# Initial Report on the Inter-Registrar Transfer Policy - Part D Policy Development Process

## STATUS OF THIS DOCUMENT

This is the Initial Report on IRTP Part D PDP, prepared by ICANN staff for submission to the GNSO Council on 3 March 2014. A Final Report will be prepared by the Working Group and ICANN staff following review of public comments on this Initial Report.

## SUMMARY

This report is submitted to the GNSO Council and posted for public comment as a required step in this GNSO Policy Development Process on the Inter-Registrar Transfer Policy.

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# 1. Executive Summary

## 1.1 Background

- The Inter-Registrar Transfer Policy (IRTP) provides the policy framework for domain name transfers between registrars, and has recently added provisions for transfers between registrants. IRTP also provides standardized requirements for registrar handling of transfer requests. The policy is an existing community consensus policy that was implemented in late 2004 and has been revised several times since then.[1]
- The IRTP Part D Policy Development Process (PDP) is the forth and final PDP of this series of revisions.
- The GNSO Council resolved at its meeting on 17 October 2012 to launch an Issue Report on IRTP Part D,

  "which should include all the remaining issues identified by the original transfers Working Groups as well as the additional issue identified by the IRTP Part C WG, namely:

  - 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
  - Whether additional provisions should be included in the TDRP (Transfer Dispute Resolution Policy) on how to handle disputes when multiple transfers have occurred;
  - 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);
  - Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrant;
  - Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy;
  - Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of FOAs."

[1] IRTP A: http://gnso.icann.org/en/group-activities/inactive/2008/irtp; IRTP B: http://gnso.icann.org/en/group-activities/active/irtp-b; IRTP C: http://gnso.icann.org/en/group-activities/active/irtp-c

### 1.2. Deliberations of the Working Group

- The IRTP Part D Working Group started its deliberations on 25 February 2013 where it decided to conduct its work through combination of weekly conference calls and conversation on a publicly-archived email list [insert link].
- The Working Group also met face-to-face during the ICANN Conferences in Beijing, Durban and Buenos Aires
- Section 5.2 provides an overview of these deliberations.

### 1.3 WG Preliminary Recommendations

**Proposed Recommendation to Charter Question A**

**Recommendation #1:** The WG recommends that reporting requirements be incorporated into the TDRP policy. Outcomes of all rulings by Dispute Resolution Providers[2] should be published on Providers' website, except in exceptional cases. The Group recommends publishing reports that follow the example of the Asian Domaine Name Dispute Resolution Centre (ADNDRC).[3] 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.'

**Proposed Recommendation to Charter Question B**

**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,**

[2] 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.

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

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.

**Note: The Working Group would like to encourage Public Comment on the question of whether costs would need to be refunded to registrars in case of negating/reversing transfers under a multiple-hop scenario.*

*** Note: The Working Group would like to encourage Public Comment on whether in this context there is a need to clearly define 'invalid transfer'; and if so, how.*

**Proposed Recommendation to Charter Question C**

The WG does not recommend that dispute options for registrants be developed and implemented as part of the current TDRP.

**Recommendation #7:** 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 #8:** The WG recommends that the TDRP be modified to eliminate the First Level (Registry) layer of the TDRP.***

**Observation:** The WG observes that the information on the ICANN website describing registrant options with regard to inter-registrar and inter-registrant transfers is not as clearly formulated and prominently displayed as it should be. The recommendations for Charter question D below address this issue in detail.

****NB: The Working Group would like to encourage Public Comment on the issue of whether to remove the registry layer from the TDRP.*

**Proposed Recommendation to Charter Question D**

**Recommendation #9:** 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 on behalf of said registrant; 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

**Recommendation #10:** 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.

**Proposed Recommendation to Charter Question E**

**Recommendation #11:** 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 #12:** 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 .

**Proposed Recommendation to Charter Question F**

The WG does not recommend the elimination of FOAs.

### 1.4 Stakeholder Group / Constituency Statements & Initial Public Comment Period

A public comment forum was opened upon initiation of the Working Group activities. The public comment period ran from 14 November to 14 December 2012. One (1) community submission was received from the gTLD Registry Stakeholder Group.

The WG also requested all GNSO Stakeholder Groups and Constituencies to submit their statements on the IRTP Part D issues by circulating the SG/Constituency template (see Annex B). One (1) contribution was received from GNSO Business Community.

In addition, the WG also reached out to the country code Names Supporting Organization (ccNSO), the At-Large Advisory Committee (ALAC), the Governmental Advisory Committee (GAC) and the Security and Stability Advisory Committee (SSAC) for input, but no comments have been received so far.

The IRTP Part D WG reviewed and discussed the contributions received. Where relevant and appropriate, information and suggestions derived from the contributions received were considered as part of the WG deliberations and have been included in section 5.

### 1.5 Conclusions and Next Steps

The Working Group aims to complete this section for the Final Report, once public comments on this Initial Report have been received and reviewed

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# 2. Objectives and Next Steps

This Initial Report on the Inter-Registrar Transfer Policy (IRTP) Part D Policy Development Process (PDP) is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws, Annex A (see http://www.icann.org/general/bylaws.htm#AnnexA).

- The Working Group has requested and reviewed community input concerning the charter questions and, following an analysis of that input, has prepared this Initial Report.
- The Initial Report will be posted for public comment for a minimum of 30 days, and then subsequently be open for a 21-day reply period.
- Once the Working Group has received and reviewed all comments, the Working Group will prepare a Draft Final Report.
- The Draft Final Report will be forwarded to the GSNO Council for review.
- If the Council determines that further work is required, it will return the draft to the Working Group with suggested topics for review and possible revision.
- If the Council approves the Draft Final Report, the ICANN staff will prepare a GNSO Council Report, which will accompany the Final Report to the Board.
- Following a public comment period, the ICANN Board will make the determination whether to approve the policy changes recommended by the Working Group.

# 3. Background

## 3.1 Process background

- Consistent with ICANN's obligation to promote and encourage robust competition in the domain name space, the Inter-Registrar Transfer Policy (IRTP) aims to provide a straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another should they wish to do so. The policy also provides standardized requirements for registrar handling of such transfer requests from domain name holders. The policy is an existing community consensus policy that was implemented in late 2004 and has been under review by the GNSO.
- As part of that review, the GNSO Council formed a Transfers Working Group (TWG) in [insert year] to examine and recommend possible areas for improvements in the existing transfer policy. The TWG identified a list of over 20 potential areas for clarification and improvement (see http://www.icann.org/en/gnso/transfers-tf/report-12feb03.htm).
- In [insert year] the Council tasked a short term planning group to evaluate and prioritize the policy issues identified by the Transfers Working Group. In March 2008, the group delivered a report to the Council that suggested dividing the consideration of related issues into five PDPs (A – E) (see http://gnso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf).
- On 8 May 2008, the Council adopted the structuring of five additional IRTP PDPs as suggested by the planning group (in addition to the Transfer PDP 1 on four reasons for denying a transfer which concluded in [add year]). It was decided that the five new PDPs would be addressed in a largely consecutive manner, with the possibility of overlap as resources would permit.
- Final Reports that have been published to date:

- IRTP Part A Final Report – published in March 2009
- IRTP Part B Final Report – published in May 2011
- IRTP Part C Final Report – published in October 2012

- The GNSO Council requested an Issue Report from Staff on this fourth and final IRTP PDP Working Group at its meeting on 22 June 2012 which combined all remaining issues identified by the original transfers WG as well as the additional issue identified by the previous IRTP Part C PDP.
- Those charter questions are:
  - 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;
  - Whether additional provisions should be included in the TDRP (Transfer Dispute Resolution Policy) on how to handle disputes when multiple transfers have occurred;
  - 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);
  - Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrant;
  - Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy;
  - Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of FOAs.
- The Final Issue Report was submitted on [include date and link to Final Issue Report]. On 17 January 2013 the GNSO Council resolved at its meeting to initiate a PDP on these six issues and adopted a Charter for a Working Group (see Annex A for the Working Group Charter), that requests the PDP Working Group to provide recommendations in relation to the six questions outlined in the Issue Report (see previous bullet points).

