

**Comments of the Intellectual Property
Constituency on the Inter-Registrar Transfer
Policy Part B, Staff Proposal
Recommendation #8 and Staff Proposal
Recommendation #9, Part 2**

December 31, 2011

Introduction

The Intellectual Property Constituency (“IPC”) is pleased to provide its comments to the Internet Corporation for Assigned Names and Numbers (“ICANN”) on the Inter-Registrar Transfer Policy (“IRTP”) Part B Staff Proposal Recommendation #8 and Staff Proposal Recommendation #9, Part 2. Please find below our recommendations and observations, specifically regarding these two recommendations.

Executive Summary

IPC generally agrees with Recommendation #8 in that it feels that this valuable and much-needed WHOIS information should be readily accessible to Internet users in a user-friendly format. IPC does, however, have some initial concerns, that the use of such an extensive list of EPP status codes might lead to further user confusion. With respect to Recommendation #9, Part 2, while IPC supports allowing certain limited exceptions to the 60-day registrar lock period for domain name transfers, for example, when hijacked domain names are being returned to their legitimate owners, IPC has strong reservations with the registrar’s ability to lock a domain name transfer under the terms and conditions of the registration agreement.

Recommendation #8

IPC understands and supports the prominent need for the standardization and clarification of WHOIS status messages as they relate to Registrar Lock status. However, IPC feels that if the proposed links do become stripped out of the WHOIS record, it might create enforcement issues for ICANN and increased user-confusion. Nonetheless, IPC believes that several other options might result in reduced consumer confusion and better enforcement. IPC details these below.

Option 1: Perhaps the link at the end of the WHOIS output could be embedded in the status code itself in the WHOIS data, rather than at the end of all the data. Alternatively, the link could appear adjacent to the status code.

Option 2: The proposed link could direct the user directly to the operative EPP code and accompanying explanation for that code. This would, in IPC’s view, obviate the need for

the user to sort through the list of 17 status codes to locate the appropriate code in a potentially time-consuming endeavor. IPC also notes that the Recommendation makes no mention of multi-lingual support for WHOIS output. Accordingly, IPS suggests that ICANN considering incorporating this feature into the final recommendation.

Option 3: Alternatively, and preferably, dispense with links and provide the explanation in a footnote to each WHOIS record.

Accordingly, IPC suggests continued discussion within ICANN to address these ongoing concerns.

Recommendation #9, Part 2

IPS fully supports a limited exception carve-out of the 60-day registrar lock contemplated as part of Issue C of the Part B Working Group Proposed Final Report. IPC believes that this would bolster the ability to mitigate harm perpetrated against legitimate domain name owners.

IPC does have concerns, however, with the ability of the registrar to impose a lock that prevents a domain name transfer if the terms and conditions for such a transfer are included in the registration agreement. IPC believes that this blanket allowance might be harmful to registrants, many of which are trademark owners or otherwise holders of intellectual property, who will agree to the terms and conditions in a “click-through” agreement without actually reading it. Accordingly, IPC opposes this particular provision of Recommendation #9, Part 2.

Conclusion

Overall, the IPC has concerns with Recommendation #8, but believes they can be resolved through continued ICANN dialog and comment. IPC supports the implementation of Recommendation #9, Part 2 as bolstering the ability of legitimate owners who have been victims of domain name hijacking or other fraudulent activity to recover those domain names, but IPC opposes the registrar’s ability to lock the transfer of a domain name pursuant to the terms of the registration agreement. IPC believes that stronger protections should be in place to protect intellectual property holders before ICANN accepts this Recommendation.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact IPC President, Steve Metalitz at: met@msk.com.