

GNSO Initial Report on Inter-Registrar Transfer Policy: Clarification of Reasons for Denial

STATUS OF THIS DOCUMENT

This is the Initial Report on Inter-Registrar Transfer Policy regarding Clarification of Reasons for Denial, prepared by ICANN staff for submission to the GNSO Council and posting for public comments. A Final Report will be prepared by ICANN staff following public comment.

SUMMARY

This report is submitted to the GNSO Council and posted for public comment as a required step in the GNSO Policy Development Process.

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1 Executive summary

1.1 Background

This Initial Report addresses a limited set of 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 that is being reviewed by the GNSO. In 2005, the GNSO formed a Transfers Working Group to examine and recommend possible further policy work. The Inter-Registrar Transfer Policy enumerates nine reasons for which a registrar of record may deny a request to transfer a domain name to a new registrar. The Working Group noted that the language is unclear on a subset of these reasons, which has resulted in varying interpretations and practices among registrars. The Working Group also explored possible ways to clarify the language used in this set of provisions in a document provided as Annex 2 to this report.

The four clauses in question (from Section 3, articulating reasons for which a Registrar of Record may deny a transfer request) are:

1. No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer (Reason #5 in the policy).
2. 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 (Reason #7 in the policy).
3. A domain name is in the first 60 days of an initial registration period (Reason #8 in the policy).

4. A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs) (Reason #9 in the policy).

1.2 Constituency Statements

Constituency statements on the issues addressed are invited at the initiation of each GNSO Policy Development Process. The GNSO constituency statements submitted for this report lend general support to clarification of the identified four reasons for denial of transfer addressed in this PDP. Some statements also provide detailed views on particular aspects of these topics as well as proposed new text for the provisions. Constituency statements received are reflected per issue in Section 5 of this Report, and are set forth in their entirety in Annex 1.

1.3 Other considerations

In addition to the issues addressed by this PDP, the Transfers WG listed a number of other issues regarding the Inter-Registrar Transfer Policy. These other issues are currently being prioritized and grouped for future potential Policy Development Processes, as a separate activity outside this PDP.

2 Objective and Next Steps

This Initial Report on clarification of four reasons for denial of transfers is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws, Annex A (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The Initial Report will be posted for public comment for 20 days. The comments received will be analyzed and used for redrafting of the Initial Report into a Final Report to be considered by the GNSO Council for deliberation and further action.

3 Background

3.1 Process background

This Initial Report addresses a limited set of 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 that is being reviewed by the GNSO. In 2005, the GNSO formed a Transfers Working Group to examine and recommend possible further policy work.

On 17 September 2007, the chair of the Transfers Working Group provided the GNSO Council with a set of documents as the outcome of the group's work (see <http://gns0.icann.org/mailling-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.

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://gns0.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://gns0.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://gns0.icann.org/drafts/Transfer-Policy-Issues-23aug07.pdf>) before the Council further considers a PDP on any of the work discussed in the report."

In response to item ii) in the above GNSO Council resolution, an [Issues Report](#) was delivered by ICANN staff to the GNSO Council on 19 October 2007. On 20 November 2007, the GNSO Council resolved to launch a PDP on the topics covered in the Issues Report by adopting the following motion:

*"Whereas the Issues Report on Inter-Registrar Transfers <http://gns0.icann.org/issues/transfers/issues-report-transfer-denial-clarifications-19oct07.pdf> has been released and discussed,
The GNSO council resolves to initiate a PDP to address the issues set forth in the Issues Report by the Staff."*

Ample further process background is available in the Issues Report at:

<http://gns0.icann.org/issues/transfers/issues-report-transfer-denial-clarifications-19oct07.pdf>

3.2 Issue Background

The Inter-Registrar Transfer Policy enumerates nine reasons for which a registrar of record may deny a request to transfer a domain name to a new registrar. The Transfers Working Group noted that the language is unclear on a subset of these reasons, which has resulted in varying interpretations and practices among registrars. The Transfers Working Group also explored possible ways to clarify the language used in this set of provisions.

The four clauses in question (from Section 3, articulating reasons for which a Registrar of Record may deny a transfer request) are:

1. No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer (Reason #5 in the policy).
2. 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 (Reason #7 in the policy).
3. A domain name is in the first 60 days of an initial registration period (Reason #8 in the policy).
4. A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs) (Reason #9 in the policy).

This PDP is solely focused on clarification of these four reasons for denial of transfers, as specified in Section 3 of the policy.

The GNSO's Transfers Working Group, along with the issues addressed in this report, also produced a broader 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>). This list is currently being prioritized and grouped as a separate activity, outside of this PDP.

Independent of the Transfers Working Group, ICANN staff also posted a "Notice of Intent to Issue Advisory Regarding the Inter-Registrar Transfer Policy" on 19 September 2007 (see <http://www.icann.org/announcements/announcement-19sep07.htm>), aimed to provide clarity on two particular issues raised by members of the community (the auto-renew grace period and changes to Whois information) within the existing policy.

4 Discussion (excerpt from Issues Report)

For ease of reference, this section has been brought over from the Issues Report. It provides extensive background, considerations and suggestions regarding the issues covered in this PDP and is repeatedly referred to in the Constituency Statements.

4.1 Overview

The issues which are the subject of this report concern four points occurring in Section 3 of the Inter-Registrar Transfer Policy, in the list of reasons for which a Registrar of Record may deny a transfer request. These are:

- Denial for nonpayment (reason 5)
- Denial for lock status (reason 7)
- Denial for 60 days of initial registration period (reason 8)
- Denial for 60 days after previous transfer (reason 9)

4.2 Denial for nonpayment

4.2.1 The current language (describing a reason for which a registrar of record may deny a transfer request) reads:

No payment for previous registration period (including credit-card chargebacks) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.

4.2.2 An element of confusion regarding this provision is due to the use of the terms "previous" and "current" registration periods, which are not defined within the policy. Additionally, the current language references the "expiration date" as a point

of distinction between when a transfer request may or may not be validly denied for nonpayment. However, particularly in the case of a registration that is auto-renewed by the registry, the expiration date recorded and displayed by the registry (triggered by payment from the registrar to the registry, under applicable terms from the Registry-Registrar Agreement) may differ from the expiration date according to the registrar's records (triggered by payment from the registrant to the registrar, under applicable terms from the registration agreement). As the expiration date is not a consistent value, there can be various meanings attached to this provision.

4.2.3 In the case of an auto-renewal transaction, the majority of gTLD registries offer an "Auto-Renew Grace Period" to registrars (currently 45 days). If a domain name is deleted or transferred away during this period, the registrar may obtain a credit for the auto-renewal fee from the registry. In the case of an auto-renewal transaction, the registry will add one year to the registration, meaning that a name within the grace period may be considered to be within a "current registration period," or "has not yet expired." However, since the auto-renewal transaction between the registry and registrar is not final and can be reversed during the grace period, the name may also be considered to be "past its expiration date."

