



## **Comments of the Intellectual Property Constituency on the Proposed Implementation of Generic Names Supporting Organization Policy Development Process Recommendations on the Inter-Registrar Transfer Policy Part C**

This comment responds to ICANN's request for comments on the proposed implementation of the Generic Names Supporting Organization (GNSO) Policy Development Process (PDP) recommendations on the Inter-Registrar Transfer Policy (IRTP) Part C (the "New Transfer Policy"). The Intellectual Property Constituency ("IPC") fully appreciates the work conducted to date on this matter. Domain name hijacking is an important problem that presents a serious security risk. We also agree that a straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another is a necessity.

The most significant change in the New Transfer Policy,<sup>1</sup> as approved by the GNSO Council<sup>2</sup> and adopted by the ICANN Board,<sup>3</sup> is to impose a 60-day waiting period, following a change of registrant, before an inter-registrar transfer may occur. So far as the implementation recommendations of the New Transfer Policy go, we appreciate that the implementation process has established common-sense definitions of, for example, what constitutes a change of registrant (i.e., a material change to the registrant name, organization, registrant e-mail address, or administrative contact e-mail in cases where there is no registrant e-mail address), and what constitutes a material, non-typographical change.

However, we are concerned that the implementation of the PDP recommendations has not gone far enough to clarify and provide clear guidance concerning the transfer process. We view this as a critical implementation goal to achieve, given the potential of the 60-day lock to make legitimate transfers more difficult, and the vagueness contained in the following recommendation from the working group's Final Report:

"A change of registrant cannot take place simultaneously with a change of registrar although they can be made to appear that way to registrants in a registrars [sic] users interface. If both changes need to be made, it is suggested, but not required, that the change of registrar (IRTP) be completed prior to initiating the change of registrant in order to avoid triggering the proposed 60-day inter-registrar transfer lock."

We appreciate that the recommendations recognized the goal of *avoiding* triggering the 60-day transfer lock. But the implementation recommendations have offered no further guidance concerning the vague first sentence above. It is not clear if the statement that "a change of registrant cannot take place simultaneously with a change of registrar" is a prohibition, or merely an observation of the technical fact that the *losing* registrar cannot implement a change of registrant without triggering the 60-day lock, and the *gaining* registrar cannot implement a

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<sup>1</sup> <http://gns0.icann.org/en/issues/irtp-c-final-report-09oct12-en.pdf>

<sup>2</sup> <http://gns0.icann.org/en/council/resolutions#20121017-4>

<sup>3</sup> [https://www.icann.org/resources/board-material/prelim-report-2012-12-20-en?routing\\_type=path#2.a](https://www.icann.org/resources/board-material/prelim-report-2012-12-20-en?routing_type=path#2.a)

change of registrant until the transfer has been completed and the registrar has gained control of the domain.

Even more to the point, the implementation recommendations offer no suggestions for how a change of registrant and an inter-registrar transfer can permissibly “be made to appear” to take place simultaneously. This is an important operational detail, because if the new registrant is required to convince the prior registrant to complete two separate consent or confirmation processes at different times, there is a risk that the prior registrant may complete the first step but not the second—consenting to the inter-registrar transfer but not the change of registrant. The result may be the new registrant’s inability to gain exclusive control over the domain, and the perpetuation of inaccurate Whois information, if the domain ends up in the new registrant’s account, but in the prior registrant’s name.

Depending on the business model and services of the losing and gaining registrars, it may not be convenient and sometimes may not be possible for the new registrant to obtain an account at the losing registrar, or for the prior registrant to obtain an account at the gaining registrar. (This may particularly be the case with registrars concentrating on bulk, large accounts for domain monetization, where brand owners may be unable to establish an account, or conversely with corporate registrars where the prior registrant may not have or wish to establish an account.) Does the recommendation suggest that the domain be transferred to the gaining registrar without the need for the prior registrant to establish an account? Does the recommendation suggest that the gaining registrar, when obtaining the prior registrant’s consent or confirmation to inter-registrar transfer, simultaneously obtain advance consent for a change of registrant that will take place subsequent to transfer? The implementation recommendations, disappointingly, offer no additional clarity on this point.

## **Conclusion**

For the reasons noted above, we respectfully suggest that the implementation recommendation team revisit the issue, in order to clarify what is meant by the Final Report’s recommendation that “change of registrant cannot take place simultaneously with a change of registrar,” and how a change of registrant and an inter-registrar transfer can permissibly “be made to appear” to take place simultaneously, in order to reduce registrant confusion and expedite legitimate transfers. The IPC appreciates the opportunity to provide comments to ICANN, and looks forward to engaging in further dialogue on this matter.

Respectfully Submitted,

Intellectual Property Constituency