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# Final Report on the Inter-Registrar Transfer Policy - Part C Policy Development Process

## STATUS OF THIS DOCUMENT

This is the Final Report on IRTP Part C PDP, prepared by ICANN staff for submission to the GNSO Council on 9 October 2012.

## SUMMARY

This report is submitted to the GNSO Council as a required step in this GNSO Policy Development Process on the Inter-Registrar Transfer Policy Part C.



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# 1. Executive Summary

## 1.1 Background

- The [Inter-Registrar Transfer Policy](#) (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 policy is an existing community consensus policy that was implemented in late 2004 and is now being reviewed by the GNSO.
- The IRTP Part C Policy Development Process (PDP) is the third in a series of five PDPs that address areas for improvements in the existing transfer policy.
- The GNSO Council [resolved](#) at its meeting on 22 September 2012 to launch a PDP to address the following three issues:
  - a. "Change of Control" function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.
  - b. Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.
  - c. Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.
- The IRTP Part C Working Group published its [Initial Report](#) on 4 June 2012 in conjunction with the opening of a public comment forum (see section 6 for further details).
- Following review of the comments received and continued deliberations, the WG has now finalized its report and submits it to the GNSO Council for its consideration.

## 1.2 Deliberations of the Working Group

- The IRTP Part C Working Group started its deliberations on 8 November 2011 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.
- Section 5 provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads.

## 1.3 WG Recommendations

- All the recommendations listed below have full consensus support from the Working Group.
- **Recommendation for Charter Question A:**

**Recommendation #1** – The IRTP Part C WG recommends the adoption of change of registrant consensus policy, which outlines the rules and requirements for a change of registrant of a domain name registration. Such a policy should follow the requirements and steps as outlined hereunder in the section ‘proposed change of registrant process for gTLDs’.

### *Proposed “Change of Registrant” Process for gTLDs*

Having concluded that there are benefits in developing a standalone process for a “change of control” or “change of registrant<sup>1</sup>”, the WG recommends the following requirements that such a change of registrant process should meet. These include:

- Both the Prior Registrant and the New Registrant need to authorize the change of registrant. Such authorization could also be provided by the Prior Registrant in the form of pre-approval or via a proxy. However such preapprovals must be secured using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this

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<sup>1</sup> In the context of the change of registrant process, the term Registrant is identical to ‘Registered Name Holder’ as defined in the Registrar Accreditation Agreement (RAA).

- recommendation is implemented in accordance with the intention of the Working Group.
- A change of registrant cannot take place simultaneously with a change of registrar although they can be made to appear that way to registrants in a registrar's user interface. If both changes need to be made, it is suggested, but not required, that the change of registrar (IRTP) be completed prior to initiating the change of registrant in order to avoid triggering the proposed 60-day inter-registrar transfer lock (see below).
  - The WG also noted that any such process should not create an unfair advantage/disadvantage for any of the segments active in the domain name industry and noted that it should not prevent innovation and differentiation amongst registrars.

The Working Group also discussed extensively whether there should be any restrictions in place that would prevent a change of registrar immediately following a change of registrant (see the Initial Report) and recommends that a domain name cannot be transferred to another registrar for 60 days to protect registrants against possible harms arising from domain hijacking. However the option to opt out of this restriction (with standard notice to all registrants of the associated risks) is provided in order to meet the needs of registrants who are concerned about the negative effect on movability of domain name registrations. If a registrar chooses to offer an option for registrants to opt out, the process to remove this restriction must use a generally accepted method of authentication.

As a result of these deliberations, the WG has developed the following proposed process for a change of registrant:

**STEP 0:** If the Prior and New Registrants are transferring the domain to a new registrar in conjunction with this Change of Registrant process, it is suggested that they first complete the Inter-Registrar Transfer in order to avoid triggering the default 60-day lock associated with the Change of Registrant process. Note that the Inter Registrar Transfer policy is revised so as to not permit changes to Registrant information at the same time as an inter-registrar transfer. The Gaining Registrar must validate this prior to completing the transfer. (see also Note H hereunder).

STEP 1: Both Registrants authorize the change

- Either the Prior or Gaining Registrant produces and transmits Change of Registrant Credentials to the other Registrant
- The other Registrant acknowledges the receipt of credentials and authorizes the transfer

STEP 2: Registrar determines that both Prior and New Registrant have authorized the Change of Registrant and that the domain is eligible for Change of Registrant (i.e. there are no locks or other restrictions on the domain)

STEP 3: Registrar changes registrant

STEP 4: Registrar notifies Prior and New Registrant of the change that has taken place

STEP 5: Registrar places a lock on the domain to prevent Inter-Registrar transfers of the domain for 60 days, unless the Prior Registrant has opted out of this requirement after having received a standard notice as to the associated risks.

**NOTES:**

Note A: Change of Registrant is defined as a material change to any of the following:

- Name
- Organization
- Primary Contact Method (registrant and/or administrative contact email address)

In the case of minor updates or corrections, the registrar, in its judgement, may waive this requirement at the request of the registrant using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar

account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.

Note B: In order to be eligible for a change of registrant, the domain name registration should not be:

- Subject to UDRP
- Locked by the Registrar (with a clear mechanism for clearing the lock)
- Expired

Note C: A change of registrant can only be requested by the registrant or an authorized representative of the registrant.

Note D: Change of Registrant Credentials could be a PIN, password, string or code, including AuthInfo codes. However Registrars should note that AuthInfo codes are also generated and used in the Inter-Registrar Transfer process. A registrar can use the same AuthInfo code for the Change of Registrant process, but there may be operational and security issues that they should address if they choose to do this without resetting and reissuing the AuthInfo code first.

Note E: The Inter-Registrar Transfer Process and this Change of Registrant Process are separate and distinct – however they can be made to appear the same to Registrants if that is desirable. The key distinction between these two processes is that the first (IRTP) happens between Registrars, while this Change of Registrant (COR) process happens within a Registrar.

Note F: This process is also used in cases where the Gaining and Losing Registrants are the same – e.g. the case where a Registrant is updating information in response to a WDRP reminder.

- Note G: The 60-day lock is used to “contain” the changes of Registrants within a single Registrar in order to facilitate recovery of domains that have been hijacked.
- Note H: It is not currently possible to validate that Registrant information is identical during an Inter Registrar Transfer in thin registries. Thus, implementation of these policy changes in thin-registry gTLDs is contingent on either a) the implementation of uniform WHOIS data access provisions being discussed in the current round of RAA negotiations, b) an outcome of a PDP process that mandates thick WHOIS across all registries or c) some other mechanism which provides secure and reliable sharing of Registrant data between Registrars in thin-registry TLDs.
- Note I: It is recommended that the change of registrant policy is incorporated as a hybrid policy, whereby the IRTP would become a Transfer Policy in which one Part or Section details the policy for a change of registrar, and another Part or Section details the policy for a change of registrant.

▪ **Recommendation Charter Question B:**

**Recommendation #2:** The WG concludes that FOAs, once obtained by a registrar, should be valid for no longer than 60 days. Following expiration of the FOA, the registrar must re-authorize (via new FOA) the transfer request. Registrars should be permitted to allow registrants to opt-into an automatic renewal of FOAs, if desired.

In addition to the 60-day maximum validity restriction, FOAs should expire if there is a change of registrant, or if the domain name expires, or if the transfer is executed, or if there is a dispute filed for the domain name. In order to preserve the integrity of the FOA, there cannot be any opt-in or opt-out provisions for these reasons for expiration of the FOA.

As recommended and approved as a result of the IRTP Part B PDP, Losing Registrars under IRTP-B are now required to send an FOA to a Prior Registrant. The WG advises that Losing Registrars have the option to send a modified version of this FOA to a Prior Registrant in the event that the transfer is automated where the FOA would be advisory in nature.

Finally, during the course of its deliberations on this topic, the WG notes that the use of EPP Authorization Info (AuthInfo) codes has become the de facto mechanism for securing domain transfers and thereby replaced some of the reasons for the creation of the standard FOA. The WG recommends that the next IRTP PDP examines whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need for FOAs.

- **Recommendation Charter Question C:**

**Recommendation #3:** The WG recommends that all gTLD Registry Operators be required to publish the Registrar of Record's IANA ID in the TLD's WHOIS. Existing gTLD Registry operators that currently use proprietary IDs can continue to do so, but they must also publish the Registrar of Record's IANA ID. This recommendation should not prevent the use of proprietary IDs by gTLD Registry Operators for other purposes, as long as the Registrar of Record's IANA ID is also published in the TLD's Whois.

- **Additional Recommendation**

**Recommendation #4:** As recommended as part of the revised GNSO Policy Development Process, the IRTP Part C Working Group strongly encourages the GNSO Council to create an IRTP Part C Implementation Review Team consisting of individual IRTP Part C Working Group members who would remain available to provide feedback on the implementation plan for the recommendations directly to ICANN staff. The Working Group suggests that consideration be given to consulting recognised security experts (such as interested members of the SSAC) by the Implementation Review Team.



#### 1.4 Stakeholder Group / Constituency Statements, Initial Public Comment Period and Public Comment Forum on Initial Report

- A [public comment forum](#) was opened upon initiation of the Working Group activities. The public comment period ran from 21 November to 22 December 2011. One (1) community submission was received.
- The WG also requested all GNSO Stakeholder Groups and Constituencies to submit their statements on the IRTP Part C issues by circulating the SG/Constituency template (see Annex B). [One contribution](#) was received from the gTLD Registry Stakeholder Group.
- In addition, the WG also reached out to the country code Names Supporting Organization (ccNSO), the Governmental Advisory Committee (GAC) and the Security and Stability Advisory Committee (SSAC) for input, but no comments were received. The At-Large Advisory Committee (ALAC) submitted a statement in response to the public comment forum on the Initial Report.
- Following the publication of the Initial Report on 4 June 2012, [a public comment forum](#) was opened. In addition, the WG held a [public workshop](#) at the ICANN meeting in Prague to solicit input. Based on the input received, the WG developed a [public comment review tool](#), which it used to review and respond to all the contributions received.
- The IRTP Part C WG reviewed and discussed all the contributions received. Where relevant and appropriate, information and suggestions derived from the contributions received were considered as part of the WG deliberations and have been included in section 5.

#### 1.5 Conclusions and Next Steps

- The Working Group now submits this Final Report and its recommendations to the GNSO Council for its consideration.

## 2. Objective and Next Steps

This Final Report on the Inter-Registrar Transfer Policy (IRTP) Part C PDP is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws, Annex A (see <http://www.icann.org/general/bylaws.htm#AnnexA>). This Final Report is based on the Initial Report of 4 June 2012 and has been updated to reflect the review and analysis of the comments received by the IRTP Part C PDP Working Group in addition to further deliberations. This report is submitted to the GNSO Council for its consideration. The conclusions and recommendations for next steps on the five issues included in this PDP are outlined in Section 7.

## 3. Background

### 3.1 Process background

- Consistent with ICANN's obligation to promote and encourage robust competition in the domain name space, the Inter-Registrar Transfer Policy (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 policy is an existing community consensus policy that was implemented in late 2004 and is now being reviewed by the GNSO.
- As part of that review, the GNSO Council formed a Transfers Working Group (TWG) to examine and recommend possible areas for improvements in the existing transfer policy. The TWG identified a broad list of over 20 potential areas for clarification and improvement (see <http://www.icann.org/en/gnsso/transfers-tf/report-12feb03.htm>).
- The Council tasked a short term planning group to evaluate and prioritize the policy issues identified by the Transfers Working Group. In March 2008, the group delivered a report to the Council that suggested combining the consideration of related issues into five new PDPs (A – E) (see <http://gnsso.icann.org/drafts/transfer-wg-recommendations-pdp-groupings-19mar08.pdf>).
- On 8 May 2008, the Council adopted the structuring of five additional inter-registrar transfers PDPs as suggested by the planning group (in addition to a recently concluded Transfer PDP 1 on four reasons for denying a transfer). It was decided that the five new PDPs would be addressed in a largely consecutive manner, with the possibility of overlap as resources would permit.
- The first PDP of the series of five, IRTP Part A PDP, was concluded in March 2009 with the publication of the [Final Report](#). The [Final Report](#) of the second of the series, IRTP Part B, was published in May 2011
- In its meeting on 22 June 2011, the GNSO Council [requested](#) an Issue Report from Staff on the third of the PDP issue sets, and on the recommendation of the IRTP Part B WG, also

added the issue of 'Change of Control' to the list of items to be considered. The [Preliminary Issue Report](#) was published for [public comment](#) on 25 July 2011. The [Final Issue Report](#) was delivered to the Council on 29 August 2011.

- The issues that IRTP Part C PDP addresses are:
  - a. "Change of Control" function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.
  - b. Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.
  - c. Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.
- The GNSO Council [resolved](#) at its meeting on 22 September 2011 to launch a PDP on these three issues and adopted a Charter for a Working Group (see Annex A for the Working Group Charter).
- The IRTP Part C Working Group published its Initial Report on 4 June 2012 in conjunction with the opening of a public comment forum (see section 6 for further details).
- Following review of the comments received and continued deliberations, the WG has now finalized its report and submits it to the GNSO Council for its consideration.

### 3.2 Final Issue Background (excerpt from [Final Issue Report](#))

- Please note that the following text has been excerpted from the IRTP Part C Final Issue Report and does not contain any new input from the Working Group.

### **“Change of Control” and Reasons for Denial #8 & #9 (Charter Question A)**

a) "Change of Control" function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.

- In the context of its deliberations on whether special provisions are needed for a change of registrant near a change of registrar, which can be an indication of an inappropriate transfer for example as the result of a hijacking, the IRTP Part B Working Group discussed the issue of ‘Change of Control’. The WG noted 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, it was also noted that the IRTP is widely used to affect a ‘change of control’, namely by moving the domain name to a new Registered Name Holder, in conjunction with a transfer to another registrar. For example, in the domain name aftermarket it is not uncommon to demonstrate control of a domain name registration through the ability to transfer the domain name registration to another registrar following which the registrant information is changed to the new registrant. Nevertheless, the concept of ‘change of control’ is not defined in the context of gTLDs.
- The IRTP Part B WG discussed the existing IRTP Reason for Denial #8<sup>2</sup> and #9<sup>3</sup>, which allows the losing registrar to deny a transfer if it is within 60 days of being transferred or created. These IRTP Reasons for Denial are optional, although prohibitions on transfers during these time periods are required in many registry agreements (see for example sections 3.1.1. and 3.1.4. - <http://www.icann.org/en/tlds/agreements/org/appendix-07-08dec06.htm>). IRTP

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<sup>2</sup> Registrar of Record may deny a transfer request if ‘The transfer was requested within 60 days of the creation date as shown in the registry Whois record for the domain name’.

<sup>3</sup> Registrar of Record may deny a transfer request 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). "Transferred" shall only mean that an inter-registrar transfer has occurred in accordance with the procedures of this policy’.

Reason for Denial #8 and #9 may be used by a registrar as a mechanism to prevent 'registrar hopping'<sup>4</sup>, which makes it more difficult to undo a transfer in case of conflict or an inappropriate transfer. At the same time, some members of the IRTP Part B WG noted that such locks have the ability to reduce the flexibility to move domain name registrations to a registrar of choice. In the example provided in the previous bullet point, if denial reason #9 were applied, it would restrict the new registrant from moving the domain name registration to his / her registrar of choice for 60 days after acquiring the registration. It is important to emphasize that IRTP Reason for Denial #8 and #9 only apply to a change of registrar, not a change of registrant<sup>5</sup>.

- As a result of the different views in the WG and the lack of data on the number of domain name hijacking<sup>6</sup> cases with resolution problems due to the registrar hopping practice vs. the number of legitimate transfers benefitting of a less stringent locking policy, the IRTP Part B Working Group did not come to consensus on making reasons for denial #8 and 9 required instead of optional. However, the deliberations on the issue of 'change of control' and IRTP Reasons for Denial #8 and #9 revealed a clear link between the two issues and the WG therefore recommended<sup>7</sup> that the 'issue of transfer 'hopping' after hijacking be considered in conjunction with the issue of the lacking "change of control" function while also taking a review of the domain locking options in IRTP into account' as part of IRTP Part C.

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<sup>4</sup> Multiple inter-registrar transfers of the same domain name registration in a very short period of time

<sup>5</sup> Various 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, but this is a registrar lock, which is not linked to the IRTP.

<sup>6</sup> Domain hijacking refers to the wrongful taking of control of a domain name from the rightful name holder (see <http://www.icann.org/announcements/hijacking-report-12jul05.pdf>).

<sup>7</sup> Recommendation #4: 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. The WG also notes that IRTP is widely used to affect a "change of control," moving the domain name to a new Registered Name Holder. The IRTP Part B WG recommends requesting an Issue Report to examine this issue, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. The policy recommendations should include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security. Recommendations should be made based on the data needs identified in the IRTP Part B workgroup discussions and should be brought to the community for public comment. The WG would like to strongly encourage the GNSO Council to include these issues (change of control and 60-day post-transfer lock) as part of the next IRTP PDP and ask the new working group to find ways to quantify their recommendations with data.