4.2.4 The policy further states that:

Instances when the requested change of Registrar may not be denied include, but are not limited to:

- Nonpayment for a pending or future registration period.

ICANN has typically considered the Auto-Renew Grace Period to be a "pending or future registration period" (see <http://www.icann.org/announcements/proposed-advisory-19sep07.htm>). However, staff has supported the referring of this issue to the GNSO because it is desirable for the policy to contain a greater degree of clarity on this point.

4.2.5 The policy also states that:

The Registrar of Record has other mechanisms available to collect payment from the Registered Name Holder that are independent from the Transfer process. Hence, in the event of a dispute over payment, the Registrar of Record must not employ transfer processes as a mechanism to secure payment for services from a Registered Name Holder. Exceptions to this requirement are as follows:

- (i) In the case of non-payment for previous registration period(s) if the transfer is requested after the expiration date, or
- (ii) In the case of non-payment of the current registration period, if transfer is requested before the expiration date.

4.2.6 Referring to the Task Force's Report

(<http://www.icann.org/gns0/transfers-tf/report-exhd-12feb03.htm>) for the intention behind the policy language, the Task Force Report stated that:

"The general principle seems to be if a registrar can obtain a refund for the registry fee following a transfer during the 45 day grace Issues Report on Clarifications to the Inter-Registrar period, than the registrar should not be able to deny the transfer for non-payment."

4.2.8 It should be noted that while the registry may offer a grace period to registrars following an auto-renewal transaction, registrars are under no obligation to offer a corresponding grace period to their customers. It is a common practice for registrars to include terms in the applicable registration agreements in which the registrant consents to various post-expiration practices, such as auctions or assignment to third parties (see for example "Advisory: Registrar Expired Name Market Developments," <http://www.icann.org/announcements/announcement-21sep04-1.htm>). However, registrars are required by the Expired Domain Deletion Policy (see <http://www.icann.org/registrars/eddp.htm>) to provide notice to registrants of their deletion and auto-renewal policies, and of any material changes to these policies.

4.2.9 The current provision in the Inter-Registrar Transfer Policy also provides that prior to denying any transfer requests for non-payment under this clause, a registrar must have placed the domain name on “Registrar Hold” status. This does not appear to be the usual practice, with many registrars using “Registrar Lock” status instead. It should be noted that “Registrar Hold” removes the name from the zone and causes it not to resolve, while a name in “Registrar Lock” may continue to function but will not be able to be transferred. As part of the discussion regarding this provision, it may be helpful to consider whether one is preferable to the other in instances of nonpayment.

4.3 Denial for lock status

4.3.1 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.

4.3.2 Referring to the Task Force’s Report (<http://www.icann.org/gns0/transfers-tf/report-exhd-12feb03.htm>) for the intention behind the policy language, the following Q/A occurs:

Q. "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 recrafted its recommendations in order to support the principles that were supported by consensus.

4.3.3 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.

4.3.4 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.¹

¹ 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."

4.3.5 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.

4.4 Denial for 60 days of Initial Registration Period

4.4.1 The current language (describing a reason for which a registrar of record may deny a transfer request) reads:

A domain name is in the first 60 days of an initial registration period.

4.4.2 As there is no definition for “an initial registration period” included in the policy, this provision has been subject to varying interpretations. It is unclear whether there is only one initial registration period associated with a domain name, or whether there may be multiple initial registration periods, as in the case for example of a change of registrant. No information has been located in regard to the original intention of the Task Force on this provision.

4.5 Denial for 60 days after Previous Transfer

4.5.1 The current language (describing a reason for which a registrar of record may deny a transfer request) reads:

A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).

4.5.2 No references were located relating to the original intention of the task force regarding this provision. It can be inferred from the name of the policy that the language refers to an inter-registrar transfer, and this is the position taken in the draft Advisory developed by the Transfers Working Group. However, in order to ensure uniformity in compliance, it may be beneficial to consider providing additional clarity on this provision in the policy itself.

4.5.3 A change of registrant or other changes to registration data may be considered by some registrars to constitute a “previous transfer.” Limiting the definition narrows the scope of circumstances in which a registrar may deny a transfer request, while allowing for broader definitions gives a registrar greater latitude. As noted by some registrars, a transfer requested soon after a change of registrant may indicate possible fraudulent activity, a case in which a registrar may wish to deny the request, although other registrars have noted that there are also legitimate reasons for a change of registrant to precede a transfer request. It should be noted that “evidence of fraud” is already a separate reason for denying a transfer request (Reason #1).

4.5.4 Additionally, a greater capacity for multiple transfers within a set amount of time complicates the dispute resolution process, requiring more registry and registrar resources to resolve problem cases.

4.5.5 The Transfers Working Group has also noted that a reference in this provision to its inclusion or non-inclusion of bulk transfers (in accordance with Part B of the policy) could be beneficial. ICANN has typically considered a bulk transfer under Part B of the policy to be a “previous transfer;” however, staff supports the referring of this issue to the GNSO because it is desirable for the policy to contain a greater degree of precision on this point.

4.6 Additional comments

The Issues Report does not propose options for solutions to these issues. However, the Transfers Working Group has developed language that may be used as a starting point for further discussions in the document entitled “Points of Clarification” (see <http://gns0.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf>). Since this document is referred to repeatedly in the Constituency Statements, it has been appended as Annex 2 to this Initial Report for ease of reference in off-line situations.

5 Constituency views per issue

This section features issues and aspects regarding the four reasons for denial addressed in this PDP, as reflected in the statements from the GNSO constituencies. These entities are abbreviated in the text as follows (in the order of submission of the constituency statements):

RyC - gTLD Registry Constituency

BC - Business and Commercial Users' Constituency

NCUC - Non-Commercial Users' Constituency

RrC - Registrars' Constituency

IPC - Intellectual Property Interests Constituency

ISPC - Internet Service Providers and Connectivity Providers Constituency (not yet received)

Annex 1 of this report contains the full text of the constituency statements received. For full information, these should be read in their entirety. While the constituency statements vary as to aspects covered and highlighted, the following section attempts to summarize key constituency views on each of the four reasons for denial of transfer addressed by this PDP. This section also reflects further work recommended and the impact of potential measures, as submitted by a couple of constituencies.

