

IE Domain Registry CLG

Policy Advisory Committee – PAC #18

Minutes from the 5 December 2018 Meeting



IE Domain Registry

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Minutes of the PAC #18 Meeting held on 5 December 2018

Meeting Location: Pegasus Suite, Spencer Hotel, IFSC, Dublin 1.

Meeting Time: Called to order at 11:05am by the PAC Chairman.

Members and representatives present:

Chair
Department of Business, Enterprise and Innovation
Department of Communications, Climate Action & Environment (DCCAIE)
Enterprise Ireland
HEAnet
Small Firms Association
.ie Accredited Registrar (Blacknight) – alternate attended (pre-arranged)
.ie Accredited Registrar (Hosting Ireland)
.ie Accredited Registrar (Irish Domains)
.ie Accredited Registrar (Register 365)
IE Domain Registry (IEDR)
PAC Secretariat

1. Apologies – Members not present

- Association of Patent and Trade Mark Attorneys (APTMA) - pre-arranged
- Internet Service Providers Association Ireland (ISPAI) - pre-arranged
- Irish Computer Society (ICS) - pre-arranged
- Law Society of Ireland

2. Minutes from the 3 September 2018 PAC #17 meeting

It was confirmed that the Minutes from the 3 September 2018 PAC #17 meeting were published online and that members had no further comments regarding their content. The PAC Chair formally approved and signed the Minutes.

3. Review of action points arising from the PAC #17 meeting

a. Proposal to alter the operation of the DNS check validation process

The proposal was summarised for the PAC, along with the action item from the last meeting. This related to IEDR updating its technical systems to support the altered DNS check process operations.

IEDR confirmed that the DNS check operational change had been implemented on 28 November 2018 following engagement with the Registrar channel. IEDR also advised that the implementation of the change resulted in immediate benefit to Registrars and Registrants, particularly reducing potential friction arising from DNS issues when processing billing transfer requests, or new registration applications.

IEDR reminded the PAC that it would continue to monitor the quality of the .ie zone and may re-visit the DNS check operations in future should the quality deteriorate.

An accredited .ie Registrar representative remarked that there had been a significant delay in the implementation of the change following its approval. IEDR commented that this had been due to:-

- internal scheduling issues,
- the need to prioritise development work arising from policy liberalisation in March 2018 and development work associated with the Registry's GDPR preparations in advance of the Regulation's enforcement on 25 May 2018, and
- technical research related to whether an API upgrade would be required in order to introduce the planned operational change.

IEDR acknowledged the feedback provided and advised that it would work to minimise implementation timeframes in future, where possible.

4. Update on the policy change request – to introduce an Alternative Dispute Resolution (ADR) Process to the .ie namespace

Supporting slides detailing the updates on this policy change request are available on the IEDR website at <https://www.iedr.ie/p30/policy-development/>

The action items from the last meeting were summarised. These related to the Working Group:-

- Engaging with the Preferred Process Operator (PPO) regarding the cost implication arising from the inclusion of rights-based criteria within the scope of the ADRP
- Developing consensus for the criteria for a successful complaint and appropriate notification timeframes
- Launching a 30-day consultation with relevant Stakeholders

It was confirmed that the Working Group (WG) had made significant progress since the PAC #17 meeting, having engaged extensively via the mailing list in the intervening months.

4.1. Cost Implications of including rights-based criteria

The Secretariat confirmed that it had contacted the PPO regarding the potential cost implications of including rights-based criteria within the scope of the ADRP. It was further confirmed that the PPO had advised that no cost increase would arise from the inclusion of such criteria within the proposed ADR process.

4.2. Consensus Building

- **Complaint Submission Criteria**

The WG remarked that it had since revised the proposed “Entry Requirements” and “Criteria for a Successful Complaint” which were detailed at PAC #17 in order to enhance its accessibility and make it more user-friendly. It was confirmed that the two distinct sets of requirements had been combined to form a single body of requirements known as the “Complaint Submission Criteria”.

Under the proposed criteria, the Complainant must prove that:

- the Complainant would **ordinarily be eligible to register** the domain name in question if it was not already registered by the Registrant, and
- the Complainant
 - (i) **has rights** in the domain name or in marks or identifiers very similar to it, or
 - (ii) that the Complainant’s rights **have been negatively impacted** by the registration, and
- the registration of the domain should be **revoked** as it has been registered or used abusively or in bad faith

The WG advised that it had found consensus for the proposed Complaint Submission Criteria text.