- The IRTP Part B Working Group also noted that ‘Data on the frequency of hijacking cases is a pivotal part of this analysis. Mechanisms should be explored to develop accurate data around this issue in a way that meets the needs of registrars to protect proprietary information while at the same time providing a solid foundation for data-based policy-making. Data on legitimate transfer activity benefitting from the current locking policy wording needs to be collected’. Although a small aftermarket survey conducted by members of the IRTP Part B Working Group provided a limited insight into the incidence of hijacking (<http://forum.icann.org/lists/gnso-irtp-b-jun09/msg00531.html>), the IRTP Part B Working Group was not able to obtain any robust data on the incidence of hijacking. Further data gathering efforts would need to take into account the potential sensitivity in relation to sharing this kind of information by registrars.
- No definition or procedure currently exists within the IRTP or any other gTLD policy that defines a ‘change of control’. At the same time, many country code Top Level Domains (ccTLDs) do have a procedure or process for a ‘change of control’. For example, Nominet (.uk) uses the concept of registrant transfer (see <http://www.nominet.com/registrants/maintain/transfer/>), .EU calls it a ‘trade’ (see <http://www.eurid.eu/en/eu-domain-names/trades-transfers>) while .ie calls it a ‘transfer domain holder’ (see <http://www.domainregistry.ie/index.php/mnumods/mnuxferdomholder>). Further work on this issue would benefit from an analysis of the different approaches to ‘change of control’ in the ccTLD community as well as identifying potential benefits and/or possible negative consequences from applying a similar approaches in a gTLD context. If considered beneficial, consideration would also need to be given to whether a ‘change of control’ procedure should be defined in the context of the IRTP or whether a separate policy should be developed.
- An initial analysis of the processes used by the previously mentioned ccTLD operators learns that in the ccTLD context a ‘change of control’ can be handled by the registry operator (for example .uk) or via an accredited registrar (for example .eu). In the latter case, the registrant has to request the accredited registrar to initiate the request for a change of control, while in the case of .uk and .ie the request can be made directly to the registry by

the registrant. In .eu, a trade automatically results in a one-year extension of the registration period, which is not the case with a registrant transfer in .uk or transfer domain holder in .ie. If a PDP is initiated and a Working Group decides that a 'change of control' function should be developed, similar considerations will need to be taken into account in order to determine what would be most appropriate in the context of gTLDs. Further input on other models used by ccTLD operators was requested as part of the public comment period on this Preliminary Issue Report, but no comments were submitted to this end.

- Further consideration might also be given to 'change of control' in relation to transfers ordered as a result of Uniform Dispute Resolution Policy (UDRP)<sup>8</sup> proceedings. Currently there is no uniform practice for handling these: some registrars create a new account and move the name over and give control to the complainant; others provide the Auth-Info code for a transfer away. If a PDP is initiated, it would make sense to also consider 'change of control' in the context of transfers resulting from UDRP proceedings in order to ensure consistency.

### **Time-limiting Form of Authorization (Charter Question B)**

b) Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.

- In order to request an inter-registrar transfer, express authorization from either the Registered Name Holder or the Administrative Contact needs to be obtained. Such authorization must be made via a valid Standardized Form of Authorization (FOA). There are two different FOA's. The FOA labeled '[Initial Authorization for Registrar Transfer](#)' must be

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<sup>8</sup> It should be noted that the GNSO Council will consider shortly whether or not to initiate a PDP on the review of the UDRP. If a PDP is initiated and a PDP is initiated on IRTP Part C, co-ordination between the two efforts in relation to this specific issue (transfers as a result of UDRP proceedings) might be appropriate.



used by the Gaining Registrar to request an authorization for a registrar transfer from the Transfer Contact. The FOA labeled '[Confirmation of Registrar Transfer Request](#)' may be used by the Registrar of Record to request confirmation of the transfer from the Transfer Contact. The FOA referred to in the question above relates to the former one ('Initial Authorization for Registrar Transfer') as for the latter the IRTP specifies that the FOA 'should be sent by the Registrar of Record to the Transfer Contact as soon as operationally possible, but must be sent not later than twenty-four (24) hours after receiving the transfer request from the Registry Operator. Failure by the Registrar of Record to respond within five (5) calendar days to a notification from the Registry regarding a transfer request will result in a default "approval" of the transfer'.

- There are no specifications in the IRTP in relation to the timing or limits of use of the 'Initial Authorization for Registrar Transfer' FOA. This issue was raised as part of the Transfer WG discussions in 2005 where it was suggested that 'we should consider limiting how long a registrar may hold an FOA before submitting a transfer request. We've run into problems when a registrar requests a transfer a month or two after they have received the FOA. By that time, the registration information may have changed, and the new registrant doesn't respond to a confirmation request. Perhaps FOAs should be effective only 5 or 10 days to avoid fraudulent transfers out' (see <http://forum.icann.org/lists/transfers-wg/msg00006.html>).
- Data provided by ICANN Compliance (see IRTP Part B Final Report) suggests that a total of 13% of complaints for the period of July – November 2009 relate to ownership / WHOIS issues / stolen domain or hijacking issues. Further details on the exact nature of these complaints is not available which makes it difficult to determine to what extent this particular issue, or the previous one, occur and are captured in this data. It should also be noted that the complaints received by ICANN Compliance probably represent a small percentage of total number of complaints<sup>9</sup> and should not be relied upon as the sole data source to determine the scale and nature of a particular issue or problem area. Further

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<sup>9</sup> Registrants presumably file complaints directly with registrars and/or registries prior to escalating the issue to ICANN.

input or data on the incidence of this issue was requested as part of the public comment period on the preliminary Issue Report, but no such information was submitted.

### **IANA IDs for registrars (Charter Question C)**

c) Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.

- When a registrar accredits with ICANN, an ID is assigned by ICANN to identify that particular registrar. See <http://www.iana.org/assignments/registrar-ids/registrar-ids.xml> for the most recent list. However, when a registrar accredits with a particular registry, that registry may also assign a proprietary ID to the registrar, which differs from the IANA ID.
- This issue of IANA vs. proprietary ID was raised as part of the Transfer WG discussions in 2005 where it was noted that ‘it would be an improvement for everyone to get rid of the proprietary registrar ids that differ from registry to registry’. The suggestion was to propose that ‘registries shall implement IANA ids in transfers instead’. (see <http://forum.icann.org/lists/transfers-wg/msg00003.html>)
- ICANN has insisted on the consistent use of the IANA ID for all registrars and it has streamlined and improved communication and other aspects significantly as a result. There have been many problems over the years when registrars change their names or when registries record the names slightly differently in their records. From ICANN’s perspective, using a common, unchanging number assigned by ICANN (through IANA) would prevent such issues.
- Further information on the scope or nature that the use of proprietary vs. IANA IDs poses was encouraged as part of the public comment period on the preliminary Issue Report. The gTLD Registries Stakeholder Group (RySG) pointed out that ‘registrar name changes often do make it difficult to ensure that the correct registrar is identified and use of the IANA ID may be helpful in confirming registrar identification’. The RySG also noted that ‘all registries that provide Monthly Registry Operator Reports to ICANN are required to provide both the registrar name and the IANA ID to identify registrar information in the Per Registrar Activity

Report file so it is reasonable to think that all registries do maintain this information in their registration systems’.

## 4. Approach taken by the Working Group

The IRTP Part C Working Group started its deliberations on 8 November 2011 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges. As one of its first tasks, the Working Group prepared a [work plan](#), which was updated on a regular basis. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that could be used to provide input in response for the request for constituency and stakeholder group statements (see Annex B). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process.

### 4.1 Members of the IRTP Part C Working Group

The members of the Working group are:

| Name                    | Affiliation*    | Meetings Attended<br>(Total # of Meetings: 43) |
|-------------------------|-----------------|--|
| Simonetta Batteiger     | RrSG            | 33   |
| Alain Berranger         | NPOC            | 8  |
| James Bladel (Co-Chair) | RrSG            | 38   |
| Chris Chaplow           | CBUC            | 28   |
| Phil Corwin             | CBUC            | 36   |
| Hago Dafalla            | NCSG            | 10   |
| Paul Diaz               | RySG            | 8  |
| Avri Doria (Co-Chair)   | NCSG & At-Large | 33   |
| Roy Dykes               | RySG            | 19   |
| Kevin Erdman            | IPC             | 35   |
| Rob Golding             | RrSG            | 29   |
| Angie Graves            | CBUC            | 26   |
| Volker Greimann         | RrSG            | 10   |
| Oliver Hope             | RrSG            | 0  |
| Erick Iriarte Ahon      | NCUC            | 4  |
| Zahid Jamil (Council    | CBUC            | 11   |

|                    |                     |    |
|--------------------|---------------------|----|
| Liaison)           |                     |    |
| Bob Mountain       | RrSG                | 30 |
| Michele Neylon     | RrSG                | 29 |
| Mike O'Connor      | ISPCP <sup>10</sup> | 42 |
| Matt Serlin        | RrSG                | 20 |
| Barbara Knight     | RySG                | 31 |
| Jonathan Tenenbaum | RrSG                | 29 |
| Rob Villeneuve     | RrSG                | 14 |
| Jacob Williams     | Individual          | 2  |

The statements of interest of the Working Group members can be found at <https://community.icann.org/display/gnsoirtppdpwg/4.+Members>.

The attendance records can be found at <https://community.icann.org/x/jrvbAQ>.

The email archives can be found at <http://forum.icann.org/lists/gnso-irtpc/>.

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RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

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<sup>10</sup> Changed from CBUC to ISPCP on 15 March 2012.

## 5. Deliberations of the Working Group

This chapter provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads. The points below are just considerations to be seen as background information and do not necessarily constitute any suggestions or recommendations by the Working Group, apart from those specifically labelled 'recommendation'.

### 5.1 Initial Fact-Finding and Research

In order to get a better understanding of the Inter-Registrar Transfer Policy, a training session was conducted by James Bladel (see <http://gnso.icann.org/meetings/presentation-irtp-c-training-29nov11-en.pdf> and <http://gnso.icann.org/meetings/transcript-irtp-c-training-29nov11-en.pdf>). In addition, the WG developed a number of [use cases](#) in order to obtain further information on how various scenarios such as change of registrar, change of registrant and change of registrar in combination with change of registrant are currently handled by various registrars.

### 5.2 Working Group Deliberations

#### 5.2.1 Charter Question A

"Change of Control" function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.

*How is this function currently achieved?*

Following review of the IRTP Part C Final Issue Report and the use cases, the WG concluded that currently there does not exist a policy in relation to "change of control" or "change of registrant,"

even though such a process is implied, for example, in the Uniform Dispute Resolution Policy<sup>11</sup>. As a result, this process is handled in different ways by registrars. At the same time, the WG recognized that there might be benefits in having minimum requirements in relation to how such a “change of control” process should be handled by registrars as this would usefully clarify and simplify<sup>12</sup> the process for registrants as well as potentially reducing problems<sup>13</sup> currently encountered when the IRTP is used to enact a “change of control”. The WG also noted that the IRTP was developed to facilitate the transfer of domain name registrations between registrars and did not take into account possibly changes of control or the development of an aftermarket in which a change of control is part of most transactions.

*Are there any applicable models in the country-code name space?*

The Final Issue Report already identified a number of ccTLDs that have a dedicated process and/or policy to conduct a change of registrant, but further investigation by the WG in combination with [discussions with the ccNSO](#) confirmed that most, if not all, ccTLDs have such a process in place. Based on the feedback received from the ccNSO as well as feedback from the different registrars that also manage ccTLD registrations, the WG developed an overview of the main characteristics of the different approaches used by ccTLDs (see Annex C) to help inform the WG deliberations on this issue and identify elements that could also be of benefit in a gTLD context. In evaluating these different processes, the WG did take into account that there are certain elements that apply to ccTLDs but not to gTLDs such as dealing with only one jurisdiction and the different role the registry operator often fulfils with ccTLDs.

In general, the WG found that there is significant variation in the way Change of Registrant is implemented by ccTLDs. Some ccTLD operators require the Registrant to initiate this process with

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<sup>11</sup> See ‘Transfers of a Domain Name to a New Holder’ (<http://archive.icann.org/en/udrp/udrp-policy-24oct99.htm>)

<sup>12</sup> Based on the experience with the use cases, the WG concluded that even moderately experienced registrants struggle with this process today as it is considered difficult and confusing as it varies between registrars how a “change of control” can be conducted.

<sup>13</sup> One such problems identified relates to the fact that bad actors are able to transfer the domain name to an unaware registrant without their knowledge, while the registrar / registrant may be held liable for any malicious activity that is conducted using that particular registration.

the registry directly, while others require the Registrar to conduct the change. In some instances, authorization was obtained by the Registry, in other the Registrar was responsible. Additionally, because some ccTLDs have eligibility requirements, there were differences in whether the new Registrant's eligibility was confirmed as a part of this process, or external to it. The relative ease of use for each ccTLD Change of Registrant process was assessed, with some scoring high (.NL, .MX, .DE), others rated as more difficult (.EU, .FR, .UK) and others identified as very difficult (.BR, .KR, .EG) (see Annex C for further details). Based upon this investigation and discussions with the ccNSO, the WG observed that:

- The ccTLD space contains a variety of examples for Change of Registrant procedures, with the majority supporting this function.
- ccTLDs vary on whether this is a Registry- or Registrar-centric function.
- Due to the concept of "thin" gTLDs, the Registry cannot exclusively control a gTLD equivalent process. The registrar must be involved or exclusively manage the function.
- Eligibility tests, which may be applicable to sTLDs or new "Community TLDs", can be a part of this process or a stand-alone procedure. For ccTLDs that test eligibility, the process appeared to be no different from those used for initial registrations.
- Some ccTLDs notify the old and new registrant, while others require confirmation or authorization.
- Some ccTLD had recently changed its process to offer more flexibility, and in their opinion, as shared during the meeting between the WG and the ccNSO, this change had been positively received by registrars and registrants.

#### *Review of locking procedures, as described in Reasons for Denial #8 and #9*

The [IRTP](#) provides for various reasons for which a registrar may deny a transfer including reason for denial #8 - The transfer was requested within 60 days of the creation date as shown in the registry Whois record for the domain name, and #9 - 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). "Transferred" shall only mean that an inter-registrar transfer has occurred in accordance with the procedures of this policy.



The WG reviewed these specific reasons for denial as prescribed in the charter question and concluded that reason for denial #9 should also apply to a change of registrant, i.e. following a change of registrant, it should not be possible to initiate a change of registrar for a 60-day time period. As explained below in further detail, the WG has also described the circumstances under which registrants may waive this requirement.

*Change of Registrant – a separate policy or part of the IRTP?*

The WG discussed as part of its Initial Report whether a change of registrant policy as outlined above should become part of the existing IRTP or should be established as a separate consensus policy or a hybrid approach should be followed. The WG would like to express a preference for the creation of a hybrid policy, whereby the IRTP would become a Transfer Policy whereby one Part or Section details the policy for a change of registrar, and another Part of Section details the policy for a change of registrant. However, if as part of the implementation process there are strong arguments for why a different approach should be followed, the WG suggests that those arguments are reviewed by the IRTP Part C Implementation Review Team (see recommendation #4 in section 7 for further details).

**Recommendation for Charter Question A:**

**Recommendation #1** – The IRTP Part C WG recommends the adoption of change of registrant consensus policy, which outlines the rules and requirements for a change of registrant of a domain name registration. Such a policy should follow the requirements and steps as outlined hereunder in the section ‘proposed change of registrant process for gTLDs’.

*Proposed “Change of Registrant” Process for gTLDs*

Having concluded that there are benefits in developing a standalone process for a “change of control” or “change of registrant<sup>14</sup>”, the WG recommends the following requirements that such a change of registrant process should meet. These include:

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<sup>14</sup> In the context of the change of registrant process, the term Registrant is identical to ‘Registered Name Holder’ as defined in the Registrar Accreditation Agreement (RAA).

- Both the Prior Registrant and the New Registrant need to authorize the change of registrant. Such authorization could also be provided by the Prior Registrant in the form of pre-approval or via a proxy. However such preapprovals must be secured using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.
- A change of registrar cannot take place simultaneously with a change of registrant although they can be made to appear that way to registrants in a registrar's users interface. If both changes need to be made, it is suggested, but not required, that the change of registrar (IRTP) be completed prior to initiating the change of registrant in order to avoid triggering the proposed 60-day inter-registrar transfer lock (see below).
- The WG also noted that any such process should not create an unfair advantage/disadvantage for any of the segments active in the domain name industry and noted that it should not prevent innovation and differentiation amongst registrars.

The Working Group also discussed extensively whether there should be any restrictions in place that would prevent a change of registrar immediately following a change of registrant (see the Initial Report) and recommends that a domain name cannot be transferred to another registrar for 60 days to protect registrants against possible harms arising from domain hijacking. However the option to opt out of this restriction (with standard notice to all registrants of the associated risks) is provided in order to meet the needs of registrants who are concerned about the negative effect on movability of domain name registrations. If a registrar chooses to offer an option for registrants to opt out, the process to remove this restriction must use a generally accepted method of authentication.