## 3.2 Final Issue Background (excerpt from Final Issue Report)[4]

**Reporting requirements for registries and dispute providers**

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.

The TDRP currently does not foresee any reporting requirements on the outcome of TDRP dispute and as part of the 'Review of Issues for Transfers Working Group'[5] it was noted that:

- *TDRP enforcement seems inconsistent and does not rely on past precedent as intended. Situations with similar fact patterns are being decided differently by the same dispute provider leading to a distinct lack of clarity and reliability of the proceedings. This is primarily observed at the registry level.*
- *Dispute providers should be filing standardized reports with ICANN to better help the community understand trend level data regarding resolutions.*
- *There is a lack of citations and precedent information for dispute providers. It would be useful if the filing party includes this information as a standard part of their submission.*

gTLD Registries are required to provide information per registrar on the number of disputes filed and resolved as part of their monthly transaction reports to ICANN (see http://www.icann.org/en/resources/registries/reports), but this does not include information on individual cases.

[4] Please note that the following text has been excerpted from the IRTP Part D Final Issue Report and does not contain any new input from the Working Group.

[5] http://forum.icann.org/lists/transfers-wg/msg00020.html

The other ICANN dispute resolution policy (which is applicable to trademark disputes, not transfer disputes), the Uniform Domain Name Dispute Resolution Policy (UDRP), does specify that decisions need to be published (see http://www.icann.org/en/help/dndr/udrp/policy - 'All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision'. Should the PDP WG recommend introducing reporting requirements for registries and/or dispute providers, it may also want to consider how to handle the display and approval of non-public information regarding transfers, should such information be required to be included.

**Additional provisions for dealing with multiple transfers**

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

As noted in the Review of Issues for Transfers Working Group, 'there are problems cleanly resolving disputes in instances where multiple transfers have occurred. Dispute providers require further guidance and clarification on this issue. New provisions may be needed to deal with implications'.

It is Staff's assumption that this issue refers to a situation whereby a registration changes registrars multiple times before or during the time a TDRP has been filed. Such a situation would create multiple layers in the dispute proceeding as the transfer process would have to be verified and assessed for every transfer that occurred, potentially involving multiple registrars. In the case of a hijacked registration, although the first transfer might be found to violate the transfer policy, the subsequent transfer(s) likely were in technical compliance with the transfer policy because the hijacker is typically able to modify the Whois data (i.e., the transfer contact) after the first transfer is completed. This might raise a question of fairness, despite technical compliance with the policy, for dispute service providers.

**Dispute options for registrants**

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).

The 'Review of Issues for Transfers Working Group'[6] pointed out that 'ICANN receives some complaints from registrants about registrars who choose not to initiate a dispute on their behalf. Should there be additional steps available for registrants to take if they believe a transfer or rejection has occurred improperly?'

Under the TDRP, only the Gaining Registrar or Registrar of Record can file a dispute. There is currently no provision for the registrant to do so.

As part of its consideration of whether dispute options for registrants should be developed and implemented as part of the policy, the PDP WG should consider gathering further information on the extent of the issue and how the current policy as well as parties involved would be impacted should dispute options for registrants be developed and implemented.

An additional consideration that the PDP WG may want to take into consideration is hat as part of the IRTP Part C PDP, a recommendation is being considered to create an additional policy to conduct a change of registrant[7]. No consideration was given in the context of those discussions on how to handle disputes that would occur as a result of this new policy. One option could be to modify the TDRP to allow for disputes as a result of a change of registrant to be handled as part of the TDRP either upon the filing of a complaint by the registrar and/or registrant.

**Best practices to make information on transfer dispute resolution available**

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

The 'Review of Issues for Transfers Working Group'[8] noted that 'further education is necessary for registrants and registrars to understand where they should take their initial complaints and what the ensuing process will entail'. As a next step it suggested that 'part of [an] advisory to registrars, possible other suggestions to ICANN on education to registrants and potential

[6] http://forum.icann.org/lists/transfers-wg/msg00020.html

[7] The proposal is that the IRTP would become a Transfer Policy in which one Part or Section details the policy for a change of registrar, and another Part or Section details the policy for a change of registrant.

[8] http://forum.icann.org/lists/transfers-wg/msg00020.html

development of statement of best practices for registrars and registrants related to the DRP' could be considered.

A 'help' button and a 'need help' section are currently featured on the ICANN Home Page, which include a direct link to information on the TDRP, including an FAQ for domain name holders:


Similar information is also available on the homepage of the InterNIC web-site (http://www.internic.net/). In addition, there is a dedicated web-page on the ICANN web-site which provides an overview of all dispute resolution options available (see http://www.icann.org/en/help/dispute-resolution).

A quick scan of some registrar web-sites does not find similar information easily accessibly, which may be explained by the fact that the TDRP cannot be initiated by registrants and hence it is deemed non-essential information.

Other ICANN policies, such as the Expired Domain Deletion Policy (EDDP), have resulted in contractual requirements on how information needs to be provided to registrants (e.g. 'If Registrar operates a website for domain name registration or renewal, details of Registrar's deletion and auto-renewal policies must be clearly displayed on the website'). The PDP WG may want to review how effective such provisions are in educating and raising awareness amongst registrants.

The WG should consider reviewing this issue together with the previous question on whether dispute options for registrants should be developed as enhanced measures to make information on dispute resolution options available may also raise expectations with registrants and may enforce the need for a mechanism for registrants to be able to initiate a proceeding directly should the registrar refuse to do so on their behalf.

**Penalties for IRTP Violations**

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

The 'Review of Issues for Transfers Working Group'[9] found that 'existing penalties are not sufficient deterrent (loser pays) to discourage bad actors' and 'existing penalties are difficult to enforce'. It was also noted that at the time of the Transfers Working Group (19 January 2006), the only option that ICANN had available to penalize registrars for not complying with the policy would be the 'nuclear option' (termination of accreditation).

Since the work done by the Transfers Working Group, a new Registrar Accreditation Agreement (RAA) was negotiated (see 2009 RAA - http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm), which foresees graduated sanctions in the case of non-compliance with ICANN policies. As noted above, under the 2001 RAA, the only sanction available for a breach/noncompliance is termination of accreditation. Under the 2009 RAA additional sanctions are authorized such as:

[9] http://forum.icann.org/lists/transfers-wg/msg00020.html

- The suspension of the ability to create new registrations and inbound transfers under some or all gTLDS for up to 12 Months;
- Recover ICANN's enforcement cost from registrar;
- Enforce registrar's group liability;
- Conduct audits (site visits) on 15 days' notice.
- 95% of registrars currently operate under the 2009 RAA (see https://charts.icann.org/public/index-registrar-distribution.html).

The PDP WG should review this issue in the context of the sanctions available under the 2009 RAA and determine whether additional provisions/penalties for specific violations are still required.

**Are FOAs still necessary?**

h) Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of Forms of Authorization (FOA)s.

This issue was raised by the IRTP Part C PDP Working Group in the context of their deliberations on the charter question relating to time-limiting FOAs. The WG observed that the use of EPP Authorization Info (AuthInfo) codes has become the de facto mechanism for securing domain transfers and thereby replaced some of the reasons for the creation of the standard FOA. As a result, the WG recommended that the GNSO Council consider adding this issue to the IRTP Part D PDP.

