Preliminary Issue Report

Inter-Registrar Transfer Policy

Part D

STATUS OF THIS DOCUMENT

This is the Preliminary Issue Report on the Inter-Registrar Transfer Policy (IRTP) Part D as requested by the Generic Names Supporting Organization (GNSO) Council. This report will be published for public comment for not less than thirty (30) days, and is to be followed by a Final Issue Report to be published after the closure of the public comment forum.

SUMMARY

This report is submitted to the GNSO Council and posted for public comment in response to a request received from the Council pursuant to a motion proposed and carried during the Council meeting on 17 October 2012.

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1   Executive summary

1.1   This preliminary Issue Report addresses six issues associated with the Inter-Registrar Transfer Policy (IRTP). The IRTP is an existing consensus policy developed through the GNSO's policy development process (PDP) and is currently under review by the GNSO.

1.2   The six issues addressed are:

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;

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

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

1.3   To initiate the review of the policy, the GNSO formed a Transfers Working Group to draw on experiences with the policy and recommend possible further policy work. The Working Group suggested certain clarifications of the policy and identified a number of issues for potential policy work by the GNSO. The latter issues were reviewed by a volunteer group that suggested a sequence of potential PDPs, grouping these issues (see http://gnso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-

19mar08.pdf). Following the adoption of the recommendations of the IRTP Part C, the GNSO Council resolved to request an Issue Report on the issues remaining in issue set D and E as identified by the Transfers Working Group as well as one issue identified by the IRTP Part C PDP Working Group.

1.4   Section 4 of this report explores the six issues identified individually, provides references to documents and processes that can inform future policy work; and indicates some areas where further data and information gathering could be of potential value.

1.5   The launch of a dedicated Policy Development Process limited to consideration of these issues has been confirmed by the General Counsel to be properly within the scope of the ICANN policy process and within scope of the GNSO and is recommended by ICANN Staff.

2   Objective

2.1   This report is submitted in accordance with Step 2 of the Policy Development Process described in Annex A of the ICANN Bylaws (http://www.icann.org/general/bylaws.htm#AnnexA).

2.2   In this context, and in compliance with ICANN Bylaw requirements:

a. The proposed issue raised for consideration:

A set of issues relating to the Inter-Registrar Transfer Policy (IRTP), namely:

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;

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

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

b. The identity of the party submitting the issue:

GNSO Council.

c. How that party is affected by the issue:

The GNSO is responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. The GNSO includes various stakeholder groups and constituencies, which are affected in various ways by issues relating to inter-registrar transfers. These issues are discussed in further detail in Section 4 below.

d. Support for the issue to initiate the PDP:

The GNSO Council voted unanimously in favor of requesting an Issue Report on IRTP Part D at its meeting of 17 October 2012.

e. Staff recommendation:

i. Whether the issue is within the scope of ICANN's mission statement, and more specifically the role of the GNSO:

ICANN's mission statement includes the coordination of the allocation of certain types of unique identifiers, including domain names, and the coordination of policy development reasonably and appropriately related to these technical functions.

ii. Whether the issue is broadly applicable:

The Inter-Registrar Transfer Policy is applicable to every transfer of a domain name between ICANN-accredited registrars, in all gTLDs that have implemented the policy. Thus, it affects a high percentage of gTLD registrants (individuals and organizations).

iii. Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates:

Enhancements of the existing Inter-Registrar Transfer Policy will have lasting value and applicability, as the policy will continue to apply to gTLD registries and registrars.

iv. Is likely to enable ICANN to carry out its commitments under the Affirmation of Commitments (AoC);

Improvements to the IRTP may contribute to improving consumer trust and consumer choice, identified as one of commitments under the AoC.

v.   Whether the issue will establish a guide or framework for future decision-making:

Enhancements of the existing Inter-Registrar Transfer Policy may establish a guide or framework, which would be applicable in other areas.

vi.   Whether the issue implicates or affects an existing ICANN policy.

Enhancements of the existing Inter-Registrar Transfer Policy clearly affect the existing policy.

2.3   Based on the above, the launch of a dedicated policy development process limited to consideration of these issues has been confirmed by the General Counsel to be properly within the scope of the ICANN policy process and within the scope of the GNSO. In addition, taking into account that transfer related issues are the # 1 area of complaint according to data from ICANN Compliance, ICANN Staff recognizes the importance of addressing issues in relation to the IRTP and supports, therefore, the initiation of a PDP on IRTP Part D.

2.4   In accordance with the proposed revised GNSO Policy Development Process, the Staff Manager shall publish the Preliminary Issue Report for public comment in order to allow for community input on additional information that may be missing from the Preliminary Issue Report, or the correction or updating of any information in the Preliminary Issue Report. In addition, the public comment period will allow for members of the ICANN Community to express their views to the GNSO Council on whether or not to initiate a PDP. Following review of the public comments received, the Staff Manager will update the Issue Report as appropriate and/or submit a summary of the comments received together with the Final Issue Report to the GNSO Council for its consideration.

