

# **Enforcement Tools**

## **Issue**

Amend the Registrar Accreditation Agreement (RAA) to include additional contract enforcement tools.

## **Background**

The RAA does not contain graduated enforcement tools. Pursuant to the RAA, the only remedy available to ICANN if a registrar fails to cure a breach of the RAA is termination of the agreement. This is challenging and impractical, as many contract breaches are material but do not warrant termination of the agreement, or breaches occur and are cured on a repeat basis. For example, if a registrar fails to comply with the requirements of a consensus policy or fails to comply with the RAA requirement to maintain registration data, these are quite serious contract breaches; however, they do not necessarily warrant contract termination. In the absence of graduated contract remedies, ICANN has been limited to providing counseling to those registrars who breach material terms of the RAA and requesting that they abstain from engaging in such behavior in the future.

## **Statement of Problem**

Historically, ICANN has been reluctant to terminate an agreement for anything other than flagrant, repeated failures to cure material breaches of the RAA, because termination is viewed as an extreme remedy, with negative consequences to registrants. As a result, registrars are aware that there are no substantive consequences for breaching the RAA. A graduated sanctions scheme based on the nature and seriousness of alleged breaches will allow ICANN to more effectively enforce the terms of the RAA and thereby encourage broad community compliance with RAA requirements.

## **Potential Outcomes**

- Compliance could improve as registrars will seek to avoid being the subject of enforcement proceedings.
- Lawsuits could be filed against ICANN when new enforcement remedies are invoked
- Graduated sanctions would provide more measured responses to less serious breaches
- Sanctions could be designed to penalize registrars without harming registrants