ICANN Contractual Compliance Enforcement of the ERRP & EDDP

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Introduction

The [Expired Domain Deletion Policy](#) (EDDP) became effective on 21 December 2004. This Consensus Policy defines registrar obligations relating to registrar deletion practices at the time of domain name expiry, as well as specific requirements for registrar handling of expired names that are subject to a Uniform Domain-Name Resolution Policy (UDRP) dispute. The [Expired Registration Recovery Policy](#) (ERRP) went into effect on 31 August 2013. The ERRP complemented the EDDP requirements and the domain registration expirations provisions in the Registrar Accreditation Agreement (RAA).

ICANN Contractual Compliance (ICANN Compliance) enforces all requirements in the EDDP, the ERRP and the RAA. Enforcement actions result from complaints received from external users through the dedicated forms located [here](#), proactive monitoring, and audit-related activities.

This document attempts to respond to the following [request](#) posed to ICANN Compliance by the Generic Names Supporting Organization (GNSO) Council on 11 August 2022:

> *As part of its review of the Expired Domain Deletion Policy1 (EDDP) and the Expired Registration Recovery Policy2 (ERRP), the GNSO Council would like to request ICANN Compliance to provide it with an update and analysis of complaints that have been received in relation to these two policies since their implementation (and if available, also information on the number of complaints on these topics before these policies were implemented).*

Complaints received and Compliance investigations related to ERRP/EDDP

The granularity of the metrics in this section is determined by the level of detail captured by ICANN Compliance's complaint processing system during the specific reporting period. Throughout the years, ICANN Compliance has worked on the continuous improvement of its system's capabilities[1]. These efforts aim to provide data on the complaints received and related enforcement actions to help inform community discussions. Accordingly, the information below is broken down into different periods according to the level of detail currently available per period at the time the GNSO Council's request was received.

From 1 August 2013 through 30 September 2016, ICANN Compliance:

- Received 2,444 new complaints through the web-form[2] dedicated to report domain renewal issues.
- Closed 1,296 invalid/out-of-scope complaints (e.g., involving country code top-level domains (ccTLDs)) without initiating an investigation with a contracted party.
- Sent 1,201 first compliance notifications, 348 second compliance notifications and 68 compliance notifications to contracted parties within the [informal resolution process](#).

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[1] The most recent example can be found at https://www.icann.org/en/blogs/details/new-icann-reporting-enhances-visibility-of-complaint-volumes-and-trends-09-03-2022-en.

[2] Web-forms are located at https://www.icann.org/compliance/complaint. This website and its forms were updated on 29 August 2020.

- Issued eight formal breach notices to registrars who failed to demonstrate compliance with certain EDDP and/or ERRP requirements (both Consensus Policies are incorporated by reference into the RAA). One breach notice resulted in a formal suspension notice and three breach notices resulted in termination of the registrars' RAAs.

Of the renewal-related complaints closed during this period:

- In 27.22% of the cases, it was determined that the contracted party had complied with the applicable EDDP and/or ERRP requirements.
- In 18.90% of the cases, the complainant failed to provide the evidence and/or information required by ICANN Compliance to assess and address the specific complaint.
- In 14% of the cases, ICANN Compliance confirmed that the affected domain name(s) had been renewed by the registrant/complainant.
- In 6.71% of the cases, they involved a private dispute outside of ICANN's remit (e.g., dispute between partners regarding the renewal of a domain used for a joint business.)

Other smaller percentages referred to scenarios which included, for example, domain names registered under ccTLDs or duplicates of ongoing or recently closed cases at the time.

From October 2016 through August 2020, ICANN Compliance:

- Received 3,563 new complaints through the web-form dedicated to report domain renewal issues.
- Closed 3,088 invalid/out-of-scope complaints (e.g., involving country code top-level domains (ccTLDs)) without initiating an investigation with a contracted party.
- Closed 552 cases after initiating a compliance notification to contracted parties within the informal resolution process.
- Issued three formal breach notices to registrars who failed to demonstrate compliance with certain EDDP and/or ERRP requirements. One of these notices escalated to termination. Additionally, ICANN issued a termination notice to a registrar who ceased providing Registrar Services to its registrants, which included renewal-related services and obligations.