3   Background

3.1   Process background

3.1.1   Following a Final Report from the GNSO Council's Transfers
Task Force (http://www.icann.org/gnso/transfers-tf/report-12feb03.htm), subsequently
submitted as a Recommendation by the GNSO Council and adopted by the ICANN
Board, ICANN announced, on 12 July 2004, the adoption of the Inter-Registrar Transfer
Policy (see http://www.icann.org/announcements/advisory-12jul04.htm), with an
effective date of 12 November 2004.

3.1.2   On 12 January 2005, ICANN posted a notice requesting public input on experiences with
the Inter-Registrar Transfer Policy
(http://www.icann.org/announcements/announcement-12jan05.htm). Staff used the
public comments along with its experiences in responding to questions and complaints
to create a Staff Report on Experiences with the Inter-Registrar Transfer Policy, posted
on 14 April 2005 (see http://www.icann.org/transfers/transfer-report-14apr05.pdf).

3.1.3   On 12 May 2005, the GNSO Council decided "to form a working group with a
representative group of volunteers from the GNSO to review the staff report in order to
seek clarification, further information and provide guidance for the 6 month review and
to report back to the Council at its meeting on 2 June 2005." (see
http://gnso.icann.org/meetings/minutes-gnso-12may05.htm).

3.1.4   On 17 September 2007, the chair of the Transfers Working Group provided the Council
with a set of documents as the outcome of the group's work (see
http://gnso.icann.org/mailing-lists/archives/council/msg03895.html). These documents
included: (i) a draft advisory containing reminders and clarifications about the policy; (ii)

a broad list of policy issues on which the GNSO might wish to do further work; and (iii) a list of issues focused on Section 3 of the policy, for which a focused PDP aimed at clarifications to these issues would be recommended.

3.1.5   At its meeting on 20 September 2007, the GNSO Council voted in favor of the following motion:

i) The GNSO Council will issue the working group report entitled "Advisory Concerning Inter-Registrar Transfer Policy" (see: http://gnso.icann.org/drafts/Transfer-Advisory-23aug07.pdf) for constituency and community review and comment for a period of no less than 14 days, and;

i.a) pursuant to this comment period, all material commentary will be summarized and reviewed by Council

i.b) pursuant to the review by Council that the current, or an amended form of this report be provided to Staff for posting to the ICANN web site as a community advisory.

ii) Pursuant to section 1.b of Annex A of ICANN's Bylaws, that the GNSO Council initiate the formal GNSO Policy Development Process by requesting the creation of an issues report evaluating issues raised by the working group document "Points of Clarification Inter-Registrar Transfer Policy". See: (http://gnso.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf)

iii). That the GNSO Council form a short-term planning group to analyse and prioritize the policy issues raised in the report "Communication to GNSO on Policy Issues Arising from Transfer Review" (see: http://gnso.icann.org/drafts/Transfer-Policy-Issues-23aug07.pdf) before the Council further considers a PDP on any of the work discussed in the report."

3.1.6   At its meeting on 8 May 2008, the GNSO Council voted in favor of the following motion:

Whereas:

The Inter-Registrar Transfer Policy (IRTP) is an existing consensus policy under review by the GNSO,

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

In September 2007 a working group was tasked by the GNSO Council to assign priorities to the remaining issues in the report (i.e., those not addressed in the PDP underway regarding four reasons for denial of a registrar transfer) resulting in the prioritized issue list contained in that group's report at http://www.gnso.icann.org/drafts/irdx-policy-priorities-20dec07.pdf,

In its meeting on 17 January 2008 the GNSO Council requested a small group of volunteers arrange the prioritized issue list into suggested PDPs,

The small group delivered its recommended PDPs on 19 March 2008 in its report at http://gnso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf,

Resolved that five PDPs be initiated in the order suggested by the small group and shown here:

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

part of issue only

Resolved; that the recommendations of the small group be approved to not initiate PDPs at this time for issues 11, 13, 14, the second part of 15, and 17.

Resolved; that the Council asks the staff to produce an Issues report of the Items listed under A - New IRTP Issues.

Resolved; Council will review the progress of these PDPs every 60 days with the goal of moving the process along as quickly a possible.

3.2   Issue Background

3.2.1   The GNSO's Transfers Working Group produced a broad list of issues for which the GNSO might wish to initiate further policy work (see http://gnso.icann.org/mailing-list/archives/council/msg03895.html). This list of issues suggested by the Transfers Working Group was subsequently assigned priorities by the Prioritization Committee of the Working Group, following a request from the GNSO Council. This work concluded in a report, available at http://gnso.icann.org/drafts/irdx-policy-priorities-20dec07.pdf.

3.2.2   On 17 January 2008, the GNSO Council tasked a group of volunteers to review the prioritized list with a view to arrange the issues in suitable sets for PDPs. This group analyzed the issues and grouped them according to similarities as well as to assigned priorities, suggesting five issue sets A-E in a report available at http://gnso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf.

