

GNSO Issues Report Inter-Registrar Transfer Policy: Set A; “New IRTP Issues”

STATUS OF THIS DOCUMENT

This is the Issues Report on Issue Set A; “New IRTP Issues”, regarding the Inter-Registrar Transfer Policy, produced by ICANN staff for submission to the GNSO Council on 23 May 2008.

SUMMARY

This report is submitted to the GNSO Council in response to the motion passed by the GNSO Council on 8 May 2008: “...Resolved that the Council asks the staff to produce an Issues Report of the Items listed under A - New IRTP Issues.” (see <http://gns0.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf>).”

1 EXECUTIVE SUMMARY

- 1.1 This Issues Report addresses three new issues associated with the Inter-Registrar Transfer Policy. The Inter-Registrar Transfer Policy (see <http://www.icann.org/transfers/policy-12jul04.htm>) is an existing consensus policy developed through the GNSO's policy development process (PDP) and is currently under review by the GNSO.
- 1.2 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 (inter alia regarding four reasons for denial which are subject to a current GNSO PDP) 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://gns0.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf>). The GNSO Council voted in favour of this approach on 8 May 2008 and requested that an Issues Report be produced regarding the first issue set A, "New IRTP Issues", in this suggested grouping. Further process background is provided in section 3 of this report.
- 1.3 The three issues in question, relating to measures for registrant approval of transfers governed by the Transfer Policy, are:
 - 1.3.1 Whether there could be a way for registrars to make Registrant Email Address data available to one another. Currently there is no way of automating approval from the Registrant, as the Registrant Email Address is not a required field in the registrar

Whois. This slows down and/or complicates the process for registrants, especially since the Registrant can overrule the Admin Contact.

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

1.3.2 Whether the policy should incorporate provisions for handling “partial bulk transfers” between registrars – that is, transfers involving a number of names but not the entire group of names held by the losing registrar.

1.4 Section 4 of this report explores these issues individually, provides references to documents and processes that can inform future policy development work; and indicates some areas where further data 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 the 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 three new issues:

- Inter-registrar access to registrant email addresses
- options for electronic authentication
- provisions for partial bulk transfers between registrars

b. The identity of the party submitting the issue:

GNSO.

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 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 at its meeting on 8 May 2008 to request an Issues Report, while also expressing support for initiation of a PDP on this topic.

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 GNSO Policy Development Process, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate a 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 clarification of the corresponding provisions in the policy was recommended.

3.1.5 At its meeting on 20 September 2007, the GNSO Council voted in favour 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."

Section iii is relevant in this context and further developments from that are traced below.

- 3.1.6 At its meeting on 8 May 2008, the GNSO Council voted in favour 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 as 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://gns0.icann.org/mailling-lists/archives/council/msg03895.html>). The list of issues suggested by the Transfers Working Group was subsequently assigned priorities by a Prioritization Committee of the Working Group, following a request from the GNSO Council. This work concluded in a report, available at <http://gns0.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://gns0.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf> . This issues report is intended to address issue set A, containing three comparatively new issues, hence the title “New IRTP Issues” for this set. Furthermore, these issues all relate to measures for registrant approval of transfers.

4 DISCUSSION OF PROPOSED ISSUES

4.1 Overview

The issues which are the subject of this report concern three aspects relating to registrant approval of transfers governed by the Inter-Registrar Transfer Policy, notably:

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

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

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

For information, the issue numbers included above and below refer to the numbering in the Transfers Working Group list mentioned earlier in this document. The issues are addressed individually in the following sections.

4.2 Inter-Registrar access to Registrant email addresses

- 4.2.1 Issue A. (Issue #1) Whether there could be a way for registrars to make Registrant Email Address data available to one another. Currently there is no way of automating approval from the Registrant, as the Registrant Email Address is not a required field in the registrar Whois. This slows down and/or complicates the process for registrants, especially since the Registrant can overrule the Admin Contact.
- 4.2.2 Section 1.1 of the Transfer Policy identifies the Registrant and the Administrative Contact as parties who can authorize a transfer, and notes that the Registrant's authority supersedes that of the Administrative Contact. Accordingly, an authorization from the Registrant provides a reliable ground for executing a transfer, while an authorization from the Administrative Contact can be contested by the Registrant, in spite of being recognized as a valid ground for a transfer. A convenient means to acquire Registrant authorization could thus enable a reduction of the number of contested transfers.
- 4.2.3 During its deliberations, the Transfers Working Group noted that the issue is related to the Whois provisions, since the email address of the Administrative Contact is a required field in Whois, in contrast to the Registrant email address. However, in the context of a PDP focused on the Transfer Policy, any proposed policy change affecting Whois policy (for example requiring registrant email information in the Whois) would be outside the scope of the PDP. The issue to address is thus limited to other means of keeping, maintaining and exchanging registrant email information between

the relevant Registrars. This invokes procedural, administrative and security aspects.

4.3 Options for electronic authentication

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

4.3.2 The original Transfers Task Force mentioned this issue as follows in its Final Report:

19. In the event that the Gaining Registrar must rely on a physical process to obtain this authorization, a paper copy of the Standardized Form of Authorization will suffice insofar as it has been signed by the Registrant or Administrative Contact and is accompanied by a physical copy of the Losing Registrar's Whois output for the domain name in question.

a – b [*...references to physical documents, of no relevance here.*]

c. The Task Force notes support for the concept that in the event of an electronic authorization process, recommended forms of identity would include;

- electronic signature in conformance with national legislation, for instance, the United States e-Sign Act
- Email address matching Registrant or Administrative Contact email address found in authoritative Whois database.