Of the renewal-related complaints closed during this period:

- In 8.3% of the cases, it was determined that the contracted party had complied with the applicable EDDP and/or ERRP requirements.
- In 64% of the cases, the complainant failed to provide the evidence and/or information required by ICANN Compliance to assess and address the specific complaint.
- In 4% of the cases, ICANN Compliance confirmed that the affected domain name(s) had been renewed by the registrant/complainant.
- Less than 1% of the cases involved a private dispute outside of ICANN's remit (e.g., dispute between partners regarding the renewal of a domain used for a joint business.)
- In 2.4% of the cases, the registrar corrected an area of noncompliance.

From September 2020 through August 2022[3], ICANN Compliance received a total of 36,409 complaints[4] across all complaint types dedicated to monitoring and enforcing registrars' and registry operators' obligations. Approximately 6% of those complaints indicated that there was a renewal-related issue.

Of those 36,409 complaints, the following chart reflects the top three complaint types (in volume) that were submitted[5] by a self-identified registrant of the affected domain name(s), including former registrant, current registrant or registrant authorized representative.
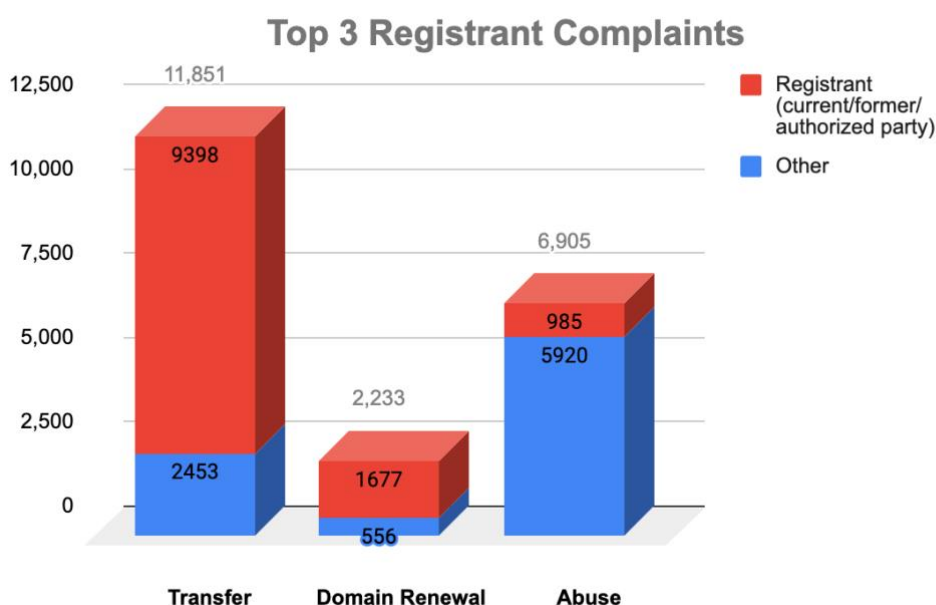
With respect to domain-renewal related complaints, the following table reflects the volume received and closed[6] during this period. The table also details those closed without contacting the registrar because of them being out of ICANN's contractual scope versus those closed after obtaining evidence of compliance from the relevant registrar.

ERRP/EDDP-Related Cases	Sep 2020 - Aug 2021	Sep 2021 - Aug 2022
Complaints received	1552	681
Complaints closed as invalid	1388	608
Sent to registrar/Closed	144	104

[3] On 29 August 2020, ICANN Compliance migrated to a new case processing platform, the Naming Services portal for Compliance (NSp Compliance). NSp Compliance includes "smart forms" tailored to individual complaint types, which captures additional reporting criteria for this complaint type, including: reporter type (e.g. Intellectual Property (IP) lawyer, Law Enforcement Agency (LEA), Registrant) and subject matter category for domain renewal-related complaints. The subject matter category represents the issues that the complainant alleged were taking place in connection with the domain name(s) and the area of compliance-related investigation conducted.

[4] This total includes external complaints and those resulting from ICANN's own monitoring.

[5] The numbers include valid and invalid/out-of-scope complaints.

[6] The numbers represent activity per reporting period. The number of complaints received will not necessarily equal the number of invalid complaints plus the number of cases sent to the registrar during the reporting period. E.g., a complaint received on 31 August 2021 and closed on 3 September 2021 will appear in the first column of the chart as received, and in the second column as closed.