5.1 Constituency Views on Denial Reason 1, "no payment"

The RyC declares support for efforts to develop revisions to the existing Inter-Registrar Transfer Policy to clarify each of the listed reasons for denying an inter-registrar transfer and suggests that careful consideration be given to the applicable work done by the Transfers Working Group as referenced in Sections 1.2, 1.3 and 1.4 of the Issues Report. In particular, careful consideration should be given to the Transfers Working Group document titled 'Points of Clarification Inter-Registrar Transfer Policy'.

The BC expresses support for clarification, realizing that there has been confusion and varying interpretation of the terms “previous” and “current” registration periods. The BC also supports revisions suggested in the RrC response; “that a name be transferred after expiry, provided that payment has been received by the registrar, for the registration term immediately preceding the expiry”. The BC notes that further clarification may be required with regard to the rules around the Auto-Renew Grace Period and states that variations between registrars in this area introduce cost and errors into the process. The BC encourages consistent implementation of the Auto-Renew Grace Period across registrars, while highlighting that other areas, like customer service and management features, are more appropriate for registrar differentiation vis-à-vis end-customers in a competitive marketplace.

The NCUC highlights the need to combat domain name hijacking and Whois abuse, two issues brought up in the web-posted staff paper, but does not provide specific comments regarding the four reasons for transfer denials addressed by this PDP.

The RrC expresses support for the proposed clarifications, specifically, “that a name be transferred after expiry, provided that payment has been received by the registrar, for the registration term immediately preceding the expiry”. The RrC adds that one registrar noted that “the proposed changes ... seem to imply that the Auto-Renew Grace Period is mandatory. It isn't, it is a period offered by the registry to the registrar. How the registrar chooses to implement it, or not, varies from registrar to registrar. That's as it should be in a competitive market. So we need to be careful not to create a situation where many registrars feel there is no value in a grace period of any length, and names end up in the RGP immediately on expiry.”

The IPC recommends a rewording of this provision, as follows:

“Non-payment:

(1) by the registrant of registrar’s fees for the previous registration period (including credit card charge-backs for registration or renewal fees) if the domain name has not yet expired; and/or

(2) by the registrant of any non-refundable fees paid to the registry during the auto-renew period for which payment has not been collected by the registrar from the registrant if the domain name is past its expiration date.

In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer."

The IPC states that the purpose of the suggested new text is to provide clarity to the process concerning the differences between transfer denials for non-payment within both expiry and auto-renew contexts.

5.2 Constituency Views on Denial Reason 2, "lock status"

The RyC declares support for efforts to develop revisions to the existing Inter-Registrar Transfer Policy to clarify each of the listed reasons for denying an inter-registrar transfer and suggests that careful consideration be given to the applicable work done by the Transfers Working Group as referenced in Sections 1.2, 1.3 and 1.4 of the Issues Report. In particular, careful consideration should be given to the Transfers Working Group document titled 'Points of Clarification Inter-Registrar Transfer Policy'.

The BC expresses support for clarification, focused on "readily accessible and reasonable means" for a registrant to address locks placed on domain names by registrars. The BC states that inconsistency in this area leads to serious problems for registrants and supports a uniform set of standards across registrars. The BC supports the RrC propositions; "that this standard be consistent with that established for providing auth-info codes elsewhere in the current policy" and "that it may be reasonable for registrants to elect to have additional verification requirements before a lock is lifted in order to secure domain names and prevent domain name hijackings." The BC also proposes expanding this clarification to include a consistent set of rules by which registrars would offer this option to registrants.

The NCUC highlights the need to combat domain name hijacking and Whois abuse, two issues brought up in the web-posted staff paper, but does not provide specific comments regarding the four reasons for transfer denials addressed by this PDP.

The RrC expresses support for the proposed clarifications, namely that an objective standard be set for defining “readily accessible and reasonable means” and specifically that this standard be consistent with that established for providing auth-info codes elsewhere in the current policy. The RrC also supports the proposition that it may be reasonable for registrants to elect to have additional verification requirements before a lock is lifted in order to secure domain names and prevent domain name hijackings.

The IPC recommends a rewording of this particular provision, as follows:

“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. “Readily accessible and reasonable” shall mean any mechanism which is (1) accessible from a registrar’s online interface; (2) can be activated electronically through that interface; (3) does not have a “time out” period or window for transfer; and (4) for which the registrar has posted clear and concise instructions for operation in the language of the registrar’s agreement with its registrants.”

The IPC further states the proposed rewording is intended to provide greater specificity about what a registrar needs to do to enable registrants to remove lock status, and thus to reduce the risk of abuse of the proviso. This change would facilitate for IPC members (and other registrants) in making inter-registrar transfer of names in "lock status," by providing a clearer path for getting the name out of that status. The IPC’s proposal would define “readily accessible and reasonable” in a manner that is more specific and transparent than the language suggested in the “Points” document.

5.3 Constituency Views on Denial Reason 3, “within initial 60 days”

The RyC declares support for efforts to develop revisions to the existing Inter-Registrar Transfer Policy to clarify each of the listed reasons for denying an inter-registrar transfer and suggests that careful consideration be given to the applicable work done by the Transfers Working Group as referenced in Sections 1.2, 1.3 and 1.4 of the Issues Report. In particular, careful consideration should be given to the Transfers Working Group document titled ‘Points of Clarification Inter-Registrar Transfer Policy’.

The BC expresses qualified support for a clarification, while noting that the absence of a clear definition of “initial registration period” has led to varying interpretations. It should be clarified whether there is only one such period, at the creation of a domain, or whether there is an initial registration period that is triggered by each transfer of a domain. The BC states that the initial registration period should only refer to the 60 days following the creation of the domain, not subsequent transfers. In addition, the BC supports removing the restriction on transfers after initial registration, since a number of 60-day locks are onerous and used by registrars to discourage losing domains to other registrars. Regarding security, the BC states that other policies can address the issues of theft and fraud and finds that registrars should improve their internal processes in such respects rather than applying 60-day holds across the board.

The NCUC highlights the need to combat domain name hijacking and Whois abuse, two issues brought up in the web-posted staff paper, but does not provide specific comments regarding the four reasons for transfer denials addressed by this PDP.

The RrC expresses support for the proposed clarification that the 60 days applies starting from the creation date of the domain name.

The IPC recommends a rewording of this particular provision, as follows:

“A domain name is in the first 60 days following its first date of registration as reflected in the WHOIS record, unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute.”

The IPC adds that the proposed change is based on the language recommended in the “Points” document but supplemented with additional language designed to eliminate an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

5.4 Constituency Views on Denial Reason 4, “within time limit after transfer”

The RyC declares support for efforts to develop revisions to the existing Inter-Registrar Transfer Policy to clarify each of the listed reasons for denying an inter-registrar transfer and suggests that careful consideration be given to the applicable work done by the Transfers Working Group as referenced in Sections 1.2, 1.3 and 1.4 of the Issues Report. In particular, careful consideration should be given to the Transfers Working Group document titled ‘Points of Clarification Inter-Registrar Transfer Policy’.

