The ICANN GNSO "Business Constituency"

Inter-Registrar Transfer Policy – PART B

WG - Final Report

Status: Final
Version: 1.0
31 MAR 2011

Commercial & Business Users Constituency Position Statement

GNSO//CSG//BC

Position Statement:

The IRTP aims to provide a straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another should they wish to do so. The policy also provides standardized requirements for registrar handling of such transfer requests from domain name holders.

The Commercial Users & Business Constituency (BC) would like to thank the GNSO for initiating the second in a series of five PDPs that address areas for improvements in the Inter-Registrar Transfer Policy (IRTP).

We also applaud the efforts of the working group, their voluntary contributions as peer stakeholders, and their collaborative development of the Initial Report.

This PDP, IRTP-B, focused on the following five issues:

a. Whether a process for urgent return/resolution of a domain name should be developed, as discussed within the SSAC hijacking report (http://www.icann.org/announcements/hijacking-report-12jul05.pdf; see also http://www.icann.org/correspondence/cole-to-tonkin-14mar05.htm);
b. Whether additional provisions on undoing inappropriate transfers are needed, especially with regard to disputes between a Registrant and Admin Contact. The policy is clear that the Registrant can overrule the AC, but how this is implemented is currently at the discretion of the registrar;
c. Whether special provisions are needed for a change of registrant near a change of registrar. The policy does not currently deal with change of registrant, which often figures in hijacking cases;
d. Whether standards or best practices should be implemented regarding use of Registrar Lock status (e.g., when it may/may not, should/should not be applied);
e. Whether, and if so, how best to clarify denial reason #7: A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status.

The Business Constituency participated actively in the Working Group and supports the recommendations that have been proposed. A detailed discussion of the BC position follows.

