

IRTP Part D PDP Working Group – SG / C Input Review Tool  
19 June 2013

For complete overview of comments received, please see <https://community.icann.org/pages/viewpage.action?pageId=41880128>

#	Comment	Who / Where	WG Response	Recommended Action
<b>a) With regard to the IRTP, should reporting requirements for registries and dispute provider be developed in order to make precedent and trend information available to the community and allow reference to past cases in dispute submissions?</b>				
1.	BC considers that reporting requirements for registries and dispute providers <b>should</b> be developed in order to make precedent and trend information available to the community and allow reference to past cases in dispute submissions	BC	- BC is restating the charter question in the affirmative	
2.	<p>The RySG is supportive of standardized reporting requirements for completed TDRP cases and allowing reference to past cases in dispute submissions as this would be consistent with UDRP panel decisions. Any disclosure of non-public information regarding transfers between registrars should be approved in writing by all registrars involved in the transfer dispute case prior to disclosure. Further, all dispute resolution providers should have input into and approval of the reporting requirements prior to implementation.</p> <p>The TDRP encourages registrars to resolve disputes amongst themselves prior to initiating a dispute case at either the first or second level. Given the low number of transfer dispute cases filed at the registry</p>	RySG (submitted in response to the Preliminary Issue Report)	<ul style="list-style-type: none"> <li>- Registries opinion should be considered especially important since the burden would fall onto them.</li> <li>- Registries are supportive of standardized reporting requirements and allowing for references to past TDRP cases and dispute decisions</li> <li>- The importance is to <b>standardize the case data</b></li> <li>- <b>With the introduction of new gTLDs the number of registries will increase dramatically</b> and a situation should be avoided whereby each registry interprets and applies the rules in a different manner</li> <li>- <b>So the TDRP could be modified</b> to have a first level dispute among registrars and second level at the dispute provider level – <b>taking the registry level out</b></li> <li>- The registry comment demonstrates that there is a problem and they want to bring this forward but this is not necessarily the correct charter question for this, still, it ought/needs to be dealt with</li> <li>- Maybe the group ought to take a step back and <b>look at the bigger TDRP picture; what was this designed for? Who is it for? What</b></li> </ul>	

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	<p>level (only 145 disputes filed across all registries between October 2009 and September 2012), it seems that the majority of disputes are being resolved prior to going to the first (registry operators) or second level dispute resolution providers. Even with the very small number of disputes as compared with the number of transfers that are processed each day, all registry operators must maintain a process and experienced personnel to handle transfer dispute cases should any be received. With the introduction of new gTLDs, the number of registry operators will increase dramatically. <b>Each of the registry operators may interpret and apply the TDRP differently.</b> It may be time to eliminate the first level dispute resolution option managed at the registry level and have all disputes that are unable to be resolved at the registrar level be submitted to a second level dispute resolution provider. Currently there are two approved TDRP second level dispute resolution providers – Asian Domain Name Dispute Resolution Centre and The National Arbitration Forum (both of which are also approved dispute resolution providers for the UDRP). Consistent handling of cases by subject matter experts has the potential to improve the overall dispute resolution process.</p>		<p><b>problems does the TDRP try to solve?</b></p> <ul style="list-style-type: none"> <li>- An overhaul might also help to deal with the discrepancy between IRTP related complaints to ICANN compliance and TDRP uses (and resolution) at registry and dispute provider level</li> <li>- <b>Key discussion points:</b> <ul style="list-style-type: none"> <li>○ <b>Removing the Registry layer from the process</b></li> <li>○ <b>Impact many new gTLDs on the process</b></li> <li>○ <b>Look at the bigger TDRP picture; what was this designed for? Who is it for? What problems does the TDRP try to solve?</b></li> <li>○ <b>Where would information be gathered/housed? What’s the scope? Registries only, or dispute providers as well?</b></li> </ul> </li> </ul>	
<p><b>b) Should additional provisions be included in the <a href="#">Transfer Dispute Resolution Policy</a> (TDRP) that set out how to handle disputes when multiple transfers have occurred?</b></p>				
3.	Additional provisions should be included Multiple transfers in the Transfer Dispute Resolution Policy	BC	- multi-transfers are a problem	

