

IPC Position Statement
On
Points of Clarification
Inter-Registrar Transfer Policy
February 20, 2008

The GNSO Council has asked for constituency position statements on a document entitled "Points of Clarification Inter-Registrar Transfer Policy" (the "Points") (see <http://gns0.icann.org/drafts/Transfer-Denial-Clarifications-23aug07.pdf>). Section 3 of the Inter-Registrar Transfer Policy (the "Policy") lists several reasons why a registrar may deny a transfer. The Points lists four of these for further consideration. In general, the IPC agrees with most of the Points document; however, we suggest a few revisions designed to provide greater clarity and efficiency. These are:

1. Denial for Non-Payment

The Policy states that a registrar can deny transfer if:

"No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer."

The IPC recommends that this text be deleted and replaced with:

"Non-payment:

(1) by the registrant of registrar's fees for the previous registration period (including credit card charge-backs for registration or renewal fees) if the domain name has not yet expired; and/or

(2) by the registrant of any non-refundable fees paid to the registry during the auto-renew period for which payment has not been collected by the registrar from the registrant if the domain name is past its expiration date.

In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer."

The purpose of the IPC's suggested changes is to provide clarity to the process concerning the differences between transfer denials for non-payment within both expiry and auto-renew contexts.

2. Lock/Unlock Measures

The Policy states that a registrar can deny transfer if:

“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 IPC recommends that this text be deleted and replaced with:

“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. “Readily accessible and reasonable” shall mean any mechanism which is (1) accessible from a registrar’s online interface; (2) can be activated electronically through that interface; (3) does not have a “time out” period or window for transfer; and (4) for which the registrar has posted clear and concise instructions for operation in the language of the registrar’s agreement with its registrants.”

IPC's proposed changes are intended to provide greater specificity about what a registrar needs to do to enable Registered Name Holders to remove lock status, and thus to reduce the risk of abuse of the proviso. This change would facilitate IPC members (and other registrants) in making inter-registrar transfer of names in "lock status," by providing a clearer path for getting the name out of that status. The IPC’s proposal would define “readily accessible and reasonable” in a manner that is more specific and transparent than the language suggested in the “Points” document.

3. 60 days – Initial Registration Period

The Policy states that a registrar can deny transfer if:

“A domain name is in the first 60 days of an initial registration period.”

The IPC recommends that this text be deleted and replaced with:

“A domain name is in the first 60 days following its first date of registration as reflected in the WHOIS record, unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute.”

The IPC’s proposed changes are based on the language recommended in the Points document but supplement it with additional language designed to eliminate an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

4. 60 days – Previous Transfer

The Policy states that a registrar can deny transfer if:

“A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).”

The IPC recommends that this text be deleted and replaced with:

“A domain name is within 60 days after being transferred from one registrar to another except (1) from being transferred back to the original Registrar in cases where both Registrars so agree; (2) where a decision in the dispute resolution process so directs; and/or (3) unless such domain name is the subject of a dispute and the registrar receives reasonable notice from the registrant and a disputing party that the registrant and disputing party have agreed to a transfer as part of a resolution of such dispute.”

The IPC’s proposed changes are designed to eliminate (1) an arbitrary requirement that a successful complainant in a UDRP or other proceeding must take possession of a domain name at the registrar of record rather than being in a position to transfer it away immediately to the complainant’s choice of registrar; and (2) an arbitrary requirement that the time period for any domain name dispute must be at least sixty (60) days long. By allowing parties in dispute to arrange for a transfer of a disputed domain name upon a reasonable showing of an agreement to transfer, domain disputes may be resolved more efficiently.

A. Constituency Process

This statement was drafted by an IPC participant in GNSO council activities related to inter-registrar transfer. After several iterations, a final draft was circulated for comment to the full IPC membership list on February 14, with notice that the issue would be up for decision at the next IPC membership call on February 20. No proposed amendments were received prior to the call. On February 20, on a teleconference attended by 14 IPC members/representatives, the draft was presented and approved without objection.

B. Effects on the Constituency

If the suggestions set forth by the IPC herein are adopted, members of the Constituency will be in a better position to address brand abuses and to resolve disputes in a more expedited fashion unhindered by an arbitrary sixty (60) day requirement that a registrant of a disputed domain name must retain title to a domain name even if both parties to a dispute agree otherwise. Since these proposed changes will shorten the “life span” of some domain disputes, the financial impact for members of the Constituency will be positive in the form of lower enforcement costs.

C. Time Period for Implementation.

We believe the suggestions set forth herein could be adopted by the community within a matter of weeks.