

Report of Public Comments

Title:	Initial Report Inter-Registrar Transfer Policy (IRTP) Part D PDP		
Publication Date:	28 April 2014		
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Comment Period:		Important Information Links	
Comment Open Date:	03 March 2014	Announcement	
Comment Close Date:	03 April 2014	Public Comment Box	
Reply Close Date:	04 April 2014	View Comments Submitted	
Time (UTC):	25 April 2014	Report of Public Comments	
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Section I: General Overview and Next Steps			
<p>The aim of the Inter-Registrar Transfer Policy (IRTP) is to provide a straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another. The GNSO Council is reviewing and considering revisions to this policy through a series of Working Groups it has established to conduct these efforts. The Inter-Registrar Transfer Policy (IRTP) Part D PDP Working Group has been chartered by the GNSO Council to answer six questions in relation to the IRTP (see hereunder).</p>			
<p>On 3 March 2014 the WG published its Initial Report [link: http://gns0.icann.org/en/issues/transfers/irtp-d-initial-03mar14-en.pdf] for public comment. In addition to background information, an overview of the WG's deliberations and community input received to date, the Initial Report contains the following Draft Recommendations:</p>			
Charter Question A - Whether reporting requirements for registries and dispute providers should be developed			
Recommendation #1: The WG recommends that reporting requirements be incorporated into the TDRP policy. Outcomes of all rulings by Dispute Resolution Providers ¹ should be published on Providers' website, except in exceptional cases. The Group recommends publishing reports that follow the example of the Asian Domain Name Dispute Resolution Centre (ADNDRC). ² These reports should include at a minimum: a) Information about parties involved in the dispute; b) The full decision of the case; c) The date of the implementation of the decision			
Recommendation #2: The WG recommends that the TDRP be amended to include language along the lines of this revised version of the UDRP: 'The relevant Dispute Resolution Provider shall report any decision made with respect to a transfer dispute initiated under the TDRP. All decisions under this Policy will be published in full over the Internet, except when a Dispute Resolution Panel determines, in an exceptional case, to redact portions of its decision. In any event, the portion of any decision determining a complaint to have been brought in bad faith shall be published.'			

¹ The Working Group recommends in Charter question C to remove the Registry as the first dispute resolution layer of the TDRP. Therefore, despite wording of Charter question A, no reporting requirements for the Registries are included here.

² See four ADNDRC Reports on TDRP decisions: http://www.adndrc.org/mten/TDRP_Decisions.php?st=6

Charter Question B - Whether to amend the Transfer Dispute Resolution Policy on how to handle disputes when multiple transfers have occurred

Recommendation #3: The WG recommends that the TDRP be amended as follows: "Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are null and void if the Gaining Registrar acquired sponsorship from the Registrar of Record through an invalid transfer, as determined through the dispute resolution process set forth in the Transfer Dispute Resolution Policy."

Recommendation #4: The WG recommends that a domain name be returned to the original Registrar of Record if it is found through a TDRP procedure that a non-IRTP compliant domain name transfer has occurred. The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly.

Recommendation #5: The WG recommends that the statute of limitation to launch a TDRP be extended from current 6 months to 12 months from the initial transfer. This is to provide registrants the opportunity to become aware of fraudulent transfers when they would no longer receive their registrar's annual WDRP notification.

Recommendation #6: The WG recommends that if a request for enforcement is initiated under the TDRP the relevant domain should be 'locked' against further transfers. The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly.

Charter Question C - whether dispute options for registrants should be developed

Recommendation #7 The WG recommends not to develop dispute options for registrants as part of the current TDRP.

Recommendation #8: The WG recommends that the GNSO ensure that IRTP-C inter-registrant transfer recommendations are implemented and include appropriate dispute-resolution mechanisms. The IRTP-C and IRTP-D Implementation Review Teams should determine whether the inter-registrant transfer use cases documented in Appendix [?] have been addressed. If there are use cases that have not been addressed by the implementation of IRTP-C-2, the Implementation Review Teams are charged with formulating a request for an Issue Report to review the remaining use cases and consider whether any additional dispute resolution mechanisms (or changes to the TDRP) should be developed. That request should then be forwarded to the GNSO Council for consideration.

Recommendation #9: The WG recommends that the TDRP be modified to eliminate the First Level (Registry) layer of the TDRP.