As a result of these deliberations, the WG has developed the following proposed process for a change of registrant:

- STEP 0:** If the Prior and New Registrants are transferring the domain to a new registrar in conjunction with this Change of Registrant process, it is suggested that they first complete the Inter-Registrar Transfer in order to avoid triggering the default 60-day lock associated with the Change of Registrant process. Note that the Inter Registrar Transfer policy is revised so as to not permit changes to Registrant information at the same time as an inter-registrar transfer. The Gaining Registrar must validate this prior to completing the transfer. (see also Note H hereunder).
- STEP 1:** Both Registrants authorize the change
- Either the Prior or Gaining Registrant produces and transmits Change of Registrant Credentials to the other Registrant
  - The other Registrant acknowledges the receipt of credentials and authorizes the transfer
- STEP 2:** Registrar determines that both Prior and New Registrant have authorized the Change of Registrant and that the domain is eligible for Change of Registrant (i.e. there are no locks or other restrictions on the domain)
- STEP 3:** Registrar changes registrant
- STEP 4:** Registrar notifies Prior and New Registrant of the change that has taken place
- STEP 5:** Registrar places a lock on the domain to prevent Inter-Registrar transfers of the domain for 60 days, unless the Prior Registrant has opted out of this requirement after having received a standard notice as to the associated risks.

**NOTES:**

- Note A:** Change of Registrant is defined as a material change to any of the following:
- Name
  - Organization

- Primary Contact Method (registrant and/or administrative contact email address)

In the case of minor updates or corrections, the registrar, in its judgement, may waive this requirement at the request of the registrant using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.

Note B: In order to be eligible for a change of registrant, the domain name registration should not be:

- Subject to UDRP
- Locked by the Registrar (with a clear mechanism for clearing the lock)
- Expired

Note C: A change of registrant can only be requested by the registrant or an authorized representative of the registrant.

Note D: Change of Registrant Credentials could be a PIN, password, string or code, including AuthInfo codes. However Registrars should note that AuthInfo codes are also generated and used in the Inter-Registrar Transfer process. A registrar can use the same AuthInfo code for the Change of Registrant process, but there may be operational and security issues that they should address if they choose to do this without resetting and reissuing the AuthInfo code first.

Note E: The Inter-Registrar Transfer Process and this Change of Registrant Process are separate and distinct – however they can be made to appear the same to Registrants if that is desirable. The key distinction between these two processes is that the first (IRTP)

happens between Registrars, while this Change of Registrant (COR) process happens within a Registrar.

Note F: This process is also used in cases where the Gaining and Losing Registrants are the same – e.g. the case where a Registrant is updating information in response to a WDRP reminder.

Note G: The 60-day lock is used to “contain” the changes of Registrants within a single Registrar in order to facilitate recovery of domains that have been hijacked.

Note H: It is not currently possible to validate that Registrant information is identical during an Inter Registrar Transfer in thin registries. Thus, implementation of these policy changes in thin-registry gTLDs is contingent on either a) the implementation of uniform WHOIS data access provisions being discussed in the current round of RAA negotiations, b) an outcome of a PDP process that mandates thick WHOIS across all registries or c) some other mechanism which provides secure and reliable sharing of Registrant data between Registrars in thin-registry TLDs.

Note I: It is recommended that the change of registrant policy is incorporated as a hybrid policy, whereby the IRTP would become a Transfer Policy in which one Part or Section details the policy for a change of registrar, and another Part or Section details the policy for a change of registrant.

**Level of consensus for this recommendation:** The WG recorded full consensus support for this recommendation.

**Expected impact of the recommendation:**

- The WG expects that adopting the proposed process for a change of registrant as outlined in the section ‘proposed change of control process for gTLDs’ will usefully clarify and standardize how a change of registrant can be conducted and as a result help

- reduce issues encountered when the IRTP is used to enact a change of registrant as well as reduce registrant confusion over how to complete a change of registrant.
- The WG expects that enhanced user education and information will be required in order to make all stakeholders familiar with this process, including some of the restrictions that are proposed (e.g. according to the recommendation a change of registrar will not be possible for 60-days, hence if both changes are desired, a change of registrar should be conducted prior to a change of registrant)

### 5.2.2 CHARTER QUESTION B

Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.

#### *What is the current situation?*

There are no specifications in the IRTP in relation to the timing or limits of use of in relation to FOAs, but the survey conducted by the data gathering sub-team (see hereunder) found that a majority of respondents currently impose a time limit on FOAs.

#### *Data Gathering*

In order to obtain further data and get a better understanding of the current practices and potential issues identified in relation to this issue, a data gathering sub-team was formed. This sub-team developed a survey in order to obtain further input especially from the registrar community on issues encountered as a result of Forms of Authorization (FOA) not being time-limited. Hundred (100) responses were received to the survey. The results of the survey can be found in Annex D. Based on the survey results, the WG concluded that:

- A majority of respondents felt that FOAs should be time limited

- Most respondents felt that a time limit on an FOA would improve security but the vast majority of respondents had not experiences or heard of problems from current non-time limited FOAs
- The majority of respondents currently impose a time limit on FOAs
- The expected scope of effort involved in time limiting FOAs was considered 'minimal' to 'some'

### *Form of Authorization*

A Form of Authorization or FOA is intended to authorize the specific transfer of a domain name. The IRTP notes that:

"For each instance where a Registered Name Holder requests to transfer a domain name registration to a different Registrar, the Gaining Registrar shall:

2.1 Obtain express authorization from either the Registered Name Holder or the Administrative Contact (hereafter, "Transfer Contact"). Hence, a transfer may only proceed if confirmation of the transfer is received by the Gaining Registrar from the Transfer Contact.

2.1.1 The authorization must be made via a valid Standardized Form of Authorization (FOA)...."

This Standardized FOA for the Gaining Registrar can be found in Annex E, the pre-authorized FOA for the losing registrar can be found in Annex F.

The FOA should not to be confused with the AuthInfo Code which is a unique code generated on a per-domain basis and is used for authorization or confirmation of a transfer request. Some registrars offer facilities for registrants to generate and manage their own AuthInfo code. In other cases, the registrant will need to contact the registrar directly to obtain it. The registrar must provide the registrant with the AuthInfo code within 5 calendar days of the request.

### *Findings*

The WG notes that one of the primary functions of IRTP is to ensure that the domain transfer

process evolves to meet new and previously unforeseen threats to the domain transfer process. Currently there is no time limit once a Form of Authorization (FOA) has been completed by a registrant. As such, there is a risk that an unexpired FOA could be used in a subsequent and unauthorized domain transfer. Many registrars have voluntarily implemented a time limit to their FOAs. The WG also notes that based on numerous responses to a survey, a very small percentage of registrars report ever having experienced or heard of problems with a domain transfer due to the lack of time limitations of an FOA. At the same time, the expected scope of effort involved in time limiting FOAs was considered 'minimal' to 'some'

**Recommendation Charter Question B:**

**Recommendation #2:** The WG concludes that FOAs, once obtained by a registrar, should be valid for no longer than 60 days. Following expiration of the FOA, the registrar must re-authorize (via new FOA) the transfer request. Registrars should be permitted to allow registrants to opt-into an automatic renewal of FOAs, if desired.

In addition to the 60-day maximum validity restriction, FOAs should expire if there is a change of registrant, or if the domain name expires, or if the transfer is executed, or if there is a dispute filed for the domain name. In order to preserve the integrity of the FOA, there cannot be any opt-in or opt-out provisions for these reasons for expiration of the FOA.

As recommended and approved as a result of the IRTP Part B PDP, Losing Registrars under IRTP-B are now required to send an FOA to a Prior Registrant. The WG advises that Losing Registrars have the option to send a modified version of this FOA to a Prior Registrant in the event that the transfer is automated where the FOA would be advisory in nature.

Finally, during the course of its deliberations on this topic, the WG notes that the use of EPP Authorization Info (AuthInfo) codes has become the de facto mechanism for securing domain transfers and thereby replaced some of the reasons for the creation of the standard FOA. The WG recommends that the next IRTP PDP examines whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need for FOAs.



**Level of consensus for this recommendation:** The WG recorded full consensus support for this recommendation.

**Expected impact of the proposed recommendation:**

- The WG expects that by introducing the notion of renewing an FOA as proposed above, it is possible to accommodate the registrant (and registrars) that would like to:
  - o "Pre-authorize" a transfer for months or even years (presumably with suitable security around that process)
  - o Provide a framework that they can explicitly enter into agreements to "auto-renew" the FOA indefinitely if they so choose
  - o Support a variety of manual or auto-renew processes that can vary across registrars.
- In addition, the WG expects that this recommendation will provide enhanced security for the vast majority of registrants who are simply using the name to conduct their day-to-day affairs.

### 5.2.3 Charter Question C

Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.

*What is the current situation?*

As outlined in the Final Issue Report, when a registrar accredits with ICANN, an ID<sup>15</sup> is assigned by ICANN to identify that particular registrar. However, when a registrar accredits with a particular registry, that registry may also assign a proprietary ID to the registrar, which differs from the IANA ID. Based on the feedback received from the Registry Stakeholder Group, there are currently at least two gTLD Registry Operators using proprietary IDs instead of the IANA assigned IDs. In the case of at least one of these registries, proprietary IDs are used in all registrar / registry communications. The primary driver behind the use of proprietary IDs vs. IANA IDs for these registries is security. The registries that currently use proprietary IDs have indicated that the use of proprietary IDs aids in the

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<sup>15</sup> See <http://www.iana.org/assignments/registrar-ids/registrar-ids.xml> for the most recent list.

prevention of mining of Whois data, based on publicly available IANA IDs. In addition, it was pointed out that in certain cases registries deal with registrars that also sell ccTLDs for which there is no IANA ID. In those cases it is considered more efficient to have one single proprietary ID. At the same time, as also noted in the Final Issue Report and the public comments received, there have been problems to identify the registrar correctly when registrars change their names or when registries record the names slightly differently in their records. ICANN has insisted on the consistent use of the IANA ID for all registrars and it has streamlined and improved communication and other aspects significantly as a result. As outlined in the Final Issue Report, from ICANN's perspective, using a common, unchanging number assigned by ICANN (through IANA) would prevent such issues. It was also noted that even though the situation may be manageable today with 'only' 21 registry operators, with new gTLDs this situation may change drastically.

#### *Data Gathering*

The data gathering sub-team mentioned above also included questions in its survey in relation to the use of IANA IDs in order to get a better understanding of the issues identified with the use of proprietary IDs and what the possible challenges might be should the use of the IANA ID be required, possibly in combination with a proprietary ID. The results of the survey can be found in Annex D. Based on the survey results, the WG concluded that:

- The majority of respondents had not experienced problems with the use of proprietary registrar IDs
- The majority of respondents felt that standardization of IANA IDs would simplify transfers
- Many respondents were skeptical about whether ccTLD registries would adopt IANA IDs
- Respondents were split on whether to require registries to use IANA IDs exclusively
- The majority of respondents felt the effort to standardize IANA IDs would be 'minimal' to 'some'

#### *Findings*

The WG notes that under the current system, Registrars are assigned one ID from ICANN (IANA ID) and another Proprietary ID by some Registries. While most Registrars hadn't reported problems from the use of proprietary IDs in our survey, the majority felt that standardization on IANA IDs

would simplify the domain transfer process. The WG also notes that the impending release of new TLDs will introduce potentially hundreds of new proprietary IDs

**Recommendation Charter Question C:**

**Recommendation #3:** The WG recommends that all gTLD Registry Operators be required to publish the Registrar of Record's IANA ID in the TLD's WHOIS. Existing gTLD Registry operators that currently use proprietary IDs can continue to do so, but they must also publish the Registrar of Record's IANA ID. This recommendation should not prevent the use of proprietary IDs by gTLD Registry Operators for other purposes, as long as the Registrar of Record's IANA ID is also published in the TLD's Whois.

**Level of consensus for this recommendation:** The WG recorded full consensus support for this recommendation.

**Expected impact of the proposed recommendation:**

- The WG expects that standardizing use of IANA IDs could simplify the domain name transfer process

## 6. Community Input

This section features issues and aspects of the IRTP Part C PDP reflected in the statements from the GNSO stakeholder groups / constituencies; other ICANN Supporting Organizations and Advisory Committees; and comments received during the public comment period.

### 6.1 Initial Public Comment Period and Request for Input

A [public comment forum](#) was opened upon initiation of the Working Group activities. The public comment period ran from 21 November to 22 December 2011. One (1) community submission was received. A summary of the contribution received can be found here:

<http://www.icann.org/en/public-comment/report-comments-irtp-c-charter-03jan12-en.pdf>. The

WG also requested all GNSO Stakeholder Groups and Constituencies to submit their statements on the IRTP Part C issues by circulating the SG/Constituency template (see Annex B). [One contribution](#) was received from the gTLD Registry Stakeholder Group. In addition, the WG also reached out to the country code Names Supporting Organization (ccNSO), the At-Large Advisory Committee (ALAC), the Governmental Advisory Committee (GAC) and the Security and Stability Advisory Committee (SSAC) for input, but no comments have been received so far. The IRTP Part C WG reviewed and discussed the contributions received thoroughly with the assistance of a [public comment review tool](#) developed for that purpose. Where relevant and appropriate, information and suggestions derived from the contributions received were considered as part of the WG deliberations and have been included in section 5.

### 6.2 Public Comment Forum on the Initial Report

Following the publication of the Initial Report on 4 June 2012, a public comment forum was opened to which three (3) community contributions were received (see [report of public comments](#)). In addition, the WG held a [public workshop](#) at the ICANN meeting in Prague to solicit input. Based on the input received, the WG developed a [public comment review tool](#), which it used to review and

respond to all the contributions received. In addition, where appropriate, the report has been updated based on the comments received.

## 7. Conclusions and Next Steps

Taking into account the Working Group Deliberations (see Chapter 5) and the Public Comments received (see Chapter 6), the Working Group would like to put forward the following recommendations for consideration by the GNSO Council to address each of the Charter Questions. All the recommendations listed below have full consensus support from the Working Group.

### **Recommendation for Charter Question A:**

**Recommendation #1** – The IRTP Part C WG recommends the adoption of change of registrant consensus policy, which outlines the rules and requirements for a change of registrant of a domain name registration. Such a policy should follow the requirements and steps as outlined hereunder in the section ‘proposed change of registrant process for gTLDs’.

#### *Proposed “Change of Registrant” Process for gTLDs*

Having concluded that there are benefits in developing a standalone process for a “change of control” or “change of registrant<sup>16</sup>”, the WG recommends the following requirements that such a change of registrant process should meet. These include:

- Both the Prior Registrant and the New Registrant need to authorize the change of registrant. Such authorization could also be provided by the Prior Registrant in the form of pre-approval or via a proxy. However such preapprovals must be secured using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.

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<sup>16</sup> In the context of the change of registrant process, the term Registrant is identical to ‘Registered Name Holder’ as defined in the Registrar Accreditation Agreement (RAA).

- A change of registrant cannot take place simultaneously with a change of registrar although they can be made to appear that way to registrants in a registrar's users interface. If both changes need to be made, it is suggested, but not required, that the change of registrar (IRTP) be completed prior to initiating the change of registrant in order to avoid triggering the proposed 60-day inter-registrar transfer lock (see below).
- The WG also noted that any such process should not create an unfair advantage/disadvantage for any of the segments active in the domain name industry and noted that it should not prevent innovation and differentiation amongst registrars.

The Working Group also discussed extensively whether there should be any restrictions in place that would prevent a change of registrar immediately following a change of registrant (see the Initial Report) and recommends that a domain name cannot be transferred to another registrar for 60 days to protect registrants against possible harms arising from domain hijacking. However the option to opt out of this restriction (with standard notice to all registrants of the associated risks) is provided in order to meet the needs of registrants who are concerned about the negative effect on movability of domain name registrations. If a registrar chooses to offer an option for registrants to opt out, the process to remove this restriction must use a generally accepted method of authentication.

As a result of these deliberations, the WG has developed the following proposed process for a change of registrant:

**STEP 0:** If the Prior and New Registrants are transferring the domain to a new registrar in conjunction with this Change of Registrant process, it is suggested that they first complete the Inter-Registrar Transfer in order to avoid triggering the default 60-day lock associated with the Change of Registrant process. Note that the Inter Registrar Transfer policy is revised so as to not permit changes to Registrant information at the same time as an inter-registrar transfer. The Gaining Registrar must validate this prior to completing the transfer. (see also Note H hereunder).

**STEP 1:** Both Registrants authorize the change

- Either the Prior or Gaining Registrant produces and transmits Change of Registrant Credentials to the other Registrant
- The other Registrant acknowledges the receipt of credentials and authorizes the transfer

STEP 2: Registrar determines that both Prior and New Registrant have authorized the Change of Registrant and that the domain is eligible for Change of Registrant (i.e. there are no locks or other restrictions on the domain)

STEP 3: Registrar changes registrant

STEP 4: Registrar notifies Prior and New Registrant of the change that has taken place

STEP 5: Registrar places a lock on the domain to prevent Inter-Registrar transfers of the domain for 60 days, unless the Prior Registrant has opted out of this requirement after having received a standard notice as to the associated risks.

