GNSO Council Report to the Board for the adoption of the IRTP Part D PDP Recommendations

1. Executive Summary

The Generic Names Supporting Organization (GNSO) unanimously approved at its meeting on 15 October 2014 the 18 recommendations of the Inter-Registrar Transfer Policy (IRPT) Part D Policy Development Process (PDP) and is now seeking Board review and approval.

The Inter-Registrar Transfer Policy (IRTP) is a consensus policy that provides a mechanism for to transfer domain names between different registrars. In case of inter-registrar transfers that are alleged to not comply with the policy, the Transfer Dispute Policy (TDRP) provides all necessary remedies.

The recommendations are expected to address the six Charter questions that have guided this PDP. Below you find an abbreviated version of these recommendations; the full text can be found in Annex A of the Final Report.

The following policy recommendations, if approved by the Board, will impose new obligations on certain contracted parties. The GNSO Council's unanimous vote in favor of these items exceeds the voting threshold required at Article X, Section 3.9.f of the ICANN Bylaws regarding the formation of consensus policies.

Under the ICANN Bylaws, the Council's supermajority support for the motion[1] obligates the Board to adopt the recommendations unless by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

Charter Question A
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.

Recommendation #1. Reporting requirements to be incorporated into the TDRP policy.

Recommendation #2. The TDRP to be amended to include language along the lines of […] the UDRP.

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

[1] The motion was passed unanimously by the GNSO Council – see http://gnso.icann.org/en/council/resolutions#20141015-1

Recommendation #3. The TDRP to be amended to reflect the following wording, or equivalent: "Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are invalidated 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. A domain name to be returned to the Registrar of Record and Registrant of Record directly prior to the non-compliant transfer if it is found, through a TDRP procedure, that a non-IRTP compliant domain name transfer occurred.

Recommendation #5. The statute of limitation to launch a TDRP to be extended from currently 6 months to 12 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 while such a request for enforcement is pending. Accordingly, 'TDRP action' and 'URS action' are to be added to the second bullet point of the list of denial reasons in the IRTP (Section 3); the IRTP and TDRP should be amended accordingly.

Charter Question C
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).

Recommendation #7. Add a list of definitions (Annex F) to the TDRP to allow for a clearer and more user-friendly policy.

Recommendation #8. Not to develop dispute options for registrants as part of the current TDRP.

Recommendation #9. In close cooperation with the IRTP Part C implementation review team, ensure that the IRTP Part C inter-registrant transfer recommendations are implemented and monitor whether dispute resolution mechanisms are necessary to cover the Use Cases in Annex C. Once such a policy is implemented, its functioning should be closely monitored, and if necessary, an Issues Report be called for to assess the need for an inter-registrant transfer dispute policy.

Recommendation #10. The TDRP to be modified to eliminate the First (Registry) Level of the TDRP.

Recommendation #11. ICANN to take the necessary steps to display information relevant to disputing non-compliant transfers prominently on its web site and assure the information is presented in a simple and clear manner and is easily accessible for registrants.

Charter Question D
Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrants.

Recommendation #12. ICANN to create and maintain a user-friendly, one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants. Such a website should be clearly accessible from or integrated into the ICANN Registrants' Benefits and Responsibilities page (https://www.icann.org/resources/pages/benefits-2013-09-16-en) or similar.

Recommendation #13. As a best practice, ICANN accredited Registrars to prominently display a link on their website to this ICANN registrant help site. Registrars should also strongly encourage any re-sellers to display prominently any such links, too. Moreover, this is to be communicated to all ICANN accredited Registrars.

Charter Question E
Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy.

Recommendation #14. No additional penalty provisions to be added to the existing IRTP or TDRP.

Recommendation #15. As a guidance to future policy development processes, policy specific sanctions to be avoided wherever possible.

Charter Question F
Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy.

Recommendation #16. Not to recommend the elimination of FOAs. However, in light of the problems regarding FOAs, such as bulk transfers and mergers of registrars and/or resellers, it is recommended that the operability of the FOAs should not be limited to email. Improvements could include: transmission of FOAs via SMS or authorization through interactive websites. Any such innovations must, however, have auditing capabilities, as this remains one of the key functions of the FOA.

Addition Recommendations:
Recommendation #17. Once all IRTP recommendations are implemented (incl. IRTP-D, and remaining elements from IRTP-C), the GNSO Council, together with ICANN staff, should convene a panel to collect, discuss, and analyze relevant data to determine whether these enhancements have improved the IRTP process and dispute mechanisms, and identify possible remaining shortcomings.

Recommendation #18. Contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts, especially with regard to those issues listed in the Observations (4.2.7.1) above.

2. If a Successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) or Stakeholder Group(s) that held that position.

N/A

3. An analysis of how the issue(s) would affect each Constituency or Stakeholder Group, including any financial impact on the constituency or Stakeholder Group.