3.2.3   A first PDP exploring clarifications for a number of reasons for denial of a transfer, as outlined in http://gnso.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf was launched in September 2007. Its recommendations were adopted by the ICANN board in November 2008. A second PDP focused on the issues outlined in set A. This PDP commenced in June 2008. A final report was presented to the GNSO Council in March 2009. The GNSO Council resolved at its meeting on 16 April 2009 to combine the issues outlined under the original issue set B, addressing three

issues related to undoing IRTP transfers, and some of the issues outlined in issue set C, related to registrar lock status and denial reason #7, into one IRTP Part B. The IRTP Part B Working Group delivered its Final Report to the GNSO Council in May 2011. The GNSO Council resolved at its meeting on 22 June 2011 to request an Issue Report on the remaining issues outlined in issue set C and one issue that was recommended for inclusion in IRTP Part C by the IRTP Part B Working Group. As one issue in the remaining issues in set C had already been addressed by one of the recommendations of the IRTP Part B Working Group ('Whether requirements should be in place for Registrars of Record to send an FOA to the Registrant or Admin Contact'), the GNSO Council decided not to include it in the list of issues for IRTP Part C. The IRTP Part C Final Report was delivered to the GNSO Council on 9 October 2012. The GNSO Council unanimously voted in favor of the IRTP Part C recommendations at its meeting on 17 October 2012.

3.2.3   On the recommendation of the IRTP Part C WG, the GNSO Council agreed to combine all the remaining IRTP issues into one final PDP, IRTP Part D, in addition to the issue that was raised by the IRTP Part C WG in its Final Report. The GNSO Council unanimously adopted the request for an Issue Report on IRTP Part D at its meeting on 17 October 2012.

4   Discussion of proposed issues

4.1   Overview

The issues, which are the subject of this report, concern the following:

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 issues are addressed individually in the following sections.

IRTP DISPUTE POLICY ENHANCEMENTS

The adoption of the Inter-Registrar Transfer Policy (IRTP) as a Generic Names Supporting Organization (GNSO) consensus policy in 2004, included a mechanism for resolving disputes

between registrars in cases of alleged violations of the IRTP. This mechanism is called the
Transfer Dispute Resolution Policy (TDRP) (see also Annex A). In short, there are two possible
steps a registrar can take to file a transfer dispute, if it was impossible to resolve the dispute
through other means:

1) File a dispute with the relevant Registry Operator (first level)
2) File a dispute with a Dispute Resolution Panel[1] (second level).

The second level filing may be used as the first option or as an appeal to a first level ruling. If it is
used as the first option, the registrar cannot go back to the first level. Neither option prevents
the registrar or registrant from filing a complaint with a court of competent jurisdiction.

Either the Gaining Registrar or Registrar of Record can file a dispute by submitting a so-called
'Request for Enforcement' (RFE). The RFE must be submitted electronically and within 6 months
of the alleged violation. The RFE must include detailed information about the domain, the
alleged violation as well as the remedy being sought. The RFE must comply with the
supplemental rules established by the Registry or Dispute Provider[2], which may include fees,
filing instructions, page limits and other guidelines. For a first level dispute filing, no fees are
collected at the time of filing, for a level two dispute filing, fees may be required, as specified in
the supplemental rules of the Dispute Provider. The registrar that does not prevail in the dispute
will be assessed a fee in the case of a first level filing, which may not be passed on to the
registrant. The TDRP furthermore outlines which information needs to be provided by the
Gaining Registrar as well as the Registrar of Record.

A timeline / workflow of the TDRP can be found in Annex B.

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[1] ICANN approved dispute-resolution providers to administer the TDRP are the Asian Domain Name
Dispute Resolution Centre (ADNDRC) and the National Arbitration Forum (NAF).
[2] See https://www.adndrc.org/tdrp/tdrpbj_supplemental_rules.html for the ADNDRC supplemental rules
and http://domains.adrforum.com/main.aspx?itemID=643&hideBar=False&navID=270&news=26 for the
NAP supplemental rules.

4.2   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.

4.2.1   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'[3] 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.*

4.2.2   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 and Annex C), but this does not include information on individual cases.

4.2.3   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

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

published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision'.

4.2.4   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.

4.3   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.

4.3.1   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'.

4.3.2   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.

4.3.3   As part of the public comment period on this Preliminary Issue Report, further input on this issue is encouraged.

4.4   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).

4.4.1   The 'Review of Issues for Transfers Working Group'[4] 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?'

4.4.2   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.

4.4.3   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.

4.4.4   An additional consideration that the PDP WG may want to take into consideration is that as part of the IRTP Part C PDP, a recommendation is being considered to create an additional policy to conduct a change of registrant[5]. 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

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

[5] 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.

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.

4.4.5   As part of the public comment period on this Preliminary Issue Report, further input on this issue is encouraged.

4.5   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.