**NOTES:**

Note A: Change of Registrant is defined as a material change to any of the following:

- Name
- Organization
- Primary Contact Method (registrant and/or administrative contact email address)

In the case of minor updates or corrections, the registrar, in its judgement, may waive this requirement at the request of the registrant using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team



is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.

Note B: In order to be eligible for a change of registrant, the domain name registration should not be:

- Subject to UDRP
- Locked by the Registrar (with a clear mechanism for clearing the lock)
- Expired

Note C: A change of registrant can only be requested by the registrant or an authorized representative of the registrant.

Note D: Change of Registrant Credentials could be a PIN, password, string or code, including AuthInfo codes. However Registrars should note that AuthInfo codes are also generated and used in the Inter-Registrar Transfer process. A registrar can use the same AuthInfo code for the Change of Registrant process, but there may be operational and security issues that they should address if they choose to do this without resetting and reissuing the AuthInfo code first.

Note E: The Inter-Registrar Transfer Process and this Change of Registrant Process are separate and distinct – however they can be made to appear the same to Registrants if that is desirable. The key distinction between these two processes is that the first (IRTP) happens between Registrars, while this Change of Registrant (COR) process happens within a Registrar.

Note F: This process is also used in cases where the Gaining and Losing Registrants are the same – e.g. the case where a Registrant is updating information in response to a WDRP reminder.

- Note G: The 60-day lock is used to “contain” the changes of Registrants within a single Registrar in order to facilitate recovery of domains that have been hijacked.
- Note H: It is not currently possible to validate that Registrant information is identical during an Inter Registrar Transfer in thin registries. Thus, implementation of these policy changes in thin-registry gTLDs is contingent on either a) the implementation of uniform WHOIS data access provisions being discussed in the current round of RAA negotiations, b) an outcome of a PDP process that mandates thick WHOIS across all registries or c) some other mechanism which provides secure and reliable sharing of Registrant data between Registrars in thin-registry TLDs.
- Note I: It is recommended that the change of registrant policy is incorporated as a hybrid policy, whereby the IRTP would become a Transfer Policy in which one Part or Section details the policy for a change of registrar, and another Part or Section details the policy for a change of registrant.

**Recommendation Charter Question B:**

**Recommendation #2:** The WG concludes that FOAs, once obtained by a registrar, should be valid for no longer than 60 days. Following expiration of the FOA, the registrar must re-authorize (via new FOA) the transfer request. Registrars should be permitted to allow registrants to opt-into an automatic renewal of FOAs, if desired.

In addition to the 60-day maximum validity restriction, FOAs should expire if there is a change of registrant, or if the domain name expires, or if the transfer is executed, or if there is a dispute filed for the domain name. In order to preserve the integrity of the FOA, there cannot be any opt-in or opt-out provisions for these reasons for expiration of the FOA.

As recommended and approved as a result of the IRTP Part B PDP, Losing Registrars under IRTP-B are now required to send an FOA to a Prior Registrant. The WG advises that Losing Registrars have

the option to send a modified version of this FOA to a Prior Registrant in the event that the transfer is automated where the FOA would be advisory in nature.

Finally, during the course of its deliberations on this topic, the WG notes that the use of EPP Authorization Info (AuthInfo) codes has become the de facto mechanism for securing domain name transfers and thereby replaced some of the reasons for the creation of the standard FOA. The WG recommends that the next IRTP PDP examines whether the universal adoption and implementation of EPP AuthInfo codes has eliminated the need for FOAs.

#### **Recommendation Charter Question C:**

**Recommendation #3:** The WG recommends that all gTLD Registry Operators be required to publish the Registrar of Record's IANA ID in the TLD's WHOIS. Existing gTLD Registry operators that currently use proprietary IDs can continue to do so, but they must also publish the Registrar of Record's IANA ID. This recommendation should not prevent the use of proprietary IDs by gTLD Registry Operators for other purposes, as long as the Registrar of Record's IANA ID is also published in the TLD's Whois.

#### **Additional Recommendation**

**Recommendation #4:** As recommended as part of the revised GNSO Policy Development Process, the IRTP Part C Working Group strongly encourages the GNSO Council to create an IRTP Part C Implementation Review Team consisting of individual IRTP Part C Working Group members who would remain available to provide feedback on the implementation plan for the recommendations directly to ICANN staff. The Working Group suggests that consideration be given to consulting recognised security experts (such as interested members of the SSAC) by the Implementation Review Team.

## Annex A – IRTP Part C PDP WG Charter

The Working Group shall consider the following questions as outlined in the Final Issue Report (<http://gns0.icann.org/issues/issue-report-irtp-c-29aug11-en.pdf>) and make recommendations to the GNSO Council:

a) "Change of Control" function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.

b) Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.

c) Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.

The Working Group shall follow the rules outlined in the GNSO Working Group Guidelines <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-07apr11-en.pdf>.

## Annex B – Template for Constituency & Stakeholder Group

### Statements

The GNSO Council has formed a Working Group of interested stakeholders and Stakeholder Group / Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, in order to consider recommendations for a number of issues related to the Inter-Registrar Transfer Policy (IRTP).

Part of the working group's effort will be to incorporate ideas and suggestions gathered from Stakeholder Groups and Constituencies through this Stakeholder Group / Constituency Statement. Inserting your Stakeholder Group's / Constituency's response in this form will make it much easier for the Working Group to summarize the responses. This information is helpful to the community in understanding the points of view of various stakeholders. However, you should feel free to add any information you deem important to inform the working group's deliberations, even if this does not fit into any of the questions listed below.

For further background information on this issue, please review the [GNSO Issue Report on IRTP Part C](#).

#### Process

- Please identify the member(s) of your stakeholder group / constituency who is (are) participating in this working group
- Please identify the members of your stakeholder group / constituency who participated in developing the perspective(s) set forth below.
- Please describe the process by which your stakeholder group / constituency arrived at the perspective(s) set forth below.

## Questions

Please provide your stakeholder group's / constituency's views on the IRTP Part C Charter

Questions:

- a) "Change of Control"<sup>17</sup> function, including an investigation of how this function is currently achieved, if there are any applicable models in the country-code name space that can be used as a best practice for the gTLD space, and any associated security concerns. It should also include a review of locking procedures, as described in Reasons for Denial #8 and #9, with an aim to balance legitimate transfer activity and security.
- b) Whether provisions on time-limiting Form Of Authorization (FOA)s should be implemented to avoid fraudulent transfers out. For example, if a Gaining Registrar sends and receives an FOA back from a transfer contact, but the name is locked, the registrar may hold the FOA pending adjustment to the domain name status, during which time the registrant or other registration information may have changed.
- c) Whether the process could be streamlined by a requirement that registries use IANA IDs for registrars rather than proprietary IDs.

In addition, the Working Group has identified the following specific issues / questions it would like to receive further input on:

- In relation to Charter Question A, the Issue Report notes that 'data on the frequency of hijacking cases is a pivotal part of this analysis. Mechanisms should be explored to develop accurate data around this issue in a way that meets the needs of registrars to protect proprietary information while at the same time providing a solid foundation for data-based policy making. Data on

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<sup>17</sup> From the Final Issue Report: "the IRTP is widely used to affect a 'change of control', namely by moving the domain name to a new Registered Name Holder, in conjunction with a transfer to another registrar. For example, in the domain name aftermarket it is not uncommon to demonstrate control of a domain name registration through the ability to transfer the domain name registration to another registrar following which the registrant information is changed to the new registrant. Nevertheless, the concept of 'change of control' is not defined in the context of gTLDs".

legitimate transfer activity benefitting from the current locking policy wording needs to be collected’.

- In addition to the ccTLDs described in the Issue Report that do have a procedure or process for a ‘change of control’ (.ie, .eu and .uk) are there any other ccTLDs that have similar procedures or processes which the WG should review in the context of charter question A? Furthermore, the WG would be interested to receive feedback on the experiences with these or other ccTLD procedures or processes for a ‘change of control’ as well as identifying potential benefits and/or possible negative consequences from applying similar approaches in a gTLD context.
- In relation to Charter Question B and C, the WG would be interested in further input or data in relation to the incidence of this issue to determine its scope and the most appropriate way to address it.
- In relation to Charter Question C, Registries and Registrars are asked to provide specific information as to where proprietary IDs are currently being used by registries and whether the use of IANA IDs instead would be preferred / beneficial.

## Annex C – Overview of ccTLD Processes for Change of Registrant

### General Comments:

- ccTLD level is easier as it only deals with one jurisdiction. For example, certain verification processes (ID, notarization) might be easy to manage / handle in one jurisdiction, but might be difficult to apply and/or implement when dealing with multiple jurisdictions.
- ccTLDs operate a 'thick' Whois model
- All ccTLDs appear to have a process for change of registrant

| ccTLD | Name                | Characteristics   | Further information  | Comments / Questions                        |
|-------|---------------------|---|--|---|
| .UK   | Registrant Transfer | <ul style="list-style-type: none"> <li>• Losing registrant logs into their account with the registry and initiates the ownership change.</li> <li>• The new registrant will then receive an email with a link to approve the request.</li> <li>• Handled by registry operator (not via registrars or EPP)</li> <li>• Change of registrant can be combined with change of registrar</li> </ul> | <a href="http://www.nominet.org.uk/registrant/maintain/transfer/">http://www.nominet.org.uk/registrant/maintain/transfer/</a><br><a href="http://www.nominet.org.uk/registrant/maintain/transfer/Process/">http://www.nominet.org.uk/registrant/maintain/transfer/Process/</a> | Considered moderate (see email Matt Serlin) |
| .EU   | Trade               | <ul style="list-style-type: none"> <li>• Handled by accredited registrar</li> <li>• Automatic one-year</li> </ul>   | <a href="http://www.eurid.eu/en/eu-domain-names/trades-transfers">http://www.eurid.eu/en/eu-domain-names/trades-transfers</a>  | Considered moderate (see email Matt Serlin) |



|     |                        |   |   |  |
|-----|------------------------|---|---|--|
|     |                        | <p>extension</p> <ul style="list-style-type: none"> <li>Needs to be confirmed within 14 days by both parties</li> </ul>   |   |  |
| .IE | Transfer Domain Holder | <ul style="list-style-type: none"> <li>Handled by registry operator</li> <li>A signed fax on headed paper from the current Administrative Contact must be submitted to initiate the transfer</li> </ul>   | <a href="http://www.domainregistry.ie/index.php/mnumods/mnuxferdomholder">http://www.domainregistry.ie/index.php/mnumods/mnuxferdomholder</a> |  |
| .ES | Transmisión de dominio | <ul style="list-style-type: none"> <li>Two processes – one for ‘ordinary’ changes of control and one for ‘special’ cases (as the result of death, company take-over)</li> <li>Process can be initiated by registrar, registrant or admin contact</li> <li>If initiated by registrar, request needs to be confirmed by registrant or admin contact</li> <li>New registrant needs to confirm transfer and accept registration terms and conditions</li> <li>In case of a ‘special’ transfer, an ID needs to be provided.</li> </ul> | <a href="http://www.dominios.es/transfer-procedure/article/267">http://www.dominios.es/transfer-procedure/article/267</a>                     |  |

|                            |              |   |  |   |
|----------------------------|--------------|---|--|---|
| <p>.NL<br/>.MX<br/>.DE</p> |              | <ul style="list-style-type: none"> <li>The current registrar can send a domain update command to the registry and update any domain information (contacts or DNS)</li> </ul>  |  | <p>Considered easiest process (see email Matt Serlin)</p> |
| <p>.GR</p>                 |              | <ul style="list-style-type: none"> <li>The losing registrant provides the auth code to the new domain holder. Transfer and ownership changes can be done at the same time</li> </ul>  |  | <p>Considered easiest process (see email Matt Serlin)</p> |
| <p>.FR</p>                 | <p>Trade</p> | <ul style="list-style-type: none"> <li>The registrar submits a 'trade' EPP command</li> <li>The registry then sends an email to the gaining and losing domain owner with a link to approve the request</li> <li>Once both parties approve the request, the registrar receives a poll message stating that the trade is complete</li> <li>A transfer and trade can be done together</li> </ul> |  | <p>Considered moderate (see email Matt Serlin)</p>        |
| <p>.SE</p>                 |              | <ul style="list-style-type: none"> <li>Documents required through a random</li> </ul>   |  | <p>Considered moderate (see email</p>                     |

|     |  |   |  |  |
|-----|--|---|--|--|
| .AU |  | <p>audit by the registry</p> <ul style="list-style-type: none"> <li>• The current registrar must have the losing domain owner sign a document agreeing to the change of ownership.</li> <li>• The registrar then submits a domain update command to the registry</li> </ul>                                   |  | Matt Serlin)                               |
| .BR |  | <ul style="list-style-type: none"> <li>• The losing registrant must sign documentation agreeing to the change.</li> <li>• The original copies of the documentation must be submitted to the registry</li> </ul>   |  | Considered hardest (see email Matt Serlin) |
| .KR |  | <ul style="list-style-type: none"> <li>• The current and new domain registrants will be required to sign ownership change documents and provide a copy of their Korean Registration certificates or, if the current or new holder is an individual, a copy of their Korean personal identification</li> </ul> |  | Considered hardest (see email Matt Serlin) |

|                            |                             |  |  |   |
|----------------------------|-----------------------------|--|--|---|
| <p>.EG<br/>.JO<br/>.OM</p> |                             | <ul style="list-style-type: none"> <li>• The losing registrant and new registrant must sign and notarize original documentation agreeing to the change.</li> <li>• The original documents are then submitted to the registry to process</li> </ul>   |  | <p>Considered hardest (see email Matt Serlin)</p>         |
| <p>.NZ</p>                 | <p>Change of Registrant</p> | <ul style="list-style-type: none"> <li>• The current registrar can send a domain update command to the registry and update any domain information (contacts or DNS)</li> <li>• Minimum expectations for registrars to handle process appropriately apply (see <a href="http://dnc.org.nz/content/changeofregistrant.html">http://dnc.org.nz/content/changeofregistrant.html</a>). For example, 'the registrar must be sure that the person requesting that a change of registrant [...] is in fact authorized to do so. An example of possible checks include: [...]'</li> <li>• Right to reverse</li> </ul> |  | <p>Considered easiest process (see email Matt Serlin)</p> |

|     |  |  |  |  |
|-----|--|--|--|--|
|     |  | transfer to original state in case of fraud  |  |  |
| .BE |  | <ul style="list-style-type: none"> <li>Registry went recently from a model that was very secure but not user-friendly to an easier transfer policy using auth-codes ("trade" model). Their registrar partners showed a significant increase in satisfaction with the new policy (and the change does not seem to have resulted in an increase in hijacking complaints).</li> </ul> |  |  |
| .KY |  | <ul style="list-style-type: none"> <li>Do not allow registrants / registrars to transfer ownership. Only registry can enact such changes (do not want a secondary market).</li> </ul>  |  |  |
| .CA |  | <ul style="list-style-type: none"> <li>Post-transfer validation process. If registrant does not meet eligibility criteria, then registration is suspended and/or</li> </ul>  |  |  |

|     |  |  |  |  |
|-----|--|--|--|--|
|     |  | cancelled. Not different from 'normal' registration and validation process.  |  |  |
| .NO |  | <ul style="list-style-type: none"> <li>• Change of registrant is treated as a new registration.</li> <li>• Have recently automated the process; before, everything was done on paper.</li> </ul> |  |  |

## Annex D – Data Gathering Survey

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# IRTP-C Data Gathering Sub-team Survey Findings

Bob Mountain  
James Bladel  
Jonathan Tenenbaum  
Marika Konings  
Roy Dykes  
Simonetta Batteiger

*Please note that this is a summary of the results of the data gathering survey. The full survey results can be found here:*

<https://community.icann.org/download/attachments/28901507/IRTP+Part+C+Data+Survey+-+Final+-+23+April+2012.pdf?version=1&modificationDate=1336557446095>

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IRTP-C Data Gathering Sub-Team – May 2, 2012

CONFIDENTIAL

## Executive Summary

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- Survey sent to registrars and registries with specific questions around IRTP charter questions B & C with broad range of respondents
- Majority felt that FoAs should be time limited
- Most respondents felt time limit on FoA would improve security but vast majority of respondents had not experienced or heard of problems from current non-time limited FoAs
- Majority currently impose a time limit on FoAs
- Expected scope of effort to time limit FoAs was “minimal” to “some”
- Majority hadn’t experienced problems from use of proprietary registrar IDs
- Majority felt standardization of IANA IDs would simplify domain transfers
- Many respondents were skeptical if ccTLD registries would adopt IANA IDs
- Respondents were split on whether to require registries to use IANA IDs exclusively
- Majority felt effort to standardize on IANA IDs would be “minimal” to “some”