In order to request an inter-registrar transfer, express authorization from either the Registered Name Holder or the Administrative Contact needs to be obtained. Such authorization must be made via a valid Standardized Form of Authorization (FOA). There are two different FOA's. The FOA labeled 'Initial Authorization for Registrar Transfer' must be used by the Gaining Registrar to request an authorization for a registrar transfer from the Transfer Contact. The FOA labeled 'Confirmation of Registrar Transfer Request' may be used by the Registrar of Record to request confirmation of the transfer from the Transfer Contact. The IRTP specifies that the FOA 'should be sent by the Registrar of Record to the Transfer Contact as soon as operationally possible, but must be sent not later than twenty-four (24) hours after receiving the transfer request from the Registry Operator. Failure by the Registrar of Record to respond within five (5) calendar days to

a notification from the Registry regarding a transfer request will result in a default "approval" of the transfer'. The IRTP also specifies that the registrar is responsible for keeping copies of documentation, including the FOA, which may be required for filing and supporting a dispute as well as per the standard document retention policies of the contracts.

The AuthInfo Code is a unique code generated on a per-domain basis and is used for authorization or confirmation of a transfer request. Some registrars offer facilities for registrants to generate and manage their own AuthInfo code. In other cases, the registrant will need to contact the registrar directly to obtain it. The registrar must provide the registrant with the AuthInfo code within 5 calendar days of the request.

The way the IRTP typically works, as described in the presentation provided by James Bladel to the IRTP Part C Working Group:

a) A Registrant sends a transfer request to the new registrar ("Gaining Registrar");
b) The Gaining Registrar provides instructions to the registrant, incl. get the AuthInfo Code from the current registrar ("Registrar of Record");
c) After confirming the Registrant and/or Administrate Contact email address, the Gaining Registrar sends the FoA to the Transfer contact;
d) The Transfer contact confirms the FOA and sends the AuthInfo code that was obtained from the Losing Registrar to the Gaining Registrar;
e) The Gaining Registrar requests the transfer and sends the AuthInfo code to the Registry;
f) If the domain name registration has no status that impedes the transfer (e.g., client Transfer Prohibited) and the AuthInfo code valid, the Registry sends notice that the transfer is pending to the Gaining and Losing Registrar;
g) The Losing Registrar must send an FOA to the Registrant. However, the transfer is not depending on this step.
h) After 5 days with no objections ("NACK"), the transfer is complete.

Most, if not all gTLD Registries, currently operate an EPP service, which was not the case at the time of implementation of the IRTP in 2004. At that time it was foreseen that for gTLD Registries that were not EPP based, a transfer command would be given by the registrar to the registry, which 'constitutes a representation on the part of the Gaining Registrar that the requisite

authorization has been obtained from the Transfer Contact listed in the authoritative Whois database'. This 'requisite authorization' would be the FOA. In the current environment[10], there may no longer be a technical need for an FOA in communicating with the Registry as the AuthInfo code has replaced that function, but at the same time the FOA serves other functions such as informing the Registrant that a transfer has been requested as well as possible evidence in dispute proceedings.

The PDP WG will need to consider carefully which functions the FOA still fulfils in the current IRTP environment, whether these functions are still necessary, and if deemed necessary, how these would be fulfilled if the FOA is deemed no longer needed or the appropriate vehicle to fulfil these functions.

[10] New gTLD Registries are required to offer an EPP service and similar requirements have been introduced in the case of recent gTLD renewals.

# 4. Approach taken by the Working Group

The IRTP Part D Working Group convened its first meeting on 25 February 2013. As one of its first tasks, the Working Group prepared a work plan, which has been reviewed on a regular basis, and revised where necessary. Constituency and Stakeholder Group statements with regard to the Charter questions (see Annex B) were solicited. This request was also directed to other ICANN Supporting Organizations (SOs) and Advisory Committees (ACs).

## 4.1 Members of the IRTP Part D Working Group

The members of the Working Group are:

| Name | Affiliation* | Meetings Attended (Total # of Meetings: tbc) |
|---|---|---|
| Simonetta Batteiger | RrSG | tbc |
| James Bladel (Co-Chair) | RrSG | tbc |
| Graeme Bunton | RrSG | tbc |
| Chris Chaplow | CBUC | tbc |
| Paul Diaz | RySG | tbc |
| Avri Doria | NCSG & At-Large | tbc |
| Kristine Dorrain | NAF | tbc |
| Roy Dykes | RySG | tbc |
| Kevin Erdman | IPC | tbc |
| Rob Golding | RrSG | tbc |
| Angie Graves | CBUC | tbc |
| Alan Greenberg | ALAC | tbc |
| Volker Greimann | RrSG | tbc |
| Oliver Hope | RrSG | tbc |
| Barbara Knight | RySG | tbc |
| Bartlett Morgan | NCUC | tbc |
| Bob Mountain | RrSG | tbc |
| Mike O'Connor (co- | ISPCP | |

| | | |
|---|---|---|
| Chair) | | |
| Richart Peterson | RrSG | tbc |
| Holly Raiche | ALAC | tbc |

The Statements of Interest (SOI) for the Working Group members can be found at https://community.icann.org/pages/viewpage.action?pageId=40927772.

The attendance records can be found at https://community.icann.org/display/ITPIPDWG/IRTP+Part+D+-+Attendance+Log .

The email archives can be found at http://forum.icann.org/lists/gnso-irtpd/.

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ALAC – At-Large Community

RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NAF – National Arbitration Forum

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

NCSG – Non-Commercial Stakeholder Group

# 5. Deliberations of the Working Group

This section provides an overview of the deliberations of the Working Group. This section is intended to serve as a record of the discussion and analysis of the Working Group, in support of the recommendations made in the following section.

## 5.1 Fact-Finding and Working Group Research

An IRTP Training Session Presentation was provided to the Group at its first session in February 2013 in order to provide working group members a shared understanding of the Inter-Registrar Transfer Policy

In addition to seeking Community input, the WG also decided to gather information from various sources to understand the underlying issues related to the Charter questions.

### 5.1.1. IRTP-related Data

The Group requested information from ICANN Compliance regarding the nature and number of IRTP-related complaints received. The data provided by ICANN Compliance indicates that IRTP-issues comprise the vast majority of complaints received by ICANN. In the thirteen [is this right? Or was it for a 12-month period?] months between January 2012 and February 2013:

- 6594 IRTP-related complaints were received and processed.
- Of those, 2778 complaints (42%) corresponded to invalid (those that did not involve a potential breach to the IRTP) or Frequently Asked Questions (FAQ)-type complaints.
- The remaining 3816 complaints (58%) were valid IRTP complaints, of which 47 (1.2%) were related to unauthorized transfers of domain names.

- Of the 47 complaints related to unauthorized transfers of domain names, 31 complaints (0.8% of the total valid IRTP complaints) were related to email address hijacking or hijacking of access credentials to the registrant's control panel.

- ICANN Compliance noted that while processing the 16 remaining complaints related to unauthorized transfers (0.4% of the total valid IRTP complaints), none of the involved registrars stated or provided evidence that they had initiated a TDRP procedure.

### 5.1.2. TDRP-related data

In relation to Charter Question B – whether to enhance the dispute options for registrants – the Working Group solicited information concerning the Transfer Dispute Resolution Policy (TDRP) from Verisign, the National Arbitration Forum (NAF), the Asian Doman Name Dispute Resolution Centre (ADNDRC) and also received anecdotal evidence from a number of Registrars including Tucows, GoDaddy and Key-Systems.

#### *5.1.2.1. Verisign Input*

From October 2009 to [insert date] there were:

- 154 TDRP cases filed with Verisign, of which 142 related to .com and 12 to .net.
- Of the 154 cases, 109 were Requests for Enforcement (RFEs) and 45 were Application for Reinstatement of Sponsorships (ARSs).[11]
- Of these 109 cases, Verisign rendered a decision on 59 cases (38 times the filing registrar prevailed; 2 cases were 'NACKed'[12]; an appeal was filed with a dispute provider in 2 cases where the original decision was upheld in both cases) and issued a no-decision on the remaining 50.

