



## Proposed ICANN "Expedited Transfer Reversal Policy" could disrupt secondary market

Printable View

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GeorgeK

05-29-2010 02:11 PM

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Proposed ICANN "Expedited Transfer Reversal Policy" could disrupt secondary market

ICANN, in typical fashion, released an important policy report today (a Saturday during the US Memorial holiday long weekend) that folks might not notice until it's too late. It's regarding the work from the Inter-Registrar Transfer Policy Working Group, and the report is at:

<http://www.icann.org/en/announcement...29may10-en.htm>

What's especially of concern is the proposed "Expedited Transfer Reversal Policy" (ETRP, see Annex C of the PDF, page 49) which would permit the registrant at the "losing" registrar to undo a transfer for up to **6 months** after a transfer. There is currently no mechanism to dispute the proposed ETRP.

This proposal would create great uncertainty in the secondary market for domain names, as it means a "transfer" isn't considered final for up to 6 months after a purchase, assuming one changes registrars during a transaction, which is almost always the case.

Here's the typical pattern of a purchase. Example.com is registered at RegA, and you want to buy the domain name, but transfer to RegB during the transaction (RegB might be your "home" registrar (Tucows for me), or might be Moniker who does escrows, etc.). At present, the seller would get paid immediately after the domain name transfers from RegA to RegB, and you'd have control of the domain name at your preferred registrar (RegB). If there was a dispute, it would go to court, etc., and RegB would await a court ruling. The good faith buyer is definitely protected.

Under ETRP, though, it would be a nightmare. How would the buyer know for sure that he/she has control and ownership of the domain name, when the seller could simply undo the transfer for up to 6 months??!!?? The seller would end up with both the cash AND the domain name, and the domain name would be at RegA (a registrar you don't want the domain name to be at). You as the buyer would then need to take the seller to court, and the relevant jurisdiction would no longer even be that of RegB (your preferred registrar), but would be that of RegA.

A Moniker or other company that uses their own registrar to ensure a secure transfer would not be able to help at all, because they are "RegB." All the power reverts to RegA (the original "losing" registrar). Not only that, the registrant at RegA indemnifies RegA itself, so RegA doesn't even care if they are "stealing" back a legitimately purchased domain.

One approach to try to "solve" this problem, as a legitimate buyer, would be to transfer the domain name at RegA first. So, for example, if the domain name is at GoDaddy or NSI, you would do an internal change of registrant transfer, keeping the name at that registrar. However, then you are **stuck** for 60 days, as most of these registrars have been trying to hold the domain name hostage for that amount of time, to get extra renewals, etc. So, for 60 days you are in limbo at a registrar that you don't like, and one that is probably not in the legal jurisdiction you want to be in (e.g. GoDaddy = Arizona jurisdiction, which would not be good). During that 60

day period, do you **really** have full control of the domain name? I would say "No", because you (as the legitimate buyer) would face the possibility of the transfer being undone by a registrar that you don't want to be at.

Anyhow, this is a **very** messed up proposal. If you look at DailyChanges.com or RegistrarStats.com, you'd quickly see that transfers make up roughly the same number of daily transactions as new registrations. So, it's very important that any changes that would have such a major impact on the secondary market for domain names be well thought out.

If one looks at the composition of those who were on the workgroup:

<https://st.icann.org/irtp-partb/index.cgi>

(see the bottom) it appears most do not even understand the grave impact such changes would have on the secondary market (which is probably greater in economic value than the primary market). I'm all for fighting domain hijacking, but this "solution" is far worse than the problem it is trying to solve. There needs to be a secure and **predictable** procedure for the **irrevocable** transfer of a domain name to a legitimate buyer, yet ICANN is now making the process **less** predictable and **more** risky for the buyer. The legitimate buyer would face at least 60 days (and up to 6 months) of risk without due process if the proposal is accepted.

What's even more appalling is that ICANN didn't even open up a comment period yet, so that folks could get their opinions on the record! The comment period won't begin until July 5th, and will last only 20 days. This is silly, given that it costs \$0 to open up the comment period **now**.

In the meantime, I encourage folks to contact their registrars to make sure that your voices are heard, and perhaps blog about the issue if you have a blog, etc.

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GeorgeK

05-29-2010 05:33 AM

BTW, even if you became your own registrar, this policy change would still affect you as a buyer (as the registrant at the losing "old" registrar has all the power, and the transfer is done by the registry operator, even over the objections of the new registrar).

It also means people moving domains from less secure to more secure registrars are also not protected!