The table below provides details concerning the cases that were initiated with the relevant registrar. Specifically, it reflects the subject matter investigated, by category[7] [8].
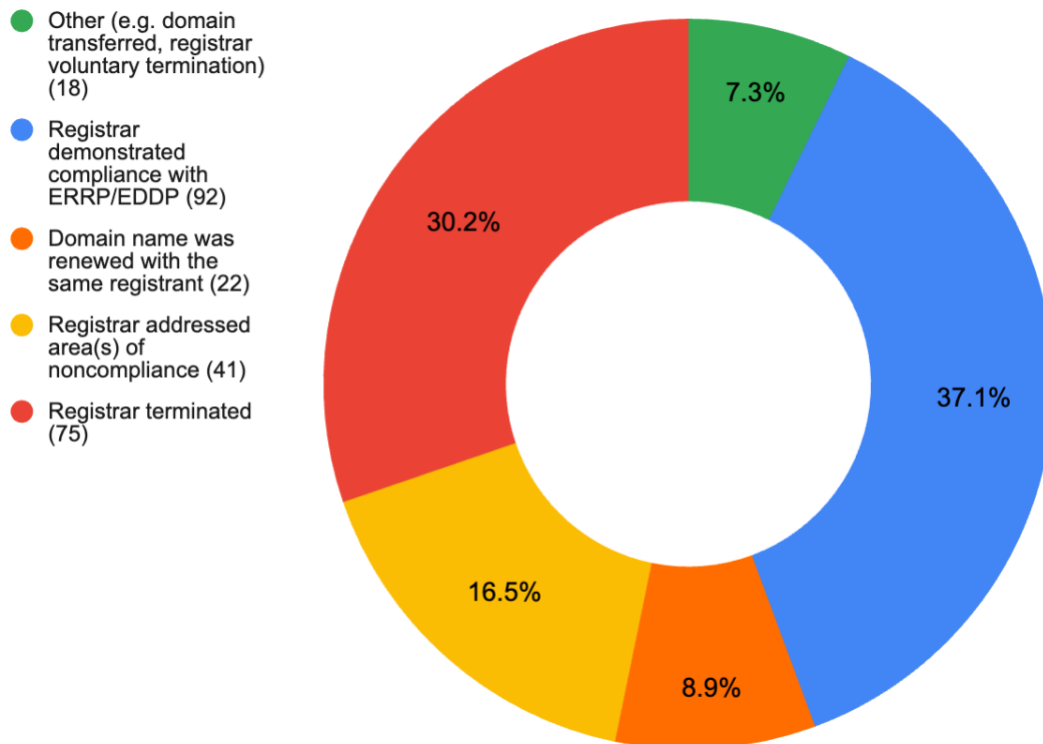
Subject Matter Category of Closed Notices/Inquiries	Sep 2020 - Aug 2021	Sep 2021 - Aug 2022
Renewal Reseller Issue: Payment Made/Not Renewed	61	28
Renewal Reseller Issue: Reseller Unresponsive	75	41
Renewal: No Renewal Notification	15	29
Renewal: Resolution Path Not Restored	31	13
Renewal: Failed To Delete Domain	10	16
Renewal: Unable to Redeem/Restore	12	11
Renewal: Unable To Renew	77	29
Renewal: Auto-Renew Or Deletion Policy Not Displayed	0	4
Renewal: Fees Not Displayed	7	5
Renewal: Notification Methods Not Displayed	4	0
Renewal: Domain Name Auctioned/Backordered (Prior Registrant)	0	3
UDRP: Did Not Allow Complainant to Renewal Or Restore	0	1
Transfer (Denied): Other	12	2
Transfer (Unauthorized Inter-Registrar Transfer)	1	1
Transfer (COR Denied): Other	3	0
Generic Registrar: Other	0	2
Generic Registrar: Reseller Issue Causing Noncompliance	0	2
Not Available	55	5

The chart below details the closure reason associated with renewal-related cases that were initiated with the relevant registrar during this period[9]:

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[7] One or more categories may be associated with a compliance case. Accordingly, the data does not reflect total domain renewal cases; rather, the number of times the category was selected within all registrar cases.