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[11] In certain cases registrars may have been able to resolve the dispute amicably but may need assistance reversing a transfer. In those cases, they may file an "Application for Reinstatement of Sponsorship", or ARS, with Verisign. Upon receipt of agreement by both registrars that a domain name transfer should be reversed, Verisign will perform the 'transfer undo' process to return the domain name at issue to the losing registrar. This allows the domain to be 'reinstated' with the losing registrar without adding an additional year to the registration period.

[12] Transfer refused by the Losing Registrar

- Of the 59 cases where Verisign rendered a decision, the complaints related to:

  - Someone other than the Admin Contact or Registered Name Holder listed in the Losing Registrar's Whois record authorized the transfer (37 cases)
  - The Administrative Contact authorized the transfer without knowledge of the Registered Name Holder (8 cases)
  - Failure by gaining registrar to obtain express written consent of the transfer from the Administrative Contact or Registered Name Holder (5 cases)
  - Payment for the domains was disputed (3 cases)
  - The domain transferred without the original registrant's approval (2 cases)
  - The Gaining registrar failed to provide a Form of Authorization (FOA) within 5 days of having received the request (2 cases)
  - The Losing registrar failed to provide evidence relied on for denial of transfer when requested (1 case)
  - Other (1 case)

*5.1.2.2. National Arbitration Forum (NAF) Input*

The NAF has processed 6 TDRP cases:

- All 6 were appeals of first level decisions and concerned Versign-administered domains
- At the first level (of those 6 cases), the gaining registrar prevailed once, one request was denied and four resulted in no-decision
- At the second level (NAF) the appellant prevailed in 5 cases and the appellee prevailed in 1 case
- 5 of these cases were fraudulent transfers and 1 case was an attempted transfer

*5.1.2.3. Asian Doman Name Dispute Resolution Centre (ADNDRC) Input*

The ADNDRC has processed 4 TDRP cases:

- Procedural problems occurred in all four cases
- In all 4 cases the appellee failed to provide sufficient information or any information at all.
- In 2 cases the appellant failed to provide sufficient information
- This resulted in only one case being arbitrated – with the appellant prevailing
- In 2 cases no-decision was rendered, in 1 case the ADNDRC determined that it had no jurisdiction to render a decision.

*5.1.2.4 Registrar Input (Key-Systems, Tucows, GoDaddy)*

Three registrars provided feedback in relation to the number of TDRP cases filed or which it was

party to.

**Key-Systems**

In the last 5-6 years, it did not initiate or was subject to any TDRP-procedures.

**Tucows**

Tucows has been involved in approximately four TDRPs (none of which occurred recently). Tucows furthermore reported that there is a low number of complaints and issues in relation to transfers are normally dealt with through informal channels by working directly with other registrars (ca. 12 cases per year). These include both gaining and losing registrars. As Tucows primarily operates as a wholesaler, the assumption is that certain transfer issues will occur at the reseller level without ever reaching Tucows directly.

**Godaddy**

GoDaddy typically receives 30-50 transfer disputes per month. Around 25% of those disputes are resolved by working with other registrars. The remaining disputes were not pursued because of one of the following reasons:

- Losing Registrar stopped pursuing the dispute;
- The customers resolved the issue amongst themselves;
- Investigation determined that one of the parties filed a false dispute.

At the time the data was compiled, GoDaddy had had only one case on record (in 2008) that resulted in a formal TDRP procedure.

### 5.1.3. ICANN Compliance's abilities to enforce the TDRP

During the latter stages of the deliberations, the WG asked ICANN Compliance to provide further details on the circumstances and the measures that are used to enforce IRTP-related complaints. ICANN Compliance provided the Group with the following information:

Scenarios (under IRTP as it stands) in which ICANN Compliance has the authority to act are:

Involving the Losing Registrar

- AuthInfo code related:
    - The registrant was not able to retrieve the AuthInfo code from the registrar control panel (or equivalent), following which the registrant requested the registrar to send the AuthInfo code but the registrar failed to do so within the required 5 days ----- (the breach in this case is when both conditions are present);
    - The means provided by the registrar for the registrant to retrieve the AuthInfo code are more restrictive than the means provided for the registrant to update its contact or name server information;
    - The registrar sends the AuthInfo Code to someone who is not the Registered Name Holder or their designee.
    - The registrar does not send the AuthInfo Code at all.

- FOA related
    - The registrar does not send the FOA
    - The Registrar sends the FOA to someone who is not a Transfer Contact

- Unlocking of the domain name registration
    - The registrant is not able to unlock the domain name registration via online means, following which the registrant requested the registrar to unlock the domain name registration which the registrar failed to do within five days ----- (the breach in this case is when both conditions are present)

Involving the Gaining Registrar

- AuthInfo Code related
  - The registrar allowed the transfer without receiving the AuthInfo code - which would be technically impossible but can theoretically happen (such a scenario would also involving registry error)

- FOA related
  - The registrar does not send the FOA
  - The registrar sends the FOA to someone who is not the Transfer Contact
  - The registrar allows the transfer without receiving confirmation after sending the FOA

## 5.2 Working Group Deliberations and Recommendations

### 5.2.1 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.*

#### 5.2.1.1 Observations:

The Transfer Dispute Resolution Policy (TDRP) currently does not include any requirements for reporting by dispute resolution providers at the conclusion of a TDRP dispute. In January 2006 the 'Review of Issues for Transfers Working Group'[13] noted that 'TDRP enforcement seems inconsistent and does not rely on past precedent as intended. Situations with similar fact patterns are being decided differently by the same dispute provider leading to a distinct lack of clarity and reliability of the proceedings' (Issue 15).

Only gTLD Registries are currently required to provide per-registrar statistics on the number of

[13] http://forum.icann.org/lists/transfers-wg/docHMrHaPLWRt.doc

disputes filed and resolved as part of their monthly transaction reports to ICANN. This requirement does not include information on individual cases.[14] In this context, WG observed that a recent media article highlighted the lack of awareness of the TDRP.[15]

During its discussions, the IRTP Part D WG agreed that publication of TDRP dispute outcomes would be desirable, especially considering that similar requirements exist within other dispute policies such as the Uniform Domain Name Dispute Resolution Policy (UDRP). The Group agreed that consistency and transparency across the various dispute resolution policies would be beneficial to both dispute providers and parties involved in disputes. The WG feels that such reporting would improve the understanding of the policy and its ramifications on those affected. Maintaining unified records of dispute outcomes could also provide data that may assist in future reviews of dispute resolution policies.

The WG noted that the Asian Domain Name Dispute Resolution Centre (ADNDR) already has a self-imposed publication policy in place for all its TDRP rulings. The ADNDR's example could serve as a best-practice model for other dispute resolution providers.[16]

**5.2.1.2 Preliminary Recommendations**:

**The WG recommends that reporting requirements be incorporated into the TDRP policy.** Outcomes of all rulings by Dispute Resolution Providers[17] should be published on Providers' website, except in exceptional cases. The Group recommends publishing reports that follow the example of the Asian Domaine Name Dispute Resolution Centre (ADNDRC).[18] 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

**The WG recommends that the TDRP be amended to include language along the lines of this revised version of the UDRP**:

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[14] See http://www.icann.org/en/resources/registries/reports
[15] See http://www.thedomains.com/2013/07/30/you-know-about-udrps-have-you-ever-heard-of-a-tdrp/
[16] For the ADNDR's reports see https://www.adndrc.org/tdrp/tdrphk_decisions.html
[17] 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.
[18] See four ADNDRC Reports on TDRP decisions: http://www.adndrc.org/mten/TDRP_Decisions.php?st=6

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.

#### 5.2.1.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized.

#### 5.2.1.4 Expected impact of the proposed recommendation

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

### 5.2.2 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.*

#### 5.2.2.1 Observations

Problems may arise when trying to resolve transfer disputes in instances where multiple transfers of a domain name have occurred. In that case, a TDRP may be filed because the initial transfer was potentially in violation of the IRTP even though subsequent transfers did not breach the policy. This issue is sometime called 'Domain Laundering' or 'Domain Hijacking.' This can complicate a dispute proceeding because the transfer process has to be verified and assessed for every transfer that occurred since the initial, disputed transfer. This investigation may involve multiple registrars, some or all of which may have complied with the transfer policy. An additional complication is that registrars only have to maintain transfer records for three years.