The right "solution" to the problem of domain hijackings, by the way, is to raise the level of security at all registrars, e.g. two-factor authentication, executive lock, Verified WHOIS, having a WHOIS history archived at the registry level (so one can do a proper "title search"), etc. Registrars should "know their customers", and refuse the transfer if there's any doubt. Once the transfer has taken place, it should become irrevocable. VeriSign has 2 services for additional locks, see:

<http://www.icann.org/en/registries/rsep/>

(#2009005 and #2009004) albeit they should have been offered on a competitive basis, instead of being another monopoly service that is not price regulated.

Instead, this proposed policy excuses the "weak" registrars, and punishes the strong registrars. It will actually incentivize registrars to **lower** security, instead of improving it, because "Hey, you can always challenge the outgoing transfer later." This perverts the incentives.

The onus should be on the current registrant (a future seller) to move their domains to a secure

registrar -- there are enough options out there that if your name isn't already at one, it's your own fault for not moving it there by now.

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GeorgeK

05-29-2010 09:34 PM

Note this has a grave impact on sellers, too, not just buyers. Suppose you are the seller, and I'm the buyer. You want to sell me Example.com.

Under this proposed policy, the domain name can't be properly delivered/transferred to me without maintaining a huge liability, i.e. the seller maintaining the option to "undo" the transfer within 6 months. That liability tarnishes the domain name, it makes it less desirable, because I as a buyer can't gain clear title to the domain name through an irrevocable transfer. This means if I want to buy the domain name, I'm going to offer you **less money**.

As a seller, you can argue until you're blue in the face that you'll never undo the transfer, but as long as that policy becomes in place, the **risk** exists that you will undo it. That risk can be represented by legal costs in terms of defending that domain transfer (of course, by then, the buyer would have lost the cash and the domain name, and be on the hook for major legal costs if the transfer is undone). That legal cost is going to hit less valuable domain names even harder. On a \$300,000 domain, I might factor in potentially \$25,000 or \$50,000 or \$100,000 in legal costs. On a \$100 domain, or a \$5,000 domain name? The legal costs alone to defend the transfer start to become far in excess of what the domain name is worth. So, the rational legitimate buyer will just walk away, and not bother to buy the domain at all.

This also affects big companies. For example, routinely big firms do stealth acquisitions through companies like Marksmen, Sedo, Moniker, and others to acquire good domains (e.g. Microsoft acquiring office.com, kin.com or docs.com). Now, if the seller realizes after the fact they've just sold a domain name that ends up at Microsoft for \$50,000, instead of \$1 million, they'll have the opportunity to renege on the deal and undo the transfer. Of course, then Microsoft/Marksmen/Sedo/Moniker would have to sue to defend the transfer. Those legal costs to sue will always have to be factored in as a buyer. What if the buyer has the domain name at a Chinese or Indian registrar (which is where it will end up with if the "undo" happens)? Good luck finding a Chinese or Indian lawyer, if you're in Canada, USA, or Europe.

This is why there's no "undo" for real estate transactions....i.e. there's a clear way to transfer title irrevocably. Heck, even in the shipping industry, there's a notion of "FOB" (Free On Board)

[http://en.wikipedia.org/wiki/FOB\\_\(shipping\)](http://en.wikipedia.org/wiki/FOB_(shipping))

which delineates exactly where the liability starts and ends for the delivery/transfer/shipping of goods. When I'm a domain buyer, I want to be able to say "You get paid when the domain name is delivered to me at Tucows. Period." Under this proposal, there'd be a 6 month period where the seller can't make that clear delivery/transfer. Or alternatively, they can deliver, but only at a registrar I don't want to be at (e.g. internal transfer at NSI/GoDaddy, etc.). In either scenario, you're not making the delivery I want, and so I'm going to have to pay you less for the essentially "damaged" goods (i.e. damaged in the sense that they carry a huge potential liability with them, until the title passes irrevocably).

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GeorgeK

05-29-2010 09:47 PM

It also obviously has a huge impact on escrow companies (e.g. Moniker.com, Escrow.com, Sedo) in addition to the "stealth" acquisition firms, and other brokers/middlemen, as there's a huge ongoing liability if the transfer cannot be done in an irrevocable manner.

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Rob

05-29-2010 11:15 PM

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You have to wonder if ICANN deliberately look for ways to screw things up. Can they really be that retarded?! This will destroy domain sales and, ultimately, affect registrars.

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trader

05-30-2010 03:53 AM

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It always seems like ICANN tries to do everything possible to damage or destroy the industry and domainers. What idiots they are!