- **Timeframes**

The WG also confirmed that it had found consensus for the appropriate time frames to be allocated for reply and appeal under the proposed operation of the ADRP. Specifically, Parties will be given a period of 20 **working** days for the right of reply, whilst appeals must be submitted within 21 **calendar** days of the binding decision being issued by the Specialist.

- **Processes**

The WG reminded the PAC that consensus still exists for the proposed ADR processes discussed at previous PAC meetings. These processes are as follows:-

- ***Mediation***

The parties may optionally engage in mediation of the complaint with the aid of a trained mediator.

- ***Summary Decision***

Available where the Registrant refuses to engage with the ADR process, i.e. provides no defence when notified of the complaint. Therefore, the Specialist will make a decision based on the information provided by the Complainant. The Registrant may appeal a decision within 21 **calendar** days of the decision being made. This may be done by requesting a Specialist Decision, or by launching a legal challenge.

- ***Specialist Decision***

Available where the Registrant responds to the complaint outlining their defence. The Specialist will review the evidence provided by both Parties and make a binding decision. Any Party may appeal within 21 **calendar** days of the decision being made by launching a legal challenge.

- ***Specialist Opinion***

Available where the Complainant requests a non-binding Opinion (made without prejudice) from the Specialist. The Specialist will review the allegation made by the Complainant, in addition to the supporting evidence provided. The Specialist will then provide an opinion on the subject matter and whether the evidence supports the allegation(s) within the complaint.

- **Remediation options**

The PAC was reminded that there was consensus for the previously discussed remediation options:-

- **Transfer** of the domain to the successful complainant, or
- **Deletion/revocation** of the domain, or
- **No action** taken where complaint is rejected or fails or is withdrawn.

- **Policy Text and Guidelines**

The WG advised that it had drafted the Policy text, in addition to plain-English guidelines, and that consensus existed amongst the WG for the draft text, including the “Complaint Submission Criteria” and the plain-English Guidelines which explain how to submit a complaint, respond to a complaint, and defend a registration.

The WG also remarked that the Alternative Dispute Resolution Policy adopts same user-friendly framework as is used for the .ie Registration and Naming Policy (known as the ‘PPPRG’ – short for “Policy, Process, Procedure, Rules, and Guidelines”).

4.3. Stakeholder Consultation

The WG confirmed that the 30-day limited consultation with relevant Stakeholders had also been held since the PAC #17 meeting, and that responses had been sought from those with experience with

online dispute resolution processes and those most likely to be impacted by/avail of the service, in order to determine if there were any potential gaps with the proposed policy or operational mechanism.

The WG provided a sample list of the bodies contacted regarding the consultation. It also confirmed that the consultation period had recently ended on 16 November 2018 and that only four comments had been received. The WG advised that all comments received were positive, and in favour of the proposed policy change and operational process.

4.4. WG and PAC Recommendation

In view of the fact that no concerns or objections existed, the WG provided its recommendation for the approval of the policy change request to the wider PAC.

It was noted that the original objective of introducing an easier and affordable process had been achieved. The inclusion of principles which arose during the consensus building process was also acknowledged, in particular:-

- that the registrant is given the benefit of the doubt (on the basis that it had previously complied with the Registration and Naming Policy, at the time of registration)
- that the burden of proof should be on the Complainant
- that mediation is to be encouraged, but is not compulsory
- that the parties have rights of appeal, and for consumers, that their statutory rights are not affected by the ADRP introduction
- that the small business community, which is time-poor and unfamiliar with the intricacies of domain name dispute resolution, had an affordable and easy to understand, plain English, process.

Following discussion, there was full consensus amongst the PAC to provide a formal recommendation for the policy change to the IEDR Board of Directors.

The Chairs of the IEDR Board of Directors and PAC both thanked the WG membership and PAC Secretariat for their achievement and acknowledged the significant time commitment required to achieve consensus and to bring this important policy change proposal to a successful conclusion.

4.5. Next Steps

Subject to IEDR Board approval, IEDR is expected to further engage with the PPO regarding implementation considerations, final costings and contracting.

IEDR will proceed with implementation:

- ❖ Reverting to the WG regarding potential changes/issues if they arise, finalising outstanding drafting matters
- ❖ Liaising with Registrars regarding implementation date and operational considerations (educational content is required)
- ❖ Informing PAC of the implementation date
- ❖ Creating and issuing a plain-English “Public Service style” notice regarding the planned introduction of the ADRP

Further updates will be provided at the PAC #19 meeting.

