GNSO Transfer Policy Review

This briefing document seeks to provide GNSO Council Leadership with the current status of the Transfer Policy Review and possible next steps for its consideration.

CURRENT STATUS

Pursuant to Recommendation 18 of the Inter-Registrar Transfer Policy (IRTP) Part D PDP WG, which provides, "[t]he Working Group recommends that contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts" ICANN Org delivered the most recent version of the Transfer Policy Status Report (TPSR) to the GNSO Council on 22 April 2019.

The Transfer Policy Status Report includes details on the noted purposes of the Transfer Policy, formerly known as the Inter-Registrar Transfer Policy (IRTP),[1] an overview of the domain name transfer process under the IRTP, the impact of the Temporary Specification and the Registration Data Access Protocol (RDAP) on the IRTP, metrics related to the IRTP, and a summary of the public comments and survey responses to the published Transfer Policy Status Report. Some of the specific issues identified in the TPSR include issues with the 60-day lock period, obtaining the "AuthCode" to carry out a transfer, confusion around the language in section I.A.3.7.3 of the Transfer Policy about denial based upon payment, confusion around whether the "Change of Registrant" provision applies to customer data when it is used by a privacy/proxy provider as it relates to the 60-day lock and the impact of the GDPR, et.al.

Separately, it may also be worth noting that some members of the Registrar Stakeholder Group have recently reached out to ICANN org to alert it to a current issue with the Transfer Policy: specifically, registrars have noted an issue with the following language in the Temporary Specification,[2] "if the Gaining Registrar is unable to gain access to then-current Registration Data for a domain name subject of a transfer, […] [t]he Gaining Registrar is not REQUIRED to obtain a Form of Authorization from the Transfer Contact." Registrars have noted there is an issue with ICANN org's current interpretation of "unable to gain access," and are in the process of petitioning the GNSO Council for a forbearance from compliance enforcement of the Gaining Registrar Form of Authorization (FOA), until such time as this issue can be comprehensively reviewed during the Transfer Policy review.

---

[1] Following the implementation of Recommendation 1 of the Inter-Registrar Transfer Policy (IRTP) Part C PDP WG, where language regarding inter-registrant transfer was added to the Policy, the Policy was subsequently renamed the Transfer Policy as in no longer exclusively dealt with inter-registrar transfers.

[2] The provided language within the Temporary Specification was approved as a policy recommendation from the EPDP Team, and, as such, will be included in the gTLD Registration Data Policy, which is currently in implementation.

POSSIBLE NEXT STEPS

The GNSO Operating Procedures do not prescribe specific steps to be taken in response to a Policy Status Report. As this is the first such review activity, the Council may wish to consider a range of options to determine the best path forward. Similarly, closer review of the issues identified could also point to different paths that could be pursued to address specific issues, either in parallel or consecutively. Please note the below list of options is not exhaustive; the GNSO Council is welcome to consider other alternatives if it so chooses.

In light of technical developments and new policy recommendations that have emerged since the Transfer Policy has been in effect, the Council may wish to consider a methodology for further work on the Transfer Policy in a broader context. Specifically, the Expedited Policy Development Process (EPDP) Team recommends a review of the Transfer Policy in light of the European Union's General Data Protection Regulation (GDPR), which affects how transfer data may be shared. Similarly, the Registration Data Access Protocol (RDAP) allows for new transfer capabilities, and this may also be relevant in relation to policy consideration of the Transfer Policy. Incorporating these areas in a broad review of the Transfer Policy may prevent revisiting these and other issues individually in future work on the Transfer Policy. Some have also suggested that it would be timely to approach the Transfer Policy from a clean slate perspective – instead of trying to fix previously-identified issues, it might be worth rethinking the Transfer Policy as a whole by starting with a clean slate.

In order to guide the GNSO Council in determining how to approach the review, here are some proposed questions to help guide the discussion:

1) Which issues identified, if any, rise to the level of "urgent" and as a result should be dealt with in a timely manner? For example, should the registrar-stated issue of difficulties with post-GDPR Gaining Registrar FOAs, be separated out and dealt with in a narrowly-focused EPDP?

2) Is it appropriate and timely to rethink the Transfer Policy as a whole or should a review only focus on those issues that have been specifically identified, or both (first dealing with the issues specifically identified, followed by a complete overhaul)?

3) If it is deemed appropriate and timely to rethink the Transfer Policy as a whole, could a proposal be prepared by a small group of experts, identified by the GNSO Council, whose proposal would form the basis for a subsequent (E)PDP? Or could a (E)PDP be structured in such a way that an overall review could be carried out and completed in a reasonable timeframe?

4) If a review should only focus on those issues that have been specifically identified, should a representative group of those directly involved in transfers (e.g. registrars,

compliance, registrants) be tasked to come up with specific solutions to those issues, instead of an open WG? Further analysis might be needed upfront to determine whether the issues identified are to be considered issues that affect the underlying policy or the implementation of the policy – which could result in a different approach for addressing them. For example, a GNSO Guidance Process (GGP) might be appropriate if it is determined that an issue is the result of the implementation of the policy, not the underlying policy recommendations.

One thing to consider, however, in choosing the path forward, is the current workload of the GNSO and the availability of potential chair(s) and volunteers to participate in the ultimately-chosen approach(es) to review the Transfer Policy.