If this goes into effect I would be real unlikely to buy domains if within 6-months the transfer can be undone.

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electronic

05-30-2010 07:10 AM

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Quote:

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*Originally posted by Rob*

***Can they really be that retarded?!***

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History shows the answer to that question to be "Yes."

But, we also have to consider the additional possibility that the bias against the buying and selling of domains is at work.

However, here is a hypothetical:

This policy goes into effect.

You buy a domain through Sedo.

The domain is at Moniker.

You wire the money to Sedo.

The domain is pushed from the seller's account at Moniker, into Sedo's account at Moniker.

You, the buyer, then transfer the domain to eNom.

Am I wrong, or, under the proposed policy, would not \*Sedo\* have to initiate the transfer reversal back to Moniker?

(This does not do much to help private sales, for example at Escrow.com, but it is just a question.)

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GeorgeK

05-30-2010 07:49 AM

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Quote:

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*Originally posted by electronic*

***Am I wrong, or, under the proposed policy, would not \*Sedo\* have to initiate the transfer reversal back to Moniker?***

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Under that scenario, it would be Sedo that would need to initiate the transfer reversal. However, suppose the name was at GoDaddy, and not Moniker. The registrant changes to Sedo, however GoDaddy won't let it change to you for 60 days. Then, when they change it to you, you won't be able to transfer to eNom for another 60 days. All during that 120 days, the old registrant might go to GoDaddy to challenge the transfer, using **GoDaddy's** procedures, or courts in a jurisdiction you don't want (Arizona, etc.).

This is all about lack of registrar due diligence, wanting to cut corners. Take a look at page 51 of the PDF. It has the point:

**3.4.2 Documentation that the PTRa has verified the identity of the pre-transfer Registrant by including information on the Registrant Title.**

Well, hello there! If the losing registrar could verify the identity of the registrant, why didn't they do so **before** the transfer??!!! It shocks the conscience when the "answer" is staring people right in the face. The reason why they don't do is because they think it'll cost too much money, and they want to save a few nickels on their \$3/yr margins. As a legitimate buyer, I do due diligence before a transfer. Why doesn't the losing registrar do this, before they allow a critical change such as an outgoing transfer or a change of registrant??

A full-service registrar **will** offer executive lock, etc., and **will** offer that higher security. If you're at a crappy registrar, it's your choice to have picked lower security. Then, to be compelled to stay 60 days at that crappy registrar if you're doing a registrant change there? No thanks. But then the alternative of having the old registrant be able to undo a transfer for up to 6 months if you do a direct transfer at the new registrar (i.e. changing registrant while doing the transfer)? That's even worse.

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electronic

05-30-2010 10:16 AM

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George, there is just nothing good about this proposal.

It is based on the presumption that the registrant remains the same after the transfer, and then stays the same for 6 months on top of that.

The folks who drafted the measure are either "retarded" as Rob stated, or they are intentionally trying to kill the secondary market.

I do hope it gets shot down ASAP.

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GeorgeK

05-30-2010 12:13 PM

After 10 hours of reading, I've digested all of the workgroup's emails and teleconferences (weekly meetings for a year). I'm not very impressed that they missed so much, or sensed that there were problems but couldn't enunciate what should be very obvious to anyone with experience in the industry. They'll use the old excuse that "they're just volunteers", but the community really deserves better when they're proposing huge changes without fully considering the implications (both legal and economic).

Anyhow, I've applied to join the workgroup, and will keep folks abreast of when they'll have an opportunity to input. If anyone else wants to join, you'd need to email [glen@icann.org](mailto:glen@icann.org) (who handles ICANN GNSO mailing lists, etc.), and also catch up on the work they've done to date.

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trader

05-30-2010 04:03 PM

You would be an incredibly valuable addition to the workgroup George. Let us hope they accept you. What's that acceptance based on anyway?

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hanogl

05-30-2010 04:30 PM

What's next? If you sell a house you can claim it back within six months, even if the buyer already moved in?

Hope you can educate them George!

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jerry

05-30-2010 06:49 PM

Quote:

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*Originally posted by GeorgeK  
Anyhow, I've applied to join the workgroup, and will keep folks abreast of when they'll have an opportunity to input.*

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Thanks George !

