GNSO Issues Report
Inter-Registrar Transfer Policy
Part B

STATUS OF THIS DOCUMENT

This is the Issues Report on the Inter-Registrar Transfer Policy, produced by ICANN staff for submission to the GNSO Council on 15 May 2009.

SUMMARY

This report is submitted to the GNSO Council in response to the motion passed by the Council on 16 April 2009.

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1   Executive summary

1.1   This issues report addresses five 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 five issues addressed are:

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

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

c)   Whether special provisions are needed for a change of registrant when it occurs near the time of a change of registrar. The policy does not currently deal with change of registrant, which often figures in hijacking cases;

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

e)   Whether, and if so, how best to clarify denial reason #7: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status.

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). In order to be more efficient and with the aim of reducing the overall timeline for addressing all outstanding IRTP issues, the GNSO Council decided 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.

1.4   Chapter 4 of this report explores the five 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.

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

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

c)   Whether special provisions are needed for a change of registrant when it occurs near the time of a change of registrar[1]. The policy does not currently deal with change of registrant, which often figures in hijacking cases;

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

e)   Whether, and if so, how best to clarify denial reason #7: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status.

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[1] Original wording: Whether special provisions are needed for a change of registrant near a change of registrar.

b. The identity of the party submitting the issue:

GNSO.

c. How that party is affected by the issue:

The GNSO is responsible for responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. The GNSO includes various 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 Council voted at its meeting 16 April 2009 to request an issues report.

e.   Staff recommendation:

i.   Whether the issue is within the scope of ICANN's mission statement:
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 to multiple situations or organizations:
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.   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.

v. 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.

2.4   In accordance with step 2(f) of the policy development process, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP. This report is submitted with a view to fulfilling that provision.

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 TransferPolicy". 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.

3.2.4   In order to be more efficient and with the aim of reducing the overall timeline for addressing all outstanding IRTP issues, 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.

4   Discussion of proposed issues

4.1   Overview

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

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

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

c) Whether special provisions are needed for a change of registrant when it occurs near to the time of a change of registrar. The policy does not currently deal with change of registrant, which often figures in hijacking cases (Issue #9)[2];

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

e) Whether, and if so, how to best clarify denial reason #7: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status (Recommendation from the IRTP Denials WG).

For informational purposes, the issue numbers included above refer to the numbering in the Transfers Working Group list mentioned earlier in this document (see

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[2] Original wording: Whether special provisions are needed for a change of registrant near a change of registrar.

http://gnso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf).

The issues are addressed individually in the following sections.

4.2   Urgent return/resolution of a domain name

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

4.2.2   In response to the ICANN request for public comments on the experiences with
        the Inter-Registrar Transfer, the Go Daddy Group noted that:

> "If a Registered Name Holder feels that a third party has illegally hijacked
> his or her domain name through a transfer, they may lodge a UDRP
> dispute. This complicates the issue since the registrars involved may be
> willing to work to correct the situation but now have their hands tied since
> they are obligated to lock down the domain name. This also conflicts with
> the TDRP, which should be the recommended and preferred method for
> a dispute regarding a transfer. It may be appropriate if the UDRP provider
> was required to refer the Registered Name Holder to the TDRP in cases
> that involve a transfer if that dispute mechanism has not already been
> tried, or to the registrars involved if they have not yet been consulted or
> yet allowed to work it out between themselves".

4.2.3   The Staff Report to the GNSO Council: Experiences with the Inter-Registrar
        Transfer Policy (14 April 2005) noted that "many of the comments related to
        security and the transfer process referred to a fraudulent transfer incident
        involving the domain name <panix.com>". In addition, in a section on transfer
        undo and fraud situations, it is stated that: "Although a transfer that has been
        determined to be fraudulent can be reversed by agreement between registrars,
        or by the registry using the Transfer-Undo mechanism, it has been suggested
        that such methods may not always allow sufficient responsiveness to fraud
        situations. The time period needed for adequate fact-finding and registrar
        coordination, or for the outcome of a fair dispute proceeding, may prolong
        problems including downtime, disruption of email services, or loss of business,

especially if a domain name is one on which other services or financial services depend.

Suggestions on handling or reversing disputed transfers included:
  (a) developing an expedited handling process for fraud situations;
  (b) automatically returning names that are subject to a dispute to be returned to the original registrar until the dispute has been resolved;
  (c) automatically rolling back the nameservers to [reflect the date contained therein] prior to the transfer.