Agree & Comment	✔
Agree & Offer Suggestion	!
Disagree & Offer Suggestion	✘

IRTP Recommendation	BC Rating	BC Comment
Issue A: Whether a process for urgent return/resolution of a domain name should be developed, as discussed within the SSAC hijacking report (http://www.icann.org/announcements/hijacking-report-12jul05.pdf; see also http://www.icann.org/correspondence/cole-to-tonkin-14mar05.htm)		
Recommendation #1 – The WG is considering recommending requiring registrars to provide an Emergency Action Channel (as described in SAC007).	✓	**Comment:** This proposal, drafted over six years ago, addresses the need for an urgent-return mechanism when a domain is hijacked or transferred by mistake. **BC Position:** *The BC supports this proposal*
Recommendation #1 question 1 Within what time should a response be received after an issue has been raised through the Emergency Action Channel (for example, 24 hours – 3 days has been the range discussed by the WG)?	!	**Comment:** Domain-name hijacking can result in substantial harm to a business and the BC would support measures that lead to a quick response. **BC Position:** *The shorter the better – the BC would support as short an interval as is practical and would prefer to see something on the order of 6 – 12 hours.*
Recommendation #1 question 2 What qualifies as 'a response'? Is an auto-response sufficient?	!	**Comment:** The objective of this policy is to get the gaining and losing registrars communicating with each other quickly in the event of an emergency. An automated response is unsatisfactory because it may not lead to action or provide accountability. **BC Position:** *The BC supports non-automated responses to emergency-action requests but would defer to registrars and registries in determining what qualifies as "a response" (email, phone call, fax, etc.).*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #1 question 3 Should there be any consequences when a response is not received within the required timeframe?	!	**Comment:** The emergency-action channel is emerging as a tool that may be useful to address a range of issues including, but not limited to, domain hijacking. These comments will only address the hijacking case – and in that case the goal is to quickly restore the domain to its prior state in order to halt the harm quickly, but allow time for dispute resolution to proceed in an orderly manner. **BC Position:** *The BC supports a modification of the IRTP to mandate a transfer-undo in cases where the gaining registrar does not respond in a timely way to an emergency-action request regarding a suspected domain hijacking.*
Recommendation #1 question 4 Is there a limited time following a transfer during which the Emergency Action Channel can be used?	!	**Comment:** The problem here is to find a balance so that the time allowed is not so short that the registrant doesn't have time to notice that their name has been stolen (more likely the case for large-portfolio managers) but not so long as to open up the possibility of gaming by domain-sellers wishing to use this as a mechanism to claw back a name when they suffer from seller's remorse. **BC Position:** *The BC supports fairly long "eligibility" windows (perhaps in the range of 60 to 180 days). The risk of the claw-back case is mitigated by the ease with which the gaining registrar can short-circuit the claw-back attempt – by merely responding to the emergency-action request.*
Recommendation #1 question 5 Which issues may be raised through the Emergency Action Channel?	!	**Comment:** When the SSAC originally proposed the Emergency Action Channel, their focus was on hijacking. In the intervening 6 years other issues (primarily in the areas of law enforcement) have emerged that might be addressed by this mechanism, once it is in place. **BC Position:** *While the Emergency Action Channel could be a very useful tool in a variety of circumstances, it is probably best to address non-IRTP use cases, consequences and timing outside of this PDP.*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #1 question 6 How/who should document the exchanges of information on the Emergency Action Channel?	!	**Comment:** There are two kinds of exchanges that should be looked at – those that succeed and those that fail. The hope would be that the vast majority of exchanges would be successful and the documentation needs in that case are largely operational. In the case of exchanges that fail, the documentation requirements are more rigorous because that documentation will be used to trigger the transfer-undo. **BC Position:** *The BC defers to registries and registrars when it comes to documenting successful exchanges. In the case of unsuccessful exchanges, the losing registrar is the only entity that can document the exchange – and that documentation is what is used to trigger the transfer undo. Here again the BC defers to registries and registrars as to how those unsuccessful exchanges are documented and communicated to the registry.*
Recommendation #1 question 7 Who is entitled to make use of the Emergency Action Channel?	!	**Comment:** The overarching goal of the emergency-action exchange is to quickly establish communication between the losing and gaining registrars. Thus it is a registrar-to-registrar channel, at least in the case of a hijacking. Other use-cases may require access by registries (and perhaps others) as well, but not in this circumstance. **BC Position:** *The BC defers to registries and registrars with regard to who has access to the Emergency Action Channel and does not envision that registrants would have such access.*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #2 - The WG notes that in addition to reactive measures such as outlined in recommendation #1, proactive measures to prevent hijacking are of the utmost importance. As such, the WG strongly recommends the promotion by ALAC and other ICANN structures of the measures outlined in the recent report of the Security and Stability Advisory Committee on A Registrant's Guide to Protecting Domain Name Registration Accounts (SAC 044).		**Comment:** The WG focused primarily on policy-changes that would improve the IRTP process "after the fact" of a hijacking. But it also was interested in addressing measures that registrars could offer, and registrants could use, to proactively reduce the risk of domain-name hijacking. SAC 044 provides a number of suggestions that the WG endorses in this area. **BC Position:** *The BC prefers the proactive approach of "building in security" to "reacting to a hijacking" and endorses this recommendation. The BC will join the SSAC, ALAC and registrars in developing and promoting best practices in this area.*
Issue B: Whether additional provisions on undoing inappropriate transfers are needed, especially with regard to disputes between a Registrant and Admin Contact. The policy is clear that the Registrant can overrule the AC, but how this is implemented is currently at the discretion of the registrar.		
Recommendation #3 - The WG recommends requesting an Issues Report on the requirement of 'thick' WHOIS for all incumbent gTLDs.		**Comment:** The WG notes that "thin" registries make it more complicated for the gaining registrar to contact the registrant to confirm that they in fact want to transfer the domain away from the losing registrar. A "thick" registry (where contact information is stored at the registry rather than the registrars) would dramatically reduce this problem. The WG notes that all new gTLDs will have thick registries and thus this recommendation really only applies to the large legacy TLDs (.com and .net) TLDs managed by Verisign. **BC Position:** *The BC supports the notion of exploring "operational" improvements to the WHOIS system, especially if they can be addressed without an entanglement with the historical issues of WHOIS data access and accuracy.* *And, while the BC supports this recommendation as one way forward, the constituency would also support a direct conversation with Verisign to explore the possibility of addressing this issue directly rather than having to go through the PDP process.*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #4 - The WG recommends requesting an Issue Report to examine [the possibility of establishing a "change of control" process that is distinct from the IRTP], including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space, and any associated security concerns.	!	**Comment:** The WG notes that the primary function of IRTP is to permit Registered Name Holders to move registrations to the Registrar of their choice, with all contact information intact. However the WG also notes that IRTP has also come to be widely used in the domain name community to affect a "change of control," moving the domain name to a new Registered Name Holder. Discussions within the WG and with ICANN Staff have determined that there is no separately-defined "change of control" function at this time. **BC Position:** *The BC supports this recommendation – but is also willing to explore other ways to address this issue if a more streamlined approach can be identified.*
Recommendation #5: The WG recommends modifying section 3 of the IRTP to require that the Registrar of Record/Losing Registrar be required to notify the Registered Name Holder/Registrant of the transfer out.	✓	**Comment:** Section 3 of the IRTP currently offers the **option** for the Registrar of Record to notify the registrant that a transfer has been requested. The WG agreed that **requiring** this notification might alert the registrant at an earlier stage that a transfer has been requested. This offers the possibility that potential conflicts might be brought to light before a transfer has been completed and therefore might reduce the number of conflicts between the admin contact and registrant that would require undoing a transfer. **BC Position:** *The BC supports this proactive approach to reducing the number of post-transfer disputes.*
Issue C: Whether special provisions are needed for a change of registrant near a change of registrar. The policy does not currently deal with change of registrant, which often figures in hijacking cases.		