Charter Question D - Whether registrars should be required to make information on transfer dispute resolution options available to registrants

Recommendation #10: The WG recommends that ICANN create and maintains a one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants. This should include: a) Improvements to the ICANN website regarding the display of information on the Inter Registrar Transfer Policy and the Transfer Dispute Resolution Policy is regularly updated; b) Links to the relevant information for registrants on the ICANN website being clearly worded and prominently displayed on the ICANN home page. This will contribute to improving visibility and content of the ICANN website that is devoted to offering guidance to registrants with transfer issues; c) ICANN Compliance clearly indicates on its FAQ/help section under which circumstances it can assist registrants with transfer disputes. This should include situations when registrants can ask ICANN Compliance to insist on registrars taking action if you do not appear in the WHOIS directory you are likely to have no right to a domain name, this is especially important when dealing

with website developers; and ICANN does not provide any policy solution to this scenario.; d) Improvements in terms of accessibility and user-friendliness should be devoted especially to these pages:

<http://www.icann.org/en/help/dispute-resolution#transfer>

<http://www.icann.org/en/resources/registrars/transfers/name-holder-faqs>

<http://www.icann.org/en/resources/registrars/transfers/text>

Links to these registrant help-website should also be prominently displayed on internic.net and iana.org in order to assure further that registrants have easy access to information. This information should also be passed on to ISOC and other relevant Internet Governance bodies.

Recommendation #11: The WG recommends that, as best practice, ICANN accredited Registrars prominently display a link on their website to this ICANN registrant help site. Registrars may chose to add this link to those sections of their website that already contains Registrant-relevant information such as the Registrant Rights and Responsibilities, the WHOIS information and/or other relevant ICANN-required links as noted under 3.16 of the 2013 RAA.

Charter Question E - Whether additional penalties for IRTP breaches should be introduced

Recommendation #12: The WG recommends that no additional penalty provisions be added to the existing policy. The WG concludes that the penalty structures introduced in the 2009 RAA and the 2013 RA are sufficiently nuanced to deal with IRTP violations.

Recommendation #13: The WG recommends that, as a matter of principle, GNSO Consensus Policy should avoid policy-specific sanctions. Rather, it is desirable that the overarching RAA and RA penalty structures be drafted in a way that assures uniformity and consistency of policy violation penalties .

Charter Question F - whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need for FOAs

Recommendation #14: The WG recommends to maintain FOAs.

The WG will now review the comments received and update its report as deemed appropriate following which it will be submitted to the GNSO Council for its consideration.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Registries Stakeholder Group	Paul Diaz	RySG
At-Large Advisory Committee	ALAC Staff	ALAC
Business Community	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
Arthur Sonnenberg	Hostnet BV	AZ

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

General Comments

All four submissions express their (strong) support for the recommendations in general.

Recommendation #1: *To incorporate reporting requirements into the TDRP*

AZ believes this to be a good idea as it has the possibility to set precedents that others may refer to and thus assure that the rules are clear to everyone.

The BC comments that “reporting requirements for registries and dispute providers should be developed” and supports recommendation #1/

Recommendation #2: *To amend the TDRP and include language along the lines of the UDRP*

The BC supports recommendation #2.

Recommendation #3: *Amending the wording of the TDRP to address transfer disputes that include multiple ‘hops’.*

The RySG is supportive of this recommendation and notes that an invalid transfer should be defined as a transfer that occurs in violation of the Inter-Registrar Transfer Policy. In addition, the RySG is of the view that there should be no refund of registration fees in cases of an invalid transfers followed by several, valid multiple ‘hops’.

The BC states that they would like to see additional provisions included “in the TDRP that set out how to handle disputes when multiple transfers have occurred”. They also expressed their support for Recommendation #3.

Recommendation #4: *If a filing registrar is successful in a dispute, the relevant domain should be returned even if multiple, compliant transfers of that domain have occurred since the non-compliant one.*

AZ comments that if multiple, valid transfers have occurred after an initial invalid one, then the chain should be rolled back to return the domain to the original registrar of record, “preferably by the registry”.

The BC notes its support for Recommendation #4.

Recommendation #5: *Extend the statute of limitation to launch a TDRP from 6 to 12 months*

The RySG expresses its support for this recommendation with reservation, pointing out that the longer statute of limitation may also result in additional transfers that can occur during that period, which may later need to be rolled back.

The BC and ALAC also support this recommendation with the ALAC noting that it would also “support an extension of the statute of limitation from 6 to 15 months from the initial transfer”.

