

GNSO Working Session in Los Angeles

Saturday 27 October 2007

Item 4 Inter-Registrar Transfer Policy

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

Attendance list:

Avri Doria Chair Nom Com, Jon Bing - Nom Com, Chuck Gomes Vice chair - Ry
Edmon Chung – Ry, Cary Karp – Ry, Norbert Klein – NCUC, Robin Gross – NCUC, Bilal Beiram –
CBUC, Mike Rodenbaugh CBUC, Tony Holmes - ISP
Kristina Rosette – IPC, Ute Decker – IPC, Ross Rader - RR
Liaison
Alan Greenberg - ALAC
Remote participation:
Mike Warnecke - Observer WHOIS wg, Steve Metalitz - Chair IPC

Observers:

Milton Mueller - NCUC
Shaundra Watson INTA
Paul Stahura - eNom
Neal Blair - CBUC
Palmer Hamilton - CBUC pm
Philip Corwin - Attorney
Desiree Milosovich
Ching Chiao - dot asia
Margie Milam - Mark monitor
Marilyn Cade - CBUC
Jeff Neuman - Ry
Matthieu Crédou - .bzh
Werner Staub - CORE
Elmar Knipp - Core
Dirk Krischenowski dot Berlin
Paul Lecouthe - CORENIC
Laurie Anderson - Godaddy
Lisa Villeneuve - Godaddy
Pam Bunn - Godaddy
Martha Johnston - Godaddy
Lynn Goodendorf - InterContinental Hotel Group - WHOIS
Stefano Trumpy - GAC
Artur Lindgren - NICTRADE Sweden
Henrik Erkkonen - NICTRADE Sweden
Claudio DiGangi - INTA International Trade Association
Chuck Warren -

AVRI DORIA: So now to the last one for the day, the add-on subject of the day, and I've asked basically we got -- we asked for and got an issues report relating to inter-registrar transfers, and so Karen's going to give us an overview on the issues report. Where we are at in this meeting is that we need to decide whether we're going to initiate a PDP on this, and if we decide that we are going to initiate a PDP, then we'll need to decide on the task force versus non-task force process. Or whether we're going to say, "Gee, you know, we need to spend some more time and we'll do this at our next teleconference."

But in any case, we need to talk about the issues report and see where we go from here, so -- Karen? >>KAREN LENTZ: Okay. Thank you. This should be pretty quick. I'm going to go through the major parts of the issues report which are some background on what the issues are, well, some background to how we got to this point, what the specific issues are that are in the report, and then what the staff recommendation is, in terms of moving forward.

So the -- the issues report concerns a specific set of issues relating to the inter-registrar transfer policy, or transfer policy for short, which is an existing GNSO consensus policy from 2004.

And it -- you know, the policy relates to, you know, transfers of domain names between registrars, so what procedures and requirements need to be followed, if I'm -- if I have a domain name and I want to move from registrar A to registrar B.

The original consensus policy recommendations also had recommended that there be some monitoring by the GNSO for the effectiveness of the policy at certain intervals, and so a working group was formed by the council to review some of the issues based on experiences after implementation of the policy, and then recommend possible further steps toward the work to be done on it.

The working group outputs came out last month. There were three pieces to that, and each of those had a resolution from the council as far as next steps.

And that was discussed at the meeting on the 20th of September.

The first output was a draft advisory which contained certain reminders and clarifications about the policy, and what the council resolved was to -- that that draft advisory would be distributed to the constituencies for comment, and then based on that, you know, a decision about whether to go ahead and post it as an advisory to the community.

The second output from the working group was an overall list of policy issues that could possibly be referred to the council to do some more work on, and the council resolved on that one to form a short-term working group to look at the whole broad list and do some prioritization in terms of what should be -- you know, what's really important to address, and when.

And then finally, the third output was a short list of issues that all had to do with Section 3 of the policy, and what is in Section 3 of the policy is a specific list of reasons when -- or circumstances where a registrar can prevent a registrant from transferring a domain name, so they can actually deny a transfer that's been requested.

