



**Comment on GNSO PDP
recommendations for
changes to the Inter-
Registrar Transfer Policy
(IRTP) Part D**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

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. IRTP also provides standardized requirements for registrar handling of transfer requests, and inter-registrar transfer disputes through the Transfer Dispute Resolution Policy (TDRP). 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
- IRTP Part D Final Report – published in September 2014

The IRTP Part D Policy Development Process (PDP) addressed the following 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 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 AuthInfo codes has eliminated the need for FOAs.

The BC commented on the IRTP Part D Initial Report on April 24, 2014¹, covering the six charter questions and the initial recommendations relating to each. The IRTP Part D final recommendations were published for community review on October 20, 2014².

¹ Comments on Initial Report on IRTP-D (Inter-Registrar Transfer Policy – Part D) Policy Development Process, April 24, 2014, at <http://www.bizconst.org/wp-content/uploads/2014/07/BC-Comment-IRTP-D.pdf>.

The IRTP Part D PDP Working Group reached full consensus on eighteen recommendations in relation to the six charter questions. The BC comments on these recommendations below.

BC COMMENT ON RECOMMENDATIONS

Recommendation #1 – Reporting requirements to be incorporated into the TDRP policy.

Recommendation #2 – The TDRP to 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 the Panel, convened by the Dispute Resolution, in an exceptional case, determines 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.”

The BC supports these reporting requirements, which would make precedent and trend information available to the community and allow reference to past cases in dispute submissions.

Recommendation #3 – The TDRP to be amended to reflect the following wording, or equivalent: “Transfers from a Gaining Registrar to a third registrar, and all other subsequent transfers, are invalidated if the Gaining Registrar acquired sponsorship from the Registrar on Record through an invalid transfer, as determined through the dispute resolution process set forth in the Transfer Dispute Resolution Policy.”

Recommendation #4 – A domain name is to be returned to the Registrar of Record and Registrant of Record directly prior to the non-compliant transfer if it is found, through a TDRP procedure, that a non-IRTP compliant domain name transfer occurred.

Recommendation #5 – The statute of limitation to launch a TDRP to be extended from current 6 months to 12 months from the initial transfer.

Recommendation #6 – If a request for enforcement is initiated under the TDRP, the relevant domain should be ‘locked’ against further transfers while such request for enforcement is pending. Accordingly, ‘TDRP action’ and ‘URS action’ are to be added to the second bullet point of the list of denial reasons in the IRTP (Section 3); the IRTP and TDRP should be amended accordingly.

The BC supports these additional provisions of the TDRP, which set out how to handle disputes when multiple transfers have occurred. The BC once again thanks the Working Group for developing these complex and carefully composed recommendations. The BC notes that these new provisions will help facilitate the handling of many domain hijacking situations where multiple transfers have complicated a finding of bad faith.

² Inter-Registrar Transfer Policy (IRTP) Part D Policy Development Process (PDP) Recommendations for ICANN Board Consideration, at <https://www.icann.org/public-comments/irtp-d-recommendations-2014-10-20-en>.

Recommendation #7 – To add a list of definitions (see Annex F of the Final Report) to the TDRP to allow for a clearer and more user-friendly policy.

The BC supports any provision that allows the TDRP to be more widely understood and utilized.

Recommendation #8 – Not to develop dispute options for registrants as part of the current TDRP.

Recommendation #9 – Staff, in close cooperation with the IRTP Part C Implementation Review Team, to ensure that the IRTP Part C inter-registrant transfer recommendations are implemented and monitor whether dispute resolution mechanisms are necessary to cover the Use Cases in Annex C. Once such a policy is implemented, its functioning should be closely monitored, and if necessary, an Issue Report be called for to assess the need for an inter-registrant transfer dispute policy.

Recommendation #10 – The TDRP is to be modified to eliminate the First (Registry) Level of the TDRP.