4.5.1   The 'Review of Issues for Transfers Working Group'[6] 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 development of statement of best practices for registrars and registrants related to the DRP' could be considered.

4.5.2   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:

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

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).

4.5.3   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.

4.5.4   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.

4.5.5   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

4.6   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.

4.6.1   The 'Review of Issues for Transfers Working Group'[7] 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).

4.6.2   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.

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

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:

- 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).

4.6.3   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.

NEED FOR FOAs

4.7 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.

4.7.1   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.

4.7.2   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.

4.7.3   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.

4.7.4   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., clientTransferProhibited) 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.

4.7.5 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[8], 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.

4.7.6 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.

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

5   Discussion of possible policy outcomes

5.1   If a policy development process were initiated on the issues discussed in this report, the probable outcome would be the presentation to the Council of new terms modifying the existing Inter-Registrar Transfer Policy. If the Council and the Board of Directors approved the proposed modifications, this would result in the revised Inter-Registrar Transfer Policy being posted and notice provided to all relevant parties.

5.2   If a policy development process were not initiated, or if there were no changes recommended at the conclusion of a PDP, the result would be that the status quo would continue.

5.3   The presumption is that a PDP in accordance with the issues addressed in this report should not result in additional changes to the policy beyond the six issues noted, since the scope of the PDP would be limited to the issues discussed in Section 4.

6   Staff recommendation

6.1   ICANN staff has confirmed that the proposed issues are within the scope of the policy development process and the GNSO. It is reasonable from the staff's perspective to expect that enhancements of the Inter-Registrar Transfer Policy would be beneficial to the community generally, particularly for registrants, as well as those parties (gTLD registries and registrars) who are obligated to comply with the policy provisions. ICANN staff, therefore, recommends that the GNSO Council proceed with a policy development process limited to consideration of the issues discussed in this report.

Annex A – Transfer Dispute Resolution Policy

In any dispute relating to Inter-Registrar domain name transfers, Registrars are encouraged to first of all attempt to resolve the problem among the Registrars involved in the dispute. In cases where this is unsuccessful and where a registrar elects to file a dispute, the following procedures apply. It is very important for Registrars to familiarize themselves with the Transfer Dispute Resolution Policy (TDRP) as described in this document before filing a dispute. Transfer dispute resolution fees can be substantial. It is critical that Registrars fully understand the fees that must be paid, which party is responsible for paying those fees and when and how those fees must be paid.

The TDRP and corresponding procedures will apply to all domain names for which transfer requests are submitted on or after the effective date of this policy.

1. Definitions

1.1 Dispute Resolution Panel

The Dispute Resolution Panel shall mean an administrative panel appointed by a Dispute Resolution Provider ("Provider") to decide a Request for Enforcement concerning a dispute under this Dispute Resolution Policy.

1.2 Dispute Resolution Provider

1.3 The Dispute Resolution Provider must be an independent and neutral third party that is neither associated nor affiliated with either Registrar involved in the dispute or the Registry Operator under which the disputed domain name is registered. ICANN shall have the authority to accredit one or more independent and neutral Dispute Resolution Providers according to criteria developed in accordance with this Dispute Resolution Policy.

1.4 FOA

Form of Authorization - The standardized form of consent that the Gaining Registrar and Registrar of Record are required to use to obtain authorization from the Registrant or Administrative Contact in order to properly process the transfer of domain name sponsorship from one Registrar to another.

1.5 Gaining Registrar

The Registrar that submitted to the Registry the request for the transfer of a domain sponsorship from the Registrar of Record.

1.6 Registrar of Record

The Registrar of Record for a domain name for which the Registry received a transfer of sponsorship request.

1.7 Registrant

The Registrant is the individual or organization that registers a specific domain name. This individual or organization holds the right to use that specific domain name for a specified period of time, provided certain conditions are met and the registration fees are paid. This person or organization is the "legal entity" bound by the terms of the relevant service agreement with the Registry operator for the TLD in question.

1.8 Registry (Registry Operator)

The organization authorized by ICANN to provide registration services for a given TLD to ICANN-accredited Registrars.

1.9 Supplemental Rules

The Supplemental Rules shall mean those rules adopted by the Registry Operator, in the case of First Level disputes (as set forth below), or the Provider administering a proceeding (in the case of all other disputes) to supplement this Policy. Supplemental Rules shall be consistent with this

Dispute Resolution Policy and shall cover topics such as fees, word and page limits and guidelines, the means for communicating with the Provider, and the form of cover sheets.

1.10 Transfer Policy

The Policy on Transfer of Sponsorship of Registrations between Registrars which is in force as part of the Registry-Registrar Agreement executed between a Registrar and the Registry, as well as the Registrar Accreditation Agreement which is executed between ICANN and all ICANN-accredited registrars.