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	(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 since the policy was written a third party can easily purchase a hijacked domain in good faith.		<ul style="list-style-type: none"> <li>- situation often also referred to as ‘registrar hopping’ or ‘domain name laundering’</li> <li>- the BC accurately describe the problem but they don’t offer any specific remedies at this point</li> <li>- there is a provision that allows a registrar to reject a transfer request if it’s within <b>60 days of a previous transfer request</b> (optional not mandatory provision)</li> <li>- some of these points have already been discussed in IRTP A and B</li> <li>- the good faith of people who buy domains on the after-market should also be born in mind when addressing this issue</li> <li>- there is an <b>issue with claw-back</b> whereby a domain was hijacked, sold on and then has been sold on legitimately but the original owner then brings a TDRP against the current one and the TDRP has to ‘claw back’ the chain – with several (presumably innocent) name holders and registrars involved</li> <li>- this means that the ‘good faith purchaser’ needs protection too</li> <li>- maybe <b>add to the provision that anybody initiating a TDRP can contact any registrar with whom the domain had been registered in the past 6 months (or similar)</b> and add a lock to the domain name as soon as the TDRP is initiated</li> </ul>	
4.	Under the TDRP, a dispute must be filed within six months of the violation date. Consistent application of the 60 day restriction on inter-registrar transfers after a transfer should help to reduce the instances of multiple transfers. The RySG would support consideration of a modification to the TDRP to clarify the impact of a fraudulent transfer on subsequent transfers.	RySG (submitted in response to the Preliminary Issue Report)	<ul style="list-style-type: none"> <li>- Maybe the next course of action is to have a strong recommendation for a best practice and further education of registrants as well as registrars – so that the latter support this wherever possible</li> <li>- TDRP should <b>lock a domain name against further transfers</b> until the dispute is resolved</li> <li>- Maybe the TDRP should be expanded so that <b>all registrars that were in a dispute transfer chain would be required to provide information relevant to the case</b></li> <li>- <b>Registrars that were involved in a contested chain could be compelled to make available all relevant data</b> that they have on record, at least two FOAs, log files and any other Whois or customer contact information.</li> </ul>	

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			<p>Maybe the TEAC process of IRTP B could be a model – or at least a jumping-off point – for a similar TDRP model</p> <ul style="list-style-type: none"> <li>- Group also need to <b>define how many transfers are too many</b> in what period of time</li> <li>- <b>Key discussion points:</b> <ul style="list-style-type: none"> <li>○ <b>Locking and lock-interval</b></li> <li>○ <b>Claw-back</b></li> <li>○ <b>A provision that anybody initiating a TDRP can contact any registrar with whom the domain had been registered in the past 6 months (or similar)</b></li> <li>○ <b>all registrars that were in a dispute transfer chain would be required to provide information relevant to the case</b></li> <li>○ <b>define how many transfers are too many in what period of time – perhaps look at a Registry view of the data, looking for patterns of transactions?</b></li> <li>○ <b>What do we imply with "good faith" acquisition? Are we creating a right that exists nowhere else? Is there some kind of help (aka training, education) to help registrants?</b></li> </ul> </li> </ul>	
<b>c) Should dispute options for registrants be developed and implanted as part of the IRTP (currently registrants depend on registrars to initiate a dispute on their behalf)?</b>				
5.	The BC believes that <b>there must be a mechanism for registrants to initiate proceedings when registrars decline to initiate them</b>	BC	<ul style="list-style-type: none"> <li>- The conflict between administrative contact and registered name holder should be addressed in this respect: how to set best practice rules on <b>who should be the final authority on domain transfers?</b></li> <li>-</li> </ul>	
6.	The RySG supports <b>dispute options for registrants</b> . There should be clear avenues for registrants to	RySG (submitted in	<ul style="list-style-type: none"> <li>- there is a problem with transfer being authorized by admin contact and not registrant (dealt with in Charter question ‘b’ of IRTP B.</li> </ul>	