The WG considered questions of fairness for those registrants that may have acquired a hijacked domain name in compliance with the existing transfer policy. A dispute provider may find that an initial transfer – in a chain of registrar hops – has violated the transfer policy and thus brought into

question the validity of all other transfers down the line. The Working Group concluded that the domain name should remain with the current Registrar of Record if subsequent transfers have taken place in good faith and if the statute of limitations to launch a TDRP has passed.

The Working Group agreed that once 'hopping' is detected, the domain must be locked and all registrars in the chain ought to participate in the fact-finding process. To facilitate this participation, a minimum of information needs to be collected and stored during all domain transfers. The WG notes that Verisign's current version of its supplemental rules are in accordance with such a requirement (See Section N, Paragraph 1).

The WG also notes that the statute of limitations for filing a TDRP is an important factor in these scenarios. These restrictions are contained in Section 2.3 of the IRTP:

> *A dispute must be filed no later than six (6) months after the alleged violation of the Transfer Policy. In the case where a Registrar of Record alleges that a transfer was in violation of this Policy, the date the transfer was completed shall be deemed the date in which the "alleged violation" took place. In the case where a Gaining Registrar alleges that a transfer should have taken place, the date in which the NACK (as defined below) was received by the Registry, shall be deemed the date in which the "alleged violation" took place.*

The WG noted that the statute of limitation to initiate a TDRP is currently set at six months. As many registrants do not check regularly on the status of their registered domain names, this length might be too short for a registrant to note a disputable transfer, notify their registrar who in turn needs to then initiate a TDRP. '

Since the statute of limitation is important to assure legal certainty for registrars and gaining registrants – assuring them an undisputed transfer – the WG was mindful that an extension of the statute might have benefits for the losing registrant in case of a disputed transfer. Since registrars are contractually obliged to contact Registrants annually under the Whois Data Reminder Policy (WDRP),[19] the WG noted that an extension of the statute of limitation from 6 months to 12 months might be desirable. This could mitigate multi-hop transfer problems by providing the losing registrant additional "reaction time" to inquire with their registrar after they did not receive their annual reminder to update their contact information.

At the same time, members of the Working Group felt that such an extension would not be unduly burdening legitimate transfers. The WG believes that extending the TDRP statute of limitations to 12

[19] See http://www.icann.org/en/resources/registrars/consensus-policies/wdrp.

months will improve the odds that registrants will become aware of a fraudulent transfer when they miss their annual reminder email from the registrar.

The IRTP C PDP Working Group recommended that a change of registrant requires that the 'registrar places a lock on the domain to prevent Inter-Registrar transfers of the domain for 60 days, unless the Prior Registrant has opted out of this requirement after having received a standard notice as to the associated risks' (see Step 5 of Recommendation #1).[20] In addition, the IRTP Part B PDP debated to apply a 60-day transfer lock following a change of either registrar or registrant but this idea did not receive the Working Group's consensus.

The Working Group noted that the hopping of domain names might include both inter-registrar and inter-registrant transfers. Disputes related to the latter are likely to be affected by the implementation of IRTP Part C that addresses inter-registrant transfer policy. The Working Group agreed that the applicability of the TDRP to those transfers should be reviewed following the implementation of IRTP C.

#### 5.2.2.2 Preliminary Recommendations

**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."***

**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.

**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.

[20] See page 41 of Final Report on IRTP Part C PDP http://gnso.icann.org/en/issues/irtp-c-final-report-09oct12-en.pdf

**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.

***Note: The Working Group would like to encourage Public Comment on the question of whether costs would need to be refunded to registrars in case of negating/reversing transfers under a multiple-hop scenario.**
**** Note: The Working Group would like to encourage Public Comment on whether in this context there is a need to clearly define 'invalid transfer'; and if so, how.**

#### 5.2.2.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized.

#### 5.2.2.4 Expected impact of the proposed recommendation

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

### 5.2.3 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);*

#### 5.2.3.1 Observations

Only the Gaining Registrar or Registrar of Record can currently file a dispute under the TDRP, there is no option for the registrant to do so. Yet, ICANN Compliance informed the Working Group that between January 2012 and February 2013 they had received 3816 complaints from individuals alleging unauthorized transfers of domains. If a registrant is in a situation where they feel their situation has been ignored by their registrar their current options are either to file a complaint with ICANN Compliance or proceed through the court system, but they cannot directly launch a TDRP.

The Working Group discussed the issue of allowing registrants to initiate a TDRP, spending a significant amount of time on this issue. The Group went so far as to form a sub-team that drafted an amended version of the TDRP which would allow for registrants to be able to initiate the process themselves. As part of its discussion, the Group developed a list of use cases that included scenarios under which registrants might initiate a dispute policy.

The Working Group observes that most of the use cases that relate to domain-name hijacking and domain-name laundering should be addressed by the implementation of the "Inter-Registrant Transfer" provisions of IRTP-C (see Annex C). During its analysis, the WG conferred with ICANN Compliance to identify those use cases that are addressed by current consensus policy and would thus allow for a TDRP procedure or an intervention by ICANN Compliance.

The WG explored options to amend the TDRP to accommodate for inter-registrant domain-hijacking scenarios but concluded it would be better to separate the inter-registrant and inter-registrar dispute-resolution processes. The WG was concerned that adding a new class of parties to an already complex and technical process would overload it. The WG also found it difficult to imagine how a "loser-pays" TDRP cost-recovery scheme would work in situations where the dispute was between a legitimate registrant and a criminal.

It is the expectation of the WG that most inter-registrant transfer use-cases will be dealt with as part of the implementation of IRTP Part C recommendations. It is also the expectation of the WG that the implementation of IRTP-C recommendations will address dispute-resolution for inter-registrant transfers. Should the implementation of IRTP Part C not address all of use cases and dispute-resolution issues identified in this report, the GNSO Council should request an Issue Report to review those remaining situations and determine whether any additional policy needs to be developed.

The WG concluded that the registry "first-level dispute-resolution provider" layer of the TDRP process should be abandoned. The WG noted that the total number of TDRP disputes that have been initiated is very small. Most registries are currently required to maintain TDRP dispute-resolution capability that is never used (since effectively all of the TDRP disputes are handled by one registry, Verisign). The number of registries is increasing dramatically with the rollout of the new gTLD program. This combined with the low volume of requests for a process that requires substantial registry resources to properly support will likely result in high costs for registries and low quality for registrars. An ever-larger number of registries resolving transfer disputes might also have a negative impact on the consistency of TDRP outcomes.

Finally, the Working Group noted that the information on the ICANN website describing registrant options with regard to inter-registrar and inter-registrant transfers is not as clearly formulated and prominently displayed as it should be. This became especially clear after the Working Group

communicated with ICANN Compliance to better understand the role and authority of Compliance in resolving transfer disputes. The WG appreciates that the TDRP is designed for Registrars, but Registrants are also involved in these disputes and need ready access clear guidance on the ICANN website as to who they can contact for assistance in cases of transfer disputes.[21]

#### 5.2.3.2 Preliminary Recommendations

**The WG does not recommend that dispute options for registrants be developed and implemented as part of the current TDRP**

The WG concluded that making the current TDRP directly available to registrants would be inappropriate for several reasons:

- The TDRP is designed to handle disputes between registrars, not between registrants
- A registrant already has the (probably faster) options of working through ICANN Compliance or the courts if they feel that their registrar is not appropriately addressing an inter-registrar transfer
- The documents and processes which are the criteria for resolving IRTP questions (FOA's AuthInfo Codes, NACKing, etc.) are not very relevant to most inter-registrant disputes

**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.

**The WG recommends that the TDRP be modified to eliminate the First Level (Registry) layer of the TDRP.***

[21] Explicit recommendations on this issue are included in Charter question D, which deals with making information to dispute resolution options available to Registrants (5.2.4.3).