The IRTP concerns Registrars and it is this Stakeholder Group that will be mostly affected by the recommendations that have come out of this PDP. The adoption of the recommendations is expected to clarify and standardize the IRTP and the related Transfer Dispute Resolution Policy (TDRP) that were both under consideration by the PDP. Thus, the greatest benefit will come from the improved operability of the TDRP and a centralized location of information for dispute resolution option(s) on the ICANN website. No monetary cost/benefit analysis has been carried out for this PDP, but this policy changes will eliminate the least expensive, formal dispute resolution channel available to registrars for contesting transfers that were allegedly effected in breach of the IRTP. Because formal disputes are fairly uncommon [2](, this won't have a substantial financial impact in the aggregate, but as some registrars might decline to use the TDRP's remaining, more expensive, dispute resolution channel, some affected registrants might be left without recourse within the IRTP framework. Still, Group members noted in their discussions, in most cases of alleged non-compliant disputes, registrars communicate among each other to solve problems and the vast majority of potential conflicts are dealt with successfully in this way.

The recommended changes to the TDRP are expected to lead to an improvement in visibility, transparency, and consistency of the TDRP and its application. It is also expected to reduce the practice of 'domain name hopping'[3] as a component of fraudulent transfers. The discontinuation of the Registry layer as the first level of dispute resolution under the TDRP is expected to benefit gTLD Registries, especially new gTLD Registries who would otherwise have to train staff in a policy that is rarely used creating costs that might be passed on to Registrars and subsequently registrants.

Finally, the additional recommendation on a future review of the IRTP – once all remaining IRTP recommendations have been implemented for at least a year – should lead to a data-driven assessment of the policy's functionality and effectiveness of the changes from the original IRTP. This approach is particularly welcomed by the Registries Stakeholder Group, as they pointed out in their public comment submission (see Section 9. below). The current estimation is that such a review would start at the earliest in 2017.

[2] Between 2009 and 2013 only 154 TDRP cases were filed with Verisign – 109 of which were requests for enforcement of the IRTP. See also Section 4.1.1. of the Final Report.
[3] Domain hopping refers to a quick succession of inter-registrar transfers – potentially to disguise a fraudulent transfer at the beginning of said transfer chain.

4. An Analysis of the period of time that would likely be necessary to implement the policy.

Staff will need to carry out further analysis of some of these recommendations to assess how they can be best implemented – especially those related to the improvements of the ICANN website. Staff will produce an internal implementation project plan that will involve several ICANN departments, such as Contractual Compliance, General Counsel's Office, and Global Domains Division. Based on this, staff will then publish a public implementation plan. From this, the work will progress and staff will be in a position to share a proposed implementation plan with the GNSO Implementation Review Team which will be created following the adoption by the ICANN Board of these recommendations. This initial planning would likely happen within two or three months of the adoption of these recommendations.

The final two recommendations prescribe a future review of the IRTP and TDRP, as well as, the gathering of relevant data by contracted parties and ICANN to facilitate such a review. The implementation of these recommendations will depend on the completion of implementation for all other IRTP recommendations, including IRTP Part D. Staff estimates that the implementation of all recommendations from this PDP – including the changes to the ICANN website and re-drafting of some section of the policy – will take between 12 and 18 months. The recommended review would need all recommendations to be fully implemented and in operation before information can be gathered for at least 12 months to provide relevant data for the review. Therefore, the start of the latter is expected not to take place before 2017. The GNSO is aware of this time gap and IRTP-D Working Group members discussed it during their deliberations.

5. The Advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

No outside advisor provided input to the Working Group. However, the National Arbitration Forum (NAF) participated actively in the Working Group – and they will be impacted by the removal of the registry level as the first level of arbitration of the TDRP. Specifically, as a First-Level TDRP service provider, they may benefit from the elimination of the first level of arbitration currently provided by gTLD registries, but they will also have to bear the costs of the publication of decisions, etc. similar to other TDRP providers. Furthermore, the Working Group solicited the Asian Doman Name Dispute Resolution Centre (ADNDRC) for input which they provided, but ADNDRC did not participate in the Working Group itself.

6. The Final Report Submitted to the Council

The IRTP Part D Final Report can be found here:

- Final Report
- Translations have been provided in:
    - Arabic, Chinese, French, Portuguese, Russian and Spanish

7. A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

See http://gnso.icann.org/en/group-activities/calendar#oct - October 15th Meeting

8. Consultations undertaken

External
Shortly after the start of the PDP Working Group, members reached out to ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies to seek input on the six Charter questions. See: https://community.icann.org/download/attachments/41883703/publicreview.pdf?version=1&modificationDate=1369049548000&api=v2

In line with the PDP Manual, the Initial Report was also published for public comment following its release on 3 March 2014 – see http://www.icann.org/en/news/public-comment/irtp-d-initial-03mar14-en.htm.