The BC believes there must be a mechanism for registrants to initiate proceedings when registrars decline to initiate them. The BC notes that clearer and more accessible information regarding the IRTP may alleviate some concerns and confusion of Registrants by highlighting the options for redress³. As highlighted by Annex C of the final report⁴, there are use cases in which registrants do not have options for redress. The BC supports the recommendation to closely monitor the IRTP C inter-registrant transfer recommendations in order to determine if a dispute option is called for in these cases. The BC also supports the recommendation to monitor the effects of Recommendation #10 on the TDRP for possible further policy work.

Recommendation #11 – ICANN to take necessary steps to display information relevant to disputing non-compliant transfers prominently on its web site and assure the information is presented in a simple and clear manner and is easily accessible for registrants.

Recommendation #12 – ICANN is to create and maintain a user-friendly, one-stop website containing all relevant information concerning disputed transfers and potential remedies to registrants. Such a website should be clearly accessible from or integrated into the ICANN Registrants’ Benefits and Responsibilities page or similar.

Recommendation #13 – As a best practice, ICANN accredited Registrars to prominently display a link on their website to this ICANN registrant help site. Registrars should also strongly encourage any re-sellers to display prominently any such links, too. Moreover, the Group recommends that this is communicated to all ICANN accredited Registrars.

The BC supports these recommendations as an important consumer protection tool, especially in the absence of the development of any dispute resolution mechanism for registrants. Registrars should ensure that all information and help available to registrants is displayed in a prominent and helpful manner, in order to facilitate communication between registrants and registrars, so that complaints to ICANN Compliance and TRDPs can be avoided as much as possible.

³ Section 4.2.4.4, p. 30, Final Report Inter-Registrar Transfer Policy Part D, September 25, 2014, at <http://gnso.icann.org/en/issues/transfers/irtp-d-final-25sep14-en.pdf>.

⁴ *Id.* at p. 41.

Recommendation #14 – No additional penalty provisions to be added to the existing IRTP or TDRP.

Recommendation #15 – As a guidance to future policy development processes, policy specific sanctions to be avoided wherever possible. Rather, sanctions should be consistent throughout policies to be governed by applicable provisions within the RAA.

The BC supports sanctions contained within the 2013 RAA that broaden the penalties beyond the ‘notice of breach’ requirement in the existing IRTP and TDRP⁵. The BC notes that policy specific sanctions should be consistent with existing obligations wherever possible, but some situations will merit additional exploration and development in the absence of adequate sanctions.

Recommendation #16 – The elimination of FOAs is not recommended. However, in light of the problems regarding FOAs, such as bulk transfers and mergers of registrars and/or resellers, the GNSO Council recommends that the operability of the FOAs should not be limited to email. Improvements could include: transmission of FOAs via SMS or authorization through interactive websites. Any such innovations must, however, have auditing capabilities, as this remains one of the key functions of the FOA.

The BC supports this recommendation, and notes especially the necessity of preserving auditing capabilities. As previously noted by the BC, although FOAs are primarily redundant, the obligation to obtain the FOA from the Registered Name Holder or the Administrative Contact can help protect domain names from being hijacked.

Recommendation #17 – Once all IRTP recommendations are implemented (incl. IRTP-D, and remaining elements from IRTP-C), the GNSO Council, together with ICANN staff, should convene a panel to collect, discuss, and analyze relevant data to determine whether these enhancements have improved the IRTP process and dispute mechanisms, and identify possible remaining shortcomings.

Recommendation #18 – Contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts, especially with regard to those issues listed in the Observations (4.2.7.1)⁶.

The BC supports a future review of the IRTP, given (as the working group notes⁷) the complex nature of the IRTP and the host of problems that registrars and registrants alike have experienced in using it. The BC looks forward to participating in and commenting on the IRTP review at that time.

These comments were drafted and approved in accordance with the BC Charter.

⁵ See Annex D, Final Report Inter-Registrar Transfer Policy Part D, September 25, 2014, at <http://gns0.icann.org/en/issues/transfers/irtp-d-final-25sep14-en.pdf>.

⁶ *Id.* at p. 34.

⁷ *Id.*