INTER-REGISTRAR TRANSFER POLICY ISSUES - PDP Recommendations - 19 Mar 08

Executive Summary

This report provides the findings and recommendations of the GNSO group of volunteers assigned to suggest PDP groupings of 19 identified Inter-Registrar Transfer Policy (IRTP) issues, based on a previously developed prioritized issue list. The group recommends the GNSO Council consider five potential PDPs, addressing four issue clusters and one individual issue. The group also suggests rephrasing several of the issues and eliminating five issues from consideration of initiating a PDP at this time.

The IRTP issue numbers for each of the five recommended PDPs are listed in the following table along with the individual issue consensus ranking (CR) assigned by the earlier IRTP working group.

PDP ID	PDP Category Name	Policy Issue #'s	CR
A	New IRTP Issues	1, 3, 12	5, 6, 12
B	Undoing Registrar Transfers	2, 7, 9	9, 6
C	IRTP Operational Rule Enhancements	5, 6, 15*, 18	8, 9, 13, 16
D	IRTP Dispute Policy Enhancements	4, 8, 16, 19	7, 10, 10, 14, 16
E	Penalties for IRTP Violations	10	10

  * First part of issue only

PDPs are not recommended at this time for the policy issues listed in the following table

Issue #	CR
11	12
13	13
14	13
15 (second part of recommendation)	13
17	14

The specific policy issues associated with policy issue numbers in both tables are described in the Findings and Recommendations section of this document along with some brief comments where applicable. The last section of this document provides some recommendations regarding how to proceed with the possible initiation of PDPs including possible order of the PDPs.

Background

The IRTP is an existing consensus policy under review by the GNSO. An IRTP working group examined possible areas for improving the existing policy and delivered its outcome in August 2007 in a report posted at http://www.gnso.icann.org/drafts/Transfer-Policy-Issues-23aug07.pdf. This report provided a list of potential issues to address for improvement of the transfer policy.

In September 2007, the GNSO Council requested an Issues Report from staff on four detailed issues identified in the above report and resolved in November 2007 to launch a PDP on these. This PDP on clarification of four reasons for transfer denials is currently ongoing. A

working group was also tasked by the GNSO Council to assign priorities to the remaining issues in the report. The outcome from this prioritization working group is available as a report posted at http://www.gnso.icann.org/drafts/irdx-policy-priorities-20dec07.pdf . The priorities shown in the two tables in the Executive Summary above refer to the consensus rankings in that report.

Based on the outcome from the prioritization group, in its meeting on 17 January 2008 the GNSO Council requested a small group of volunteers arrange the prioritized issue list into suggested PDPs. The following individuals participated in the group:

Chuck Gomes - Registries constituency
Thomas Keller - Registrar constituency
Tim Ruiz - Registrar constituency
Mike O'Connor - Business constituency
Olof Nordling - Manager, Policy Development Coordination (ICANN Staff support)
Robert Hoggarth - ICANN Senior Policy Director
Glen de Saint Gery - GNSO Secretariat

Methodology

The group conducted its work via email (mailing list gnso-trans-wg@icann.org with archives at http://forum.icann.org/lists/gnso-trans-wg/) and weekly conference calls starting 30 January 2008. The issues were first sorted into three preliminary groups and then discussed individually, with a view to identifying suitable issue combinations for PDPs as well as issues that needed to be handled as individual PDPs. These deliberations lead to a first regrouping of the issues, a regrouping that was subsequently further reviewed and refined, resulting in the findings and recommendations below, which were supported by all group members.

Findings and Recommendations

The main outcome of the group's work is provided below as a list of four suggested PDPs on clusters of issues and one PDP devoted to a single issue. For a couple of issues, the group suggests rephrasing as indicated in the text. There is also a group of issues for which consideration of a PDP is not suggested at this time.

The numeric references used for the individual issues are drawn from the earlier report from the prioritization working group and give the priority order of the issues in that report. The consensus rankings assigned by that working group (a value between 5 and 16, with 5 indicating highest ranking) are indicated within parentheses at the end of each issue description (e.g., CR 9.0).

PDP A - New IRTP Issues

1. Whether there could be a way for registrars to make Registrant Email Address data available to one another. Currently there is no way of automating approval from the Registrant, as the Registrant Email Address is not a required field in the registrar Whois. This slows down and/or complicates the process for registrants, especially since the Registrant can overrule the Admin Contact. (CR 5.0)

3. Whether there is need for other options for electronic authentication (e.g., security token in FOA) due to security concerns on use of email addresses (potential for hacking or spoofing). (CR 6.0)

12. Whether the policy should incorporate provisions for handling "partial bulk transfers" between registrars – that is, transfers involving a number of names but not the entire group of names held by the losing registrar. (CR 12.0)

PDP B – Undoing IRTP Transfers

2. Whether a process for urgent return/resolution of a domain name should be developed, as discussed within the SSAC hijacking report (http://www.icann.org/announcements/hijacking-report-12jul05.pdf; see also http://www.icann.org/correspondence/cole-to-tonkin-14mar05.htm). (CR 6.0)

7. Whether additional provisions on undoing inappropriate transfers are needed, especially with regard to disputes between a Registrant and Admin Contact. The policy is clear that the Registrant can overrule the AC, but how this is implemented is currently at the discretion of the registrar. (CR 9.0)

9. Whether special provisions are needed for a change of registrant near a change of registrar. The policy does not currently deal with change of registrant, which often figures in hijacking cases. (CR 10.0)

> *[Note that this issue was previously worded as follows: "Whether special provisions are needed for a change of registrant simultaneous to transfer or within a period after transfer. The policy does not currently deal with change of registrant, which often figures in hijacking cases. (CR 10.0)" It is believed by the working group members that the revised wording is more appropriate because it is highly unlikely if not impossible for a registrar change and a registrant change to happen simultaneously and because the dispute resolution problems associated with a registrant change after a registrar change can continue for some time after the registrar change.]*