2. Dispute Resolution Process

There are two possible steps to the Registrar Transfer Dispute Resolution Process. A Registrar may elect one or both of the steps pursuant to the rules below. In the event a Registrar either files a Request for Enforcement (as described below) with a Second-Level Dispute Provider, or files an Appeal (as described below) with a Dispute Provider, it may not revert to the First-Level Registry option later for the same filing or matter presented for resolution.

2.1 First Level - Registry Operator

A Registrar may choose to file a dispute directly with the relevant Registry Operator. Any decisions made by the Registry Operator may be appealed to a Dispute Resolution Provider. A Registrar may file a dispute directly to a Dispute Resolution Provider; however, in that case the filing Registrar would forfeit any right to appeal the decision of the Dispute Resolution Provider.

2.2 Second-Level - Dispute Resolution Panel

The primary intent of this step is to provide a means for registrars to appeal decisions made by the Registry at the first level of the dispute resolution process, but it may also be used as the first step if a registrar so elects. The decision of the Dispute Resolution Panel is final, except as it may be appealed to a court of competent jurisdiction.

2.3 Statute of Limitations

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.

3. Dispute Procedures at the First Level (Registry)

3.1 Registrar files a Request for Enforcement with the applicable Registry Operator

3.1.1 Either the Gaining or Registrar of Record ("Filing Registrar") may submit a Request for Enforcement. This must be done in accordance with the Supplemental Rules adopted by the applicable Registry Operator.

3.1.2 The Request for Enforcement shall be submitted to the Registry and to the Respondent (the Non-filing Registrar) in electronic form and shall:

(i) Request that the Request for Enforcement be submitted for decision in accordance with the Registrar Transfer and Dispute Resolution Policy and the applicable Supplemental Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Filing Registrar and those representatives authorized by the Filing Registrar to act on behalf of the Filing Registrar in the administrative proceeding;

(iii) Provide the name of the Respondent and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Filing Registrar regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings;

(iv) Specify the domain name(s) that is/are the subject of the Request for Enforcement;

(v) Specify the incident(s) that gave rise to the dispute;

(vi) Describe, in accordance with the Policy, the grounds on which the Request for Enforcement is based;

(vii) State the specific remedy being sought (either approval or denial of the transfer);

(viii) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(ix) Certify that a copy of the Request for Enforcement, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent; and

(x) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"<insert name of Filing Registrar> agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the Respondent and waives all such claims and remedies against the Registry Operator as well as its directors, officers, employees, and agents, except in the case of deliberate wrongdoing or gross negligence."

"<insert name of Filing Registrar> certifies that the information contained in this Request for Enforcement is to the best of Filing Registrar's knowledge complete and accurate, that this Request for Enforcement is not being presented for any improper purpose, such as to harass, and that the assertions in this Request for Enforcement are warranted under this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

3.1.3 The Request for Enforcement may relate to more than one domain name, provided that the domain names involve the same Filing Registrar and Respondent and that the claims arise out of the same or similar factual circumstances.

3.1.4 The Request for Enforcement shall annex the following documentary evidence (as applicable and available) in electronic form if possible, together with a schedule indexing such evidence:

(i) For the Gaining Registrar:

a. Completed Form of Authorization ("FOA")

b. Copy of the Whois output for the date transfer was initiated, which was used to identify the authorized Transfer Contacts

c. Copy of evidence of identity used

d. Copy of a bilateral agreement, final determination of a dispute resolution body or court order in cases when the Registrant of Record is being changed simultaneously with a Registrar Transfer

e. Copies of all communications made to the Registrar of Record with regard to the applicable transfer request along with any responses from the Registrar of Record

(ii) For the Registrar of Record:

a. Completed FOA from Registrar of Record if applicable

b. Copy of the Whois output for the date the transfer was initiated

c. Relevant history of Whois modifications made to the applicable registration

d. Evidence of one of the following if a transfer was denied:

- fraud;

- UDRP action;

- court order;

- Registrant or administrative contact identity dispute in accordance with Section 4 [Registrar of Record Requirements]

- applicable payment dispute along with evidence that the registration was put on HOLD status;

- express written objection from the Registered Name Holder or Administrative Contact;

- LOCK status along with proof of a reasonable means for the registrant to remove LOCK status as per Section __of Exhibit __ to this Agreement;

- domain name within 60 days of initial registration; or

- • domain name within 60 days of a prior transfer.

e. Copies of all communications made to the Gaining Registrar with regard to the applicable transfer request along with any responses from the Gaining Registrar.

3.2 The Non-Filing Registrar ("Respondent") shall have seven (7) calendar days from receipt of the Request for Enforcement to prepare a Response to the Request for Enforcement ("Response").

3.2.1 The Response shall be submitted in electronic form to both the Registry and Filing Registrar and shall:

(i) Respond specifically to the statements and allegations contained in the Request for Enforcement (This portion of the response shall comply with any word or page limit set forth in the Dispute Resolution Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the Respondent (non-filing Registrar);

(iii) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the Request for Enforcement;

(iv) State that a copy of the Response has been sent or transmitted to the Filing Registrar;

(v) Conclude with the following statement followed by the signature of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(vi) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

3.2.2 At the request of the Respondent, the Registry Operator may, in exceptional cases, extend the period of time for the filing of the response, but in no case may the extension be more than an additional five (5) calendar days. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Registry Operator.