And there are listed in the policy nine specific limited cases when that can happen.

And so -- and I'll talk about those issues in more detail in a second.

So there's a list of four of those, and the council resolved to request an issues report just on those particular -- that particular set of issues as Step 1 to possibly doing a policy development process on those.

So as I said, there are four issues that are discussed in the issues report, and I'll just talk about them really briefly. There's a lot more detail in the report.

But the first one is non- -- you know, to put it briefly, is nonpayment. That's the reason that the transfer can be denied. But there is quite a bit of ambiguity or lack of definition in terms of the time frames that are listed in that clause in the policy. It lists some terms like current, previous, pending or future registration period, which are not defined and can be sort of calculated differently, depending on which set of data that you're looking at.

The second issue or second point in the policy is registrar lock status, and that one, you know, provides that a registrar can deny a transfer if the name is on registrar lock status, but the registrar also has to provide a, quote, readily accessible and reasonable means for the lock status to be removed.

And so, you know, clearly there's -- it's difficult to uniformly apply something like readily accessible and reasonable without a little more -- you know, some more standards or tests around that.

The third one is 60 days of an initial registration period. "Initial registration period" is not defined. There are, you know, views of that as meaning one thing or another thing, or maybe several things. And then the same -- the last one is 60 days of a previous transfer, which as above, "a previous transfer" can be interpreted to mean a few different things.

For example, if I've sold my name to somebody else, is that considered to be a previous transfer or is it only an inter-registrar transfer? Which happens under the policy.

So really the -- the aim at having an issues report on these -- on this specific set of issues is to do some clarification and tightening of the language that's there. And the approach that's being suggested is to sort of separate this set of issues from the whole broad list, and do something that I think is expected to be relatively quick, if you limit it to these particular things and that, you know -- set the scope of what you're trying to achieve.

So in the report, there -- the last part of it is a staff recommendation on how to proceed, and what the bylaws require is that staff look at some questions about whether the issues are within the scope of ICANN's mission statement, whether it -- whether they're broadly applicable to multiple situations or organizations, whether they're likely to have lasting value or applicability, whether they will establish a guide or framework for future decision making, and whether they will implicate or affect an existing ICANN policy.

And the analysis from staff was positive on all of those points.

So it was concluded that the issues are within scope of -- of ICANN policy process and the GNSO, something that could be appropriately worked on. Staff thought that it would be beneficial to do some

work towards further clarification and tightening of the language that's there in the existing policy, and staff also recognized that there is -- and this is not the only set of issues that has to do with the transfer policy. There are others, and staff would also continue to support the further work on -- possible further work on some of those.

So that's an overview of what's in the report, and I'll be happy to take any questions.

>>AVRI DORIA: Okay. Yeah. Thank you. I'd like to open it to both taking questions and to comments. Ross first.

>>ROSS RADER: I just wanted to make a follow-up comment to Karen's statement just outlining why this is important work for the council.

These -- the original domain name portability or domain name policy recommendations were made under the old DNSO policy development processes which were very, very loose, and a lot of it had to really do with -- it really came down to, you know, what did Louie think the best way to proceed on specific issue was.

So the guidance that we received from staff under this old structure and this old management was simply leave the implementation to us. Just give us the high-level policy recommendations and we'll figure out how to write it into the contract.

Then the DNSO went away and Louie went away and all memory of these conversations kind of fade into the background and the GNSO was left with these policy recommendations that couldn't really be tightly implemented. They were implemented nonetheless, but there's a lot of confusion over them.

So really, I think, what we're asking for at this point is the opportunity to go back under a much more defined process to tighten it up so that we can actually complete the implementation that we started four years ago now.

>>AVRI DORIA: Okay. Thanks. Chuck. Anyone else want to be --

>>KRISTINA ROSETTE: Yeah, Avri.

>>AVRI DORIA: Kristina. Anyone else?