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IRTP-C Data Gathering Sub-Team – May 2, 2012

CONFIDENTIAL 1

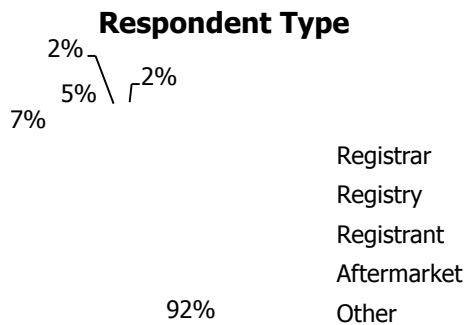
# CHARTER QUESTION "B" TIME LIMITING FOA

IRTP-C Data Gathering Sub-Team – May 2, 2012

CONFIDENTIAL 2

## Strong response by registrars and registries

- 100 Total Respondents
- 66 Provided Names
- 38 Provided Affiliations
- 65 Provided Contact Info

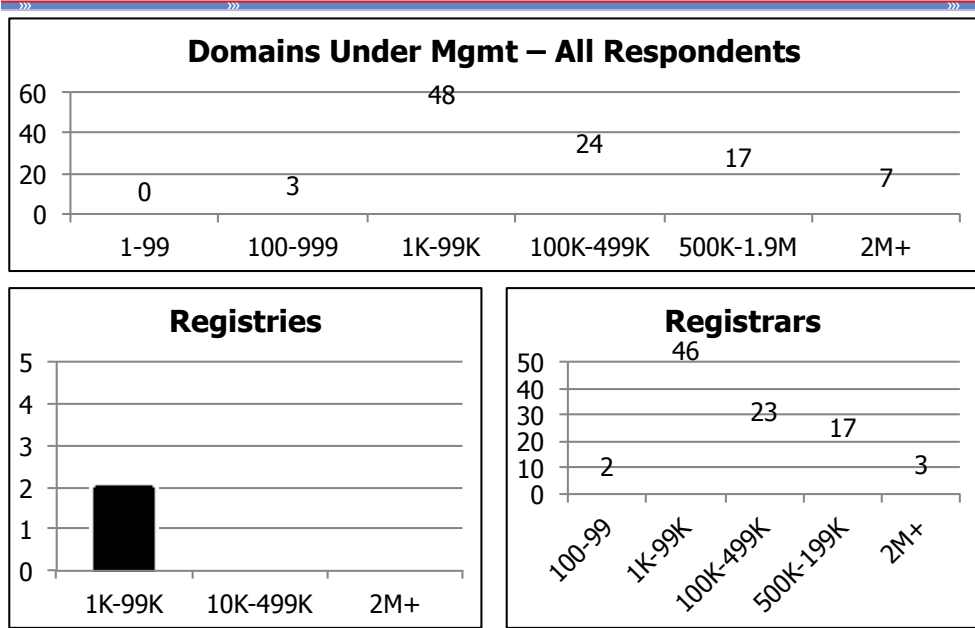


IRTP-C Data Gathering Sub-Team – May 2, 2012

CONFIDENTIAL 3



### Broad range of respondent sizes

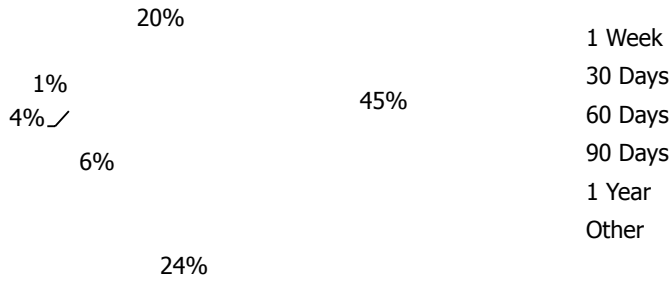


### 6. Should FoA be time limited?



71% of respondents feel that FoA should be time limited, the majority of comments involved reduced risk of fraud. However a 32% of the comments (42 comments received) felt that time limited FOAs would not improve security or was unnecessary.

### 7. If "Yes", what would be an appropriate time limit?



80% of respondents felt the time limit should be 30 days or less (including specific responses from "Other")

### 8. Do you currently time limit FOAs?

94% of respondents who provided an existing time limit use 30 days or less.  
'Other' category included a.o.: depends on client / circumstance, in the process of implementing.

### 9. Why do you apply a time limit?

- .... So we can refund customer’s money if transfer doesn’t get approved.
- In order to prevent fraud
- For security reasons
- It’s done informally at present but the aim is to prevent fraudulent transfers out and protect the registrant
- To have a correct lifecycle for the transfer
- To avoid...having domain names in our systemthat we don’t manage
- A transfer without timeout is senseless

### 10. Have you experienced a problem with a transfer because of FoA not being time limited?

12%

Yes

No

88%

Comments:

- Roughly half of registrars time-limit FoA currently
- Some customers shared their email mailboxes within their companies... After the transfer was started they forgot to confirm it. After weeks another user of their company falsely confirmed it and we had to stop the transfer manually
- The registrant details were changed between the timeframe when the FoA had been sent and the time of the transfer request
- Registrant had forgotten about it
- Because many times we have a problem in transferring some domain names, but we have no idea why this happens

### 11. Have you heard about problems by others because of non-time limited FOA?

4%

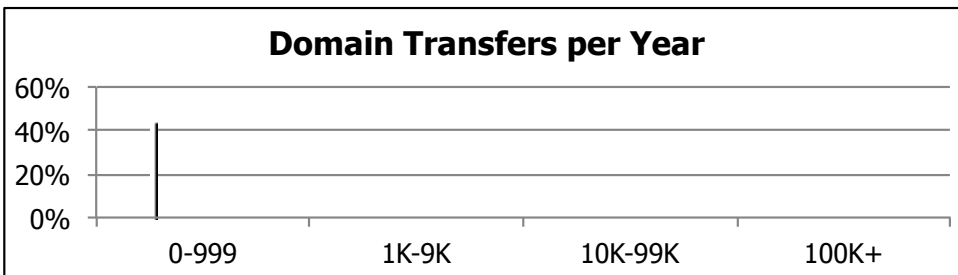
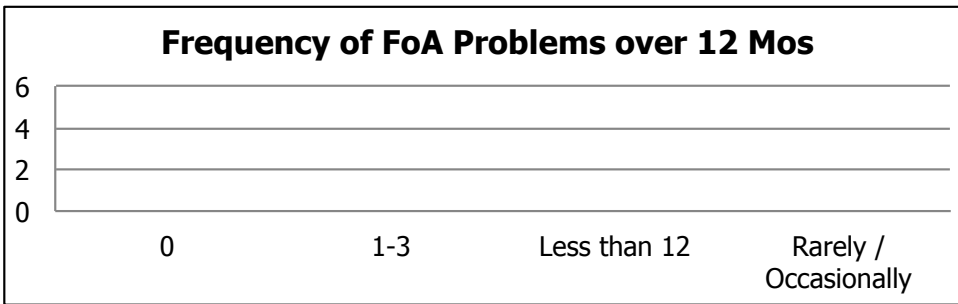
Yes  
No

96%

**Comments:**

- I do not think the lack of time-limit is an issue but might be used by losing registrars to block transfers.
- Read some reports from Domain Name Wire.
- We don't discuss with other registrars, had one example where a name was listed on an auction service... new registrar was not aware of the auction listing and the name sold and was transferred out of their account.

### 12/13. Frequency of problems and domain transfer volume



FoA-related problems are small pct of transfer volume

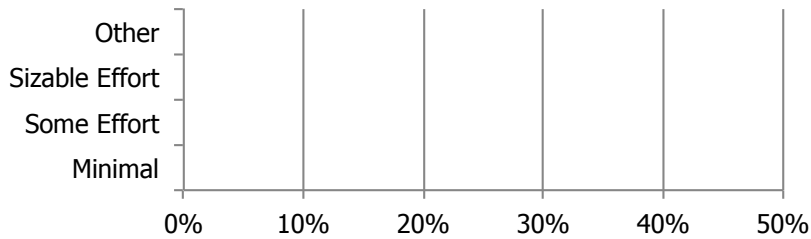
## 14. Are there downsides to time-limiting FoA?

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Most comments were concerned about time limitations impacting legitimate transfers and increased complexity in the process.

## 15. What effort is involved with time limiting FoA?

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## 16. Other considerations

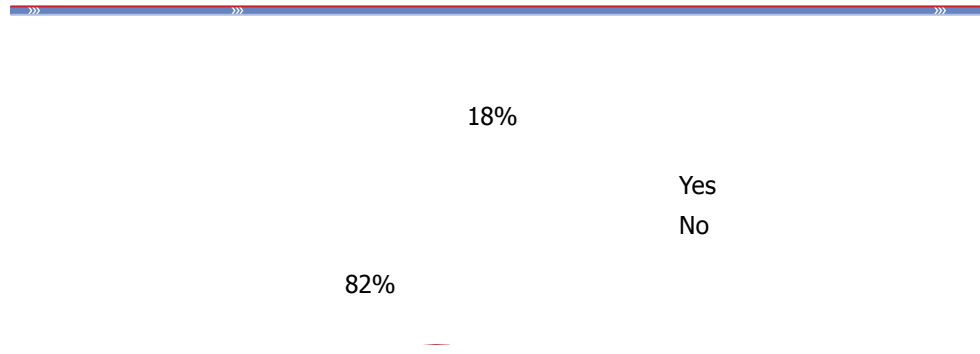
---

- Define time limits as calendar days/hours based on UTC time of request
- May cause hassle for customer with hundreds of FoA emails
- Should not be fixed time, use a range
- Current process is wrong, registrars should push domain upon request
- FoA should be eliminated
- Registrant should pay fees for domain transfers

---

# CHARTER QUESTION "C" USE OF IANA VERSUS PROPRIETARY IDS

### 17. Have you experienced problems from proprietary versus IANA IDs?



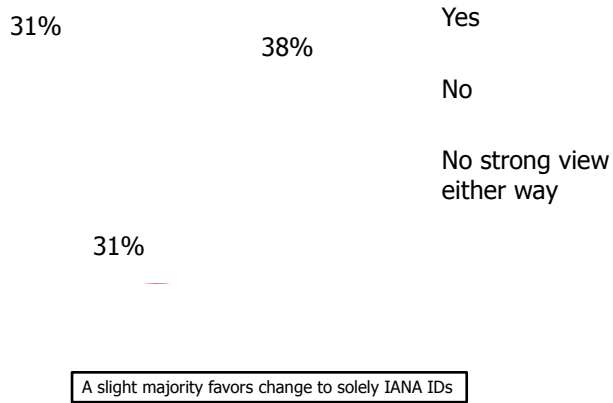
Majority of respondents said no but 20 comments mainly indicated sub-optimal nature of proprietary IDs:

- Have heard complaints that looking up proprietary IDs can be burdensome.
- ....Would be vastly easier if IDs were standardized in one place, not per-registry.
- Half the time we can't easily check to see who the registrar is.
- Just unnecessary confusion, no big deal to work around but why have two systems. Registries should be forced to use IANA system

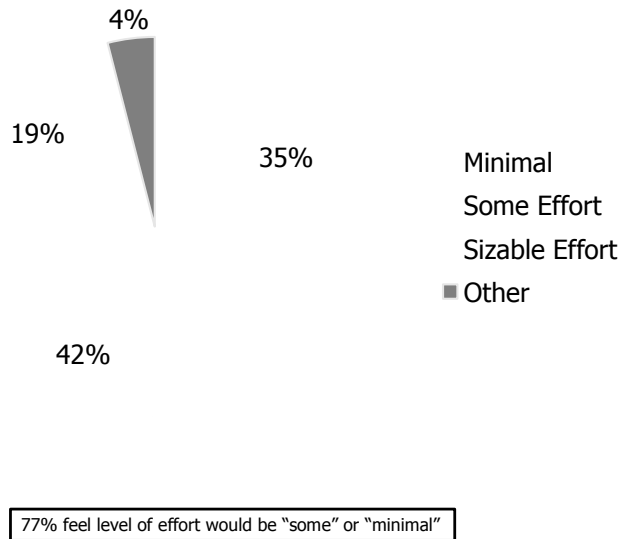
### 18. What are benefits to using only IANA IDs or IANA combined with proprietary IDs?

- Majority of the comments indicated that standardizing on IANA IDs would improve simplicity and transparency of domain operations
- A minority questioned the justification of making a change to the existing method
- A small minority felt the current approach provides the benefit of more information

### 19. Should there be a requirement to use only IANA IDs?

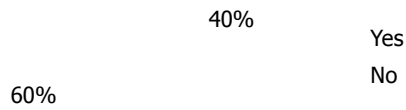


### 20. Level of effort to use only IANA IDs?



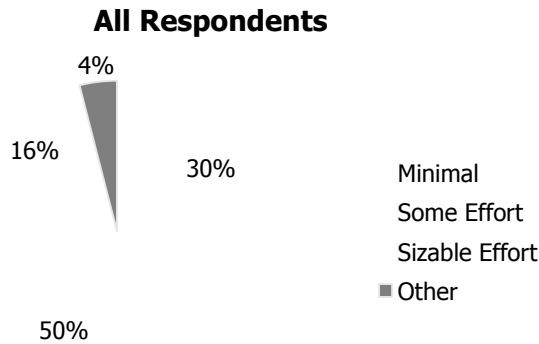


### 21. Should there be requirement to use IANA IDs with possibility to combine with proprietary IDs?



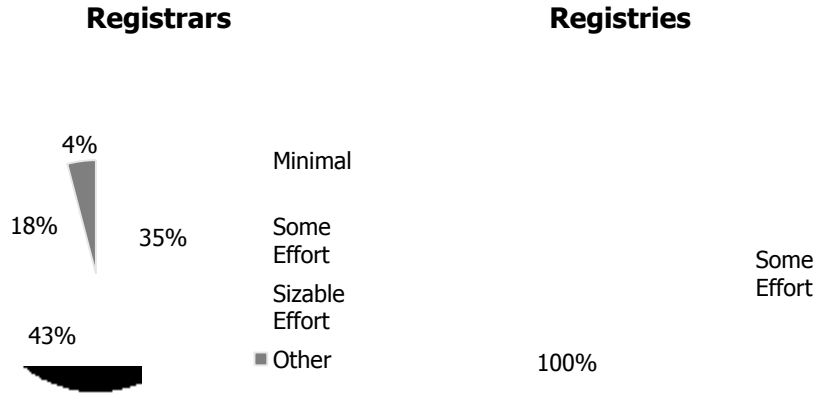
- Many comments questioned the benefits of having both IANA and Proprietary IDs
- One interesting comment proposed "grandfathering" existing proprietary IDs but new registries would use IANA IDs
- Some additional comments on inefficiencies of proprietary IDs in general

### 22(a). Level of effort to use IANA IDs in combination with proprietary IDs?



- 80% feel level of effort would be "some" or "minimal"
- Parties would be willing to investigate further using both in tandem

### 22(b). Level of effort to use IANA IDs in combination with proprietary IDs?



### 23. Possible implications of requiring IANA IDs on ccTLDs/ gTLDs

- ccTLDs will ignore any mandate
- Might force ccTLDs to standardize
- Not all ccTLD registrars are ICANN accredited....so you'd require all ccTLD registrars to list at IANA
- gTLDs would be ok but ccTLDs would be too problematic
- Current IDs and systems would be changed which can require a sizable effort

## 24. Other considerations to be taken into account by the Working Group on this issue?

---

- Keep in mind that more gTLDs are coming up and it should be easy for registrars to implement them. If not we could just skip these “problematic” ones.
- Why should we change a running process? We never had any transfer which was done in error – never.
- Ensure registry is compliant to new ICANN policy.
- Time for migration and expense.
- We use internal registrars to hold reserved domains or domains in violation of certain rules. These registrars do not have an IANA ID. A plan would need to be devised to handle this issue.

## Annex E - STANDARDIZED FORM OF AUTHORIZATION | DOMAIN NAME TRANSFER (GAINING REGISTRAR)

An English version of this message is contained below.

<Insert translation of English version in preferred language of the registrant if known>

ENGLISH VERSION

Attention: <insert Registered Name Holder or Administrative Contact of Record as listed in the WHOIS>

Re: Transfer of <insert one or more domain names>

[OPTIONAL text: The current registrar of record for this domain name is <insert name of losing registrar>.]

<insert name of gaining registrar> has received a request from <insert name of person/entity/reseller requesting transfer>

[OPTIONAL text:] via <insert method of request e.g email address or fax>

[END OPTIONAL TEXT]

on <insert date of request> for us to become the new registrar of record.

You have received this message because you are listed as the Registered Name Holder or Administrative contact for this domain name in the WHOIS database.

Please read the following important information about transferring your domain name:

- You must agree to enter into a new Registration Agreement with us. You can review the full terms and conditions of the Agreement at <insert instructions for accessing the new terms and conditions, e.g. URL where the term and conditions can be found>
- Once you have entered into the Agreement, the transfer will take place within five (5) calendar days unless the current registrar of record denies the request.
- Once a transfer takes place, you will not be able to transfer to another registrar for 60 days, apart from a transfer back to the original registrar, in cases where both registrars so agree or where a decision in the dispute resolution process so directs.