It should be noted, however, that not every transfer that appears fraudulent may end up actually being a fraud case. Therefore, any measures should allow for flexibility in handling various outcomes." It is important to emphasize this last point as determinations of fraudulent activity must be made with caution and a number of questions would need to be addressed including; who has the authority to make such a determination and what qualifies an activity as fraudulent?

4.2.4   The SSAC report on Domain Name Hijacking: Incidents, threats risks and remedial actions (July 2005) recommends that "Registrars should identify evaluation criteria a registrant must provide to obtain immediate intervention and restoration of domain name registration information and DNS configuration. Registrars should define emergency procedures and policy based on these criteria. This policy would complement the Transfer Dispute Resolution Policy (TDRP) and must not undermine or conflict with those policies." The report notes that "The Inter-Registrar Transfer Policy incorporates formal dispute mechanisms (the Transfer Dispute Resolution Policy) intended for handling disputes between registrars associated with a transfer that cannot be solved directly between the two parties. These business-oriented processes are appropriate when the DNS information of a domain name is unaffected, when there is no issue of service denial or interruption, and when there is less immediate urgency to restore service. While the processes may be satisfactory for resolving a transfer-related

dispute in a matter of days, another mechanism may be necessary to allow restoration of service in the timely manner real-time communications networks demand".

In relation to the current dispute resolution mechanisms, the report notes that "the UDRP is available for cases of abusive registrations or cybersquatting, particularly with regard to trademarked names. A UDRP involves a cost of approximately USD $2,000, and takes at least two months to reach a decision. The Transfer Dispute Resolution Policy (TDRP) is available to registrars to address disputes involving a transfer that has occurred. A TDRP dispute can be brought to the registry for a decision or to a third-party dispute resolution service provider. Both dispute resolution policies are designed to provide an impartial assessment of the factual circumstances of a case in order t determine the appropriate outcome of a dispute. However, neither of these provides an immediate fix to cases of interrupted service or suspected hijacking".

Furthermore, the report states that "although registrars have worked together and agreed on a solution in several specific hijacking or fraud incidents, registrars may need a new communications channel and corresponding procedures to respond quickly to an operational loss of use of a domain name resulting from a transfer or DNS configuration error or hijacking. Possible elements of an urgent restoration of domain name registration information and DNS configuration include:

An emergency action channel – to provide 24 x 7 access to registrar technical support staff who are authorized to assess the situation, establish the magnitude and immediacy of harm, and take measures to restore registration records and DNS configuration to what is often described as "the last working configuration". An urgent restoration of a hijacked domain may require the coordinated efforts of geographically dispersed registrars, operating in different time zones. The emergency action channel requires a contact directory of parties who can be reached during non-business hours and weekends. It may be useful to make

support staff contacts available online, so a third party is not required to maintain and distribute the contact details.

A companion policy to the emergency action channel – to identify evaluation criteria a registrant must provide to obtain immediate intervention (e.g., circumstances and evidence). From these, registrars can define emergency UNDO procedures. This policy would complement the TDRP and must not undermine or conflict with policies defined therein. The circumstances which distinguish when an urgent recovery policy may be a more appropriate action than the TDRP include:

1) Immediacy of the harm to the registrant if the transfer is not reversed (e.g., business interruption, security incidents).

2) Magnitude of the harm, or the extent to which the incident threatens the security and stability of parties other than the registrant, including but not limited to users, business partners, customers, and subscribers of a registrant's services.

3) Escalating impact, or the extent to which a delay in reversing the transfer (and DNS configuration) would cause more serious and widespread incidents.

The emergency action procedures should be tested to verify they are resilient to tampering and difficult to exploit. In particular, it should be difficult or impossible for an attacker to effect a hijack or interfere with a transfer under the guise of requesting urgent restoration of a domain.

A public awareness campaign should be conducted to provide clear and unambiguous documentation that describes the policy and processes to registrars and registrants. This documentation should identify the criteria and the procedures registrants must follow to request intervention and immediate restoration."

4.2.5   Some of the questions that might need further consideration in a potential policy development process include determining the extent of the problem and whether it warrants a new policy or policy change; how to ensure that a process for urgent return does not interfere with the potential outcome of a dispute resolution

process; who would be the ultimate decision-maker in such a process; and, which market solutions or best practices currently exist for dealing with this issue.