PDP C - IRTP Operational Rule Enhancements

5. Whether standards or best practices should be implemented regarding use of Registrar Lock status (e.g., when it may/may not, should/should not be applied). (CR 8.0)

6. Whether provisions on time-limiting FOAs should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed. (CR 9.0)

15. "Whether requirements should be in place for Registrars of Record to send an FOA to the Registrant or Admin Contact". (CR 13.0)

> *[Notes: The first part of this issue is retained, although rephrased as noted above; the original wording was "Whether requirements should be in place for Registrars of Record to send an FOA". The second part of 15 (reading: "and/or receive the FOA*

back from Transfer Contact before acking a transfer") is recommended for deletion because of past debates when this was deemed to make it easier for uncooperative Registrars of Record to delay or block a transfer desired by the registrant. See the section below titled 'PDP not recommended at this time'.]

18. Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs. (CR 16.0)

PDP D - IRTP Dispute Policy Enhancements

4. Whether reporting requirements for registries and dispute providers should be developed, in order to make precedent and trend information available to the community and allow reference to past cases in dispute submissions. (CR7.0)

8. Whether additional provisions should be included in the TDRP (Transfer Dispute Resolution Policy) on how to handle disputes when multiple transfers have occurred. (CR 10.0)

16. Whether dispute options for registrants should be developed and implemented as part of the policy (registrants currently depend on registrars to initiate a dispute on their behalf). (CR 14.0)

19. Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrants. (CR 16.0)

PDP E - Individual PDP - Penalties for IRTP Violations

10. Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy. (CR10.0)

PDP not recommended at this time

11. Whether registrants should be able to retrieve authInfo codes from third parties other than the registrar. (CR 12.0)

[Notes: This issue raises concerns about both additional security risks, as multiple sources of authInfo codes would be potentially possible, and the viability of finding suitable third parties to act as such sources with appropriate safeguards. Accordingly, a PDP for 11 is not recommended at this time.]

13. Whether additional provisions relating to transfer of registrations involving various types of Whois privacy services should be developed as part of the policy. (CR 13.0)

[Notes: This issue should be a non-issue in the transfer policy context, as the registrant should be able to opt-out from a privacy service prior to a transfer. Any possible lack of ability to perform such an opt-out invokes issues unrelated to the transfer policy. Accordingly, a PDP for 13 is not recommended from a transfer policy perspective.]

14. Whether review of registry-level dispute decisions is needed (some complaints exist about inconsistency). (CR13.0)

> *[Notes: This issue is primarily a compliance matter and a review may be appropriate in that context, but it is not a transfer policy matter. Accordingly, a PDP for 14 is not recommended. Review outside of the policy development process is encouraged. Should such a review indicate that improvements could be achieved through policy changes, the issue can subsequently be appropriately reframed for reconsideration as a PDP at a future stage.]*

15. Whether requirements should be in place for Registrars of Record to receive the FOA back from Transfer Contact before acking a transfer. (CR 13.0)

> *[Notes: The first part of this recommendation is retained, although rephrased as noted above in PDP C. For the second part of 15 (reading: ",and/or receive the FOA back from Transfer Contact before acking a transfer") no PDP is recommended for the following reasons: in the original IRTP task force there was considerable debate about the problem of uncooperative Registrars of Record delaying or blocking a transfer desired by the registrant and the approved policy was designed to minimize this problem; requiring that the Registrar of Record receive the FOA back from the Transfer Contact before acking a transfer would in essence provide an easy means for delaying or blocking a transfer, thereby going against the intent of the initial policy.]*

17. Whether additional requirements regarding Whois history should be developed, for change tracking of Whois data and use in resolving disputes. (CR 14.0)

> *[Notes: While this issue, if resolved as suggested, would be very beneficial to registries in resolving disputes, it was felt that it may be excessively controversial and difficult to deal with because of the lack of resolution of some Whois issues. To reopen a Whois debate from a transfer policy perspective doesn't appear to be a constructive approach right now. Therefore, no PDP for issue 17 is recommended at this time. This position should be reconsidered in view of future developments regarding the Whois issue.]*

Order of PDPs

The question about whether the five PDPs should be done in parallel or serially or some combination of both was discussed and the following ideas are proposed:
- Before deciding on how to initiate the PDPs, it was agreed that the availability of different people to work on PDPs should first be assessed, recognizing that it is critical to have adequate registrar representation on all of the PDPs.
- Depending on whether or not there are enough volunteers representing needed diversity to form independent working groups, it may be possible to have two or more PDPs ongoing at the same time. Whether the PDPs are done totally serially or some are done in parallel, working group members agreed on the following prioritization of the PDPs with the highest priority listed first:
    1. PDP A - New IRTP Issues
    2. PDP B – Undoing IRTP Transfers
    3. PDP C - IRTP Operational Rule Enhancements

4. PDP D - IRTP Dispute Policy Enhancements
5. PDP E - Penalties for IRTP Violations

To determine the above PDP priorities, working group members compared the consensus rankings of the issues in each PDP as shown in the first table in the Executive Summary and also considered other factors that were deemed relevant. For example, the group noted that IRTP policy issue 10 (Penalties for IRTP Violations) was given a consensus ranking that is as high as or higher than quite a few of the issues included in PDPs C & D, but it was recognized that issue 10 is part of a policy issue that is much bigger than just the IRTP and as such it could be decided to tackle it separately from the PDP; it is also noted that some aspects of issue 10 could be dealt with in the introduction of new gTLDs process, having been discussed by the New gTLD Committee.