If you WISH TO PROCEED with the transfer, you must respond to this message via one of the

following methods (note if you do not respond by <date>, <domain name or domain names> will not be transferred to us.).

[NOTE: a registrar can choose to include one or more of the following in the message sent to the Registered Name Holder or Admin contact, and additional processes may be added with ICANN approval. The order in which options are presented is a decision for each registrar. Further, in addition to the options below, the registrar may choose to request the "Auth-Info" code from the Registered Name Holder or Administrative Contact]

[option 1] please email us with the following message:

"I confirm that I have read the Domain Name Transfer - Request for Confirmation Message.

I confirm that I wish to proceed with the transfer of <insert domain name> from <insert name of losing registrar> to <insert name of gaining registrar>."

[option 2] please go to our website, <insert URL of confirmation webpage> to confirm.

[Note: website to contain text as above, with the option to confirm or deny the transfer]

[option 3] please print out a copy of this message and send a signed copy to <insert fax or postal address details>

If you DO NOT WANT the transfer to proceed, then don't respond to this message.

If you have any questions about this process, please contact <insert contact details>.

## Annex F – PRE-AUTHORIZED FORM OF AUTHORIZATION | DOMAIN NAME TRANSFER (LOSING REGISTRAR)

An English version of this message is contained below.

<Insert translation of English version in preferred language of the registrant if known>

ENGLISH VERSION

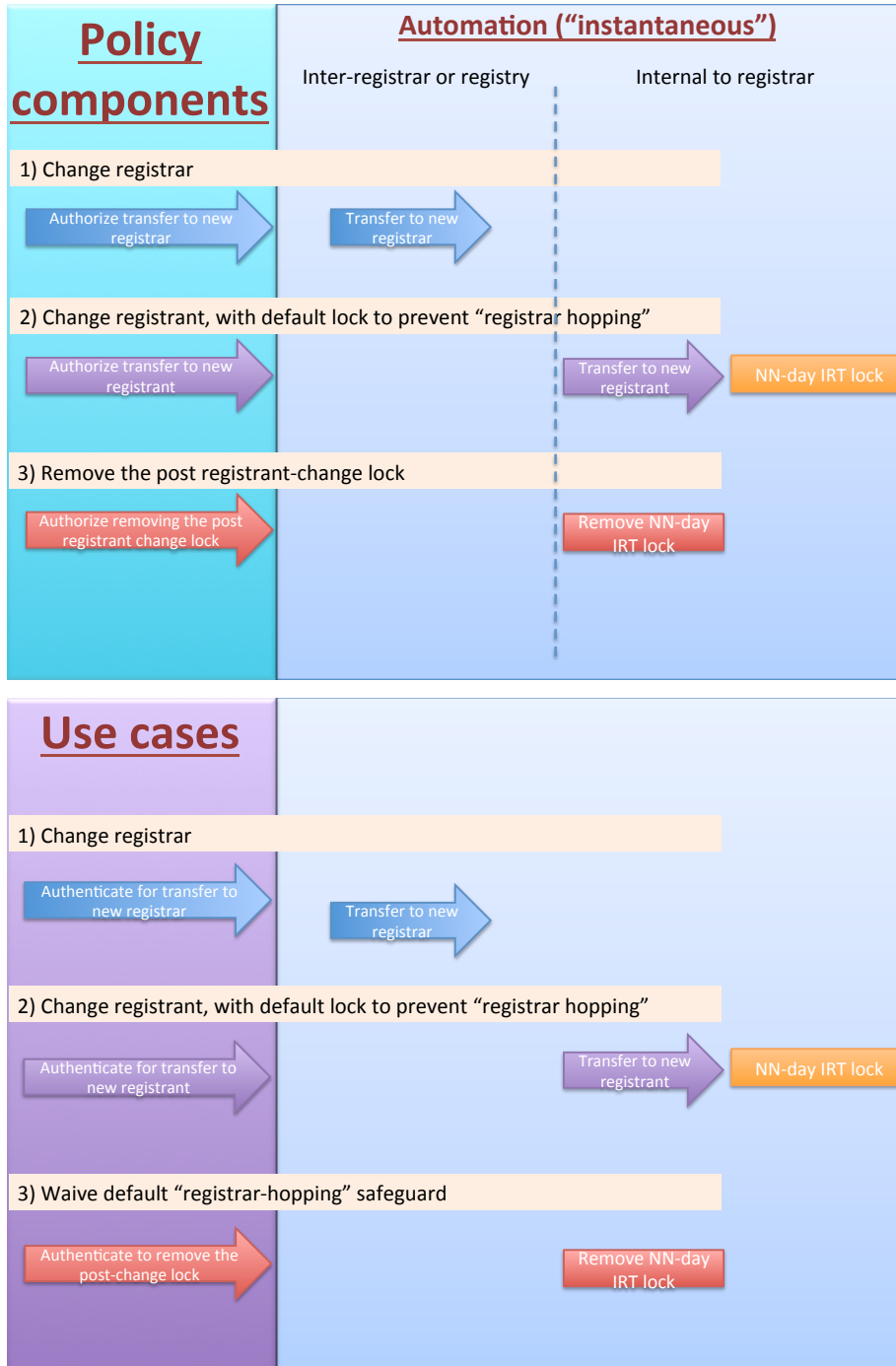
DOMAIN NAME TRANSFER

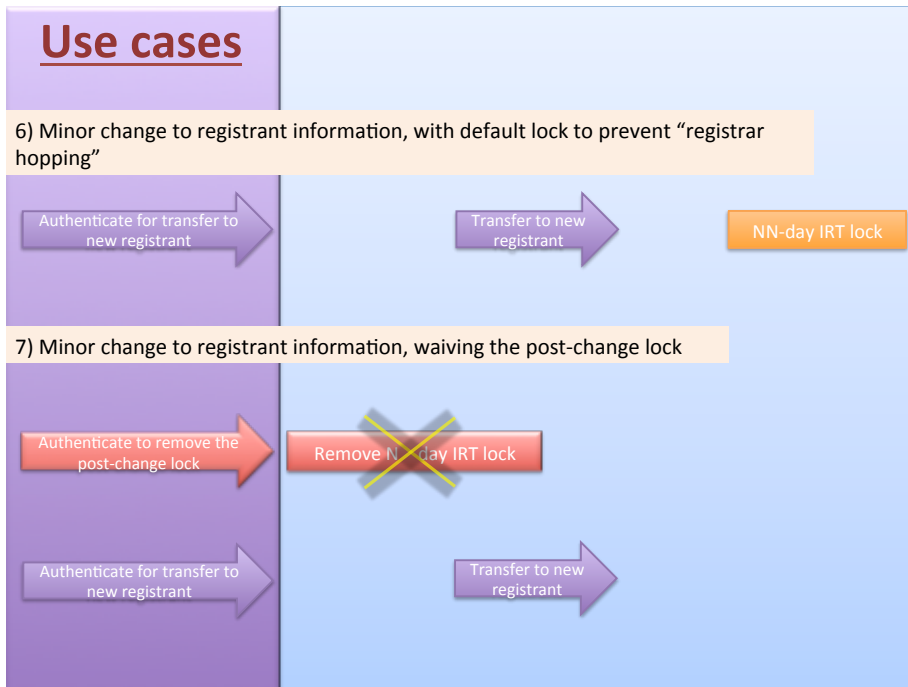
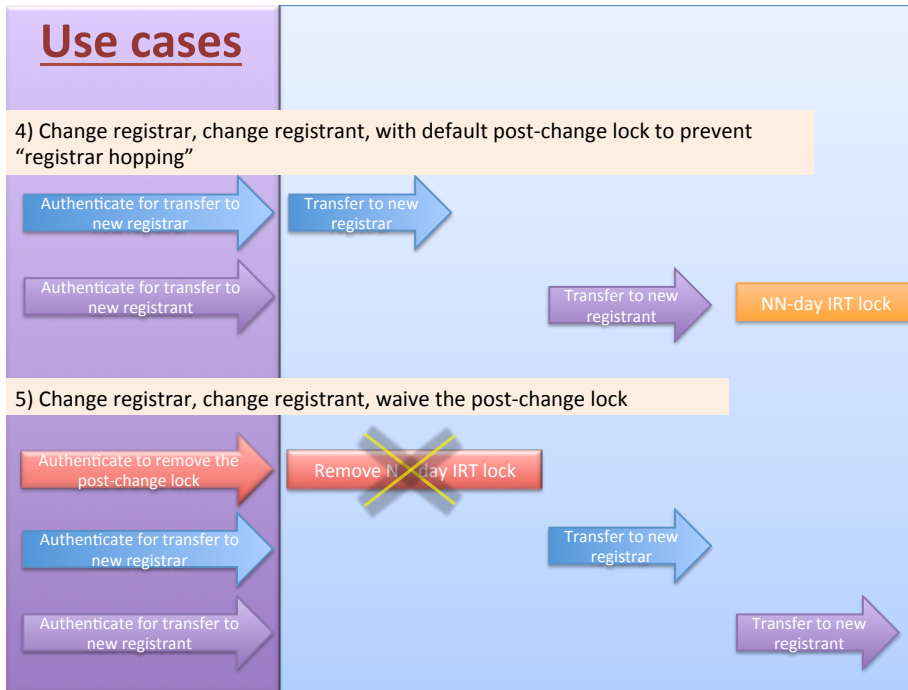
Attention: <insert Registered Name Holder or Administrative Contact of Record as listed in the WHOIS>

Re: Transfer of <insert domain name or list of domain names>

<insert name of registrar and/or name of reseller> received notification on <insert date of notification> that you have requested a transfer to another domain name registrar. If you want to proceed with this transfer, you do not need to respond to this message. If this transfer was unauthorized by you or you believe it was done in error, please contact us before <insert date> by: [NOTE: a registrar may choose to include one or more of the following in the message sent to the Registered Name Holder or Admin contact, and additional processes may be added with ICANN approval. The order in which options are presented is a decision for each registrar] [optional] send an email to <insert contact details> [optional] send a fax to <insert contact details> [optional] or please go to our website <insert URL of confirmation webpage> [Note: website to contain text as above, with the option to accept or deny the transfer.]

## Annex G - Case Studies







### CASE 1: Change Registrar

This falls under current IRTP policy. Mike wants to move his domain from one registrar to another. No other parties involved. Because the Registrant hasn't changed, Registrant info must remain the same and the "waive lock" option is not needed or presented.

|  |   |
|--|---|
| <p style="text-align: center; color: #c00000; margin: 0;"><b>Current registrant</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Request to change Registrar</li> <li><input type="checkbox"/> Request to change Registrant</li> <li><input type="checkbox"/> Request to waive safeguard</li> </ul> <hr style="border: 0; border-top: 1px solid #ccc; margin: 5px 0;"/> <ul style="list-style-type: none"> <li><input style="background-color: #ffcc66;" type="checkbox"/> Authenticate to Δ Registrar</li> <li><input type="checkbox"/> Authenticate to Δ Registrant</li> <li><input type="checkbox"/> Authenticate to Waive Safeguard</li> </ul> | <p style="text-align: center; color: #c00000; margin: 0;"><b>Current registrant</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Authorize Registrar change</li> <li><input type="checkbox"/> Authorize Registrant change</li> <li><input type="checkbox"/> Authorize waiver of safeguard</li> </ul> <hr style="border: 0; border-top: 1px solid #ccc; margin: 5px 0;"/> <ul style="list-style-type: none"> <li><input style="background-color: #ffcc66;" type="checkbox"/> Authenticate to Δ Registrar</li> <li><input type="checkbox"/> Authenticate to Δ Registrant</li> <li><input type="checkbox"/> Authenticate to Waive Safeguard</li> </ul> |
|--|---|

Note: **Registrant** information fields need to match in this use case. Present the "Registrant info must match" requirement to the registrant (and validate that it does) at the new registrar. Registrars of record that don't yet comply with RAA uniform WHOIS access rules will fail this authentication. If registrant wants/needs to change registrant info, present the option to switch to Case 4 or 5 (depending on lock choice)

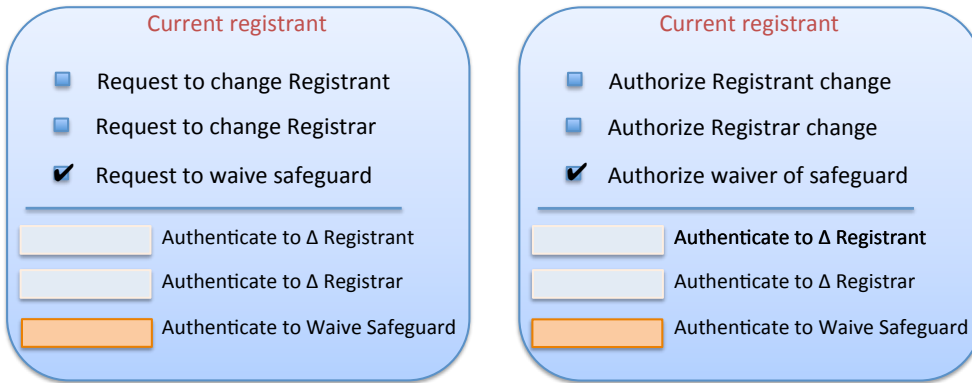
### CASE 2: Change Registrant

Mary (a business owner) wants to buy a domain from Mike for use in her business. She and Mike are using the same registrar. Because she plans to use the name for a long time, and wants to protect it from hijacking, she leaves the lock in place.

|  |   |
|--|---|
| <p style="text-align: center; color: #c00000; margin: 0;"><b>New registrant</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Request to change Registrar</li> <li><input checked="" type="checkbox"/> Request to change Registrant</li> <li><input type="checkbox"/> Request to waive safeguard</li> </ul> <hr style="border: 0; border-top: 1px solid #ccc; margin: 5px 0;"/> <ul style="list-style-type: none"> <li><input type="checkbox"/> Authenticate to Δ Registrar</li> <li><input style="background-color: #ffcc66;" type="checkbox"/> Authenticate to Δ Registrant</li> <li><input type="checkbox"/> Authenticate to Waive Safeguard</li> </ul> | <p style="text-align: center; color: #c00000; margin: 0;"><b>Current registrant</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Authorize Registrar change</li> <li><input checked="" type="checkbox"/> Authorize Registrant change</li> <li><input type="checkbox"/> Authorize waiver of safeguard</li> </ul> <hr style="border: 0; border-top: 1px solid #ccc; margin: 5px 0;"/> <ul style="list-style-type: none"> <li><input type="checkbox"/> Authenticate to Δ Registrar</li> <li><input style="background-color: #ffcc66;" type="checkbox"/> Authenticate to Δ Registrant</li> <li><input type="checkbox"/> Authenticate to Waive Safeguard</li> </ul> |
|--|---|

### CASE 3: Waive the Registrar-hopping Safeguard

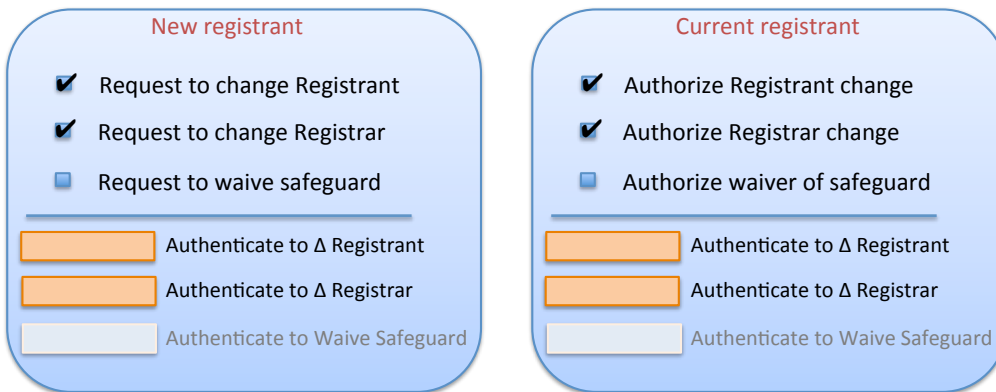
Susan (a domain investor) wants waive the lock in anticipation of a future transaction.



Note: Authentication to **remove the lock** must be very rigorous (preferably out of band, using information that is hard for hijackers to acquire) otherwise hijackers simply do this before they steal the name.

### CASE 4: Change Registrant AND Registrar

Ann (an individual) wants to buy a domain from Mike for use for her blog. She and Mike are NOT using the same registrar. Because she plans to use the name for a long time, and wants to protect it from hijacking, she leaves the lock in place.