In relation to the first bullet point above, it can be noted that the current extent of Registrars' use of digital signature means for transfers is unknown. Such information could be useful to collect as background for deliberations in a future PDP covering this issue.

4.3.3 The Transfers WG noted the issue in its report as follows:

According to the policy, the Gaining Registrar is required to obtain the FOA from the Registrant or Administrative Contact before initiating a transfer request. The Registrar of Record also has the option to send an FOA to confirm the transfer request. Policy issues relating to the FOA include:

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

- 4.3.4 Regarding the risk of spoofing mentioned by the Transfers WG, useful background information is provided in the SSAC report on domain name hijacking, available at <http://www.icann.org/announcements/hijacking-report-12jul05.pdf> . Recommendation 10 of this report states: "ICANN should consider whether to strengthen the identity verification requirements in electronic correspondence to be commensurate with the verification used when the correspondence is by mail or in person."
- 4.3.5 The SSAC report was produced in 2005 and it should be noted that, since then, EPP¹ has been deployed by all gTLD registries that have implemented the Transfer Policy. Since EPP requires an authorization ("AuthInfo") code, EPP deployment may have had an impact from a security standpoint and recent data in this respect could be useful as background for a future PDP covering this issue.
- 4.3.6 It can also be noted that some ccTLDs do use electronic authentication methods for transfers, for example through digital signatures for authentication of e-mail requests. The .UK registry operator Nominet uses PGP² as described at <http://www.nic.uk/registrars/systems/auto/pgp/> . Another example is

¹ Extensible Provisioning Protocol, for an introduction see http://en.wikipedia.org/wiki/Extensible_Provisioning_Protocol

² "Pretty Good Privacy", for an introduction see http://en.wikipedia.org/wiki/Pretty_Good_Privacy

the .SE registry operator, IIS, featuring a certificate-based web interface (“Domänhanteraren” – in English “The Domain Handler”) for the registrant, where the registrant can effectuate changes of domain information, including change of Registrar, see <https://domanhanteraren.iis.se/start/welcome>. There may be other such examples of interest as references for this issue.

4.4 Provisions for partial bulk transfers between Registrars

- 4.4.1 Issue C. (Issue #12) Whether the policy should incorporate provisions for handling “partial bulk transfers” between registrars – that is, transfers involving a number of names but not the entire group of names held by the losing registrar.
- 4.4.2 This aspect was not touched upon by the Transfers Task Force, but identified as a potential issue (under “Other”) by the Transfers WG in its report.
- 4.4.3 Part B of the Transfer Policy governs bulk transfers, meaning transfer of all domains sponsored by one Registrar to another Registrar, for example as a consequence of one Registrar acquiring another. According to the policy, bulk transfers can only take place under certain specific conditions, for information see part B in <http://www.icann.org/transfers/policy-12jul04.htm>.
- 4.4.4 While different from bulk transfers in the “complete” sense, i.e. transfer of a Registrar’s complete domain portfolio to another Registrar, the need for “partial” bulk transfers can arise due to, for example, company takeovers, where the acquiring company wishes

to transfer some or all of the acquired company's domains to its own Registrar of Record. There is no prescribed way of doing so in the Inter Registrar Transfer Policy other than domain by domain, although Registrars are free to accept, for example, fax lists with numerous domains to transfer, while still having to follow the authentication/verification practices of the policy. The extent of such "voluntary provisions to facilitate partial bulk transfers" in practice is unknown.

4.4.5 NeuLevel, Inc., the registry operator of .BIZ, has proposed the launch of a partial bulk transfer service, which has been approved by ICANN through the RSTEP³ procedure. This service proposal was prompted by two Registrars' request for a partial bulk transfer between them. For further information, see

http://www.icann.org/registries/rsep/NeuLevel_request.pdf

4.4.6 For information, there are provisions in place for partial bulk transfers in some ccTLDs. The .UK registry, Nominet, has a procedure for "mass transfers", described at <http://www.nic.uk/registrants/maintain/transfer/mass/> and also for PGP-signed "bulk" operations at the registrar level, described at <http://www.nic.uk/registrars/systems/auto/bulk/> (see especially Example 9 therein, of relevance for partial bulk transfers). There may be other such examples of interest as references for this issue.

³ Registry Services Technical Evaluation Panel

4.5 Next Steps

4.5.1 The immediate next step is for the GNSO Council to consider this Issues Report and decide whether to launch a PDP on the related issues or not, potentially also considering the usefulness of further fact-finding as indicated in the preceding sections. The Issues Report does not propose options for solutions to these issues. In a subsequent step, if a PDP is launched, the GNSO Constituencies and the wider ICANN community will be invited to provide their views on the issues and how to resolve them.

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 approve 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 three issues discussed in Section 4. It should be noted in this context that other PDPs are foreseen for other Transfer Policy issues, as stated by the GNSO Council resolution of 8 May 2008.

6 STAFF RECOMMENDATION

- 6.1 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. Staff therefore recommends that the GNSO Council proceed with a Policy Development Process limited to consideration of the issues discussed in this report.