



Comments on
Initial Report on IRTP-D
(Inter-Registrar Transfer Policy -
Part D)
Policy Development Process

Status: FINAL

Version: 1

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC). The BC's comments arise from the perspective of Business users and registrants, as defined in our Charter¹:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

The Inter-Registrar Transfer Policy (IRTP) provides the policy framework for domain name transfers between registrars, and has recently added provisions for transfers between registrants. IRTP also provides standardized requirements for registrar handling of transfer requests. The policy is an existing community consensus policy that was implemented in late 2004 and has been revised several times since then.

Final Reports that have been published to date:

- IRTP Part A Final Report – published in March 2009
- IRTP Part B Final Report – published in May 2011
- IRTP Part C Final Report – published in October 2012

The IRTP Part D Policy Development Process (PDP) is the fourth and final PDP of this series of revisions.

The group addressed six charter questions:

- A - Whether reporting requirements for registries and dispute providers should be developed, in order to make precedent and trend information available to the community and allow reference to past cases in dispute submissions;
- B - Whether additional provisions should be included in the TDRP (Transfer Dispute Resolution Policy) on how to handle disputes when multiple transfers have occurred;
- C - Whether dispute options for registrants should be developed and implemented as part of the policy (registrants currently depend on registrars to initiate a dispute on their behalf);
- D - Whether requirements or best practices should be put into place for registrars to make information on transfer dispute resolution options available to registrant;
- E - Whether existing penalties for policy violations are sufficient or if additional provisions/penalties for specific violations should be added into the policy;
- F - Whether the universal adoption and implementation of EPP Auth Info codes has eliminated the need for FOAs.

In February 2014, the IRTP-D Working group published its Draft Report and Recommendations for public comment.

¹ Business Constituency Charter, at <http://www.bizconst.org/charter.htm>.

BC Comment on Proposed Recommendations

Proposed Recommendation to Charter Question A

BC considers that reporting requirements for registries and dispute providers **should be** developed in order to make precedent and trend information available to the community and allow reference to past cases in dispute submissions.

Recommendation #1: The WG recommends that reporting requirements be incorporated into the TDRP policy. Outcomes of all rulings by Dispute Resolution Providers² should be published on Providers' website, except in exceptional cases. The Group recommends publishing reports that follow the example of the Asian Domain Name Dispute Resolution Centre (ADNDRC). These reports should include at a minimum: a) Information about parties involved in the dispute; b) The full decision of the case; c) The date of the implementation of the decision

BC supports the details of our position on Charter Questions A that are encompassed into of recommendation #1

Recommendation #2: The WG recommends that the TDRP be amended to include language along the lines of this revised version of the UDRP: 'The relevant Dispute Resolution Provider shall report any decision made with respect to a transfer dispute initiated under the TDRP. All decisions under this Policy will be published in full over the Internet, except when a Dispute Resolution Panel determines, in an exceptional case, to redact portions of its decision. In any event, the portion of any decision determining a complaint to have been brought in bad faith shall be published.'

BC supports the details of our position on Charter Questions A that are encompassed into of recommendation #2

Proposed Recommendation to Charter Question B

Additional provisions should be included Multiple transfers in the Transfer Dispute Resolution Policy (TDRP) that set out how to handle disputes when multiple transfers have occurred. As they could help clarify the process and facilitate the handling of disputes, multiple transfers are used in domain hijack situations, and also since the aftermarket has developed after the policy was written, a third party can easily purchase a hijacked domain in good faith.

Recommendation #3: The WG recommends that the TDRP be amended as follows: "Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are null and void if the Gaining Registrar acquired sponsorship from the Registrar of Record through an invalid transfer, as determined through the dispute resolution process set forth in the Transfer Dispute Resolution Policy."

Recommendation #4: The WG recommends that a domain name be returned to the original Registrar of Record if it is found through a TDRP procedure that a non-IRTP compliant domain name transfer has occurred. The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly.

Recommendation #5: The WG recommends that the statute of limitation to launch a TDRP be extended from current 6 months to 12 months from the initial transfer. This is to provide registrants the opportunity to become aware of fraudulent transfers when they would no longer receive their registrar's annual WDRP notification.

Recommendation #6: The WG recommends that if a request for enforcement is initiated under the TDRP the relevant domain should be 'locked' against further transfers. The TDRP as well as guidelines to registrars, registries and third party dispute providers should be modified accordingly.