[8] "Transfer" categories indicate when a domain renewal-related case also addressed issues under the Transfer Policy; "Generic Registrar" categories indicate the renewal case also addressed other RAA-related obligations. "Not Available" indicates instances where a case was closed during the reporting period but initiated before the subject matter category criteria was added to ICANN's case processing system to capture and report on.

[9] The number of cases closed with the reason "terminated registrar" during this reporting period was impacted by Net 4 India Limited's discontinuation of support to registrants and repeated violation of the RAA which resulted in its RAA being terminated.

Legend:
- Other (e.g. domain transferred, registrar voluntary termination) (18)
- Registrar demonstrated compliance with ERRP/EDDP (92)
- Domain name was renewed with the same registrant (22)
- Registrar addressed area(s) of noncompliance (41)
- Registrar terminated (75)

Chart values: 7.3%, 37.1%, 8.9%, 16.5%, 30.2%

Additionally, during this period (September 2020 through August 2022) ICANN Compliance requested and monitored the implementation of 96 remediation plans by different contracted parties. A remediation plan is requested when ICANN Compliance determines that a contracted party's noncompliance impacts additional domain names/registrants/user and that the root-cause of the non-compliance must be addressed to prevent its continuation or recurrence. Of these 96 remediation plans, 19 related to domain renewal obligations. The majority of the remediated renewal obligations related to the mandatory renewal reminders that must be sent at a minimum at the three prescribed intervals (e.g., in these cases, the registrar (or its reseller) was not sending all required reminders, or was not sending them at all prescribed intervals or to the Registered Name Holder). ICANN Compliance closed these cases upon receiving confirmation that the necessary corrective and preventive measures had been implemented by the contracted party (e.g., all mandatory renewal reminders were being sent to Registered Name Holders at the prescribed intervals).

Finally, prior to issuing any notice of breach to a contracted party, regardless of the area of non-compliance that led to the issuance of the breach notice, ICANN Compliance conducts an overall contractual compliance "health check" of the contracted party. During this check, ICANN Compliance reviews the relevant registrar's website(s) to confirm, among other things, that the required domain renewal-related information is published. Issues found during these checks are included in the breach notice and required to be cured for the contracted party to maintain its accreditation with ICANN. All formal enforcement notices can be found here. Recent examples of breach notices which included the detection of missing renewal information on the registrar's website and/or within their registration agreements include, the notice of breach sent to Toglodo, S.A. which escalated to RAA termination, the notice of breach to DomainName Highway LLC, and the notice of breach sent to Innovadeus Pvt. Ltd which also escalated to RAA termination.

Audit results related to EDDP/ERRP obligations

ICANN Compliance regularly conducts registrar audits, which include auditing compliance with domain-renewal obligations as part of our ICANN Compliance Audit Program. Reports providing aggregated audit results are publicly available here.

Registrar audits between 2013 through 2018 included checks for compliance of the following specific ERRP/EDDP requirements:
- ERRP Section 2.1: Domain renewal reminders were sent to the correct contact and at the required intervals;
- ERRP Section 2.2: When applicable, the DNS resolution path was interrupted as prescribed, and where the registrar directs the domain name to a park page while the registration is still renewable by the RAE, that web page includes the required content;
- EDDP Section 3.7.7.5 and 3.7.7.6: If the registrar operates a website for domain registration or renewal, its auto-renewal and deletion policy, and redemption fees are clearly displayed.

Audit Period	# of Registrars in Audit Phase	# of Registrars with Deficiency	Deficiency in Audit Report
Oct 2013 - Apr 2013	152	14	4.3.1 Obligations to comply with Consensus Policies
Oct 2014 - May 2015	128	12	4.3.1 Obligations to comply with Consensus Policies
Aug 2015 - May 2016	65	7	4.1 Expired Registration Recovery Policy
May 2016 - Oct 2016	15	2	4.1 Expired Registration Recovery Policy
Sep 2017 - May 2018	58	21	4.1 Expired Registration Recovery Policy (ERRP)
		6	3.7.5.3 to 3.7.5.6 EDDP; Domain Name renewal, Provision of Applicable Information to Registrants

In the first four audit rounds above, no formal breach notice was issued as a result of the audits. Of the registrars with identified deficiencies, 26 resolved all deficiencies within the relevant round, and nine were retested in subsequent rounds.