The BC expresses qualified support for clarification, while stating that the absence of a clear definition of “transfer” has led to varying interpretations. It should be clarified whether this applies only to inter-registrar transfers or is more broad-reaching. The BC reiterates its position that there are currently more 60-day locks than required (see 3 above) and states that this provision should apply to inter-registrar transfers only. The BC is strongly in favour of improving the security of domain transfers, but does not support 60-day locks as the mechanism to accomplish this goal, preferring improvements to registrar policy and process to achieve this.

The NCUC highlights the need to combat domain name hijacking and Whois abuse, two issues brought up in the web-posted staff paper, but does not provide specific comments regarding the four reasons for transfer denials addressed by this PDP.

The RrC expresses support for the proposed clarification, specifically; “Transferred” shall mean that an inter-registrar transfer, or transfer to the Registrar of Record has occurred in accordance with the procedures of this policy. It was also suggested that this could be widened to take into account specific situations where the registrant of a domain name has been legally and duly changed. The RrC adds that this would not include instances where a registrant has simply updated their existing contact information or credentials and no actual change of registrant had taken place. The RrC further states that one registrar noted that the policy discussion pertaining to bulk transfers is out of scope for this specific series of clarifications and would benefit from broader input from the ICANN community through a separate policy development process.

The IPC recommends a rewording of this particular provision, as follows:

“A domain name is within 60 days after being transferred from one registrar to another except (1) from being transferred back to the original Registrar in cases where both Registrars so agree; (2) where a decision in the dispute resolution process so directs; and/or (3) unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute.”

The IPC adds that the proposed change is designed to eliminate (1) an arbitrary requirement that a successful complainant in a UDRP or other proceeding must take possession of a domain name at the registrar of record rather than being in a position to transfer it away immediately to the complainant’s choice of registrar; and (2) an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

5.5 Impact of Potential Measures on the Constituencies

A couple of constituency statements, as follows, describe the possible effects on the constituencies of implementing changes.

The RyC states that revising the Inter-Registrar Transfer Policy to clarify the allowable reasons for denying a registrar transfer will have a beneficial effect on registries or sponsors if it eliminates some of the ambiguity in the existing policy. Registries/sponsors are responsible for resolving transfer disputes so added clarity would likely result in fewer disputes filed and easier resolution of disputes in cases related to the four reasons covered in this PDP. The RyC adds that there could be a small decrease in registry/sponsor costs for administering the registrar transfer dispute process but it probably would not be material because the number of transfer disputes is quite minimal. Furthermore the RyC states that registries/sponsors should be able to implement any policy revisions very quickly because it would simply be a matter of updating the policy.

The IPC states that if the IPC's suggestions are adopted, members of the Constituency will be in a better position to address brand abuses and to resolve disputes in a more expedited fashion unhindered by an arbitrary sixty (60) day requirement that a registrant of a disputed domain name must retain title to a domain name even if both parties to a dispute agree otherwise. The IPC adds that, since these proposed changes will shorten the "life span" of some domain disputes, the financial impact for members of the Constituency will be positive in the form of lower enforcement costs. The IPC further states its belief that the suggestions could be adopted by the community within a matter of weeks.

5.6 Further work suggested by Constituencies

The BC and the NCUC have both brought up views on other issues with the Inter-Registrar Transfer Policy, of interest for parallel ongoing work regarding the planning of future PDPs relating to such issues.

6 Conclusions and Next Steps

The four reasons for denial of transfers identified for potential clarification in this PDP have been addressed by the GNSO constituencies in the statements supplied for this Initial Report. The constituencies express general support for further work on clarifying these reasons. Most make positive references to the clarification considerations given in the Issues Report and the “Points for Clarification” document from the WG. Some also provide detailed comments as well as proposed new text for the provisions, for further considerations during this PDP.

This Initial Report is an early step in the GNSO Policy Development Process, and the report will be posted for public comment for 20 days as prescribed by the ICANN bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). Public comments will then be incorporated into a “Final Report” by ICANN staff and submitted to the GNSO Council Chair within ten calendar days following the end of the public comment period. The Final Report (along with the preceding Issues Report) will serve as a basis for subsequent deliberations and actions by the GNSO Council in formulating recommendations to the ICANN Board regarding policy changes that should be made to clarify these transfer denial reasons.

Annex 1 - Constituency Statements

GNSO gTLD Registry Constituency Statement

Issue: Inter-Registrar Transfer Policy - Clarification of Reasons for Denial of a Transfer Request

Date: 21 December 2007

Issues Report URL: <http://gns0.icann.org/issues/transfers/issues-report-transfer-denial-clarifications-19oct07.pdf>

General RyC Information

- Total # of eligible RyC Members²: 15
- Total # of RyC Members: 15
- Total # of Active RyC Members³: 15
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 11
- Names of Members that participated in this process:
 1. Afilias (.info)

² All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RyC Articles of Operations can be found at http://www.gtldregistries.org/about_us/articles.

³ Per the RyC Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

2. DotCooperation (.coop)
 3. Employ Media (.jobs)
 4. Fundació puntCAT (.cat)
 5. Global Name Registry - GNR (.name)
 6. mTLD Top Level Domain (.mobi)
 7. NeuStar (.biz)
 8. Public Interest Registry - PIR (.org)
 9. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
 10. Telnic (.tel)
 11. VeriSign (.com & .net)
- Names & email addresses for points of contact
 - Chair: David Maher, dmaher@pir.org
 - Vice Chair: Jeff Neuman, Jeff.Neuman@Neustar.us
 - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
 - RyC representative for this statement: cgomes@verisign.com

Regarding the issue noted above, the following position represents the views of the ICANN GNSO gTLD Registry Constituency (RyC) as indicated. Unless stated otherwise, the RyC positions were arrived at through a combination of RyC email list discussion and RyC meetings (including teleconference meetings).