The Working Group met in public during ICANN 46, 47, 48, 49 and 50 to report on its process and seek community feedback. Transcripts can be found here:

http://beijing46.icann.org/meetings/beijing2013/transcript-irtp-d-10apr13-en.pdf
http://durban47.icann.org/meetings/durban2013/transcript-irtp-d-17jul13-en.pdf
http://buenosaires48.icann.org/en/schedule/wed-irtp-d/transcript-irtp-d-20nov13-en.pdf
http://singapore49.icann.org/en/schedule/wed-irtp-d/transcript-irtp-d-26mar14-en.pdf
https://london50.icann.org/en/schedule/mon-irtp-d/transcript-irtp-d-23jun14-en.pdf

All comments received have been reviewed and considered by the IRTP Part D PDP Working Group (See Section 5 of Final Report).

Internal

Regular updates were provided to ICANN Contractual Compliance, General Counsel's Office, and the Registrar Services team. Some of their team members attended WG calls on a regular basis and joined the Group for their face-to-face meetings. Their feedback was very constructive and aided in consensus formation among Working Group members.

9. Summary and Analysis of Public Comment Forum to provide input on the Inter-Registrar Transfer Policy Part D Recommendations, adopted by the GNSO Council prior to ICANN Board consideration.

A public comment forum was opened on 20 October 2014 to solicit feedback on the recommendations prior to ICANN Board consideration. See https://www.icann.org/public-comments/irtp-d-recommendations-2014-10-20-en. Two comments were received - see Report of Public Comments. The Registries Stakeholder Group supported the recommendations, especially the future review of the policy based on relevant data. In addition, John Horton provided feedback, particularly relating to the issue of rogue Internet pharmacies; however his comments were deemed by the Working Group to be out of scope of the PDP's Charter. See the public comment report: https://www.icann.org/en/system/files/files/report-comments-irtp-d-recommendations-12dec14-en.pdf

10. Impact/Implementation Considerations from ICANN Staff

As noted above, staff will need to carry out further analysis of the recommendations in order to determine how these can be best implemented. Following that, staff will be able to share a proposed implementation plan with the Implementation Review Team (IRT) that is yet to be formed. Staff would like to point out to the Board that the scope of some of the recommendation means that their implementation might, in some cases, proof challenging. These issues and all other pertinent information will be listed in the implementation plan and shared with the implementation review team, once formed. Similarly, additional issues might arise that staff would aim to address in consultation with the Implementation Review Team, some have already been raised by ICANN Compliance and thus will be communicated to the IRT in due course.

It is expected that considerable staff resources will be needed, especially to support the future review of the policy, once all other recommendations are implemented. It is important to note that the collection of data needed will require cooperation from registrars and registries. This is beyond the control of staff and might impact on the timely delivery of the implementation. Still, allocation of the required resources will assure an in-depth analysis of a policy that currently still leads to several thousand complaints each year to ICANN Contractual Compliance.

Finally, time and resources will be required to ensure that the implementation is accompanied with the appropriate materials to ensure efficient implementation and community acceptance of the new requirements to all parties involved. Also, cooperation between different ICANN departments will be necessary since changes to consensus policy, to the website and to the operational changes for contracted parties are all part of this implementation.

Annex A: Extract from the IRTP Part D PDP WG Final Report

Charter Question A

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.

Recommendation #1 - The WG recommends that reporting requirements be incorporated into the TDRP policy. Outcomes of all rulings by Dispute Resolution Providers (DRP) [4] should be published on Providers' website, except in exceptional cases – in keeping with practices currently employed in the UDRP. Exceptions, if sought by the DRP, are to be granted by ICANN Contractual Compliance on a case-by-case basis. The Group recommends publishing reports that follow the example of the Asian Domain Name Dispute Resolution Centre (ADNDRC).[5] These reports should include at a minimum:

a) The domain name under dispute
b) Relevant information about parties involved in the dispute;
c) The full decision of the case;
d) The date of the implementation of the decision

The need for publication does not apply to TDRP rulings that have taken place prior to the implementation of this recommendation.

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 the Panel, convened by the Dispute Resolution, in an exceptional case, determines 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."

Charter Question B

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

Recommendation #3 - The WG recommends that the TDRP be amended to reflect the following wording, or equivalent: "Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are invalidated if the Gaining Registrar acquired

[4] 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.

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

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 Registrar of Record and Registrant of Record directly prior to the non-compliant transfer if it is found, through a TDRP procedure, that a non-IRTP compliant domain name transfer occurred.

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 while such request for enforcement is pending. Accordingly, 'TDRP action' and 'URS action' are to be added to the second bullet point of the list of denial reasons in the IRTP (Section 3); the IRTP and TDRP should be amended accordingly.[6]
The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly. The WG notes that the locking should be executed in the way that the UDRP prescribes – once that the UDRP locking process is implemented.

