s) until such names expire);

4.5.2.4 Negotiate an arrangement with the de-accredited provider to obtain its cooperation with a bulk transfer;

4.5.2.5 Allow registrations to expire on their expiration dates;

4.5.2.56 Instruct registrars to delete any or all names upon request of ICANN (in limited and unique circumstances, such as, for example, where it appears the names are all test registrations with no customer); or

4.5.2.67 Take other steps to ensure customers' interests are adequately protected.

4.5.3   If ICANN is satisfied with the availability, quality and quantity of the customer data, it will proceed to the Gaining Provider Selection Process.

5. Gaining Provider Selection Process

5.1 Because there are many factors that influence the transition of names from a de-accredited provider, the gaining provider selection process will follow one (1) of two (2) tracks. The two (2) tracks include: (a) process in which ICANN selects a provider from a pre-qualified provider pool, and (b) the sponsoring registrar(s) will be offered a right of first refusal after which, if the registrar declines, ICANN will select a privacy and/or proxy service provider from a pre-qualified provider pool.

5.2 The provider pool process is favored when:

5.2.1 The total registration population is greater than 1,000;

5.2.2 Credible customer data is believed to be available;

5.2.3 Many unique customers appear to be involved;

5.2.4 Only a small number of registrars are involved;

5.2.5 A lack of exigent circumstances suggests an orderly transition would be likely, despite the additional time required for prospective gaining providers to complete the full competitive bidding process.

5.3 The registrar right of first refusal option is favored when:

5.3.1 There are many registrars involved, making it unlikely that a provider could be selected from the pool that works with all of the impacted registrars;

5.3.2 There are less than 1,000 registrations involved;

5.3.3 The sponsoring registrar(s) is affiliated with an accredited privacy and/or proxy service provider(s);

5.3.4 The availability and quality of customer data is questionable, which could create significant challenges in transferring names to a new provider and, possibly, a new registrar.

5.4 Provider Pool Process

5.4.1 Any ICANN-accredited provider can apply to participate in the pre-qualified pool by responding to a standardized questionnaire. Providers can leave the pool at any time.

5.4.2 When selecting a provider from the pool, ICANN may select the provider that it believes will best meet the needs of the affected customers, or it may select a gaining provider using a round-robin (first in, first out) approach. The goal in this process is to transfer the customers to the most appropriate gaining provider and distribute the opportunities for the pool's incentive provision in an equitable fashion.

5.4.3 The gaining provider will be required to notify customers within ten (10) business days of the transfer approval and to provide detailed instructions to customers for the continued management of their gTLD registrations under the new privacy and/or proxy service provider.

5.5 Alternatives When Gaining Provider Is Not Identified

5.5.1 If no qualified gaining provider is identified, ICANN may:

5.5.1.1 ~~Temporarily operate the provider and establish a deadline by which all customers must transfer their names;~~

~~5.5.1.2~~ Compensate a provider to receive the bulk transfer;

5.5.1.2~~3~~ Offer a temporary accreditation to a potential gaining provider; and/or

5.5.1.3 Instruct the sponsoring registrar to delete any or all impacted names (in limited and unique circumstances, such as, for example, where it appears the names are all test registrations with no customer). ~~and/or~~

~~5.5.1.4 Allow names to be deleted upon expiration.~~