RyC Position

1.1. Position Description

- 1.1.1. The issues which are the subject of this report concern four points occurring in Section 3 of the Inter-Registrar Transfer Policy, in the list of reasons for which a Registrar of Record may deny a transfer request. These are:
 - Denial for nonpayment (reason 5)
 - Denial for lock status (reason 7)
 - Denial for 60 days of initial registration period (reason 8)
 - Denial for 60 days after previous transfer (reason 9).⁴
- 1.1.2. The RyC supports efforts to attempt to develop revisions to the existing Inter-Registrar Transfer Policy to clarify each of the above listed reasons for denying an inter-registrar transfer and suggests in so doing that careful consideration be given to the applicable work done by the Transfers Working Group as

⁴ Issues Report Section 4.1

GNSO Initial Report on Transfer Policy: Denial Reasons

Authors: Olof Nordling, olof.nordling@icann.org

referenced in Sections 1.2, 1.3 and 1.4 of the Issues Report. In particular, careful consideration should be given to the Transfers Working Group document titled 'Points of Clarification Inter-Registrar Transfer Policy'.⁵

1.2. **Level of Support of Active Members:** Supermajority

- 1.2.1. # of Members in Favor: 10
- 1.2.2. # of Members Opposed: 0
- 1.2.3. # of Members that Abstained: 1
- 1.2.4. # of Members that did not vote: 4

1.3. **Minority Position(s):** None

1.4. **General impact on the RyC:** Revising the Inter-Registrar Transfer Policy to clarify the allowable reasons for denying a registrar transfer will have a beneficial effect on registries or sponsors if it eliminates some of the ambiguity in the existing policy. Registries/sponsors are responsible for resolving transfer disputes so added clarity would likely result in fewer disputes filed and easier resolution of disputes in cases related to the four reasons covered in this PDP.

1.5. **Financial impact on the RyC:** There could be a small decrease in registry/sponsor costs for administering the registrar transfer dispute process but it probably would not be material because the number of transfer disputes is quite minimal.

1.6. **Analysis of the period of time that would likely be necessary to implement the policy:** Registries/sponsors should be able to implement any policy revisions very quickly because it would simply be a matter of updating the policy.

⁵ <http://gns0.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf>

GNSO Initial Report on Transfer Policy: Denial Reasons

Authors: Olof Nordling, olof.nordling@icann.org

Statement of the Business Constituency (BC)

RE: Points of Clarification of the Inter-Registrar Transfer Policy

15 February 2008

Overview

The Business Constituency supports actions which improve the security, efficiency and effectiveness of the inter-registrar domain transfer process. We support all of these clarifications of existing policy as a useful step in the right direction.

1. Transfer can be denied for non-payment

Clause in question;

“No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for **previous** or **current** registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer (Reason #5 in the policy).

BC Position – Support clarification

BC Impact

The Business Constituency understands that there has been confusion and varying interpretation of the terms “previous” and “current” registration periods and supports the revising the language as suggested by the Registrars Constituency response. Namely; “that a name be transferred after expiry, provided that payment has been received by the registrar, for the registration term immediately preceding the expiry”

It would appear, from the Registrar Constituency comments, that further clarification may be required with regard to the rules around the Auto-Renew Grace Period. Business Constituency members would prefer to eliminate variations between registrars in this area as well. Arguments that differing ARGP implementations between registrars bring value to customers pale in comparison to the cost and errors introduced into the process. Thus the Business Constituency would encourage that the Auto-Renew Grace Period be implemented consistently across registrars, and that we look to other arenas (like customer service, management features, etc.) for registrars to demonstrate their virtues to end-customers in a competitive marketplace.

2. Transfer can be denied if the domain is already in “lock status”

Clause in question;

“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 (Reason #7 in the policy).”

BC Position – Support clarification

BC Impact

The Business Constituency understands that the focus of this clarification is on “readily accessible and reasonable means” for a registrant to address locks placed on domain names by registrars. We emphatically agree that inconsistency in this area leads to serious problems for registrants and support a uniform set of standards across registrars. We support the proposition made by the Registrars Constituency;

"that this standard be consistent with that established for providing auth-info codes elsewhere in the current policy"

The Business Constituency also supports the idea, again raised in the Registrar Constituency comments, “that it may be reasonable for registrants to elect to have additional verification requirements before a lock is lifted in order to secure domain names and prevent domain name hijackings.” We would encourage that the policy group consider expanding this clarification to include a consistent set of rules by which registrars would offer this option to registrants.

3. Transfer can be denied if the domain is within 60 days of the creation date of the domain name

Proposed clarification;

“A domain name is in the first 60 days of an [initial registration period](#) (Reason #8 in the policy).”

BC Position – Support – with qualifications

BC Impact

The Business Constituency understands that there is not currently a clear definition of “initial registration period” which has led to varying interpretations. We support clarifying whether there is only one such period (which the domain is created), or whether there is an initial registration period that is triggered by each transfer of a domain. We support the position that the initial registration period only refers to the 60 days following the creation of the domain, not subsequent transfers.

In addition, the Business Constituency supports removing the restriction on transfers after initial registration. It is the view of the Business Constituency that a number of 60-day locks (such as these and minor WHOIS changes for example) are onerous, and are used by registrars to discourage losing domains to other registrars. To those who argue that these are needed to ensure security, we submit that there are other policies that can speak to the issues of theft and fraud, and that registrars should improve their internal processes to address this rather than applying 60-day holds across the board.

4. Transfer can be denied if the domain has been transferred within 60 days

Proposed clarification;

“A domain name is within 60 days (or a lesser period to be determined) after being **transferred** (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs) (Reason #9 in the policy).”

BC Position – Support – with qualifications

BC Impact

The Business Constituency understands that there is not currently a clear definition of “transfer” which has led to varying interpretations. We support clarifying whether this applies only to inter-registrar transfers or is more broad-reaching. In keeping with our position that there are currently more 60-day locks than required (see 3 above), we support the narrower position that this provision apply to inter-registrar transfers only.

In general, the Business Constituency is strongly in favor of improving the security of domain transfers, but does not support 60-day locks as the mechanism to accomplish this goal. Rather, we would like to see improvements to registrar policy and process that can accomplish this.

Statement of the Non-Commercial User's Constituency (NCUC)

RE: Intra-Transfer Registrar Policy Development Process

25 January 2008

Background

Domain hijacking, in which one party fraudulently takes control of another's domain name, allows unethical hackers to direct traffic to sites under their control, conduct denial of service attacks, and collect identifying or financial data from unsuspecting users. These attacks not only cause direct harm to those involved but also undermine the security and stability of the Internet and e-commerce generally. Every person who uses the Internet has a clear interest in preventing these attacks.

As the SSAC report makes clear, unethical hackers are coupling domain hijackings with an inter-registrar transfer to take advantage of a natural point of confusion and human psychology. When a domain is transferred from one registrar to another, the losing registrar may feel less responsibility for catching or correcting fraud, whereas the gaining registrar may have less reason to suspect fraud and will have no prior relationship with the victimized registrant. This, plus miscommunication between the registrars, can prevent or delay efforts to correct the domain hijacking once detected. ICANN exists to coordinate such communication, and should endeavor to adjust its policies to take these attacks into account.