Within the final audit round (September 2017 through May 2018), of the registrars with identified deficiencies: 12 resolved deficiencies under the ERRP, nine were retested in subsequent rounds; six resolved deficiencies under the EDDP. Two registrars were breached, which included renewal-related obligations under the RAA, ERRP, and EDDP.

Both breach notices were subsequently cured. ICANN's formal breach notices can be found here.

ICANN Compliance observations based on the receipt of ERRP/EDDP-related complaints

Through the enforcement of ERRP and EDDP related obligations, ICANN Compliance has observed confusion, both on registrants/complainants and some registrars, arising from certain ambiguous text within these policies. A compilation of those observations appears below.

Ambiguities in key terms create confusion for and/or delayed actions by registrants
Certain key terms used in the policies to describe specific required actions by the registrars are not defined within the RAA, ERRP, or EDDP. In addition, several of these terms appear to be used interchangeably. This creates confusion for registrants which results in registrants' failure to take timely action to renew or redeem domain names or, on a few occasions, in a renewal that was not wanted by the registrant. Similarly, certain registrars may also interpret these terms differently, resulting in failure to provide the intended protections.

Examples include:
- The terms "delete"/"deletion" can take on different meanings in the life-cycle of a domain name: (1) the registrar can delete a domain name by sending an explicit delete command to the registry operator; and (2) the registry operator permanently purges a domain name from the DNS following the 30-day Redemption Grace Period. *Note: RFC 3915 describes these combined actions as the "deletion process" wherein a registrar provides a delete command and the registry purges the domain name from the Domain Name System (DNS).* Further, deletion may also take place at the registrant account level, i.e. a domain name is deleted from the registrant's account, but remains in the DNS and continues to be sponsored by the registrar.
- Phrases such as "cancellation of the registration"; "terminating a registration agreement"; and "domain name must be deleted" are used to describe specific actions required by the registrar but are not defined.
- EDDP Section 3.7.5 provides that, "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)" (emphasis added). The "second notice" is not defined, there is no timing or indication whether the consent must be explicit or can be implicit. The Expiration Notices in ERRP Section 2.1 do not describe a manner in which this information must be conveyed either
- The terms "auto-renew grace period," "auto-renew period," and the like are used differently by some registrars and do not always take on the same meaning as described in RFC 3915 "autoRenewPeriod" (standard registry value of 45 calendar days). For example, some registrars use such terms to describe their own internal redemption period, reactivation period or renewal period.

Requirements related to auto-renew grace period and aftermarket activities create confusion for and/or delayed actions by registrants.
Many registrars implement a process in which they auction or otherwise re-assign the rights to expired domain names during the auto-renew grace period. These domain names do not enter a 30-day redemption period (during which the Registrant at Expiration (RAE) may

request the redemption). Instead, these domain names remain at the current registrar and are re-assigned to the control of the highest bidder. Under the ERRP and EDDP, redemption period is only required if a domain name is deleted.

The practice of implementing a process in which the registrar auctions or otherwise re-assigns the rights to expired domain names during the auto-renew grace period is not prohibited. However, ICANN Compliance has observed that this practice - coupled with the lack of definition for certain terms explained in the previous section - causes substantial confusion for registrants/complainants. Some of these registrants "lost" domain names during the renewal grace period and contended that they were not afforded a redemption grace period or the subsequent release of the domain name to permit re-registration. Although registrars are required to "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 domains expiration date" (EDDP Section 3.7.5.4), the manner in which the auction/resale events are described do not always make clear that the domain names may not be available for renewal/redemption during this stage.

In addition, Section 2.2 of the ERRP prescribes the circumstances under which a Domain Name System (DNS) resolution must be interrupted. Section 2.2.2 and 2.2.3 describe DNS interruption requirements, which are determined relative to the time at which a domain name is deleted. For example, Section 2.2.2 provides, "for registration deleted within 8 days of expiration the existing DNS resolution path must be interrupted..." The term "deleted" can be interpreted as the actual deletion of the domain name from a registrar's database (i.e., a delete command is sent to the registry) or as the deletion from the registrant's account (when it is, for example, made available in auction or sold to a third party). Using the former definition, in cases of auction or resale as described above, the DNS interruption warning (often the biggest warning a registrant receives regarding the expiration) would not be required and may not occur until a domain name is already "lost" (and the DNS resolution path modified by a new registrant).