3.2.3 If a Respondent does not submit a response, in the absence of exceptional circumstances, the Registry Operator shall decide the dispute based upon the Request for Enforcement.

3.3 Registry Operator must review all applicable documentation and compare registrant/contact data with that contained within the authoritative Whois database and reach a conclusion not later than 14 days after receipt of the Response.

3.3.1 If the data included in the Request for Enforcement does not match the data listed in the authoritative Whois, the Registry Operator must contact each Registrar and require additional documentation.

3.3.2 If the Gaining Registrar cannot provide a complete FOA with data matching that contained within the authoritative Whois database, then the Registry Operator shall find that the transfer should be reversed. In the case of a thick Registry, if the Registrar of Record's Whois is not accessible or invalid, the Registry Operator's Whois should be used. In the case of a thin Registry, if the Registrar of Record's Whois is not accessible or is invalid, the Registry Operator must notify ICANN and place the dispute on hold until such time as the specific problem is resolved by ICANN.

3.3.3 In the case where a Registrar of Record denies a request for a domain name transfer ("NACKs"), the Registrar of Record must provide evidence of one of the factors for which it is allowed to NACK. If the Registrar of Record cannot provide evidence that demonstrates any of the factors, and the Gaining Registrar provides to the Registry a complete FOA with data matching that contained within the authoritative Whois database, then the transfer must be approved to be processed.

3.3.4 If the data provided by neither Registrar appears to be conclusive, then the Registry shall issue a finding of "no decision." If the data provided to the Registry is complete and provides sufficient basis for a determination based on the Policy, the Registry may not issue a finding of "no decision." Either Registrar shall be able to appeal such issue to a Second-Level Dispute Resolution Provider in accordance with the provisions set forth below.

3.4 Fees for First-Level Dispute Resolution Service

3.4.1 There is no filing fee assessed to the Filing Registrar at the time the Request for Enforcement is submitted to the Registry Operator.

3.4.2 The Registrar that does not prevail in the dispute will be assessed a fee to be set by the Registry Operator. Such fee shall be set forth in the Registry's Supplemental Rules that are in effect at the time that the Request for Enforcement was filed.

3.4.3 This fee shall not be passed on to the Registrant.

3.4.4 This fee will be charged after a final decision is rendered by the Registry. In the case that the Registry issues a finding of "no decision," the Registry Operator shall collect the applicable fees from the Filing Registrar.

3.5 Availability of Court Proceedings

The procedures set forth above shall not prevent a Registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before such an administrative proceeding is commenced or after such proceeding is concluded. If a Registry Operator decides a domain name registration should be transferred (either to the Gaining Registrar, or alternatively, back from the Gaining Registrar to the Registrar of Record), the Registry will wait fourteen (14) calendar days after it is informed of the decision before implementing that decision. The Registry will then implement the decision unless it has received during that fourteen (14) calendar day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that a lawsuit has commenced with respect to the impacted domain name(s). If such documentation is received by the Registry Operator within the fourteen (14) calendar day period, the decision will not be implemented until (i) evidence is presented to the Registry Operator that the parties have resolved such dispute; (ii) evidence is presented to the Registry Operator that the lawsuit has been dismissed or withdrawn; or (iii) the Registry Operator receives a copy of an order from such court.

4. Dispute Procedures at the Second Level with a Dispute Resolution Provider

4.1 The services of the Dispute Resolution Panel may be invoked in any of the following two situations:

(i) A Filing Registrar may elect to skip the First-Level dispute process at Registry level and submit a Request for Enforcement directly with a Dispute Resolution Provider;

(ii) The non-prevailing Registrar in a First-Level dispute proceeding may submit an appeal of the applicable Registry Operator's decision to the Dispute Resolution Provider. Additionally, in the case where the result in the First-Level dispute process is a "no-decision," either Registrar may file an Appeal of such decision to a Dispute Resolution Provider.

4.2 Initial Request for Enforcement

4.2.1 In the event that the Filing Registrar elects to submit a Request for Enforcement to the Dispute Resolution Provider in lieu of submitting a Request for Enforcement to the applicable Registry Operator, the obligations and responsibilities set forth in Sections 3.1 through 3.2 above shall apply.

4.2.2 The Dispute Resolution Panel appointed by the Dispute Resolution Provider must review all applicable documentation and compare registrant/contact data with that contained within the authoritative Whois database and reach a conclusion not later than thirty (30) days after receipt of Response from the Respondent.

(i) If the data does not match the data listed in authoritative Whois, the Dispute Resolution Panel should contact each Registrar and require additional documentation.