GNSO Action

The GNSO currently has before it an extensive list of proposals on how to prevent domain hijackings and to remedy them more rapidly once detected. In considering these proposals, the GNSO should recognize these two goals as distinct, and ensure that both are

addressed. Moreover, while the registrars can create their own internal security policies to help prevent domain hijacking, all parties are dependent on ICANN to set sound policies for the coordination of two or more registrars and a registrant. Therefore, the GNSO should carefully consider all proposals that may modify policies for intra-registrar transfer and remedy of a domain hijacking.

When considering these proposals, the GNSO should also recognize that some may be implemented quickly and easily whereas others may require more extensive discussion. Since these proposals are intended to address an existing vulnerability, timely action is important. Tying all of these proposals to the same policy development process runs the risk that easily agreed upon fixes will be needlessly delayed or, conversely, that discussion of more complicated or controversial remedies will be hurried or cut short. Therefore, it may be appropriate for the working group to submit a short list of easily agreed upon proposals before moving on to the more time consuming proposals.

Whois Issues

Because whois reform has been the subject of a separate policy development process, none of the proposed methods of countering domain hijacking include any changes to the whois database policy. Given the contentious nature of whois reform, it unquestionably warrants its own PDP. Yet to discuss domain hijacking without discussing whois is to ignore an elephant standing in the middle of the room. The implications of the current whois policy for domain hijacking should not be ignored merely because the issues straddle two working groups.

As the investigation into high profile domain hijackings has made clear, whois data is a valuable resource to Internet scammers. The database lets the nefarious hacker know whom he should impersonate in a social engineering attack, and which email address the registrar will accept requests from. Because this information is made publicly available through whois, this tool has been given to the black-hat hackers for free. Restricting access to whois data may be the easiest and most effective way to combat domain hijackings. While it may be appropriate to discuss these issues in another working group, they should not be allowed to slip through the cracks.

The Collected Views of the Registrar Constituency Pertaining to the Staff Paper Entitled “The Points of Clarification of the Inter-Registrar Transfer Policy”.

Comments to ross@tu cows.com, on behalf of the GNSO Registrar Constituency
1/29/2008

The following statements represented the collected views of participants in the ICANN GNSO Registrar Constituency pertaining to the staff paper referenced. This document is not an exhaustive statement of the entirety of the views of the constituency membership, nor does it constitute a formal policy position of the constituency. This document simply reflects the views of those registrars who chose to make written submissions in response to the Council’s call for submissions. Note that comments were received from MarkMonitor after deadline for submissions and after the summary of comments had already been prepared. The comments of MarkMonitor should be given equal weight to all other submissions made, even though they were not specifically contemplated during the summary of submissions. Ref. <http://gns o.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf>

Summary of Views of the Constituency Participants

1. Denials for Non-payment

There is support for the proposed clarifications, specifically, “that a name be transferred after expiry, provided that payment has been received by the registrar, for the registration term immediately preceding the expiry”.

One registrar noted that “the proposed changes ... seem to imply that the Auto-Renew Grace Period is mandatory. It isn't, it is a period offered by the registry to the registrar. How the registrar chooses to implement it, or not, varies from registrar to registrar. That's as it should be in a competitive market. So we need to be careful not to create a situation where many registrars feel there is no value in a grace period of any length, and names end up in the RGP immediately on expiry.”

2. Lock/Unlock Measures

There is support for the proposed clarifications, namely that an objective standard be set for defining “readily accessible and reasonable means” and specifically that this standard be consistent with that established for providing auth-info codes elsewhere in the current policy. There also is support for the proposition that it may be reasonable for registrants to elect to have additional verification requirements before a lock is lifted in order to secure domain names and prevent domain name hijackings.

3. 60 Days – Initial Registration period

There is support for the proposed clarification that the 60 days applies starting from the creation date of the domain name.

4. 60 Days – Previous Transfer

There is support for the proposed clarification, specifically;

“Transferred” shall mean that an inter-registrar transfer, or transfer to the Registrar of Record has occurred in accordance with the procedures of this policy. It was also suggested that this could be widened to take into account specific situations where the registrant of a domain name has been legally and duly changed. However, this would not include instances where a registrant has simply updated their existing contact information or credentials and no actual change of registrant had taken place.

One registrar noted that the policy discussion pertaining to bulk transfers is out of scope for this specific series of clarifications and would benefit from broader input from the ICANN community through a separate policy development process.

Exhibit A – Full Text of Registrar Comments

Comments from Bruce Tonkin, Melbourne IT

1) Regarding Denial for non-payment

-support the original TF intent

-ie a name may be transferred after expiry, provided payment has been received for the term leading up to that expiry.

-for Melbourne IT we would generally require the registrant to explicitly release a name from registrar-lock during that period. This helps establish that the registrant is currently with Melbourne IT and is making a choice to move to another registrar. Some of the misleading renewal notices have implied that the registrant is simply paying the invoice from their current supplier.

(2) lock/unlock measures

I support the proposed clarification that the standard for reasonable measures I no stricter than measures to change contact details or name server details

(3) 60 days-initial registration period

I support the proposed clarification-that the 60 days applies from the creation date.

(4) 60 days-previous transfer

I support the proposed clarification.

I am OK with widening this to take into account situations where the legal registrant of a domain name is changed (as compared to changing an email address). This would be a REGISTRANT transfer. This would relate to a change in the name or organisation field of the registrant contact object. I do not support the interpretation that the 60 days applies after a change to email address, as often the change of email address is associated with updating credentials as a pre-cursor to allowing a transfer away.

Comments from Paul Diaz, Network Solutions

Network Solutions recognizes that domain hijacking and fraud are serious problems for our industry. We also believe that ICANN's current Inter-Registrar Transfer Policy fails to protect registrants from such abuse. In fact, the Policy has failed registrants even when it had been established that a domain name was compromised prior to a transfer.

In order to provide our customers more security and protect them from unauthorized account changes or transfer attempts, Network Solutions locks domain names for 60 days after a change in Registrant and/or Administrative Contact information. We believe that our business practice is entirely consistent with the Transfer Policy, including this section now under PDP review for "clarification": 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.

We provide a readily accessible and reasonable means to remove the lock once the transfer requestor has verified his or her identity. The customer can contact Network Solutions' 24x7 Customer Service and after clearly establishing his or her identity as the original Registrant or Administrative Contact proceed with the transfer request. Alternatively, the customer can choose to wait until the lock period expires and then transfer the domain. Either scenario meets the terms of the Transfer Policy.

The 60-day lock provides an important security precaution that is otherwise missing from the Transfer Policy. While this may not have direct bearing on the narrowly focused work of the current PDP, it is an important issue for Network Solutions and our customers. Our practice gives the legal registrant a chance to notice the unauthorized changes to their account and contact us before their domain has been stolen or sold. It also gives Network Solutions an opportunity to prevent other names from being hijacked by the same fraudster using the same *modus operandi*.