**The WG observes that the information on the ICANN website describing registrant options with regard to inter-registrar and inter-registrant transfers is not as clearly formulated and prominently displayed as it should be.**

The recommendations for Charter question D below (5.2.4.2) address this issue in detail.

***Note: The Working Group would like to encourage Public Comment on the issue of whether to remove the registry layer from the TDRP.**

The Working Group debated the issue of whether the Registry layer should be removed from the TDRP. Removing it would lead most likely to a more consistent policy interpretation, as only a few Dispute Resolution Providers would process transfer disputes, rather than a growing number of registries. In addition, registries would reduce costs, as they would not longer be required to train staff to support this very infrequently used policy. Also, removing the registry level would not prevent registrars from coming to an agreement among themselves prior to initiating a TDRP– similar to the situation today.

However, the WG also noted that removing the registry layer would increase TDRP costs for registrars, and potentially registrants, as they would no longer be able to file complaints with the registries but would have to file with the (more expensive) Dispute Providers. It was also mentioned that this cost increase could create a barrier to accessing the TDRP, and potentially lead to a greater reluctance of registrars to launch that dispute resolution process.

#### 5.2.3.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized

#### 5.2.3.4 Expected impact of the proposed recommendation:

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

### 5.2.4 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*

#### 5.2.4.1 Observations

The 2006 'Review of Issues for Transfers Working Group'[22] noted that 'further education is necessary for registrants and registrars to understand where they should take their initial complaints and what the ensuing process will entail'.

The WG observed that a person experiencing a problem with a transfer is greeted with information that is not obvious, clear or well organized. This person is likely to be a first-time visitor to the ICANN site and may not be terribly interested in anything except a speedy solution to a devastating problem. The ICANN Home Page currently features a "below the fold" 'Need Help?' topic-box that is preceded by all sorts of information about ICANN that gives no indication that the registrant has arrived at a place where they can get help. If the registrant determines the right link to click amidst all the visual clutter, they are taken to a page containing information on domain name transfers that includes a bewildering collection of policy and technical information about unauthorized transfers of domain names and information about the IRTP and the TDRP.

Compliance's Complaint Submission and FAQs site provides information regarding the IRTP and unauthorized transfers: www.icann.org/en/resources/compliance/complaints/transfer. This site is also very technical and combines a wide array of policy-related information that is not relevant or helpful to a person looking for the correct course of action to take in a specific situation. The Group concluded that the helpful information is not easily found and could be much better organised and displayed to guide registrants to the answers they need.

Registrar websites do not always prominently display links to registrant rights and that information

[22] http://forum.icann.org/lists/transfers-wg/msg00020.html

on TDRP is hardly ever found. The WG concluded that registrars should adopt a best practice to make consistent and up to date information on transfer resolution options more visible to registrants.

The WG concluded that ICANN could improve the portion of its website containing information for registrants and their options regarding remedies to disputed transfers. All registrars and registries could then simply point to that ICANN hosted site, allowing for an easy, up-to date, and consistent source of relevant information for registrants.

#### 5.2.4.2 Preliminary Recommendation

**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:

- 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:

  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

**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.

#### 5.2.4.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized.

#### 5.2.4.4 Expected impact of the proposed recommendation:

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

### 5.2.5 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.*

#### 5.2.5.1 Observations

The WG notes that this Charter question dates from 2006. In the interim two new Registrar Accreditation Agreement (RAA) have been negotiated (the 2009 RAA and the 2013 RAA) both of which introduce graduated sanctions in the case of non-compliance with ICANN policies.

A full overview of the 2001 RAA penalty structure, that was in place when the Charter question was drafted, as well as the additional penalty regimes from the 2009 and the 2013 RAA can be found in the Annex D.

#### 5.2.5.2 Preliminary Recommendations

**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.

**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 .

#### 5.2.5.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized.

#### 5.2.5.4 Expected impact of the proposed recommendation:

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

### 5.2.6 Charter Question F

*Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of FOAs.*

#### 5.2.6.1 Observations

FOA

Explicit authorization from either the Registered Name Holder or the Administrative Contact needs to be obtained in order to request an inter-registrar transfer. Such authorization must be made via a valid Standardized Form of Authorization (FOA).

The 'Initial Authorization for Registrar Transfer' must be used by the Gaining Registrar to request an authorization for a registrar transfer from the Transfer Contact. The losing registrar must send a

copy of this FOA to the Registered Name Holder, however the registrar does not need to receive confirmation to let the transfer go through.

The IRTP specifies that the registrar is responsible for keeping copies of documentation, including the FOA, which may be required for filing and supporting a dispute as well as per the standard document retention policies of the contracts.

AuthInfo Code

The AuthInfo Code is a unique code generated on a per-domain basis and is used for authorization or confirmation of a transfer request. Some registrars offer facilities for registrants to generate and manage their own AuthInfo code. In other cases, the registrant will need to contact the registrar directly to obtain it. The registrar must provide the registrant with the AuthInfo code within 5 calendar days of the request.

In cases of a disputed transfer, FOAs are essential to help resolve the dispute and to reverse it if appropriate. It is for this reason that ICANN Compliance also expressed its support for maintaining FOAs, reasoning that its continued use may help prevent hijackings in certain cases or serve as evidence in disputes.

#### 5.2.6.2 Preliminary Recommendation

**The WG does not recommend the elimination of FOAs.**

#### 5.2.6.3 Preliminary level of consensus for this recommendation

The WG has not yet determined the consensus level on this recommendation but will do so once the public comment period on this Initial Report is closed and comments have been reviewed and the recommendation is finalized.

#### 5.2.6.4 Expected impact of the proposed recommendation:

The WG would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the WG deliberations going forward.

# 6. Community Input

This section features issues and aspects of the IRTP Part D PDP reflected in the statements from the GNSO stakeholder groups / constituencies; other ICANN Supporting Organizations and Advisory Committees; and comments received during the public comment period.

### 6.1 Initial Public Comment Period and Request for Input

A public comment forum was opened upon initiation of the Working Group activities. The public comment period ran from 14 November to 14 December 2012. One (1) community submission was received from the gTLD Registry Stakeholder Group.

The WG also requested all GNSO Stakeholder Groups and Constituencies to submit their statements on the IRTP Part D issues by circulating the SG/Constituency template (see Annex B). One (1) contribution was received from GNSO Business Community.

In addition, the WG also reached out to the country code Names Supporting Organization (ccNSO), the At-Large Advisory Committee (ALAC), the Governmental Advisory Committee (GAC) and the Security and Stability Advisory Committee (SSAC) for input, but no comments have been received so far.

The IRTP Part D WG reviewed and discussed the contributions received. Where relevant and appropriate, information and suggestions derived from the contributions received were considered as part of the WG deliberations and have been included in Section 5.

# 7. Conclusions and Next Steps

The Working Group aims to complete this section of the report in the second phase of the PDP, following a public comment period on this Initial Report.

# Annex A – IRTP Part D PDP WG Charter

The Working Group shall consider the following questions as outlined in the Final Issue Report http://gnso.icann.org/en/issues/issue-report-irtp-d-08jan13-en.pdf and make recommendations to the GNSO Council:

IRTP Dispute Policy Enhancements

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;

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

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);

d) Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrants;

Penalties for IRTP Violations

e) Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy;

Need for FOAs

f) Whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need of FOAs.

The Working Group shall follow the rules outlined in the GNSO Working Group Guidelines: http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-07apr11-en.pdf.