5. Update on the policy change request – to remove restrictions on .ie domains corresponding to TLDs

The action item from the last meeting was summarised. This related to IEDR working to schedule the release of the three reserved .ie domains corresponding to TLD extensions (in addition to the release of eleven domains, reserved or registered to the Registry), once other, higher priority, planned technical changes relating to GDPR and DNS check have been implemented.

At PAC #17 the IEDR representative had advised that he would schedule the policy change request for discussion with the Board at the earliest opportunity, as there was effectively a new Board in place, following the normal rotation of IEDR Directors recently.

The IEDR advised that it had received industry feedback from a security expert regarding the potential release of wpad.ie, which was one of the reserved .ie domains considered for release. It was noted that the feedback received strongly recommended that IEDR refrain from releasing wpad.ie at this time on the grounds that it could be misused by bad actors. It was noted that “wpad” is the abbreviation for the web proxy auto-discovery protocol.

An accredited .ie Registrar representative queried whether other similar technical terms were restricted, and IEDR confirmed that a small number have historically been registered to the Registry to avoid misuse/confusion. IEDR confirmed there was no general restriction on technical terms being registered as .ie domains.

Discussion followed on the need to appropriately consider the feedback received. There was a suggestion for additional information and a second opinion to be sought from an additional security expert which could then be shared with the wider PAC before discussing the matter further.

It was noted that an organisation exists which proactively registers domains containing the “wpad” string to mitigate the potential for misuse to occur. The PAC agreed that this should also be taken into consideration when deliberating further on this matter.

Discussion turned to the planned release of the relevant additional .ie domains which are reserved to the Registry, specifically the potential release of porn.ie. It was noted that the domain had been the subject of a complaint/appeal many years ago. The registry had sought and received a legal opinion on the subject matter of the dispute. The legal opinion concluded that the word “porn” would not in itself be “...contrary to generally accepted principles of morality...”. The legal opinion was inconclusive in relation to whether the word “porn” was “contrary to public policy” (noting that the registry was entitled to determine its own Policies and Rules). Given the inconclusive nature of the legal opinion, IEDR decided at the time to shelve the domain, thereby blocking it from future registration.

The Chair of the IEDR Board of Directors reported that one view was held within the newly appointed IEDR Board of Directors that the release of porn.ie could adversely impact the reputation of the Registry and/or the organisation members of the PAC, particularly from a PR perspective (and especially in the context of recent media coverage highlighting concerns of the potential impact of porn availability online on underage citizens).

In light of this concern, the Chair of the IEDR Board asked the membership if it was still of the opinion that it wished to recommend the release of this domain. Robust discussion on this matter followed.

There was broad consensus amongst the accredited .ie Registrar representatives on the PAC for the release of the domain.

It was noted that the package of 14 domain names under discussion included the release of school.ie, kid.ie and porn.ie - which was an unfortunate combination and could have damaging PR implications. It was further acknowledged that the potential for adverse PR implications to arise could be mitigated by releasing the relevant domains at differing times.

Referring to the precise wording of the policy change request contained in the template, it was noted that it specifically stated that,

“...the .IE Naming Policy generally prohibits the registration of a second level domain within .ie where the domain is identical to an existing top-level domain. An example would be com.ie which is not allowed to be registered because it corresponds to the existing .com top-level domain. It is proposed to remove this rule entirely.....”

It was therefore acknowledged that the policy change itself only required the release of the reserved .ie domains which correspond to TLD extensions. Within the package of 14 domains, these were clarified as: post.ie, coop.ie and aero.ie.

The matter of “consensus” was discussed by members. It was agreed that the PAC always seeks to achieve “full consensus” with the widest possible agreement, from PAC members, from stakeholders, and from those consulted, having received and having made every effort to accommodate minority or dissenting views. The objective is to strive for unanimous recommendations or decisions from the PAC, however it was acknowledged that this will not always be possible.

It was clarified that the role of the PAC is to make recommendations to the Board of the IE Domain Registry. It was acknowledged that the final decision in relation to policy matters and recommendations rests with the Board of the IE Domain Registry, in accordance with the 10-step policy development process (PDP) for the .ie namespace.

Following discussion, the PAC members agreed that the policy change request (and the release of the three relevant domains) should be treated separately to the release of the other reserved .ie domains. On this basis, there was consensus within the PAC that it wished to provide its recommendation to the IEDR Board for the approval of the policy change request and for the release of the reserved .ie domains which correspond to TLD extensions.