ICANN staff is aware that some registrars have dealt with the issue of urgent return of a domain name in the case of a suspected hijacking by indemnifying the gaining registrar, which appears to be a mechanism that ensures that the registrar of record will only pursue this avenue if it is absolutely sure that the domain name has been hijacked as it could otherwise incur substantial costs.

4.3   Additional provisions for undoing inappropriate transfers

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

4.3.2   In response to the ICANN request for public comments on the experiences with the Inter-Registrar Transfer, the Go Daddy Group submitted the following comment in relation to this issue:

> "We have seen more than a few cases where the gaining registrar has received appropriate confirmation of a transfer request from the current Administrative Contact of record for the domain name. After the transfer completed, the Registered Name Holder of record at the time of the transfer claims that they did NOT approve the transfer and want it reversed. The Policy states that the Registered Name Holder's authority supersedes that of the Administrative Contact. Although the transfer was valid based on the current Policy the registrars are left to work together to reverse the transfer or face a formal dispute or legal action.
>
> Is this the intent of the Policy? It opens up the potential for fraud, for example, in the event of a domain name sale and transfer. It also puts a burden on the registrar to attempt to verify the identity of the Registered Name Holder. Since most Whois records do not list the Registered Name Holder's email address, we need to rely on other documentation. However, given the international nature of our businesses, if we rely on photo identifications and business licenses from the Registered Name Holder we could easily be defrauded.

In addition, apparently due to the situation noted above, some registrars have adopted a hard copy transfer process centered on getting confirmation only from Registered Name Holders. This not only slows down the process for the Registered Name Holders, but puts registrars at increased risk and expense as they attempt to verify identification information from an international user base."

4.3.3   The [Staff Report to the GNSO Council: Experiences with the Inter-Registrar Transfer Policy](#) (14 April 2005) noted that "the policy provides that registry operators implement and make available a Transfer-Undo mechanism, to be used in cases where a transfer is determined to have been processed in contravention of the policy. This capability can be used either: a) when both registrars agree that a transfer should not have occurred and request the registry to reverse it, or b) as a result of a dispute proceeding which determines that a transfer should not have occurred. The policy recommendations only required that registries develop such a mechanism. ICANN encouraged coordination among registries but determined that registries could be individually responsible for their own implementation of this mechanism".

4.3.4   In a document titled '[Review of Issues for Transfers Working Group](#)' (19 January 2006), a working document developed by the Transfers Working Group, it is noted that "repatriation of inappropriately transferred names is difficult and processes are still unclear. This is mostly evident in incidences where a registrant has objected to a transfer despite the approval of the admin contact. The transfer policy is quite clear that the registrant 'trumps' the admin contact, but it is not clear how these types of veto situations should be handled. The result is an inconsistent application of policy and increased risk of domain theft." The document notes that potential next steps to be considered include a clarification, "restate intent of existing policy", as well as "additional policy provisions for handling inappropriate transfers".

4.3.5   In its [Final Report](#), the IRTP Part A PDP Working Group recommended that "in the absence of a simple and secure solution for providing the gaining registrar access to the registrant email address, future IRTP working groups should

consider the appropriateness of a policy change that would prevent a registrant from reversing a transfer after it has been completed and authorized by the admin contact. This option would not change the current situation whereby a losing registrar can choose to notify the registrant and provide an opportunity to cancel a transfer before the process is completed".

4.4 Special provisions for a change of registrant near a change of registrar

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

4.4.2 As stated in the description of the issue, a change of registrar near a change of registrant is a common feature in hijacking cases. In the opinion of Registrar.com as noted in one of the comments submitted in response to the ICANN request for public comments on the experiences with the Inter-Registrar Transfer:

> "the Inter-Registrar Transfer Policy exposes losing registrars to an unacceptable level of liability when names are fraudulently transferred. Ultimately, the liability for a fraudulent transfer rests with the losing registrar since it has allowed a transfer-away to be processed while it is the current service provider for the registrant. The registrant will almost always look to the losing registrar in the event an unauthorized or fraudulent transfer is completed."