>>CHUCK GOMES: Yeah. The -- I'd like to communicate my opinion that I don't think we're talking about a very complicated process here. I don't even think it's very controversial. It just needs to be cleaned up. And not only these things in this PDP, but I think your group that you're working on now is actually going to prioritize some other things that was -- that came out of the working group's report, which will also, in subsequent PDPs, could clean it up even a little bit more. Some issues especially I know that we as a registry, because we have to manage the dispute process, there are certain things that we've found that if -- with some tweaks could clean it up and reduce even more confusion.

So I would hope that we, as a council, can treat this as a -- as one of our rare, simple PDPs, and not make it over -- overcomplicated, because I really think it can be.

I do believe that registry and registrar participation is really important because they have the firsthand experience of what's going on, but should also involve others as well that are interested in that.

>>AVRI DORIA: Okay. Kristina?

>>KRISTINA ROSETTE: I've read the initial recommendation -- I guess it was last month -- and I read this, but what I don't remember is: Is there any historical document that's accessible on the site anywhere that would kind of delineate, for example, why 60 days as opposed to like 30, 15, what some of the -- the policy considerations at the time were, so that for those of us who haven't been involved in this from the beginning, we can have a context for it?

>>KAREN LENTZ: There is -- you know, the policy that we have now is based on the -- I think it was called something like "Final Report on Gaining and Losing Registrars" that the task force did, and there's -- it's a pretty long report and there's a lot of discussion about why certain things were arrived at, and not -- you know, that aren't reflected. You can't just from reading, "Here are the 29 recommendations themselves." You know, sort of like the new gTLDs report. Here's the set of recommendations but there's a whole lot of, you know, discussion about that in the -- in that report, which is on line.

>>KRISTINA ROSETTE: Okay.

>>ROSS RADER: To answer the specific question, though, that came out of a compromise. It was originally 10 days and then somebody said 6 months and we settled on something that was in the middle.

>>KRISTINA ROSETTE: So it's not as if -- if I'm understanding correctly, there's no kind of technical or operational reason for having 60 days as opposed to any other?

[Speaker is off microphone]

>>KRISTINA ROSETTE: Got it.

>>CHUCK GOMES: If I can just -- it's important to realize, too, that the transfer working group was one that was really struggling for a long time, and got to -- so, you know, this is maybe good for -- in light of the fact that we talked about WHOIS today.

Didn't last that long, but it was a long process, and there were competing sides within the registrar community that were, you know -- and so it was going nowhere.

But a lot of these things that came out -- and Ross talked about compromises. There was some good work that ultimately happened to develop what we have now, and it's one of the positive -- it's definitely positive evidence of what can happen even in a very difficult and contentious situation.

>>AVRI DORIA: Anyone else want to comment? Discuss this issue at the moment? I mean, we'll be bringing it up on Wednesday to decide -- was that a hand?

>>MIKE RODENBAUGH: Again, am I missing something here? It just seems like you're really inconsistent there. This was a torturous process for four years, yet now you think we can have a targeted PDP that resolves the situation a few months?

>>AVRI DORIA: Well, there is experience now.

>>CHUCK GOMES: Yeah, that's absolutely -- that's absolutely correct.

>>AVRI DORIA: And I think that's often the case when you haven't had experience doing something and have. Anyone else want to comment? Yes, Ross.

>>ROSS RADER: You just -- it's just the question of timeliness. You know, I don't see anything in there that's controversial at all, unless you're holding back on something that I don't know about.

[Laughter]

>>MIKE RODENBAUGH: No, no.

>>ROSS RADER: But, you know, this really is -- I'd almost characterize this, and anybody feel free to correct me but I'd almost correct this as an administrative process at this point. I think we've all got a - - at least the people that are involved with -- at least with prioritization committee a good sense of history on there. There's a good sense of both operational practical knowledge balanced with some good, you know, more academic view, and there's people from all sides of the community in there, whether it be the operators or the users or the suppliers, et cetera, et cetera, et cetera. But -- so everybody is kind of on the same page that, you know, domain portability is good. How do we make it work best, right? I think it's just -- it's -- I think we do have our work cut out for us.