# Annex B – Request for Initial Constituency & Stakeholder Group Input

As you may be aware, the GNSO Council recently initiated a Policy Development Process (PDP) on the Inter-Registrar Transfer Policy (IRTP) Part D; the relevant Issue Report can be found here. The IRTP is a consensus policy adopted in 2004 to provide a straightforward procedure for domain name holders to transfer domain names between registrars. This PDP will address 6 questions; 4 related to the Transfer Dispute Resolution Policy (TDRP); 1 related to penalties for IRTP violations; 1 related to the need for Forms of Authorization (FOAs) – you can find the detailed Charter here. As part of its efforts to obtain input from the broader ICANN Community at an early stage of its deliberations, the Working Group that has been tasked with addressing this issue is looking for any input or information that may help inform its deliberations.

Any provision of input or information you or members of your respective communities may have (either on the charter questions or any other issue that may help inform the deliberations) would be very welcome. Please send these to the GNSO Secretariat (gnso.secretariat@gnso.icann.org) who will forward these to the Working Group.

For further background information on the WG's activities to date, please see the Working Group's Wiki. Below you'll find further details on the charter questions that the WG's has been tasked to address.

If possible, the WG would greatly appreciate if it could receive your input by **Friday 19 April 2013** at the latest. If you cannot submit your input by that date, but your group would like to contribute, please let us know when we can expect to receive your contribution so we can plan accordingly. Your input will be very much appreciated.

**IRTP Part D Charter Questions**

IRTP Dispute Policy Enhancements

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;

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

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);

d) Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrants;

Penalties for IRTP Violations

e) Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy;

Need for FOAs

f) Whether the universal adoption and implementation of EPP AuthInfo codes* has eliminated the need of FOAs.**

* The Auth-Info Code is a unique code generated on a per-domain basis and is used for authorization or confirmation of a transfer request.

** An FOA is a standardized form of authorization used to initiate a domain name transfer, see See also: FOA: Domain Name Transfer – Initial Authorization for Registrar Transfer

# Annex C – Overview of Use Cases regarding transfer disputes

(This overview is still a draft and will be finalised for the Final Report)

| | | | |
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| A Registrar is not authorizing a transfer-out, or is not providing an auth-info code in a timely way | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| A Registrar is not participating in resolving an issue with a transfer. Several attempts to engage have been made by the other Registrar, including a message the Emergency Action Contact, to no avail. | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |
| Registrar not unlocking a name | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |
| or allowing the registrant to unlock the | Existing IRTP/TDRP applies | Registrars and | Compliance clearly |

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| domain themselves | | Registrants are both parties | has a role, under existing policy |
| Where the FOA's are not sent to the two transfer contacts | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |
| The Administrative Contact authorises a transfer but the Registrant is challenging that | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Registrars and Registrants are both parties | Compliance may have a role as "Inter Registrant" rules are defined |
| When auth-code is sent to wrong whois contact, to the account holder that sometimes is not listed in the whois | Existing IRTP/TDRP applies | Entirely between Registr | Compliance clearly has a role, under existing |

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| | | ars | policy |
| Two registrants are disputing the right to a domain name after an inter-reigistrar transfer -- registrars went through the right process and have no further information to add. | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Entirely between Registrants | No Compliance role |
| Both registrants were acknowledged at some point in time as being registrants. Both of their names have appeared in Whois, but they now disagree as to who the true registrant is. | "Inter-REGISTRANT" transfer from IRTP-C may apply | Entirely between Registrants | No Compliance role |
| Administrative and Registrant contacts are spread across two parts of an organization and there's a disagreement between them as to the validity of a transfer | "Inter-REGISTRANT" transfer from IRTP-C may apply | Entirely between Registrants | No Compliance role |
| Different contacts or departments within an organization have conflicts | ICANN policy does NOT apply - but an inter-registrant dispute | Entirely between | No Compliance role |

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| | resolution process could be made available | Registrants | |
| A registrant-claimant approaches a Registrar claiming that they are the registrant rather than the Proxy Service Provider to whom the domain name is registered | "Inter-REGISTRANT" transfer from IRTP-C may apply | Registrars and Registrants are both parties | Compliance may have a role as "Inter Registrant" rules are defined |
| Maybe refer this edge case to the PPS WG? | | | |
| Proxy is acting as an agent | | | |
| Maybe a subset of the "confusion of roles within an organization" case | | | |
| One registrant is completely unknown to the registrars | | | |
| A website designer registers a domain under their name on behalf of a customer for whom they build a website. They are challenged by their customer who claims to be the registrant but has never appeared in any Whois record at any time. | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Entirely between Registrants | No Compliance role |

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| A website designer registers a domain under their name on behalf of a customer, and then goes out of business - causing domain to expire, leaving registrants to resolve the issue with a registrar who has never heard of them. | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Registrars and Registrants are both parties | No Compliance role |
| Registrant says "I'm the owner, but I'm not in control of the name, here's why, help me get it back" | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Entirely between Registrants | No Compliance role |
| Two business partners split and claim rights on the domain name | ICANN policy does NOT apply - and this is a matter for the courts to resolve | Entirely between Registrants | No Compliance role |
| Contract disputes sometimes enter into this | ICANN policy does NOT apply - and this is a matter for the courts to | Entirely between | No Compliance role |

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| | resolve | Registrants | |
| Company goes through an ownership/structure change -- the original owner tries to retain the name | ICANN policy does NOT apply - and this is a matter for the courts to resolve | Entirely between Registrants | No Compliance role |
| | | | |
| Privacy services -- losing registrar doesn't remove privacy service, the gaining registrar can't validate the identity of the person registering the name | "Inter-REGISTRANT" transfer from IRTP-C may apply | Registrars and Registrants are both parties | Compliance may have a role as "Inter Registrant" rules are defined |
| This is also the case for any other entity that's providing the privacy service -- resellers or other 3rd parties for example | "Inter-REGISTRANT" transfer from IRTP-C may apply | Registrars and Registrants are both parties | Compliance may have a role as "Inter Registrant" rules are defined |

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| Somebody registers a domain name as part of their job, does it under their own personal account, they and company part ways, which trumps? | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Entirely between Registrants | No Compliance role |
| There is a spectrum here -- size of organization | | | |
| Major manufacturer - clearer case | | | |
| Small company (just a few people) - slides into the personal/contract dispute | | | |
| Person works at the company -- maybe in the corporate account -- their contact info is listed -- they have left the company and access to the account and controlling email address is no longer possible | ICANN policy does NOT apply - but an inter-registrant dispute resolution process could be made available | Registrars and Registrants are both parties | No Compliance role |
| A claim is made -- but it is not clear at the outset that this is a private party dispute -- it looks like a transfer problem at the beginning -- it's only | Unclear | Unclear | Unclear |

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| through working through the Registrars that the truth will out. | | | |
| It's not always clear at the outset that a given complaint is valid under the IRTP | | | |
| Once the complainant has provided details, it is then possible to determine validity | | | |
| Understanding changes during the course of the dispute process -- some prove valid, some are discovered to be invalid | | | |
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| Compliance scenarios | | | |
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| + - Regarding the losing registrar: | | | |
| + - Auth-code related: | | | |
| - the registrant was not able to retrieve the auth code from the control panel, then the registrant requested the registrar to send it but it was not sent within the required 5 days ----- (the breach in this case is when both conditions are present) | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |

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| - the means provided by the registrar for the registrant to retrieve the auth code are more restrictive than the means provided for the registrant to update its contact or name server information | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| - the registrar sends the Authinfo Code to someone who is not the Registered Name Holder | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| - the registrar does not even send it at all | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| + - FOA related: | | | |
| - the registrar does not send the FOA | Existing IRTP/TDRP applies | Registrars and | Compliance clearly |

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| | | Registrants are both parties | has a role, under existing policy |
| - sends it to someone who is not a Transfer Contact | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| + - Unlocking of the domain name: | | | |
| - the registrant did not have the means provided by the registrar to unlock the domain name, then the registrant requested the registrar to unlock the domains and the registrar did not unlock them within the five days ----- (the breach in this case is when both conditions are present) | Existing IRTP/TDRP applies | Registrars and Registrants are both parties | Compliance clearly has a role, under existing policy |
| + - Regarding the gaining registrar: | | | |