As a result, a number of registrars have taken preventative measures such as Go Daddy, which introduced a 60-day transfer prohibition period[3] following a change of registrant. However, some registrants seem to view such measures unnecessarily restrictive and not in compliance with the transfer policy, see e.g.:

> "GoDaddy has been treating a Registrant change as something major and is denying transfers for 60 days based on this [...] I wish ICANN puts

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[3] From Go Daddy agreement: 'The domain name may not be transferred to another registrar within sixty (60) days of the completion of the change of Registrant transaction (the "Transfer Prohibition Period"). In the event the domain name is subject to another change of Registrant within the Transfer Prohibition Period, the 60-day Transfer Prohibition Period will begin again upon completion of the subsequent change of Registrant transaction'.

a stop to all this ASAP." (From http://forum.icann.org/lists/transfer-comments-a/msg00012.html),

and

"Also there are some registrars that in case of change of ownership, avoid ack transfers request send by other registrar, saying that "the domain registrant has recently changed". That is NOT one of the instances in which a transfer request may legitimately be denied by the Registrar of Record" (From http://forum.icann.org/lists/transfer-comments-g/msg00023.html).

ICANN issued an advisory in April 2008 to clarify that "a registrant change to Whois information is not a valid basis for denying a transfer request". It should be pointed out that Go Daddy since then has changed the "transfer prohibition period" to a voluntary opt-in provision that is offered to the registrant to prevent any transfers for 60 days after their domain name ownership change for security reasons. If a registrant has opted for this provision but still tries to transfer the domain name before the expiration of the 60 days, the transfer is denied under section A3(6) of the Inter-Registrar Transfer Policy (http://www.icann.org/en/transfers/policy-en.htm).

4.4.3   In a document titled 'Review of Issues for Transfers Working Group' (19 January 2006), a working document developed by the Transfers Working Group, it is stated that "transfers immediately following a Registrant transfer (change of ownership or license) should not be allowed, or at least the registrar should have the option of not allowing it for some period of time, 30-60 days perhaps. This was an explicit requirement in the old transfer policy, not sure why it was removed". Potential next steps referred to include "clarify intentions of existing policy related to how change of registrant fits into definitions in policy and whether [the] intent was to allow for Registrar implementation of special provisions needed for change of registrant simultaneous to transfer or within a period after transfer" and "possible PDP to create policy related to change of registrant".

4.5   Standards or best practices regarding use of Registrar Lock Status

4.5.1   Issue D: Whether standards or best practices should be implemented regarding use of Registrar Lock status (e.g., when it may/may not, should/should not be applied) (Issue #5).

4.5.2   Registrar-Lock is described in RFC 2832 as:

> "REGISTRAR-LOCK: The registrar of the domain sets the domain to this status. The domain cannot be modified or deleted when in this status. The registrar MUST remove REGISTRAR-LOCK status to modify the domain. The domain can be renewed. The domain SHALL be included in the zone file when in this status".

Registrar-Lock does not refer to any internal flag or status termed 'lock' which a registrar may be using. As outlined in an ICANN Inter-Registrar Transfer Policy: Implementation Update "Registrars will […] be able to use "registrar-lock" to give registrants added assurance that their domains will not be transferred or modified without their consent, but only if the registrar provides a readily accessible and reasonable means for registrants to remove the lock if and when the registrant decides to transfer".

4.5.3   The Staff Report to the GNSO Council: Experiences with the Inter-Registrar Transfer Policy (14 April 2005) noted that "many comments raised issues concerning locking mechanisms which are currently used by registrars. Variations in the use of lock statuses and their variability across registrars has added a level of complexity to the transfer process that in some cases has the effect of obstructing the desired ease of inter-registrar transfers. Additionally, such mechanisms impose a further burden on policy implementation because many registrants do not understand locking mechanisms. This is especially complicated in cases involving multiple languages". As a result, the report recommends considering "greater standardization of locking and unlocking functions or more precise definitions of appropriate use of the lock status".

4.5.4   In a document titled 'Review of Issues for Transfers Working Group' (19 January 2006), a working document developed by the Transfers Working Group, it is noted that "there seems to be ambiguity about what can be considered as registrar lock". Potential next steps mentioned include a clarification by defining registrar lock within the policy. In addition, the document notes that "best practices regarding registrar lock need to be drawn out from current practices. Standards may need to be set regarding when use of lock is appropriate and not appropriate".

4.6   Clarification of denial reason #7

4.6.1   Issue E: Whether, and if so, how to best clarify denial reason #7: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status (Recommendation from the IRTP Denials WG).