>>MIKE RODENBAUGH: Just to respond that, just an administrative item, the BC has appointed somebody to that prioritization committee. I don't think it's been communicated to you yet. But it's Mike O'Connor so please, let's get him on the list.

>>AVRI DORIA: Okay. I have J. Scott and Paul.

>>J. SCOTT EVANS: J. Scott Evans for IPC. I think that this is an example of what you're going to find yourself going on as ICANN matures. You're always going to have these issues that went through a torturous process and then, because technology changes and the fixes you think you have put into place to resolve the situations have been gamed or there's misunderstanding or there's using ambiguity to clog up the process. So I agree, you're always going to have to come back and do these administrative fixes, and I can tell you that as somebody who represents domain name owners, both large and small, this is a huge problem when you're doing mergers and acquisitions and you've got someone who clogs up the process and you're talking about millions of domains you're trying to move over for a large institution that you're trying to get security agreements and things done at the bank so that you can get your financing in place for your revolving credit agreements. This is a very big deal. But it's also a big deal for a woman who's running a cookie company out of her home and has a Web site and has found a better process because she's had processing problems with her server and she wants to change and she finds now she's spending more time trying to get her domain name moved to someone who can handle the volume of business she's now doing rather than running her cookie business.

So this is a really important thing for all levels of domain name holders and I hope that you all will clean it up, so that you take the gamesmanship out of it, and that the process and the portability that is recognized that is important can work.

>>AVRI DORIA: Okay. Thank you. Paul?

>>PAUL STAHURA: I agree with Chuck. The first time, you know, took a long time, was very contentious and controversial. Sorry. The first time was pretty contentious and controversial, took a long time, and -- but I don't -- I agree that this time, it's not that. The only controversial piece, and it's not even that controversial, would be transfers after expiration and that's that just essentially needs to be clarified. So I pretty much agree with what's been said. It's -- it's not that controversial this time around.

>>AVRI DORIA: Anyone else wish to comment on this? I mean I don't want to drag it on, but I want to make sure that everything -- yes, Chuck. You've got your finger on the speak button.

>>CHUCK GOMES: Sure. Well, just I think, you know, we're -- we're often criticized because of how long we take to do things. This is actually an opportunity to make something -- get something going

quickly, and I would hope if we don't discover any reasons to the contrary that we could actually, on Wednesday, just vote to initiate the PDP on this.

>>AVRI DORIA: Yeah. Well, actually once we vote to initiate a PDP and this is something that will happen, and several others, we will immediately have that discussion of whether we're doing task force or non-task force. And that's something that we're going to have to explore, especially in light of the conversation that we're going to start out with tomorrow in terms of working groups and organizations and the notion that task forces put us in that constituency bucket, whereas non-task force doesn't necessarily.

So, you know, that's something -- we, basically -- as soon as we have one vote, we've got the other decision to make, too.

Yes, Ross?

>>ROSS RADER: I think that's almost a conversation that's worth having now.

>>AVRI DORIA: That's kind of why I brought it up. But I didn't want to extend the day if people didn't want to do it.

>>ROSS RADER: I think we have time.

>>AVRI DORIA: I did schedule it for another hour.

>>BRUCE TONKIN: You have a number of things on the agenda.

>>AVRI DORIA: But they all have that same question.

>>BRUCE TONKIN: The question about whether to form working groups and how you do it is a good question. It is not specific to transfers.

>>AVRI DORIA: It is not specific to transfers, but it is specific to each one of them. The question has to be answered for each one. Now, there may be a general question -- and I should have asked you to put on the mike.

But there may be a general question -- I mean, a general answer, a general form of thought. But for each individual one we have to say, Okay, do we use the task force which is very defined, very constituency-oriented? Or do we use the non-task force where we go to the constituencies, we get their viewpoints, we get the community viewpoint, we put out a report and then we go into deliberations of the council? At which point we may say, Okay, it is done, we understand, from the work we've done. Or we say, Oh, a working group to figure this one out that's not constituency based is the way to go.