BC supports the details of our position on Charter Questions B that are encompassed into of recommendation #3, #4, #5, and #6. The BC particularly appreciates the work of the WG in developing these complex and carefully composed recommendations.

Proposed Recommendation to Charter Question C

The BC believes that there must be a mechanism for registrants to initiate proceedings when registrars decline to initiate them.

The WG does not recommend that dispute options for registrants be developed and implemented as part of the current TDRP.

Recommendation #7: The WG recommends that the GNSO ensure that IRTP-C inter-registrant transfer recommendations are implemented and include appropriate dispute-resolution mechanisms. The IRTP-C and IRTP-D Implementation Review Teams should determine whether the inter-registrant transfer use cases documented in the report Appendix have been addressed. If there are use cases that have not been addressed by the implementation of IRTP-C-2, the Implementation Review Teams are charged with formulating a request for an Issue Report to review the remaining use cases and consider whether any additional dispute resolution mechanisms (or changes to the TDRP) should be developed. That request should then be forwarded to the GNSO Council for consideration.

Recommendation #8: The WG recommends that the TDRP be modified to eliminate the First Level

BC supports the details of our position on Charter Questions C that are encompassed into of recommendation #7 and #8.

Proposed Recommendation to Charter Question D

In the interests of consumer protection, the BC recommends establishing requirements for registrars to publish information pertaining to transfer dispute resolution options available to registrants.

Recommendation #9: The WG recommends that ICANN create and maintains a one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants. This should include:

- a) Improvements to the ICANN website regarding the display of information on the Inter Registrar Transfer Policy and the Transfer Dispute Resolution Policy is regularly updated;
- b) Links to the relevant information for registrants on the ICANN website being clearly worded and prominently displayed on the ICANN home page. This will contribute to improving visibility

and content of the ICANN website that is devoted to offering guidance to registrants with transfer issues;

c) ICANN Compliance clearly indicates on its FAQ/help section under which circumstances it can assist registrants with transfer disputes. This should include situations when registrants can ask ICANN Compliance to insist on registrars taking action on behalf of said registrant;

d) Improvements in terms of accessibility and user-friendliness should be devoted especially to these pages:

<http://www.icann.org/en/help/dispute-resolution#transfer>

<http://www.icann.org/en/resources/registrars/transfers/name-holder-faqs>

<http://www.icann.org/en/resources/registrars/transfers/text>

Links to these registrant help-website should also be prominently displayed on internic.net and iana.org in order to assure further that registrants have easy access to information

Recommendation #10: The WG recommends that, as best practice, ICANN accredited Registrars prominently display a link on their website to this ICANN registrant help site. Registrars may chose to add this link to those sections of their website that already contains Registrant-relevant information such as the Registrant Rights and Responsibilities, the WHOIS information and/or other relevant ICANN-required links as noted under 3.16 of the 2013 RAA.

BC supports the details of our position on Charter Questions D that are encompassed into of recommendation #9 and #10

Proposed Recommendation to Charter Question E

The BC believes there should be penalties for specific violations other than ‘notice of breach’. The BC “hopes” that the 2013 RAA will address this issue.

Recommendation #11: The WG recommends that no additional penalty provisions be added to the existing policy. The WG concludes that the penalty structures introduced in the 2009 RAA and the 2013 RA are sufficiently nuanced to deal with IRTP violations.

Recommendation #12: The WG recommends that, as a matter of principle, GNSO Consensus Policy should avoid policy-specific sanctions. Rather, it is desirable that the overarching RAA and RA penalty structures be drafted in a way that assures uniformity and consistency of policy violation penalties .

BC supports the details of our position on Charter Questions E that are encompassed into recommendation #11, #12

Proposed Recommendation to Charter Question F

In day to day administration the FOAs are redundant. However, in cases involving unauthorized transfer requests in which the Registered Name Holders’s email address has been hijacked, or its access credentials to the control panel have been stolen, the gaining registrar’s obligation to obtain the FOA from either the Registered Name Holder or the Admin Contact can help protect the domain names from being hijacked, given the Registered Name Holder’s Whois contact information is different from the Admin Contact’s.

The WG does not recommend the elimination of FOAs.

BC supports the details of our position on Charter Questions F that is encompassed in recommendation #13

Chris Chaplow, Stephane Van Gelder, Elisa Cooper led drafting of these comments. These comments were approved in accordance with the BC Charter.