4.6.2.   From the Issues Report on Specified Inter-Registrar Transfer Policy Issues: "The current language (describing a reason for which a registrar of record may deny a transfer request) reads: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status. Referring to the Task Force's Report (http://www.icann.org/gnso/transfers-tf/report-exhd-12feb03.htm) for the intention behind the policy language, the following Q/A occurs:

> 9. "Some Registrars liberally employ the 'Registrar lock' function as it relates to the domain names they register for Registrants. This often means that Registrants *can't* transfer their domain name in a predictable way. Do the Task Force recommendations consider this?"

> A. Through extensive discussion within the Task Force and further consultation with the community after the Interim Report, the Task Force formed a minor series of amended recommendations that simply requires

Registrars to provide Registrants with simple and transparent mechanisms by which Registrants can simply unlock or lock their domain name using accessible processes established by the Registrar.

Analysis: The Task Force heard this concern from several user groups. Earlier versions of this report contained substantially more stringent recommendations, however further discussion within the Task Force and outreach to various stakeholders within the DNSO only drew the lack of consensus on the older recommendations into focus. Accordingly the Task Force re-crafted its recommendations in order to support the principles that were supported by consensus.

In the current environment, registrar policies and practices vary with regard to means available to registrants for removing a Registrar Lock status. As a prerequisite to a registrar's denial of a transfer request for this reason, the policy requires that registrars provide a "readily accessible and reasonable means for the Registered Name Holder to remove the lock status." In staff's investigation of complaints about an inability to unlock a name, it is necessary to review the circumstances on a case by case basis, and apply an interpretation as to whether the registrar's practice is reasonable.

ICANN continues to receive complaints from registrants noting difficulty in unlocking names (see data from 2006 at http://www.icann.org/compliance/pie-problem-reports-2006.html).

ICANN could more efficiently enforce this provision if there were a test available for what is "reasonable or readily accessible." Adoption of a common test or standard would also facilitate uniform enforcement of this provision[4].

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[4] As an example of such a test or standard, Section 5 of the policy includes the following in regard to provision of the authInfo code: "Registrars may not employ any mechanism for complying with a Registered Name Holder's request to remove the lock status that is more restrictive than the mechanisms used for changing any aspect of the Registered Name Holder's contact or name server information."

In instances where a domain name is in Registrar Lock status, a transfer that is initiated by a potential gaining registrar will be automatically rejected at the registry level, without an explicit denial by the registrar of record. This makes it difficult for a registrar of record to comply with the requirement to provide the registrant and potential gaining registrar with the reason that the transfer was denied. It may be helpful for the policy language to reflect the process that occurs in the case of this type of denial."

4.6.3 Clarification of denial reason #7 was discussed in a previous PDP on Clarification of Denial Reasons, but the drafting group recommended dealing with this issue in conjunction with the question of standards or best practices regarding use of Registrar Lock Status which has been outlined in the previous section. The drafting group noted in its report the following concerns:

- "Discussions focused on clarification of the meaning of "readily accessible and reasonable means", but in the attempts to clarify this by comparison and by increased specificity potential undesired consequences were identified, see below

- The proposed texts raise deeper issues and more complexity than we are prepared to deal with within the scope and timeframe allotted to this drafting group

- We want to avoid a situation where registrars increase difficulty on contact/DNS changes in order to prevent transfers

- Some registrars have offered higher levels of security, and don't want to lose the flexibility of offering those add-on opt-in services

- The trade-off between security and convenience is one that must be made by registrants and this policy needs to provide the ability to make that choice

- Issue 5 under PDP C of the IRTP Issues PDP Recommendations of 19 March 2008 and the reason for wanting to clarify reason for denial number 7 are very closely related:

  • Issue 5 of PDP C on IRTP Operational Rule Enhancements states:

    "Whether standards or best practices should be implemented regarding

use of Registrar Lock status (e.g., when it may/may not, should/should not be applied). (CR 8.0)"

- The IRTP Policy Clarification of Reasons for Denial final report of 9 April 2008 says in the first sentence of the second paragraph on page 5: "Regarding "lock status", there is support for clarification, with a clear focus on the meaning of "readily accessible and reasonable means" for removing the lock."

As a result, the GNSO Council resolved 'that the work on denial reason #7 […] be suspended until such time as PDP C of the IRTP Issues PDP is initiated'.

5   Discussion of possible policy outcomes

5.1   If a policy development process is 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 is not initiated, or if there are 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 five areas noted, since the scope of the PDP would be limited to the issues discussed in Chapter 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.