IRTP Recommendation	BC Rating	BC Comment
Request for comments regarding a lock following a change of registrant information:	!	**Comment:** Some registrars lock a domain name registration for a sixty-day period following a **change of registrant** to prevent hijacking and/or unauthorized transfer of a domain name registration. It is useful to make the distinction between changes to WHOIS information where the registrant simply updates the WHOIS contact information (i.e., **WHOIS Update**) versus where WHOIS information is updated as a result of the registered name holder being changed from an existing registrant A to a new registrant B (**Registrant Change**). The goal of this conversation is to determine whether there are ways to short-circuit domain hijackers who use a series of rapid domain-transfers between multiple registrars to frustrate the efforts of registrars and registrants to recover stolen names. **BC Position:** *The BC supports requiring a lock after WHOIS information is updated when that update effects a change of registrant. The BC defers to registrars when it comes to specifying how long this interval should be, but would suggest something on the order of 60 days as a starting point for discussion.* *The BC also supports prohibiting a transfer of a domain name registration for 60-days following a transfer, which is currently an **option** under reason of denial #9 in the IRTP.*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #6: The WG recommends that [IRTP] language [be] expanded and clarified to tailor it more to explicitly address registrar-specific (i.e. non-EPP) locks in order to make it clear that the registrant must give some sort of informed opt-in express consent to having such a lock applied, and the registrant must be able to have the lock removed upon reasonable notice and authentication. Specifically, the WG recommends that denial reason #6 be modified to read as follows: "Express objection to the transfer by the Transfer Contact. Objection could take the form of specific request (either by paper or electronic means) by the Transfer Contact to deny a particular transfer request, or a general objection to all transfer requests received by the Registrar, either temporarily or indefinitely. In all cases, the objection must be provided with the express and informed consent of the Transfer Contact on an opt-in basis and upon request by the Transfer Contact, the Registrar must remove the lock or provide a reasonably accessible method for the Transfer Contact to remove the lock within five (5) calendar days."	✔	**Comment:** There is an important distinction between locks on domain names that are consistent across all registrars in a TLD (locks supported by the registry's implementation of the Extended Provisioning Protocol or EPP), and those locks that are unique to a given registrar (non-EPP locks). The current IRTP is unclear how these non-EPP locks should be handled, which provides an opportunity for a registrar to prevent a registrant from transferring a domain away from that registrar by using a lock that is not clearly addressed by the IRTP. **BC Position:** *The BC supports modifying the IRTP to close this gap in the policy.* *The BC supports the idea of splitting the current Denial Reason #6 into two. The first would provide an express objection to a particular transfer. The second would provide a general indefinite lock to deny all transfer requests.*
Issue D: Whether standards or best practices should be implemented regarding use of Registrar Lock status (e.g., when it may/may not, should/should not be applied)		

IRTP Recommendation	BC Rating	BC Comment
Recommendation #7: The WG recommends that if a review of the UDRP is conducted in the near future, the issue of requiring the locking of a domain name subject to UDRP proceedings is taken into consideration.	!	**Comment:** WIPO suggested locking a domain name during a UDRP dispute in their comments to the WG. **BC Position:** *The BC supports this recommendation, and would also support elevating this recommendation from an optional "best practice" to a policy change that makes this kind of lock mandatory.* *The BC would also support proceeding with this policy change as a part of this PDP rather than waiting for the launch of a UDRP PDP that either may be some time off, or never launch at all.*
Recommendation #8: The WG recommends standardizing and clarifying WHOIS status messages regarding Registrar Lock status.	✓	**Comment:** Current WHOIS status messages vary quite a lot between registrars and registries which is confusing and causes operational headaches for registrants, registrar and registries. **BC Position:** *The BC supports this recommendation and notes that standardizing these messages would also improve the post-expiration domain name recovery process.*

IRTP Recommendation	BC Rating	BC Comment
Recommendation #9: The WG recommends deleting denial reason #7 as a valid reason for denial under section 3 of the IRTP as it is technically not possible to initiate a transfer for a domain name that is locked, and hence cannot be denied, making this denial reason obsolete. Instead denial reason #7 should be replaced by adding a new provision in a different section of the IRTP on when and how domains may be locked or unlocked. The WG recommends that ICANN staff is asked to develop an implementation plan for community consideration including proposed changes to the IRTP to reflect this recommendation.	✔	**Comment:** This is a recommendation to cure a logical impossibility in the current IRTP. **BC Position:** *The BC supports this recommendation*

Conclusion and voting:

In summary, the BC takes the position that is broadly supportive of the working group's final report.

Business Constituency Support Stats:

- **Position Statement author:** Mike O'Connor
- **BC Members on IRTP Working Group:**

Name	Affiliation*	Meetings Attended
Berry Cobb	CBUC	41
Chris Chaplow	CBUC	40
Mikey O'Connor	CBUC	38
Mike Rodenbaugh	CBUC	1

BC Information Regarding this Position Statement:

- Total # of BC Members: 50
- Total # of eligible BC Members: 50
- Minimum requirement for majority of Members: 25
- # of Members that contributed to this document: 6

Level of Support of Active Members:

This document was posted to BC members for review and comment on 18-Mar-2011. Pursuant to our section 7.2 of the BC Charter, this document is deemed approved since no substantively opposing comments were received as of 31-Mar-2011.

Attesting BC Officer: Steve DelBianco, vice chair for policy coordination