## CASE 5: Change Registrant and Registrar and Waive Safeguard

Susan (a domain investor) wants to buy a domain asset from Mike. She and Mike are NOT using the same registrar. Because she wants the flexibility to sell the name, and has sophisticated anti-hijacking of her own, she waives the lock.

| New registrant   | Current registrant  |
|--|---|
| <input checked="" type="checkbox"/> Request to change Registrant | <input checked="" type="checkbox"/> Authorize Registrant change   |
| <input checked="" type="checkbox"/> Request to change Registrar  | <input checked="" type="checkbox"/> Authorize Registrar change    |
| <input checked="" type="checkbox"/> Request to waive safeguard   | <input checked="" type="checkbox"/> Authorize waiver of safeguard |
| <hr/>  | <hr/>   |
| <input type="text"/> Authenticate to Δ Registrant                | <input type="text"/> Authenticate to Δ Registrant                 |
| <input type="text"/> Authenticate to Δ Registrar                 | <input type="text"/> Authenticate to Δ Registrar                  |
| <input type="text"/> Authenticate to Waive Safeguard             | <input type="text"/> Authenticate to Waive Safeguard              |

Note: Authentication to **remove the lock** must be very rigorous (preferably out of band, using information that is hard for hijackers to acquire) otherwise hijackers simply do this before they steal the name.

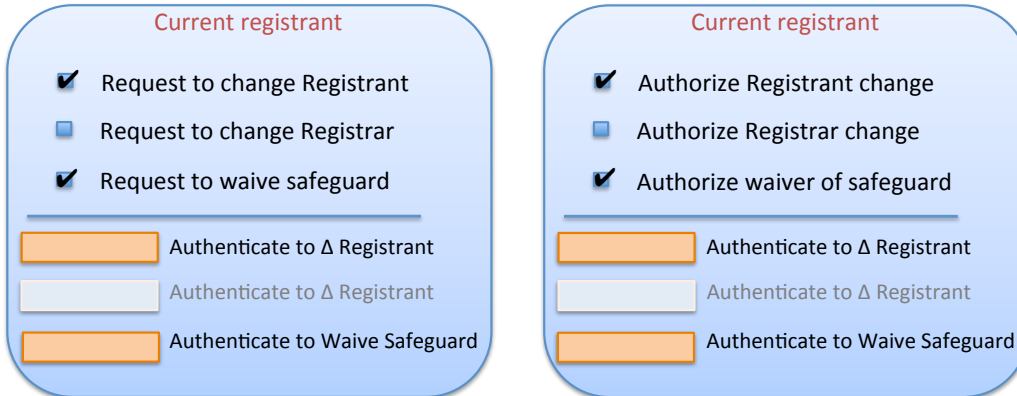
## CASE 6: Minor Change to Registrant Information

Nathalie (a recently married blogger) wants to update her Registrant information to her married name. Because she has no plans to transfer her domain and wants to protectit from hijacking, she declines the opportunity to waive the lock when it's presented by her registrar. Note: technically this is identical to Use Case 2

| Current registrant   | Current registrant  |
|--|---|
| <input type="checkbox"/> Request to change Registrant            | <input type="checkbox"/> Authorize Registrar change             |
| <input checked="" type="checkbox"/> Request to change Registrant | <input checked="" type="checkbox"/> Authorize Registrant change |
| <input type="checkbox"/> Request to waive safeguard              | <input type="checkbox"/> Authorize waiver of safeguard          |
| <hr/>  | <hr/>   |
| <input type="text"/> Authenticate to Δ Registrar                 | <input type="text"/> Authenticate to Δ Registrar                |
| <input type="text"/> Authenticate to Δ Registrant                | <input type="text"/> Authenticate to Δ Registrant               |
| <input type="text"/> Authenticate to Waive Safeguard             | <input type="text"/> Authenticate to Waive Safeguard            |

### CASE 7: Minor change to Registrant information, waiving the post-change lock

Nettie (an unhappy registrar customer) wants to make a minor change to her registrant information. She is willing to waive the safeguard in order to have the option to quickly transfer to a new registrar.



Note: Authentication to **remove the lock** must be very rigorous (preferably out of band, using information that is hard for hijackers to acquire) otherwise hijackers simply do this before they steal the name.

# **2012-12-20-01d-Annex B - IRTP-C-PDP-Input Tracking List.doc**

**Input Tracking – GNSO PDP Recommendations**

The purpose of this checklist is to assist the Board in assuring that all parties with an interest have had an opportunity to participate and weigh in on the recommendations arising out of the GNSO PDP, and to provide a summary of how those inputs were considered. This checklist should be included with the Board paper transmitting the policy recommendations to the Board for decision.

**ISSUE: Inter-Registrar Transfer Policy Part C Policy Development Process**

**DATE OF COUNCIL APPROVAL: 17 October 2012**

**Public Comment<sup>1</sup>**

Identify all documents submitted for public comment as part of the consideration of this issue and the dates of the public comment forums. Also identify the total number of commenters. Also note any open mic/forum sessions on the topic. Include link to the summary and analysis of public comments.<sup>2</sup> In the “outreach efforts” column, please identify the actions taken to publicize the comment period or meeting to encourage participation.

| <b>Comment Period Dates or Meeting Date</b>                                  | <b>Dates opened / closed or Meeting date</b> | <b>Number of commenters</b> | <b>Outreach Efforts</b>                                  |
|--|--|-----------------------------|--|
| Initiation of PDP – Request for Input  | 21 November 2011 / 22 December 2012          | 1                           | Broadly circulated, incl. announcement on ICANN web-site |
| Public meeting at the ICANN Meeting in Costa Rica                            | 14 March 2012                                |                             | Public session   |
| Initial Report   | 4 June 2012 – 25 July 2012                   | 3                           | Broadly circulated, incl. announcement on ICANN web-site |
| Session at the ICANN Meeting in Prague to obtain input on the Initial Report | 27 June 2012                                 |                             | Public session   |

<sup>1</sup> This checklist is not intended as a replacement for full public comment summaries. Rather, this checklist is a supplement to the comment summarization work, to identify in a quick manner that key inputs were received and taken into consideration prior to the issue reaching the Board.

<sup>2</sup> Required public comment sessions upon presentation of the GNSO Recommendations to the Board will be tracked separately.

|   |                                    |   |  |
|---|------------------------------------|---|--|
| Presentation of the Final Report to the ICANN Community at the ICANN Meeting in Toronto | 17 October 2012                    |   | Public session   |
| Recommendations subject to Board consideration  | 22 October 2012 – 12 November 2012 | 1 | Broadly circulated, incl. announcement on ICANN web-site |

### Tracking of GNSO or Stakeholder Inputs

For each GNSO Stakeholder Group, Constituency or Advisory Committee identified below, identify if any input was received, and provide a brief summary of how those inputs were considered. The brief summary should include whether the stakeholder group at issue voiced any opposition to the items under consideration and whether any changes were recommended to the recommendations. Note: In some cases, certain Stakeholder Groups may make comments through component constituencies instead of through a collective statement of the Stakeholder Group. Only comments that are provided on behalf of one of the identified SGs or Constituencies should be recorded in this section.

#### GNSO

| Group                             | Requested | Received | Summary of Action on Input   |
|-----------------------------------|-----------|----------|--|
| GNSO Council                      | Yes       | Yes      | Approved by the GNSO Council on 15 November 2012.  |
| Registrar Stakeholder Group       | Yes       | No       |  |
| Registry Stakeholder Group        | Yes       | Yes      | WG reviewed and addressed input received (see <a href="#">public comment review tool</a> ) |
| New gTLD Applicant Interest Group | N/A       | N/A      |  |
| Commercial Stakeholder Group      | Yes       | No       |  |
| Business Constituency             | Yes       | No       |  |
| IPC Constituency                  | Yes       | No       |  |
| ISP Constituency                  | Yes       | No       |  |
| Non-Commercial Stakeholder Group  | Yes       | No       |  |
| Non-Commercial Users Constituency | Yes       | No       |  |
| Not for Profit Operational        | Yes       | No       |  |

|                          |  |  |  |
|--------------------------|--|--|--|
| Concerns<br>Constituency |  |  |  |
|--------------------------|--|--|--|

| Group  | Requested | Received | Summary of Action on Input  |
|--|-----------|----------|---|
| ccNSO  | Yes       | Yes      | WG was invited to attend the ccNSO meeting in Costa Rica and received valuable insight into the experiences of ccTLDs with change of registrant policies / procedures as detailed in Annex C of the Final Report. |
| ASO  | Yes       | No       |   |
| At-Large Advisory Committee                  | Yes       | Yes      | ALAC submitted its input in response to the public comment forum in the Initial Report. The WG reviewed and addressed the input received (see <a href="#">public comment review tool</a> ).                       |
| Governmental Advisory Committee <sup>3</sup> | Yes       | No       |   |
| RSSAC  | Yes       | No       |   |
| SSAC   | Yes       | No       |   |

### Specific Outreach and Emerging Interests

If the working group or the GNSO Council performed any specific outreach to groups not identified above for advice or assistance on the issues under discussion, please identify the groups/entities consulted, the inputs received and how they were considered. (Ex: for the UDRP Issues Report, UDRP Providers and UDRP practitioners were each consulted for input). In addition, if a definable group of collective interests emerge during a PDP and is not listed above, those collective inputs should be identified below. In the “outreach efforts” column, please identify the actions taken to identify key interested parties to encourage their participation. Also note if there are any groups identified as key that did not respond to outreach efforts.

| Entity/Group | Outreach efforts | How inputs were considered |
|--------------|------------------|----------------------------|
| N/A          |                  |                            |
|              |                  |                            |

<sup>3</sup> Formal GAC advice to the Board will be tracked through the GAC registry process.



**2012-12-20-01d-Annex C - GNSO Council Report to the  
ICANN Board - IRTP Part C.pdf**

**GNSO Council Report to the ICANN Board**  
**Inter-Registrar Transfer Policy Part C Policy Development Process**

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**Executive Summary**

The Generic Names Supporting Organization (GNSO) unanimously approved at its meeting on 17 October 2012 the following recommendations on the Inter-Registrar Transfer Policy (IRTP) Part C Policy Development Process (PDP):

- **Recommendation #1** – The adoption of change of registrant consensus policy, which outlines the rules and requirements for a change of registrant of a domain name registration. Such a policy should follow the requirements and steps as outlined in the section 'proposed change of registrant process for gTLDs' in the IRTP Part C Final Report.
- **Recommendation #2:** Forms of Authorization (FOAs), once obtained by a registrar, should be valid for no longer than 60 days. Following expiration of the FOA, the registrar must re-authorize (via new FOA) the transfer request. Registrars should be permitted to allow registrants to opt-into an automatic renewal of FOAs, if desired.

In addition to the 60-day maximum validity restriction, FOAs should expire if there is a change of registrant, or if the domain name expires, or if the transfer is executed, or if there is a dispute filed for the domain name. In order to preserve the integrity of the FOA, there cannot be any opt-in or opt-out provisions for these reasons for expiration of the FOA.

As recommended and approved as a result of the IRTP Part B PDP, Losing Registrars under IRTP-B are now required to send an FOA to a Prior Registrant. It is advised that Losing Registrars have the option to send a modified version of this FOA to a Prior Registrant in the event that the transfer is automated where the FOA would be advisory in nature.

- **Recommendation #3:** All gTLD Registry Operators be required to publish the Registrar of Record's IANA ID in the TLD's WHOIS. Existing gTLD Registry operators that currently use proprietary IDs can continue to do so, but they must also publish the Registrar of Record's IANA ID. This recommendation should not prevent the use of proprietary IDs by gTLD

Registry Operators for other purposes, as long as the Registrar of Record's IANA ID is also published in the TLD's Whois.

Under the ICANN Bylaws, the Council's unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than 66%, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

**a. A clear statement of any Successful GNSO Vote recommendation of the Council**

The Generic Names Supporting Organization (GNSO) unanimously approved at its meeting on 17 October 2012 the following recommendations on the Inter-Registrar Transfer Policy (IRTP) Part C Policy Development Process (PDP):

- **Recommendation #1** – The adoption of change of registrant consensus policy, which outlines the rules and requirements for a change of registrant of a domain name registration. Such a policy should follow the requirements and steps as outlined hereunder in the section 'proposed change of registrant process for gTLDs'.

*Proposed "Change of Registrant" Process for gTLDs*

Having concluded that there are benefits in developing a standalone process for a "change of control" or "change of registrant"<sup>1</sup>, the WG recommends the following requirements that such a change of registrant process should meet. These include:

- Both the Prior Registrant and the New Registrant need to authorize the change of registrant. Such authorization could also be provided by the Prior Registrant in the form of pre-approval or via a proxy. However such preapprovals must be secured using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider "out of band" authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this

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<sup>1</sup> In the context of the change of registrant process, the term Registrant is identical to 'Registered Name Holder' as defined in the Registrar Accreditation Agreement (RAA).

recommendation is implemented in accordance with the intention of the Working Group.

- A change of registrant cannot take place simultaneously with a change of registrar although they can be made to appear that way to registrants in a registrars users interface. If both changes need to be made, it is suggested, but not required, that the change of registrar (IRTP) be completed prior to initiating the change of registrant in order to avoid triggering the proposed 60-day inter-registrar transfer lock (see below).
- The WG also noted that any such process should not create an unfair advantage/disadvantage for any of the segments active in the domain name industry and noted that it should not prevent innovation and differentiation amongst registrars.

The Working Group also discussed extensively whether there should be any restrictions in place that would prevent a change of registrar immediately following a change of registrant (see the Initial Report) and recommends that a domain name cannot be transferred to another registrar for 60 days to protect registrants against possible harms arising from domain hijacking. However the option to opt out of this restriction (with standard notice to all registrants of the associated risks) is provided in order to meet the needs of registrants who are concerned about the negative effect on movability of domain name registrations. If a registrar chooses to offer an option for registrants to opt out, the process to remove this restriction must use a generally accepted method of authentication.

As a result of these deliberations, the WG has developed the following proposed process for a change of registrant:

STEP 0: If the Prior and New Registrants are transferring the domain to a new registrar in conjunction with this Change of Registrant process, it is suggested that they first complete the Inter-Registrar Transfer in order to avoid triggering the default 60-day lock associated with the Change of Registrant process. Note that the Inter Registrar Transfer policy is revised so as to not permit changes to Registrant information at the same time as an inter-registrar transfer. The Gaining Registrar must validate this prior to completing the transfer. (see also Note H hereunder).

STEP 1: Both Registrants authorize the change

- Either the Prior or Gaining Registrant produces and transmits Change of Registrant Credentials to the other Registrant
- The other Registrant acknowledges the receipt of credentials and authorizes the transfer

STEP 2: Registrar determines that both Prior and New Registrant have authorized the Change of Registrant and that the domain is eligible for Change of Registrant (i.e. there are no locks or other restrictions on the domain)

STEP 3: Registrar changes registrant

STEP 4: Registrar notifies Prior and New Registrant of the change that has taken place

STEP 5: Registrar places a lock on the domain to prevent Inter-Registrar transfers of the domain for 60 days, unless the Prior Registrant has opted out of this requirement after having received a standard notice as to the associated risks.

**NOTES:**

Note A: Change of Registrant is defined as a material change to any of the following:

- Name
- Organization
- Primary Contact Method (registrant and/or administrative contact email address)

In the case of minor updates or corrections, the registrar, in its judgment, may waive this requirement at the request of the registrant using a generally accepted method of authentication. As a non-limiting example, Registrars may want to consider “out of band” authentication based on information that cannot be learned from within the registrar account or publicly available resources such as Whois. The Working Group recommends that the IRTP Part C Implementation Review Team is consulted by ICANN staff as it develops the implementation plan to ensure this recommendation is implemented in accordance with the intention of the Working Group.

Note B: In order to be eligible for a change of registrant, the domain name registration should not be:

- Subject to UDRP

- Locked by the Registrar (with a clear mechanism for clearing the lock)
- Expired

- Note C: A change of registrant can only be requested by the registrant or an authorized representative of the registrant.
- Note D: Change of Registrant Credentials could be a PIN, password, string or code, including AuthInfo codes. However Registrars should note that AuthInfo codes are also generated and used in the Inter-Registrar Transfer process. A registrar can use the same AuthInfo code for the Change of Registrant process, but there may be operational and security issues that they should address if they choose to do this without resetting and reissuing the AuthInfo code first.
- Note E: The Inter-Registrar Transfer Process and this Change of Registrant Process are separate and distinct – however they can be made to appear the same to Registrants if that is desirable. The key distinction between these two processes is that the first (IRTP) happens between Registrars, while this Change of Registrant (COR) process happens within a Registrar.
- Note F: This process is also used in cases where the Gaining and Losing Registrants are the same – e.g. the case where a Registrant is updating information in response to a WDRP reminder.
- Note G: The 60-day lock is used to “contain” the changes of Registrants within a single Registrar in order to facilitate recovery of domains that have been hijacked.
- Note H: It is not currently possible to validate that Registrant information is identical during an Inter Registrar Transfer in thin registries. Thus, implementation of these policy changes in thin-registry gTLDs is contingent on either a) the implementation of uniform WHOIS data access provisions being discussed in the current round of RAA negotiations, b) an outcome of a PDP process that mandates thick WHOIS across all registries or c) some other mechanism which provides secure and reliable sharing of Registrant data between Registrars in thin-registry TLDs.
- Note I: It is recommended that the change of registrant policy is incorporated as a hybrid policy, whereby the IRTP would become a Transfer Policy in which one

Part or Section details the policy for a change of registrar, and another Part or Section details the policy for a change of registrant.