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| + - Auth-code related: | | | |
| - the registrar allows the transfer without receiving the Auth-code - which would be technically impossible but can theoretically happen (in a scenario also involving registry error) | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |
| + - FOA related: | | | |
| - the registrar does not send the FOA | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |
| - the registrar sends the FOA to someone who is not a Transfer Contact | Existing IRTP/TDRP applies | Entirely between Registrars | Compliance clearly has a role, under existing policy |

# Annex D – Development of the Penalty Structure from the 2001, 2009 and 2013 RAAs

| 2001 RAA | 2009 RAA | 2013 RAA |
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| **Termination**<br><br>5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances: […] | **Termination**<br><br>5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:<br><br>5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.<br><br>5.3.2 Registrar:<br><br>5.3.2.1 is convicted by a court of | **Termination**<br><br>5.5 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:<br><br>5.5.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for Accreditation or renewal of Accreditation or any material accompanying the application.<br><br>5.5.2 Registrar:<br><br>5.5.2.1 is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have:<br><br>5.5.2.1.1 committed fraud, |

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| Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review | competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or<br><br>5.3.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.<br><br>5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed | 5.5.2.1.2 committed a breach of fiduciary duty, or<br><br>5.5.2.1.3 **with actual knowledge (or through gross negligence) permitted Illegal Activity in the registration or use of domain names or in the provision to Registrar by any Registered Name Holder of inaccurate Whois information**; or<br><br>5.5.2.1.4 failed to comply with the terms of an order issued by a court of competent jurisdiction relating to the use of domain names sponsored by the Registrar;<br><br>or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing; or<br><br>5.5.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others; or<br><br>5.5.2.3 **is the subject of a non-interlocutory order issued by a court or arbitral tribunal, in each case of competent jurisdiction, finding that Registrar has, directly or through an Affiliate, committed a specific violation(s) of applicable national law or governmental regulation relating to cybersquatting or its equivalent; or 5.5.2.4 is** |

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| under Subsection 4.3.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.<br><br>5.3.6 Registrar continues acting in a manner that ICANN has | fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances. Upon the execution of this agreement, Registrar shall provide ICANN with a list of the names of Registrar's directors and officers. Registrar also shall notify ICANN within thirty (30) days of any changes to its list of directors and officers.<br><br>5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the | **found by ICANN, based on its review of the findings of arbitral tribunals, to have been engaged, either directly or through its Affiliate, in a pattern and practice of trafficking in or use of domain names identical or confusingly similar to a trademark or service mark of a third party in which the Registered Name Holder has no rights or legitimate interest, which trademarks have been registered and are being used in bad faith.**<br><br>5.5.3 Registrar knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) days of Registrar's knowledge of the foregoing; or any member of Registrar's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of |

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| reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determinati on. | term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is present) within fifteen (15) working days after ICANN gives Registrar notice of the breach.<br><br>5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.<br><br>5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three (3) days notice of that determination. | the foregoing and such member is not removed from Registrar's board of directors or similar governing body within thirty (30) days of Registrar's knowledge of the foregoing.<br><br>5.5.4 Registrar fails to cure any breach of this Agreement within twenty-one (21) days after ICANN gives Registrar notice of the breach.<br><br>5.5.5 Registrar fails to comply with a ruling granting specific performance under Sections 5.7 or 7.1.<br><br>5.5.6 **Registrar has been in fundamental and material breach of its obligations under this Agreement at least three (3) times within a twelve (12) month period.**<br><br>5.5.7 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three (3) days notice of that determination.<br><br>5.5.**8 (i) Registrar makes an assignment for the benefit of creditors or similar act; (ii) attachment, garnishment or similar proceedings are commenced against Registrar, which proceedings are a material threat to Registrar's ability to provide Registrar Services** |

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| | 5.3.7 Registrar becomes bankrupt or insolvent.<br><br>This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen (15) days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does | **for gTLDs, and are not dismissed within sixty (60) days of their commencement; (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registrar or maintains control over any of Registrar's property; (iv) execution is levied upon any property of Registrar, (v) proceedings are instituted by or against Registrar under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registrar files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations**.<br><br>**Suspension**<br><br>5.7.1 Upon the occurrence of any of the circumstances set forth in Section 5.5, ICANN may, in ICANN's sole discretion, upon delivery of a notice pursuant to Subsection 5.7.2, elect to suspend Registrar's ability to create or sponsor new Registered Names or initiate inbound transfers of Registered Names for any or all gTLDs for a period of up to a twelve (12) months following the effectiveness of such suspension. Suspension of a Registrar does not preclude |

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| | not immediately cure, ICANN may suspend this Agreement for five (5) working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.<br><br>**Suspension**<br><br>2.1.<br>[…] Notwithstanding the above and except in the case of a good faith disagreement concerning the interpretation of this | ICANN's ability to issue a notice of termination in accordance with the notice requirements of Section 5.6.<br><br>**5.7.2 Any suspension under Subsections 5.7.1 will be effective upon fifteen (15) days written notice to Registrar, with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of suspension under this Agreement.**<br><br>5.7.3 **Upon suspension, Registrar shall notify users, by posting a prominent notice on its web site, that it is unable to create or sponsor new gTLD domain name registrations or initiate inbound transfers of Registered Names. Registrar's notice shall include a link to the notice of suspension from ICANN.**<br><br>5.7.4 **If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five (5) working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 7.1. Suspension of the Agreement under this Subsection may, at ICANN's sole discretion, preclude the Registrar** |

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| | Agreement, ICANN may, following notice to Registrar, suspend Registrar's ability to create new Registered Names or initiate inbound transfers of Registered Names for one or more TLDs for up to a twelve (12) month period if (i) ICANN has given notice to Registrar of a breach that is fundamental and material to this Agreement pursuant to Subsection 5.3.4 and Registrar has not cured the breach within the period for cure prescribed by Subsection 5.3.4, or (ii) Registrar shall have been repeatedly and willfully in fundamental and material breach of its obligations at least three (3) times within any | **from (i) providing Registration Services for gTLDs delegated by ICANN on or after the date of delivery of such notice to Registrar and (ii) creating or sponsoring new Registered Names or initiating inbound transfers of Registered Names for any gTLDs. Registrar must also post the statement specified in Subsection 5.7.3.**<br><br>5.7.1 Upon the occurrence of any of the circumstances set forth in Section 5.5, ICANN may, in ICANN's sole discretion, upon delivery of a notice pursuant to Subsection 5.7.2, elect to suspend Registrar's ability to create or sponsor new Registered Names or initiate inbound transfers of Registered Names for any or all gTLDs for a period of up to a twelve (12) months following the effectiveness of such suspension. Suspension of a Registrar does not preclude ICANN's ability to issue a notice of termination in accordance with the notice requirements of Section 5.6.<br><br>5.7.2 Any suspension under Subsections 5.7.1 will be effective upon fifteen (15) days written notice to Registrar, with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of suspension under this Agreement |

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| | twelve (12) month period. | 5.7.3 **Upon suspension, Registrar shall notify users, by posting a prominent notice on its web site, that it is unable to create or sponsor new gTLD domain name registrations or initiate inbound transfers of Registered Names. Registrar's notice shall include a link to the notice of suspension from ICANN**.<br><br>5.7.4 If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five (5) working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 7.1. Suspension of the Agreement under this Subsection may, at ICANN's sole discretion, preclude the Registrar from (i) providing Registration Services for gTLDs delegated by ICANN on or after the date of delivery of such notice to Registrar and (ii) creating or sponsoring new Registered Names or initiating inbound transfers of Registered Names for any gTLDs. Registrar must also post the statement specified in Subsection 5.7.3. |