Dinner on me if your planning to visit brussels or paris within the next few months :)

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trellian

05-31-2010 09:49 PM

From my reading:

Quote:

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*4.3 ETRP is intended to correct fraudulent or erroneous transfers, not to address or resolve disputes arising over domain control or use. In these scenarios, the appropriate remedies include, but are not limited to, one or more of the following:*

*4.3.1 Registry-Specific reassignment service*

*4.3.2 Uniform Dispute Resolution Policy (UDRP)*

*4.3.3 Court of competent jurisdiction*

*4.4 PTRa may block ETRP use in cases of repeated hijack claims, abuse of the procedure, or in suspected cases of "reverse hijacking," and refer the Registrant to alternative mechanisms (Sec. 4.3) where appropriate.*

*5. Disputed ETRP Claim [The WG agrees that there should be a mechanism to dispute an ETRP but has not reached agreement on how such a mechanism might work. The WG hopes to receive further input during the public comment period on the elements an ETRP dispute mechanism should contain and whether it should be an integral part of the ETRP or another existing dispute resolution mechanism e.g. the TDRP.]*

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shows that it is not intended for such reversal transfers and that they have indeed not worked out a dispute policy/procedure for gaining registrars that wish to dispute such ETRP claims. So yes they need more input.

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GeorgeK

05-31-2010 11:04 PM

Trellian: Thanks for your input. Consider this, though:

<http://forum.icann.org/lists/gnso-ir.../msg00285.html>

Quote:

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*In short, I think we should consider going forward with an alternate version that **doesn't include a means to dispute the ETRP**. I say this with full acknowledgment to the problems that Michael, Kevin, Barbara and others have identified, and the efforts of the Working Group to address them. But the "ETRP Dispute" contains some fundamental flaws that could derail our entire proposal.*

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That's from James Bladel of GoDaddy (hi James!), who has been pushing this process (GoDaddy has 2 members in the workgroup). This comment was recent, i.e. May 21, 2010.

I managed to join the workgroup, see:

<http://forum.icann.org/lists/gnso-ir.../msg00301.html>

However as you can see in the posts at:

<http://forum.icann.org/lists/gnso-irtp-b-jun09/>

they've not been very forthcoming. Essentially, they want to take a holiday between now and Brussels, and then open up comments only for 20 days in July, when most people are on holidays. Plus, ICANN is literally swamping the public now with many simultaneous comment periods, i.e. RAA amendments, new TLDs, etc. It's obvious they simply want to railroad their pet ideas through, with minimum notice or opportunity for the public to make real changes.

As James Bladel of GoDaddy said on April 27 (hi James!):

<http://gnso.icann.org/meetings/trans...27apr10-en.pdf>

Quote:

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*Good points Mikey and Marika. I would agree with one qualifier is that I think that when initial reports are released they do tend to take on a certain **degree of inertia**. And while they do change between the initial and the final I think that they probably are **80% of the recommendations** are contained in one (unintelligible) other. (page 5)*

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So, while they call this an "Initial Report", for all intents and purposes they feel their work is mostly done (despite the serious defects that everyone I've consulted sees immediately).

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NexSite

06-03-2010 11:58 AM

hmmm. So lets say I buy a domain from a Netsol seller. I transfer it to another registrar, and 90 days out, I get an offer to sell that same domain for double my money. Question, can I sell it? If the answer is yes, and it transfers to a third registrar of the new owners choice, what the hell happens then? I admit, I didnt read any of the material. I dont know about any of you guys, but I have bought a stolen domain a few years back and it was pulled from my account a few weeks later and transferred back. It cost me a few hundred dollars but I didnt complain too much as it taught me a valuable lesson. But people buy and sell domains and dont necessarily keep them all for six months. Is there a new "you must remain the owner" or " the gaining registrar must retain" the said tranferred domain for a period of six months. Or to word it better, is a sale/subsequent registrar transfer prohibited for the follwing six months? I can just see somebody getting a six figure offer and the buyer saying not so fast. Maybe this is just a set up so ICANN can propose and sell domain name title insurance.

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GeorgeK

06-23-2010 01:40 AM

The ITRP just had a conference call, and I was basically ganged up on for pointing out all the flaws in the proposed ETRP (Expedited Transfer Reverse Policy).

How's your business going to be affected when folks can simply undo a legitimate transfer "at will", without due process, within 6 months? How will an escrow work if the prior owner can simply claim "hijacking" and undo a transfer, when it's simply a case of seller's remorse?

I'm totally appalled at how they want to create a huge loophole in policy, that will have collateral



damage which is much bigger than the "problem" they're trying to solve.