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	<p>make a complaint or file a dispute case, but the first option should always be to go through the registrar. Because the potential for gaming is high, careful consideration should be made in determining secondary options if the registrar is unresponsive. Just one potential issue associated with a direct dispute mechanism for registrants is the inability of parties other than the registrar to authenticate the registrant.</p>	<p>response to the Preliminary Issue Report)</p>	<ul style="list-style-type: none"> <li>- also assess the problems with the access to registrant contact details in thin vs. thick Whois models.</li> <li>- Possible re-assess of this question <b>once the thick Whois PDP is concluded.</b></li> <li>- <b>Key discussion points:</b> <ul style="list-style-type: none"> <li>○ <b>A mechanism for registrants to initiate proceedings when registrars decline to initiate them</b></li> <li>○ <b>Should this be aimed at a mechanism to initiate a dispute directly with the 2<sup>nd</sup> level provider?</b></li> <li>○ <b>The inability of parties other than the registrar to authenticate the registrant (applies more to thin Whois – which may be impacted by the results of the Thick Whois PDP)</b></li> <li>○ Impact of cost – who pays? Impact of time/speed – what happens to the registrant with a high-traffic site?</li> <li>○ Impact of “change of registrant” from IRTP-C – are those issues included?</li> </ul> </li> </ul>	
<p><b>d) Should certain requirements and best practices be put into place for registrars to make information on transfer dispute resolution options available to registrants?</b></p>				
<p>7.</p>	<p>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.</p>	<p>BC</p>		
<p>8.</p>	<p>The RySG commends ICANN on the steps that they have taken to provide information to registrants on the transfer process in the form of information on their website including frequently asked questions, one of which includes a link to the Transfer Dispute Resolution Policy. The RySG is supportive of</p>	<p>RySG (submitted in response to the Preliminary Issue Report)</p>	<ul style="list-style-type: none"> <li>- Improving the publishing of information - by requiring registrars to make info to dispute resolution available - falls into a general bucket to improve the information that is available to the registrants</li> <li>- If registrant can initiate a dispute - they have to be told about it.</li> </ul>	

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	<p>establishing best practices, and perhaps requirements, for making information on how to initiate a transfer, as well as transfer dispute options available to registrants via the registrar. Most registrants should know who their registrar is so registrar web sites would be a logical place where registrants would go for answers to questions relating to transferring their domain name. It is the RySG's opinion that information for registrants on how to file a dispute should they feel that their domain name was transferred without their authorization, or if their registrar of record is prohibiting the transfer of their domain name for a reason that is in direct conflict with the IRTP, also be included. Implementation of agreed upon best practices could be as simple as requiring all registrars to provide a link on their web site to the best practices that could be hosted and maintained by ICANN.</p>		<p>- Even though a registrant cannot lodge a dispute with the registry directly, they should have access to how they can raise an issue with their registrar who can raise a dispute on their behalf with the registry.</p> <p>- Future discussion stipulated on whether to put it into the registrant-registrar agreement or not.</p> <p>- General support that registers should be adequately informed - especially since the global sale and maintenance of domain names means that language/cultural barriers are likely to play a role</p> <p><b>Key discussion points:</b></p> <ul style="list-style-type: none"> <li>○ <b>Where does the information reside? RA? Registrar web site? ICANN-hosted education site (PEDNR implementation) with link? Somewhere else?</b></li> </ul>	
<b>e) Are existing penalties for policy violations sufficient or should additional provisions/penalties for specific violations be added into the IRTP?</b>				
9.	<p>The BC believes there should be penalties for specific violations other than 'notice of breach'. The BC "hopes" that the 2013 RAA has addressed this issue.</p>	BC	<p>The draft RAA - as it stands now - includes a gradient type of enforcement or sanction structure for ICANN compliance, e.g., suspension where a registrar would not be able to add new domain names or accept transfers but it still permits registrant customers to manage their existing names.</p> <p>The Group is considering to <b>state explicitly that policies should not have individual sanction structures</b>. But rather having an overall structure under the RAA to assure <b>uniformity and consistency of penalties</b>.</p>	