(ii) If the Gaining Registrar is unable to provide a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the Dispute Resolution Panel shall find that the transfer should be reversed. In the case of a thick Registry, if the Registrar of Record's Whois is not accessible or invalid, the applicable Registry Operator's Whois should be used. In the case of a thin Registry, if the Registrar of Record's Whois is not accessible or is invalid, the Dispute Resolution Provider may place the dispute on hold until such time as the problem is resolved.

(iii) In the case where a Registrar of Record NACKs a transfer, the Registrar of Record must provide evidence of one of the factors for which it is allowed to NACK as set forth in Section 3.1.4 (ii) of this Dispute Resolution Policy. If the Registrar of Record cannot provide evidence that demonstrates any of the factors, and the Gaining Registrar provides to the Dispute Resolution Provider a complete FOA with data matching that contained within the authoritative Whois database at the time of the transfer request, then the transfer should be approved.

(iv) Unlike under the First-Level dispute process, the Dispute Resolution Panel may not issue a finding of "no decision." It must weigh the applicable evidence in light of the Transfer policies and determine, based on a preponderance of the evidence, which Registrar should prevail in the dispute and what resolution to the Request for Enforcement will appropriately redress the issues set forth in the Request for Enforcement.

(v) Resolution options for the Dispute Resolution Panel are limited to the following:

a. Approve Transfer

b. Deny the Transfer (or ordering the domain name be returned to the Registrar of Record in cases where a Transfer has already occurred)

4.3 Appeal of First Level Dispute Decision or Registry Operator Finding of "No-Decision."

4.3.1 In the event that the Registrar which does not prevail in the First-Level dispute is dissatisfied by the Registry-Operator's decision, such Registrar may file an appeal with a Dispute Resolution Provider, provided that such appeal is filed no later than fourteen (14) calendar days after the date on which the First-Level decision was issued.

4.3.2 In the event that the Registry Operator issues a finding of "no-decision" in accordance with Section 3.3.4 above, either Registrar may file an appeal of such decision with a Dispute Resolution Provider, provided that such appeal is filed no later than fourteen (14) calendar days after the date on which the First-Level decision was issued.

4.3.3 In either case, the document submitted by the Registrar to the Dispute Resolution Provider shall be referred to as an "Appeal."

4.3.4 The Appellant shall submit the Appeal in electronic form and shall:

(i) Request that the Appeal be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Appellant and of any representative authorized by the Appellant to act on behalf of the Appellant in the administrative proceeding;

(iii) Provide the name of the Appellee and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Appellee regarding how to contact

Appellee or any representative of Appellee, including contact information based on pre-Request for Enforcement and pre-Appeal dealings;

(iv) Specify the domain name(s) that is/are the subject of the Appeal;

(v) Specify the incident(s) which gave rise to the dispute;

(vi) State the basis for such appeal, including specific responses to the findings of the Registry Operator in the First-Level Dispute process. (This portion of the response shall comply with any word or page limit set forth in the Dispute Resolution Provider's Supplemental Rules);

(vii) Specify, in accordance with the Policy, the remedies sought;

(viii) Identify any other related legal proceedings known to the Appellant that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(ix) State that a copy of the Appeal, together with the cover sheet as prescribed by the Dispute Resolution Provider's Supplemental Rules, has been sent or transmitted to the Appellee; and

(x) Conclude with the following statement followed by the signature of the Appellant or its authorized representative:

"Appellant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the Appellee and waives all such claims and remedies against the Dispute Resolution Provider and the Registry Operator as well as their directors, officers, employees, and agents, except in the case of deliberate wrongdoing or gross negligence."

"Appellant certifies that the information contained in this Appeal is to the best of Appellant's knowledge complete and accurate, that this Appeal is not being presented for any improper purpose, such as to harass, and that the assertions in this Appeal are warranted under this Policy and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."

4.3.5 The Appeal may relate to more than one domain name, provided that the domain names involve the same decision issued by the Registry Operator for the First-Level Dispute.

4.3.6 The Appeal shall annex any documentary evidence that was not already submitted to the Registry Operator during the First-Level Dispute.

4.3.7 A Dispute Resolution Provider must request all documentation relating to the First-Level Dispute from the applicable Registry Operator no later than seven (7) calendar days of receipt of the appeal. The Registry Operator shall submit such documentation to the Dispute Resolution Provider within seven (7) days of such request.

4.3.8 The Dispute Resolution Panel must review all applicable documentation and reach a conclusion not later than 30 calendar days after receipt of the Appeal.

(i) The Dispute Resolution Panel may submit questions to the Registry, the Appellant or Appellee.

(ii) Responses to all such questions must be received by the Dispute Resolution Panel within 7 days.

(iii) The Dispute Resolution Panel shall review each Appeal on a De Novo basis. Although the Dispute Resolution Panel is not bound by the findings of the Registry Operator in an Appeal, it shall have the discretion to consider such findings in reaching its own conclusions. The purpose of the Dispute Resolution Panel should be to make a determination as to whether the Appeal has merit based solely on the requirements of the current Transfer policy and determine the appropriate resolution to the issues presented.