A transcript of what went down should be available later at:

<http://brussels38.icann.org/node/12502>

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GeorgeK

06-23-2010 09:36 AM

BTW, I came up with a possible solution, namely an "Irrevocable Transfer Procedure." That would give people a choice, see:

<http://forum.icann.org/lists/gnso-ir.../msg00334.html>

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GeorgeK

07-05-2010 02:55 AM

The comment period is now open:

<http://www.icann.org/en/announcement...05jul10-en.htm>

I'll likely have my comments in sometime next week.

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GeorgeK

07-15-2010 09:34 PM

Hey folks,

Now things are getting interesting. As you know, we're getting swamped with ICANN comment periods right now. But it appears that the members of the transfers workgroup are reconsidering extending the public comment period by two weeks! What a joke. One can see my response at:

<http://forum.icann.org/lists/gnso-ir.../msg00415.html>

and you can see related discussion at:

<http://forum.icann.org/lists/gnso-irtp-b-jun09/>

It's all too typical of ICANN politics....folks generally want more time, but on a specific issue when they feel that the public will oppose a given issue, they won't extend deadlines at all, in order to get the fewest possible comments.

The public comment period is currently set to end on July 25, and there are many other comment periods that need to be dealt with. All the documents are at:

<http://www.icann.org/en/public-comme...initial-report>

(and as I've previously discussed, the proposed ETRP would have a huge impact on the secondary market if sellers were able to simply undo a transfer at will anytime within 6 months; it would cause havoc due to "seller's remorse", affect escrows, and affect overall domain name

valuations by creating uncertainty over true "title" over domains; the current proposal lacks any due process whatsoever to prevent "gaming" and "abuse" of this clawback procedure)

Anyhow, if you feel as I do that there should be more time, you might want to let them know. One can send a comment to the public comment site at:

[irtp-b-initial-report@icann.org](mailto:irtp-b-initial-report@icann.org)

Or contact members of the workgroup, listed at the bottom of:

<http://st.icann.org/irtp-partb>

You can see from the results of the Doodle Poll so far, that they're currently voting NOT to extend the comment period! Ridiculous!

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GeorgeK

07-15-2010 11:58 PM

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(from a post I just made on another forum, as a primer to those who've not followed the issue in depth)

Let me explain why the ETRP affects everyone in the domain industry, in a nutshell. It would allow for "seller's remorse" because domain transfers could be undone anytime within 6 months without any due process, and with no built-in dispute mechanism at present (unlike the TDRP). It is supposed to be limited to domain hijackings, but there aren't any "qualifiers" to it. This despite the issues report saying any emergency procedure needed to be "qualified" to situations where the magnitude of the harm was great, and tested to ensure that there was no opportunity for "gaming", i.e. to allow an attacker to misuse the procedure to reverse hijack a name.

So, suppose you are buying a domain name. You have to factor in as a buyer that the domain name could be clawed back (causing you legal fees, etc.). That lowers the value of the domain name, as it's coming with a built-in risk, a built-in liability. So, instead of paying \$10K for a domain name, you might pay \$8K. Or, you might not even do the deal at all. You might say "oh, that doesn't affect me, we only sell domains. A-ha, but when the buyer is buying from you, you can jump and down all day long saying you'll never use the ETRP against them.....but it's still a risk for the buyer. So, the price you get for a domain name will always be lower to a rational buyer. So, uniformly it lowers ALL domain name values.

If transfers are currently "irrevocable", but suddenly become undoable, it's kind of like what would happen to "money", if everyone suddenly was forced to stop using wire transfers (i.e. which are essentially irrevocable), and \*had\* to use credit cards for ALL transactions. Markets would be in chaos, because there'd be a big risk to deal with in ALL payments (i.e. chargebacks, credit risk, counterparty risk).

So, it's just not "sophisticated buyers" or "domainers" who need the irrevocability to exist....it's everyone, sellers, holders, developers, etc. lest all domain names become devalued and tainted.

Just imagine if the same "undo" rules were in effect in the housing market....everyone in the housing market from broker to buyer to seller to builder would be affected by the uncertainty. The same would happen to domains, due to uncertainty over true title.

Then there's the side-issue of the 60-day lock on registrant change (i.e. the "GoDaddy so-called "opt-in") which the report commends as a best-practice! (helps that the working group had 2 GoDaddy employees on it, lol) I'm still trying to get that killed via:

<http://forum.icann.org/lists/gnso-ir.../msg00387.html>

but so far, silence from ICANN.

In the "worst-case" scenario, your transactions (if done through an escrow firm) would need to have up to a **6-month** closing period. Can you live with that??!!??

All times are GMT -4. The time now is 11:23 AM.  
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