Recommendation #6: *If a request for enforcement is initiated under the TDRP the relevant domain should be ‘locked’ against further transfers*

The RySG and BC both express their support for this recommendation. The RySG furthermore notes that “some TLD registries currently have a practice of ‘locking’ a domain name by applying serverTransferProhibited,

serverDeleteProhibited and serverUpdateProhibited to the domain name upon receipt of a request for enforcement. In those cases, the 'lock' remains in place for the pendency of the case, including the period of time that a domain name dispute is appealed to a second level dispute resolution provider if the non-prevailing party elects to appeal the decision".

Recommendation #7: *Not to develop dispute options for registrants as part of the current TDRP*

Notwithstanding the BC's comment that they believe "that there must be a mechanism for registrants to initiate proceedings when registrars decline to initiate them" they do support Recommendation #8.

Recommendation #8: The implementation of IRTP C's inter-registrant transfer policy should include appropriate dispute-resolution mechanisms (see also Annex C).

Recommendation #9: *Abandoning the first dispute resolution level (registry level) of the TDRP.*

The BC and RySG support this recommendation with the RySG noting reasons such as the continuous increase in the number of registries, the expenses that Registry operators occur to have to train staff, the fact that other ICANN dispute policies (UDRP, URS) also rely solely on dispute resolution providers. AZ encourages the WG to consider recommending to "remove the fees (but keep the fines), as they can be prohibitive. Registrars starting procedures in vain or without good cause can be warned, fined and ultimately de-accredited based on the RAA". At the same time, AZ is of the view that "gTLD registries should take more responsibility" in dealing with and resolving of transfer dispute.

Recommendation #10: *ICANN to create and maintain a one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants*

AZ agrees with the recommendation and points out that the ICANN website would benefit from content written "in a more accessible way", ideally covering policies that impact registrants on one screen page.

The ALAC points out that the term 'user-friendliness' should be "augmented comprehensively to make clear that this site should be understandable to a registrant who does not have to deal with such problems on a regular basis". The BC states that in the interest of consumer protection, they recommend "establishing requirements for registrars to publish information pertaining to transfer disputes options available to registrants" and note that with that in mind they support this recommendation.

Recommendation #11: *As best practice, ICANN accredited Registrars prominently display a link on their website to this ICANN registrant help site (see Rec #10)*

The ALAC comments that it "is essential that, in addition to Registrars, Resellers be explicitly included". The BC supports this Recommendation bearing in mind their comment above that registrars provide pertinent information concerning transfer dispute options to registrants.

Recommendation #12: No additional penalty provisions to be added to the existing IRTP policy

AZ agrees and points out that "financial penalties are almost always efficient when dealing with registrars violating policy. Alternatively, ICANN compliance has enough tools as it is for those registrars unfazed by fines". The BC "believes there should be penalties for specific violations other than 'notice of breach' and hopes that the 2013 RAA will address this issue".

Recommendation #13: *As a guiding principle, GNSO Consensus Policy should avoid policy-specific sanction*

The BC notes its support for this recommendation

Recommendation #14: *Not to abandon FOAs*

The BC notes that in “day to day administration the FOAs are redundant” but acknowledges that under certain circumstances it “can help protect a domain name from being hijacked” and thus the BC supports to maintain FOAs. However, AZ argues strongly in favor of abandoning the FOA and thus disagrees strongly with the WG’s recommendation. In his contribution he comments that the Initial Report does not provide any data on the times that “FOAs made the difference, above and beyond the AuthInfo code”. He points out that “FOAs are [his] single most common source of pending orders costing time and often revenue in [their] registration systems”. AZ also estimates that the number of failed transfers is at least double the number of the successful transfers – and in his view this can be attributed mostly to the need for FOAs. AZ describes in detail why FOAs are in his view a complicated additional hurdle without any tangible benefit other than preventing transfers and thus – at least indirectly – protecting the business of the registrar or record. He concludes that “3 factors are required for 1 successful transfer (unlock, FOA+email address, AuthInfo Code), where every factor beyond the auth code does not add either authorization or true security” and thus some large registrars might say that maintaining FOAs is about security and safety “but it really is not”.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The IRTP Part D PDP Working Group is responsible for analyzing and evaluating the comments received. Its review of the comments should be available in due time on the Working Group’s workspace (see <https://community.icann.org/x/B4JwAg>).