Following further discussion, there was consensus that the .ie domains reserved to the Registry or domains otherwise blocked from registration would be considered as a separate matter and carried forward for consideration at the next meeting.

6. Any Other Business

a) Industry related developments / relevant legislative changes

EU General Data Protection Regulation

There was brief discussion on the:-

- GDPR related fine issued by the German Data Protection Authority
- clarification that the Registry conducted a data verification exercise on the legal names (companies) disclosed in the WHOIS for the .ie namespace
- [Initial Report of the Temporary Specification for gTLD Registration Data Expedited Policy Development Process](#) (ICANN GNSO)

EU Directive on security of network and information systems (NIS Directive)

There was brief discussion on this matter. The PAC representative from the Department of Communications, Climate Action and Environment advised that it was engaging with those designated as potential “Digital Service Providers” (DSPs) under the Directive, and was also issuing notification letters in December to those designated as potential “Operators of Essential Services (OES)”.

It was also confirmed that the guidelines on Security Measures and Incident Reporting will be published for public consultation shortly, and that the National Cybersecurity Strategy was also being drafted and would be issued for consultation in 2019.

Further updates will be provided at the PAC #19 meeting.

Liberalisation Growth

There was a brief report on the experience since policy liberalisation was enacted in March 2018. The absence of disputes or cybersquatting was noted. Regarding the growth in .ie domain registrations, it was noted that there had been a moderate rise in registration volumes since liberalisation was implemented.

b) Update from Register 365

The representative for the accredited .ie Registrar, Register 365, informed the PAC that its parent company, the Dada Group, had recently acquired two additional accredited .ie Registrar companies; Letshost.ie, and Hosting Ireland (Hosting Ireland also occupies one of the accredited .ie Registrar seats on the PAC).

There was discussion on the corporate structure of the group companies, and it was confirmed that the three Registrars would, for the foreseeable future, continue to operate as separate corporate bodies, and therefore as three separate accredited .ie Registrars.

The PAC was asked to consider the issue of two PAC members being from the same legal entity.

Discussion turned to the PAC Terms of Reference (ToR) and it was noted that the ToR provided for four PAC seats to be occupied by accredited .ie Registrar representatives. It was noted that the Registrars had an election process in 2015 to elect their four Registrar representatives. The ToR does not specifically address the issue of where one parent company owns multiple accredited .ie Registrar companies.

The PAC acknowledged the hard work of the accredited .ie Registrar representatives and noted that it would be a loss to lose the expertise of these bodies from the PAC. Discussion turned to the PAC membership term length provided for within the ToR which provides for members to occupy a seat for a 2 year term. It was clarified that the ToR did not have a limit on the number of consecutive terms allowed for members. It was also noted that the initial 2 year membership term had rolled over in February 2017, and that the membership would next be scheduled for review in February 2019.

The PAC unanimously agreed that it wished for the 2 year membership term to be extended to a 4 year term. This would ensure momentum within discussions is maintained and mitigate potential operational challenges that may arise if membership was to be rolled over so frequently.

Acknowledging that the election process for the Registrar representative PAC seats was a matter for the Registrar community, it was nevertheless suggested that the opportunity might be taken to have an election process to elect the Registrar representatives ahead of the next membership term, to commence in February 2019. It was reaffirmed that the PAC held no objection to any accredited .ie Registrar affiliated with Register 365's parent company applying for (re-)election to the PAC membership. The PAC Registrars indicated it would engage with the wider Registrar community, and work with the IEDR to facilitate an election process early in 2019.

Further updates will be provided at the PAC#19 meeting in 2019.

7. Next Steps

IEDR will:-

- Engage with the ADR preferred process operator regarding implementation of the ADRP and establishing contracts
- Subject to Board approval, work with the PAC to schedule the phased release (Sunrise, Landrush and General Availability) of the three .ie domains that correspond to TLD extensions

PAC Secretariat will:-

- Notify the Board of Directors that:-
 - the PAC wishes to de-couple the policy change relating to removing the restriction on registering .ie domains corresponding to TLD extensions from the unrelated release of a number of other reserved .ie domains,
 - the PAC wishes to further inform the Board that it wishes to recommend the completion of the policy change request.
- Inform the Board of Directors that the PAC has provided its formal recommendation for the approval of the ADRP
- Facilitate the election process for the four PAC seats to be filled by accredited .ie Registrar representatives

8. Next Meeting

PAC Secretariat will engage with wider PAC to set a date for the next meeting, which is expected to be held in March / April 2019.