Charter Question C
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);

Recommendation #7 - The WG recommends to add a list of definitions (Annex F) to the TDRP to allow for a clearer and more user-friendly policy.

Recommendation #8 - The WG recommends not to develop dispute options for registrants as part of the current TDRP.

Recommendation #9 - The WG recommends that staff, in close cooperation with the IRTP Part C Implementation Review Team, ensures that the IRTP Part C inter-registrant transfer recommendations are implemented and monitor whether dispute resolution mechanisms are necessary to cover the Use Cases in Annex C. Once such a policy is implemented, its functioning should be closely monitored, and if necessary, an Issues Report be called for to assess the need for an inter-registrant transfer dispute policy.
See also Recommendations #17 and #18 below.

Recommendation #10 - The WG recommends that the TDRP be modified to eliminate the First (Registry) Level of the TDRP.

[6] https://www.icann.org/resources/pages/policy-transfers-2014-07-02-en

ICANN should monitor the use of TDRPs and if the discontinuation of the Registry layer as first level dispute provider seems to create a barrier to this dispute resolution mechanism, future policy work should be initiated to counter such development. See also #17 below.

Recommendation #11 - The WG recommends that ICANN take the necessary steps to display information relevant to disputing non-compliant transfers prominently on its web site and assure the information is presented in a simple and clear manner and is easily accessible for registrants.
This recommendation should be view in combination with Recommendation #12 (below).

Charter Question D
Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrants

Recommendation #12 - The WG recommends that ICANN create and maintain a user-friendly, one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants. Such a website should be clearly accessible from or integrated into the ICANN Registrants' Benefits and Responsibilities page (https://www.icann.org/resources/pages/benefits-2013-09-16-en) or similar.

This should include:

- Information to encourage registrants to contact the registrar to resolve disputed transfers at the registrar level before engaging ICANN Compliance or third parties by launching a TDRP.
- 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 (see 5.2.3.3 above).
- 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.
- 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 on behalf of said registrant.
- Improvements in terms of accessibility and user-friendliness should be devoted especially to these pages:
    - https://www.icann.org/resources/pages/dispute-resolution-2012-02-25-en#transfer
    - https://www.icann.org/resources/pages/name-holder-faqs-2012-02-25-en
    - https://www.icann.org/resources/pages/text-2012-02-25-en

Links to these registrant help-websites should also be prominently displayed on internic.net and iana.org in order to assure further that registrants have easy access to information.

Recommendation #13 - The WG recommends that, as a best practice, ICANN accredited Registrars prominently display a link on their website to this ICANN registrant help site. Registrars should also strongly encourage any re-sellers to display prominently any such links, too. Moreover, the Group recommends that this is communicated to all ICANN accredited Registrars.
Registrars may choose 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 existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy.

Recommendation #14 - The WG recommends that no additional penalty provisions be added to the existing IRTP or TDRP.

Recommendation #15 - As a guidance to future policy development processes, this Working Group recommends that policy specific sanctions be avoided wherever possible. Rather, sanctions should be consistent throughout policies and be governed by applicable provisions within the RAA.

Charter Question F
Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of FOAs.

Recommendation #16 - The WG does not recommend the elimination of FOAs. However, in light of the problems regarding FOAs, such as bulk transfers and mergers of registrars and/or resellers, the Group recommends that the operability of the FOAs should not be limited to email. Improvements could include: transmission of FOAs via SMS or authorization through interactive websites. Any such innovations must, however, have auditing capabilities, as this remains one of the key functions of the FOA.
The Working Group notes that the implementation of this recommendation should not be affected by whether transfers take place in advance (for certain bulk transfers) or in real time.

Additional Recommendations

Recommendation #17 The WG recommends that, once all IRTP recommendations are implemented (incl. IRTP-D, and remaining elements from IRTP-C), the GNSO Council,

together with ICANN staff, should convene a panel to collect, discuss, and analyze relevant data to determine whether these enhancements have improved the IRTP process and dispute mechanisms, and identify possible remaining shortcomings.
If, after a period of 12 months of such a review, the GNSO (with ICANN Staff) determine that the situation regarding transfers is not improved, then this WG recommends that a top-to-bottom reevaluation of the transfer process be undertaken. The goal of this is to create a simpler, faster, more secure policy that is more readily understood and more accessible to use for registrants."

It is a further recommendation that a security expert be included in any such next review Working Group, should for example real 2-factor authentication be required, that it is implemented according to industry standards.

Recommendation #18 - The Working Group recommends that contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts, especially with regard to those issues listed in the Observations (4.2.7.1) above.
To facilitate the gathering of relevant data, the Implementation Review Team should closely liaise with ICANN Staff to assure prompt access to necessary data.