Finally, we also should note that the current PDP is only focused on lock/unlock procedures. While the original Task Force recognized that further policy work was needed regarding what to do when there are changes to Whois contact information "simultaneous to transfer or within a period after transfer" (see <http://gns0.icann.org/drafts/Transfer-Policy-Issues-23aug07.pdf>), this issue is not part of the current PDP. While this issue may be addressed in the future, our current practice is not a subject for review under the terms of the current PDP.

Comments from Tim Ruiz, The GoDaddy Group

Specific comments on the suggested changes:

1. Denial for nonpayment (reason 5)

The concern I have with the proposed changes is that they seem to imply that the Auto-Renew Grace Period is mandatory. It isn't, it is a period offered by the registry to the registrar. How the registrar chooses to implement it, or not, varies from registrar to registrar. That's as it should be in a competitive market. So we need to be careful not to create a situation where many registrars feel there is no value in a grace period of any length, and names end up in the RGP immediately on expiry.

2. Lock/unlock procedures (reason 7)

There needs to be an exception made here for situations similar to what's described in reason 6: Express written objection to the transfer from the Transfer Contact. (e.g.-email, fax, paper document or other processes by which the Transfer Contact has expressly and voluntarily objected through opt-in means). Some registrars, including Go Daddy, have products/services that a customer may opt-in to at the time of registration. The whole point of it is additional security and safety. So turning it off may be more complicated than performing other functions, but the customer has chosen the more complicated option.

There needs to be an allowance for the registrant to choose something else, and for the registrar to be able to provide it.

3. 60 days of initial registration (reason 8)

No comment.

4. 60 days of previous transfer (reason 9)

No comment.

Comments from Ross Rader, Tucows Inc.

Tucows agrees with the clarifications presented in the Staff paper and urges the GNSO Council to implement these simple policy clarifications as quickly as possible and end current registrant confusion and the continued loss of domains.

Tucows is a long time participant in the Inter-registrar transfer policy development processes. Ross Rader was a co-chair of the original DNSO working group and has continued on with a high level of involvement in the GNSO transfer policy discussion. We believe we are especially qualified to speak on the historical intent of the original working group and the subsequent challenges in instantiating these requirements as functional policy.

The root of the confusion stems from a feature of the DNSO policy development process which required ICANN staff, not the DNSO, to formulate the final statements of policy and incorporate them within the various operating agreements after the policy requirements had been recommended to the ICANN Board by the DNSO Council. With the advent of the GNSO, this process changed. Policy recommendations of the GNSO that are approved by the ICANN Board of Directors are now incorporated in the operating agreements by reference. ICANN's Inter-Registrar Transfer Policy was agreed to during a time of transition. Operational details are often overlooked in such circumstances. In this case, the policy was never "translated" into a coherent statement of policy by staff as had been agreed to. This is most likely due to a change in ICANN's CEO and also its General Counsel around the time the policy was adopted. This not intended to assign blame, but rather, to point out that by current standards, implementation of this policy is incomplete.

The weakness of this implementation has lead to confusion amongst staff, registrars, registries and registrants. Unfortunately, this confusion is also being exploited and is leading to the loss of domain names by registrants on a regular basis. The ICANN

Community must take these losses seriously and work quickly to fully implement a functional statement of policy on this subject.

Regarding “Denial for Non-Payment”.

Registrars should permit the transfer of domain names to another registrar after a domain name has expired, provided that they have received payment for the immediately preceding registration period. We fully support the specific clarifications outlined in the staff paper on this subject.

Regarding “Lock/unlock measures”.

The original task force intention concerning this policy requirement was to ensure that Registrants could easily unlock their domain names. At the time, domain names were being locked with no apparent unlock mechanisms. There was explicit discussion, as indicated in the staff paper, that if Registrars were using the lock mechanism, that the unlock mechanism be “reasonable” and “readily accessible”. It is highly important that these terms be qualified in order to finally implement this policy properly. We fully support the clarifications in the staff paper.

Regarding “60 days – Initial Registration Period”

Tucows fully supports the suggested clarification in the staff paper. It is fully consistent with the intention of the original working group.

Regarding “60 days – Previous Transfer”

Tucows fully supports the suggested clarification in the staff paper. It is fully consistent with the intention of the original working group and implementation review group.

We note that the issue of inclusion or non-inclusion of this clarification as it relates to bulk transfers was not contemplated in the original or ensuing policy discussions. This is a highly important issue, but it should have the benefit of full community deliberation prior to any implementation as policy. We encourage the GNSO Council to raise this as a separate matter for policy development and not address it as part of these clarifications.

We thank the Council for this opportunity to comment on this important matter and look forward to an expedient and productive policy development process.

Comments from Margie Milam, MarkMonitor, Inc.

[editors note: These comments were received after deadline for submissions and after the summary of comments had already been prepared. These comments should be given equal weight to all other submissions made, even though they were not specifically contemplated during the summary of submissions.]

MarkMonitor agrees with the clarifications spelled out in the Staff Paper and urges the GNSO Council to support their implementation as quickly as possible.

In addition, MarkMonitor would like to make the following specific observations:

Lock/unlock procedures (reason 7)

MarkMonitor believes that it is appropriate to spell out the reasons that a registrar should lock/unlock a domain name in order to facilitate legitimate transfers and competition among registrars. It is important that ICANN’s policy provide the

registrant with the choice, at any time during the registration term, to change registrars if it is unhappy with the level of customer service, prices, or additional services offered by its current registrar. Consequently, ICANN's policy should clarify that any registrant, at any time may request that a domain name be unlocked, notwithstanding any election or opt-in mechanism selected at the time of registration.

60 Day- Registrar Transfer

MarkMonitor supports the clarification that this policy applies only to transfers among registrars. MarkMonitor does not support extending this policy to registrant transfers or to changes in the registrant's WHOIS contacts, as this would impose unnecessary delays in inter-registrar transfers and in the significant secondary market for domain resales.

IPC Position Statement
On
Points of Clarification
Inter-Registrar Transfer Policy
February 20, 2008

The GNSO Council has asked for constituency position statements on a document entitled “Points of Clarification Inter-Registrar Transfer Policy” (the “Points”) (see <http://gns0.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf>). Section 3 of the Inter-Registrar Transfer Policy (the “Policy”) lists several reasons why a registrar may deny a transfer. The Points lists four of these for further consideration. In general, the IPC agrees with most of the Points document; however, we suggest a few revisions designed to provide greater clarity and efficiency. These are:

1. Denial for Non-Payment

The Policy states that a registrar can deny transfer if:

“No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.”