The two provisions defining the DNS interruption requirements are later used to define the time within which a RAE must be permitted to renew a domain name (ERRP, Section 2.2.5: "[b]eginning **at the time of expiration** and through the **DNS resolution interruption period** described in paragraphs 2.2.2 and 2.2.3, the RAE must be permitted by the registrar to renew the expired registration.) (emphasis added). As the DNS interruption period is not required in cases where the domain name is not deleted, registrants may be confused at the time within which they have to renew the domain name relative to the time of expiration. Additionally, even though the ERRP requires the registrar to begin warning the registrant about the upcoming expiration approximately 30 days before the expiry day, the obligation for the registrar to permit the RAE to renew is not effective until the time of expiration, at which point the domain name could have been deleted or is already at risk of being deleted/lost.

Requirements related to expiration reminder notices
Section 2 of the ERRP indicates that registrars must notify a Registered Name Holder (RNH) (or Registrant at Expiration (RAE) in cases in which the domain name is transferred pursuant

to the registrar's policy in relation to the expiration) of the expiration, which must be transmitted in a manner that does not require affirmative action to receive the notification. Section 4 later provides examples of channels that can be used to transmit the required notices, "e.g., email to registered name holder, telephone call to administrative contact, postal mail to customer, etc.", which appears to contradict these requirements. For instance, Section 4 implies that the notices could be provided: 1) to a contact other than the RNH/RAE (for example, administrative contact, which sometimes can be a reseller or other party); and 2) via means that require affirmative action to receive the notification, such as a telephone call (even if not answered). Based on this language, certain registrars believe that notifying their resellers (when they are the administrative contact) suffices even if the RNH is not notified, and even if their resellers are not responsive. ICANN Compliance enforces notification requirements in the ERRP, including the obligation to notify the Registrant at the intervals prescribed by the ERRP. However, by the time a Registrant who did not receive such notifications submits a complaint to us, the domain name may already be lost. This hinders the protection these sections intend to afford RNHs.

Finally, ICANN has observed issues with registrants receiving required notifications arising when resellers use their own contact information in WHOIS/Registration Data. In such cases, resellers may receive renewal reminders notifications without forwarding them to the customer/beneficial user/registrant (depending on the terms of service), which can result in the loss of a domain name.

Common ERRP/EDDP non-compliance issues observed by ICANN Compliance

Below are two common scenarios of non-compliance observed by ICANN Compliance through the processing of complaints. In all cases, ICANN Compliance enforces all relevant obligations under the RAA and the ERRP/EDDP and escalates any matter not appropriately addressed or remediated through our standard compliance process (available here), as necessary.

Requirements performed by reseller
ICANN Compliance regularly receives complaints involving resellers that failed to perform certain registrar obligations under the ERRP and/or EDDP to which they were delegated by the applicable registrar. Under Section 3.12 of the RAA, registrars remain responsible for compliance with the provision of all Registrar Services required under the RAA and ICANN Consensus Policies, regardless of whether it delegates the performance of the Registrar Service(s) to its reseller. These include Registrar Services required by the ERRP/EDDP. In the event a reseller is found to be causing a registrar to be in breach of the RAA, the registrar must take reasonable steps to cure and prevent further instances of non-compliance with its reseller (RAA Section 3.12.6). Notwithstanding these obligations that ICANN Compliance enforces, we note issues of recurrence of reseller related failures under the ERRP/EDDP, including for instance:
- Registrant paid a reseller the registration renewal fee(s), but the reseller does not make the payment to the registrar and/or the domain name is not renewed/redeemed (ERRP Section 2.2.5 and 3.3); and
- Reseller fails to send renewal reminders to the registrant (ERRP Section 2.1).

Required description of deletion and auto-renewal policy
EDDP Section 3.7.5.4 requires registrars to "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 domains expiration date, or a date range not to exceed ten (10) days in length**." In addition, Section 3.7.5.5 requires that where the registrar operates a website for registration or renewal, these

policies are clearly displayed on the website. ICANN Compliance has observed that while most registrars provide notice and display on their websites their deletion and auto-renewal policies, the details often do not provide the requisite information to make clear to registrants of the expected time at which a non-renewed domain will be deleted relative to the expiration (within a date range of 10 days).

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