And goes to whereas we could do the same thing with a task force except that at that point we start out with people having voted and having our barriers created. So it is a discussion we need to have on each one unless we can resolve it in some sort of general form of thought.

So Tim.

>>TIM RUIZ: Just a quick question. You keep saying not constituency based. I'm just wondering, what kind of policy can proceed that doesn't involve the constituencies?

>>AVRI DORIA: Not that doesn't involve the constituencies. But if you look, the constituencies are always there. They're always at the root of it all.

But if you look at the recommendations -- And as I say we will get more of that tomorrow when the board comes in. It's how do we open up to a larger working group process. It's not necessarily just the people on the council. It is not even necessarily just the people in the constituencies that contribute to the work. In other words, we've had ALAC members in working groups. We've had GAC members in working groups. We've had people who were individuals who weren't members of any constituency participating in working groups that then came back.

Certainly, the council was always constituency based and the council making its decisions. But in a task force by bylaw we vote and, you know, we vote at the task force before voting at the council.

So we really do a vote twice.

>>CHUCK GOMES: Can I add to that? I guess your question is really good, Tim. In fact, Avri and I am having some discussions, I had to go back and read the Annex A and the bylaws especially for this part with the way they read because I was automatically concluded that a task force is better because I think we need to get away from the council doing everything.

But the task force approach, the way it is outlined, is much more restrictive in the sense that you do have to have members from each constituency. It's more -- you can involve others from the outside but they don't have any votes. It doesn't really encapsulate the working group concept that we've been working on in some other areas that involves broader participation.

It requires -- seems to require more voting.

She actually convinced me, I think, that the council has a whole approach is maybe the better way to go.

But I will say that with this qualification. I only think we should do that if that doesn't translate into what it has meant in the past, that the council does all the work. To the extent that we use that

approach to use working groups to do a lot of the work, I think that's a good way to go because I don't think it scales for us just to keep doing everything ourselves. It is the wrong way to go.

>>AVRI DORIA: And so the point about the constituencies is the working groups don't need to be formed purely out of constituency.

>>CHUCK GOMES: Ultimately, you still have to come back -- the council still has to vote on anything that's done so you have the structure that we have in place now. So it doesn't minimize that at all. It spreads -- hopefully spreads the work out better.

>>AVRI DORIA: So any further discussion on that one? As I say, we are not trying to get a resolution on it now but just trying to make sure when we get to the task force or not task force we have sort of thought that through.

>>ROSS RADER: This is, I think, a rather, let's call it, low-risk exercise. In other words, there is not a lot at stake. We already have policy. There is not a lot of controversy around the subject matter and the work seems to be relatively straightforward. I think it's safe to consider taking an alternate approach, in other words, experiment a little bit with this.

It may not make it easier to do it, as Mike as very suspiciously points out but I think it is worth giving a shot to. I don't have any serious objections to proceeding on that matter. I think it would be an interesting exercise to try and use this as a -- I wouldn't call it a prototype but at least as a learning mechanism.

>>AVRI DORIA: And it still would be -- we still have to function within the bylaws. It is just that the bylaws are very open about how we do our deliberations.

>>CHUCK GOMES: It could be an example of us applying some of the recommendations in the GNSO review. Like she said, we are kind of stuck with the bylaws we have right now. But within that, we should be able to actually exercise some of the principles that they're suggesting that I think are really sound.

>>AVRI DORIA: Any other comments on that now while we're still here, still talking, still not in the bar? Not that I'm heading directly to the bar.

[Laughter]

But Dave brought up the bar and it was so very IETF. So if no one else has any comment on this now, I thank everybody for their endurance today and see you tomorrow at 9:00 when we'll talk about GNSO -- what's the word -- reform. Thank you all. Thank you.