(iv) The Remedies ordered by the Dispute Resolution Panel shall be limited to:

- Approval of a Transfer
- Denial of the Transfer (or ordering the domain name be returned to the Registrar of Record in cases where a Transfer has already occurred)

4.4 Fees for Second-Level Dispute Resolution Service

4.4.1 In the case of either a Request for Enforcement or an Appeal filed at the Second Level, the applicable Dispute Resolution Provider shall determine the applicable filing fee ("Filing Fee"). The specific fees along with the terms and conditions governing the actual payment of such fees shall be included in the Dispute Resolution Provider's Supplemental Rules.
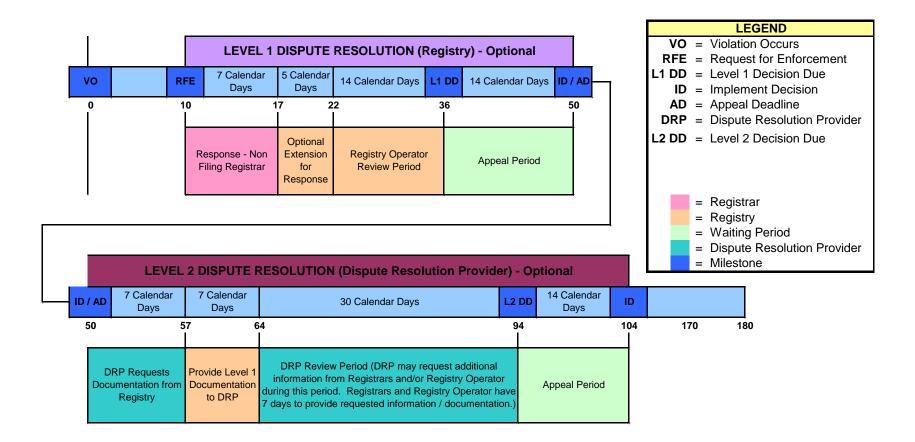
4.4.2 In the event that the Filing Registrar or Appellant, whichever applicable, does not prevail in a Second-Level dispute, the Filing Fees shall be retained by the Dispute Resolution Provider.

4.4.3 In the event that the Filing Registrar or Appellant, whichever applicable, prevails in a Second-Level dispute, the Respondent or Appellee, whichever applicable, must submit to the Dispute Resolution Provider, the Filing Fees within fourteen (14) calendar days after such decision. In such an event, the Dispute Resolution Provider shall refund to the Filing Registrar or Appellant, whichever applicable, the Filing Fees, no later than fourteen (14) calendar days after it receives the Filing Fees from the Respondent or Appellee. Such fees must be paid regardless of whether a Court Proceeding is commenced in accordance with Section 4.5 below. Failure to pay Filing Fees to the Dispute Resolution Provider may result in the loss of accreditation by ICANN.

4.5 Availability of Court Proceedings

The procedures set forth above shall not prevent a Registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before such administrative proceeding is commenced or after such proceeding is concluded. If a Dispute Resolution Panel decides a domain name registration should be transferred (either to the Gaining Registrar, or alternatively, back from the Gaining Registrar to the Registrar of Record), such Registrar will wait fourteen (14) calendar days after it is informed of the decision before implementing that decision. The Registry will then implement the decision unless it has received from either of the parties to the dispute during that fourteen (14) calendar day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that a lawsuit has commenced with respect to the impacted domain name(s). If such documentation is received by the Registry, as applicable, within the fourteen (14) calendar day period, the decision will not be implemented until (i) evidence is presented that the parties have resolved such dispute; (ii) evidence is presented that the lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the lawsuit or ordering certain actions with respect to the domain name.

Annex B - TDRP Timeline / Workflow[9]

Annex C - Overview of TDRP Cases

Period	Transfers disputed won	Transfers disputed lost	Transfers disputed no decision
Oct-09	0	0	10
Nov-09	0	0	4
Dec-09	1	1	42
Jan-10	1	1	6
Feb-10	0	0	4
Mar-10	5	5	2
Apr-10	2	2	8
May-10	0	0	0
Jun-10	2	2	4
Jul-10	0	0	6
Aug-10	0	0	10
Sep-10	3	3	0
Oct-10	0	0	0
Nov-10	1	1	2
Dec-10	8	8	8
Jan-11	0	0	6
Feb-11	0	0	0
Mar-11	1	1	0
Apr-11	0	0	2
May-11	1	1	0
Jun-11	5	5	0
Jul-11	0	0	4
Aug-11	3	3	6
Sep-11	7	7	6
Oct-11	1	1	6
Nov-11	5	5	1
Dec-11	1	1	2
Jan-12	1	1	2
Feb-12	6	6	0
Mar-12	4	4	2
Apr-12	0	0	0
May-12	3	3	6
Jun-12	7	7	0

Jul-12	1	1	0
Aug-12	1	1	0
Sep-12	0	0	0
Total	70	70	149