The IPC recommends that this text be deleted and replaced with:

“Non-payment:

(1) by the registrant of registrar’s fees for the previous registration period (including credit card charge-backs for registration or renewal fees) if the domain name has not yet expired; and/or

(2) by the registrant of any non-refundable fees paid to the registry during the auto-renew period for which payment has not been collected by the registrar from the registrant if the domain name is past its expiration date.

In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.”

The purpose of the IPC’s suggested changes is to provide clarity to the process concerning the differences between transfer denials for non-payment within both expiry and auto-renew contexts.

2. Lock/Unlock Measures

The Policy states that a registrar can deny transfer if:

“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.”

The IPC recommends that this text be deleted and replaced with:

“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. “Readily accessible and reasonable” shall mean any mechanism which is (1) accessible from a registrar’s online interface; (2) can be activated electronically through that interface; (3) does not have a “time out” period or window for transfer; and (4) for which the registrar has posted clear and concise instructions for operation in the language of the registrar’s agreement with its registrants.”

IPC's proposed changes are intended to provide greater specificity about what a registrar needs to do to enable Registered Name Holders to remove lock status, and thus to reduce the risk of

abuse of the proviso. This change would facilitate IPC members (and other registrants) in making inter-registrar transfer of names in "lock status," by providing a clearer path for getting the name out of that status. The IPC's proposal would define "readily accessible and reasonable" in a manner that is more specific and transparent than the language suggested in the "Points" document.

3. **60 days – Initial Registration Period**

The Policy states that a registrar can deny transfer if:

"A domain name is in the first 60 days of an initial registration period."

The IPC recommends that this text be deleted and replaced with:

"A domain name is in the first 60 days following its first date of registration as reflected in the WHOIS record, unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute."

The IPC's proposed changes are based on the language recommended in the Points document but supplement it with additional language designed to eliminate an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

4. **60 days – Previous Transfer**

The Policy states that a registrar can deny transfer if:

“A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).”

The IPC recommends that this text be deleted and replaced with:

“A domain name is within 60 days after being transferred from one registrar to another except (1) from being transferred back to the original Registrar in cases where both Registrars so agree; (2) where a decision in the dispute resolution process so directs; and/or (3) unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute.”

The IPC’s proposed changes are designed to eliminate (1) an arbitrary requirement that a successful complainant in a UDRP or other proceeding must take possession of a domain name at the registrar of record rather than being in a position to transfer it away immediately to the complainant’s choice of registrar; and (2) an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

A. Constituency Process

This statement was drafted by an IPC participant in GNSO council activities related to inter-registrar transfer. After several iterations, a final draft was circulated for comment to the full IPC membership list on February 14, with notice that the issue would be up for decision at the next IPC membership call on February 20. No proposed amendments were received prior to the call. On February 20, on a teleconference attended by 14 IPC members/representatives, the draft was presented and approved without objection.

B. Effects on the Constituency

If the suggestions set forth by the IPC herein are adopted, members of the Constituency will be in a better position to address brand abuses and to resolve disputes in a more expedited fashion unhindered by an arbitrary sixty (60) day requirement that a registrant of a disputed domain name must retain title to a domain name even if both parties to a dispute agree otherwise. Since these proposed changes will shorten the “life span” of some domain disputes, the financial impact for members of the Constituency will be positive in the form of lower enforcement costs.

C. Time Period for Implementation.

We believe the suggestions set forth herein could be adopted by the community within a matter of weeks.

Annex 2 - "Points of Clarification" Document

Notes for discussion purposes only

Points of Clarification Inter-Registrar Transfer Policy

The four points below occur in Section 3 of the policy, in the list of reasons for which a Registrar of Record may deny a transfer request.

1. Denial for nonpayment (reason 5)
2. Lock/unlock procedures (reason 7)
3. 60 days of initial registration (reason 8)
4. 60 days of previous transfer (reason 9)

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1. Denial for nonpayment

Current language:

No payment for previous registration period (including credit-card chargebacks) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.

Original TF intent:

<http://www.icann.org/gns0/transfers-tf/report-exhd-12feb03.htm>

"The general principle seems to be if a registrar can obtain a refund for the registry fee following a transfer during the 45 day grace period, than the registrar should not be able to deny the transfer for non-payment."

Clarification:

Most confusion in relation to this provision occurs in regard to the auto-renew grace period. If this provision is trying to create a distinction between past-due registration fees that the registrar is owed for services it has already provided, and renewal fees which a registrar may wish to collect, this can be clarified in various ways, for example:

- Including an explicit statement that this reason may not be cited for nonpayment of fees for time added in the auto-renew function, e.g., "Registration renewal fees for a domain name within the Auto-Renew Grace Period as defined in the Registry's functional specifications are not considered fees for a current registration period" or a more generic statement that in any circumstance where the registrar is eligible to receive a credit back of its fees from the registry, they may not deny a transfer for nonpayment by the registrant.
- Creating definitions for the current language, on how to calculate previous, current, pending, and future registration periods (e.g., "a name may be considered to be

within a current registration period if, on the date of the query, the current date falls between the Creation Date and the Expiration Date shown in the Whois record for the domain name”).

2. Lock/unlock measures

Current language:

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.

Original TF intention:

<http://www.icann.org/gns0/transfers-tf/report-12feb03.htm>

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.

Clarification:

Staff noted in the working group that ICANN could more efficiently enforce this provision if there were a test available for what is "reasonable or readily accessible." This could be addressed using the same standard that exists within the policy for complying with provision of the authInfo code. For example: "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."

3. 60 days - Initial Registration Period

Current language:

A domain name is in the first 60 days of an initial registration period.

Original TF intention: no references located

Clarification:

If the intention is that this should refer only to the first 60 days after a name is registered, then it may make more sense to refer not to any particular "period" but to the start date from which the 60 days is calculated. This could be, for example, the creation date shown in the registry or registrar Whois (item 3.3.1.4 of the RAA). The reason for denial could be framed as something like:

"The transfer was requested within 60 days of the creation date as shown in the registry/registrar Whois record for the domain name."

4. 60 days - Previous Transfer**Current language:**

A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).

Original TF intention: no references located

Clarification:

If the intention is that this should refer to an inter-registrar transfer, then the 60 days could be tied to the date that the name was received by the registrar of record. This could be addressed by adding a sentence something like:

"Transferred" shall mean that an inter-registrar transfer, or transfer to the Registrar of Record has occurred in accordance with the procedures of this policy.

Note: An additional reference in this definition to its inclusion or non-inclusion of bulk transfers (in accordance with Part B of the policy) may be beneficial.