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10.	With the modifications introduced in the 2009 Registrar Accreditation Agreement that provide for enforcement measures for non-compliance, the RySG is satisfied that there are adequate remedies to encourage resolution of non-compliance with the IRTP and TDRP.	RySG (submitted in response to the Preliminary Issue Report)	<p><b>The existing penalties particularly in the 2009 and especially in the draft 2013 RAA are sufficient.</b></p> <p><b>Key discussion points:</b></p> <ul style="list-style-type: none"> <li>○ <b>None</b></li> </ul>	
<b>f) Did the universal adoption and implementation of EPP AuthInfo codes eliminate the need of Standard Forms of Authorization (FOAs)</b>				
11.	In the day to day administrations 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 <b>can help protect the domain names from being hijacked</b> , given the Registered Name Holder's Whois contact information is different from the Admin Contact's.	BC	<p>In the vast majority of transfers FOAs are redundant. However in those cases where there is a hijacked, or compromised registrar account, or a dispute between the registrant and the admin contact the FOAs are <b>useful to help resolve the dispute and to reverse it where appropriate.</b></p> <p>Keeping both EPP and FOA could mean that registrants are getting multiple codes and <b>there is a chance of confusion.</b></p> <p>The Group could imagine to preserve the usefulness of the FOA for disputes but to <b>consolidate the FOA and the Auth-Info into a single step.</b></p> <p>The aim should not be to eliminate FOAs but to make its use more efficient by <b>streamlining the process and possibly merging it with EPP</b></p>	
12.	The FOA is a <b>key document in the transfer dispute resolution process and the elimination of the FOA would critically impact it.</b> It is the recommendation of the RySG that the FOA requirement not be	RySG (submitted in response to the Preliminary	The Group is wondering whether there gTLD registries out there that don't use EPP – since there are some ccTLDs (Denmark, Latin American countries) that still use fax/postal services	

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	<p>eliminated given that a mechanism to capture information adequate to <b>document the chain of events that prove registrant authentication and authorization of the initiation of the transfer request</b> would still be necessary to facilitate resolution of disputes.</p>	y Issue Report)	<p>Overall sentiment is that the FOA may feel like archaic and unnecessary administrative paperwork but it remains invaluable to prevent hijacking or to undo a transfer that was unauthorized.</p> <p><b>Key discussion points:</b></p> <ul style="list-style-type: none"> <li>○ <b>Need to more clarity around how FOAs prevent hijacking (include discussion of Compliance “Clarification” document)</b></li> <li>○ <b>Need to understand the feasibility/implications of combining Auth-Info and FOA into a single step, or combining it with EPP</b></li> </ul>	
<b>Other comments</b>				
13.	No further comments	BC		
14.	<p>Finally, the RySG also wishes to underscore the importance of explicitly addressing the <b>role resellers play</b> in all of the issues that will be reviewed in IRTP-D. The domain name industry is changing, and vertical integration could amplify potential complications involving reseller relationships. While the RySG does not have specific comments at this time on how resellers may (or may not) factor into each of the issues that will be considered in this PDP, we encourage the Working Group to explicitly consider resellers' roles and develop appropriate recommendations that might help minimize community misunderstandings about reseller responsibilities moving forward.</p>	RySG (submitted in response to the Preliminary Issue Report)	<p><b>Resellers are explicitly mentioned in both the 2009 RAA and the 2013 draft RAA</b> and accordingly, registrars remain completely responsible for the actions of their resellers. They are not able to “out source” their obligations to resellers.</p> <p>This also means that there are no obligations of resellers towards ICANN directly. <b>All the obligations run via the registrars.</b></p> <p><b>The Group has no intention to alter the existing chain of responsibility between registrars and their resellers.</b></p>	