- **Recommendation #2:** FOAs, once obtained by a registrar, should be valid for no longer than 60 days. Following expiration of the FOA, the registrar must re-authorize (via new FOA) the transfer request. Registrars should be permitted to allow registrants to opt-into an automatic renewal of FOAs, if desired.

In addition to the 60-day maximum validity restriction, FOAs should expire if there is a change of registrant, or if the domain name expires, or if the transfer is executed, or if there is a dispute filed for the domain name. In order to preserve the integrity of the FOA, there cannot be any opt-in or opt-out provisions for these reasons for expiration of the FOA.

As recommended and approved as a result of the IRTP Part B PDP, Losing Registrars under IRTP-B are now required to send an FOA to a Prior Registrant. It is advised that Losing Registrars have the option to send a modified version of this FOA to a Prior Registrant in the event that the transfer is automated where the FOA would be advisory in nature.

- **Recommendation #3:** All gTLD Registry Operators be required to publish the Registrar of Record's IANA ID in the TLD's WHOIS. Existing gTLD Registry operators that currently use proprietary IDs can continue to do so, but they must also publish the Registrar of Record's IANA ID. This recommendation should not prevent the use of proprietary IDs by gTLD Registry Operators for other purposes, as long as the Registrar of Record's IANA ID is also published in the TLD's Whois.

Under the ICANN Bylaws, the Council's unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than 66%, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

- b. If a Successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) or Stakeholder Group(s) that held the position;**

N/A

- c. An analysis of how the issue would affect each constituency or Stakeholder Group, including any financial impact on the constituency or Stakeholder Group;**

Adoption of the recommendations will require substantial changes in processes for most registrars with potential changes for gTLD registries as well, especially with respect to recommendation #3. It should be recognized that certain details have been left to be worked out and further clarified as part of the implementation process, which may require additional changes and/or costs by parties impacted by the recommendations, especially in relation to recommendation #1. However, the recommendations, if properly implemented, are expected to usefully clarify and enhance the IRTP, to the advantage of all parties concerned.

- d. An analysis of the period of time that would likely be necessary to implement the policy;**

Taking into account the significant changes proposed to the transfer policy as a result of recommendation #1, in addition to certain details that are intended to be worked out as part of the implementation process, staff expects that considerable consultation with the IRTP Part C Implementation Review Team as well as the broader ICANN Community will need to be undertaken to ensure a useful and implementable policy. Furthermore, as the implementation of these recommendations, especially a change of registrant policy, marks a significant change from current practice, sufficient time will need to be allocated to educate and inform affected parties about the new rules and requirements.

- e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;**

N/A

- f. The Final Report submitted to the Council**



The IRTP Part C PDP Final Report can be found here: <http://gns0.icann.org/en/issues/irtp-c-final-report-09oct12-en.pdf>. Translations of the Final Report are also available (see <http://gns0.icann.org/en/group-activities/irtp-c-wg.htm>).

- g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.**

See <http://gns0.icann.org/en/meetings/minutes-council-17oct12-en.htm>.

#### **ADDITIONAL INFORMATION**

##### **h. Consultations undertaken**

###### *External*

Public comment forums were held on the [initiation of the PDP](#), [the Initial Report](#), and [the recommendations subject to Board Consideration](#), in addition to regular updates to the GNSO Council as well as workshops to inform and solicit the input from the ICANN Community at ICANN meetings (see for example, [Prague Meeting](#) and [Costa Rica Meeting](#)). Constituency / Stakeholder Group Statements were requested, and one submission was received from the gTLD Registries Stakeholder Group (see <https://community.icann.org/x/ovbAQ>). All comments received have been reviewed and considered by the IRTP Part C PDP WG (see section 6 of the [IRTP Part C Final Report](#)).

###### *Internal*

Regular updates were provided to the different ICANN departments potentially affected by these recommendations (e.g. compliance, registrar relations teams) under consideration and potential issues were raised with the IRTP Part C PDP Working Group.

- i. Summary and Analysis of Public Comment Forum to provide input on the IRTP Part C Recommendations adopted by the GNSO Council prior to ICANN Board consideration**

One comment in support of Board consideration of the recommendations was submitted (see <http://www.icann.org/en/news/public-comment/irtp-c-recommendations-22oct12-en.htm>).

**j. Implementation Recommendations for Recommendation #1 as developed by the IRTP Part C PDP Working Group**

The IRTP Part C WG has provided detailed implementation guidance as part of recommendation #1 in addition to outlining case studies (see Annex G of the IRTP Part C Final Report) that cover the different scenarios for a change of registrant that should assist in the implementation of this recommendation. In addition, the GNSO Council, upon the recommendation of the IRTP Part C WG, has agreed to the formation of an IRTP Part C Implementation Review Team following the adoption of the IRTP Part C Recommendations by the ICANN Board to assist staff in the implementation of these recommendations.

**k. Impact / Implementation Considerations from ICANN Staff**

As noted above, taking into account the significant changes proposed to the transfer policy, in addition to certain details that are intended to be worked out as part of the implementation process, staff expects that considerable consultation with the IRTP Part C Implementation Review Team as well as the broader ICANN Community will need to be undertaken to ensure a useful and implementable policy. For example:

- In relation to recommendation #1, it is mentioned that preapprovals and/or opt-outs need to be done using a generally accepted method of authentication. If this is intended to mean that the policy should specify certain minimum requirements and/or examples of what ‘accepted methods of authentication’ may be, this would be pretty straightforward. However, if it is the intention that as part of the implementation such an authentication method is designed that would become part of the policy, this may prove to be much more complicated and require additional expertise and resources to accomplish;
- Further clarification may be needed on some of the terms used as some are currently not consistent with those in the RAA or not consistently used;

- No specific mention is made how disputes resulting from a change of registrant should be handled, but it may be worth considering whether a modification of the Transfer Dispute Resolution Policy (TDRP) would be in order (something that may also be considered as part of the upcoming IRTP Part D);
- Are there any specific issues that may arise from proxy and privacy registrations in relation to the change of registrant policy?

These are just some examples of issues ICANN Staff hopes to receive further clarification on as a result of its collaboration with the IRTP Part C Implementation Review Team in developing the proposed implementation plan.

**2012-12-20-01e-Proposed RSSAC Bylaws  
Revisions.docx**

### 3. Root Server System Advisory Committee

a. The role of the Root Server System Advisory Committee ("RSSAC") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.
2. Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.
3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.
4. Respond to requests for information or opinions from the ICANN Board of Directors.
5. Report periodically to the Board on its activities.
6. Make policy recommendations to the ICANN community and Board.

b. The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

1. RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the board declines to appoint a person nominated by the RSSAC then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (Note: The first full term under this paragraph shall commence on 1 January 2013 and end on 31 December 2015. Prior to 1 January 2011, the RSSAC shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC chairs shall recommend the re-appointment of all current RSSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

**Comment [BRR1]:** Dates to be adjusted appropriately.

2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC shall annually appoint a non-voting liaison to the ICANN Board according to [Section 9 of Article VI](#).

**2012-12-20-01g-ICANN Investment Policy new gTLD  
FINAL.pdf**

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## 1. PURPOSE OF THIS DOCUMENT

This document sets out the Investment Policy agreed by the ICANN Board of Directors for the investment of cash on hand (funds) pertaining to the New gTLD program. This document has been prepared jointly with ICANN's external financial advisors.

## 2. ICANN's OBJECTIVES

The ICANN Board of Directors has set out the following three main objectives:

- First, ensure that funds are safe and the capital is preserved.
- Second, ensure that funds remain liquid to meet the needs of ICANN's new New gTLD operations.
- Third, ensure that funds earn appropriate returns commensurate with the level of risk.

## 3. USE OF EXTERNAL RESOURCES

In order to meet the above objectives, ICANN will retain external investment expertise to hold (custodian bank) and invest (investment manager) funds. A firm can be both a custodian bank and an investment manager for ICANN, if the separate criteria for each role are all met at the same time and no conflict between the role of manager and the role of custodian is identified.

ICANN will not borrow funds from any institution to leverage the portfolio or for speculative purposes. ICANN may enter reverse repurchase agreements with prior approval from the Chief Financial Officer to provide short-term liquidity, if necessary.

### 3.1 Managers and Custodians structure

ICANN will at all times use a sufficient number of custodian banks so that no one custodian bank holds more than 80% of the insurance amount that such bank has in place.

If 80% of the insurance amount in place at a custodian exceeds \$75m, the amount of funds held by any custodian will not exceed \$75m.

Provided that the above conditions are met, ICANN will not use more than 5 different custodian banks, for practical purposes. This last limit was determined assuming that most custodian banks have in place an insurance amount at or above \$100m.

Until such time that the new gTLD funds invested under this Investment Policy exceed in aggregate \$150m, ICANN will use at least 3 different investment managers. When the amount of new gTLD funds invested will be less than \$150m, the CFO will consult an advisor, and will recommend a reduction of the number of investment managers if deemed appropriate.



### 3.2 Investment manager

External investment manager(s) utilized must meet the following criteria:

- Must be an SEC-registered investment advisor with SEC Form ADV readily available and in good standing with regulators.
- Manage a minimum of \$1 billion in institutional fixed income portfolios.
- Have a verifiable fixed income performance record for the prior five years that complies with the CFA Institute's GIPS (Global Investment Performance Standards).

The external Investment Manager(s) will have the following responsibilities:

- Comply with all guidelines and limitations set forth in the Investment Policy.
- Analyze, oversee, direct the execution of investment decisions
- Report monthly to the CFO on the performance of the Processing Fund and compliance with the Investment Policy and the overall credit quality, duration and cash flow of the portfolio.
- Communicate any major changes to economic outlook, market conditions, investment strategy, credit downgrades or any other factors, which affect the portfolio(s).
- Be available to report periodically to the Board of Directors on the performance results and cash flow projections of the Processing Fund including comparisons with approved industry benchmarks.
- Be available to report periodically to the Board of Directors on the compliance with the Investment Policy.
- Inform the CFO (or CEO) regarding any significant changes including changes to the investment management firm, its financial strength, significant changes in assets under management, SEC investigation, material litigation, changes in portfolio management personnel, ownership structure, investment philosophy, and investment processes.
- Provide ICANN with all requisite monthly and quarterly reports, including, but not limited to:
  - Credit ratings, downgrades/upgrades
  - Sector allocations
  - Maturity/Duration distribution
  - Total rates of return (CFA Institute's GIPS)
  - Reports of any realized and unrealized capital gains/losses
  - Transactions
  - Benchmark comparisons

### 3.3 Custodian bank

All investments managed by external investment managers must be held in bank custodial account(s) that are segregated from the firm's assets. All transactions will be reconciled to the custody account statements on a monthly basis.

Custodian bank(s) must meet all of the following criteria:

- Minimum long-term debt credit rating of Investment Grade (A4/A-) as determined by any two of the NRSROs (Nationally Recognized Statistical Rating Organizations).
- Must have an unqualified SSAE 16 (formerly SAS 70) audit by an independent audit firm that is registered with PCAOB (Public Company Accounting Oversight Board created by Sarbanes-Oxley)
- Must maintain insurance: Financial Institutions Bond that covers losses from employee theft, loss of securities on premises/in transit, forgery, etc. and Professional Liability (Errors & Omissions).

The custodian bank(s) will have the following responsibilities:

- Hold fiduciary responsibility for all assets in the Fund.
- Comply with all guidelines and limitations set forth in the Investment Policy.
- Complete all actions instructed by the investment managers including buying, selling, and holding of individual securities for all asset types in all asset classes.
- Must provide accounting reports that are consistent with FAS 124.
- Must provide a complete and detailed listing of all securities held for this account, fair market values, amortized cost values of each security, realized and unrealized gains/losses, accrued and earned interest and a detailed transaction report on a monthly basis.
- Must price the securities at each month end at fair market value using independent third party pricing services that are consistent with FAS 157.

## **4. INVESTMENT GUIDELINES**

### **4.1 Overall portfolio requirements**

#### **4.1.1 Expected investment return**

Funds will be invested in assets that are expected to yield the greatest investment return given the risk profile, cash flow needs, and other parameters of the fund.

The Processing Fund is expected to earn rates of return commensurate with a capital preservation fund. The BOAML 3 Month LIBID is considered an appropriate performance benchmark for the short-term portion of the portfolio. The longer-term portion benchmark is to be determined.

#### **4.1.2 Average portfolio quality**

The portfolio will maintain a minimum weighted average portfolio quality of A3 by Moody's and A- by Standard & Poor's.

#### 4.1.3 Diversification

Portfolio diversification will be a tool for minimizing risk while maintaining liquidity. No more than 5% of the portfolio will be invested with any one issuer, with the exception of the U.S. Treasury and its Federal Agencies for which no limit will be imposed.

Government Sponsored Enterprise (GSE) issued mortgage-backed securities will be limited to 5% per issue basis rather than per issuer. Each FNMA or FHLMC mortgage backed security must have different underlying mortgages and a different CUSIP number. GSE debentures will be limited to 20% per issuer.

Asset backed securities will be limited to 5% per issue basis rather than per issuer. Each asset-backed issue must have a different trust, different underlying collateral and different CUSIP number.

Money market fund investments will be limited to a maximum of 5% of the specific fund's total assets.

## 4.2 Prohibited securities

Prohibited securities include auction rate securities, auction rate preferred stock and perpetual preferreds, securities with short-puts on bonds with long stated final maturities, collateralized bond obligations (CBOs), collateralized debt obligations (CDOs), collateralized loan obligations (CLOs), collateralized trusts that have embedded leverage, interest only securities (IOs), super POs and principal only securities (POs), residuals, credit default swaps (CDS), tiered indexed bonds and two –tiered indexed bonds, mortgage backed securities. Floating rate securities with embedded interest rate caps, collars, inverse interest rate relationships, leverage floaters, and indices not directly correlated with money market interest rate movements are not permitted. Securities with deferred interest payments, extendible maturities at issuer's option, structured investment vehicles (SIVs), and subordinated issues are not eligible for the investment portfolio.

There will be no foreign currency or margin purchases; short sales; options, uncovered call options, puts, or straddles; futures or commodity futures; letter stock; illiquid securities; non-financial commodities such as precious metals; direct ownership of real estate or mortgages; international securities unless listed on a National Exchange and U.S. dollar denominated; or direct interest in gas, oil or other mineral exploration or development programs and hedge funds.

## 4.3 Eligible investments

### 4.3.1 Eligibility criteria

*Prepared November 15, 2012 by Bridgebay Financial, Inc. for the exclusive use of ICANN.*

- All eligible securities must carry at least one credit quality rating from Moody's, Standard & Poor's, Fitch, or DBRS. In the case of split ratings, the lower of the ratings will be considered the overall credit rating.
- The Investment Manager's responsibility for assessing the credit quality of eligible securities is ongoing on a daily basis and is not limited to credit quality at the time of purchase.
- All eligible securities must be senior notes or senior classes of the capital structure of the issuer or the senior tranche or class of the collateralized issue. Notes, tranches or classes, preferred shares and equities that are all junior to senior notes of all eligible issuers are prohibited.
- Floating rate securities have a stated final maturity of up to 5 years. Floating rate securities have interest rates linked to a well-recognized money market index such as the Treasury Bill, LIBOR or Federal Funds with coupon resets weekly, monthly, quarterly, semi-annually or annually are eligible investments.
- Fixed rate securities are limited to 3.5 years stated final maturity or 3.5 year weighted average life (WAL).
- All investments will be U.S. dollar-denominated.
- The funds may be invested with a moderate global focus if the securities are USD, meet the principles of the investment policy, and are eligible assets.

#### 4.3.2 List of eligible securities

##### a - United States Treasury Securities

Marketable securities which are direct obligations of the U.S.A., issued by and guaranteed as to principal and interest by the U. S. Treasury and supported by the full faith and credit of the United States.

##### b - United States Government Agency Securities

###### Federal Agency Securities

Certain corporations wholly owned by the U.S. Government such as Government National Mortgage Association (GNMA) or the Small Business Association (SBA) issue debt securities that are backed by the "full faith and credit" of the U.S. Government.

##### c - Government Sponsored Enterprises (GSEs)

Enterprises chartered by Congress to fulfill a public purpose, but privately owned and operated are not government agencies despite government sponsorship. GSEs include, but are not limited to the Federal Farm Credit Banks (FFCBs), the Federal Home Loan Banks (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC) and Federal National Mortgage Association (FNMA).

##### d - Tri-Party Repurchase Agreements

Tri-party repurchase agreements (repos) will be transacted only with financial institutions that are rated a minimum of A3 by Moody's or A- by S&P. All transactions must be fully collateralized by U.S. Treasury, U.S. Federal Agency obligations, Government Sponsored Enterprises, money market

instruments, or corporates eligible within this policy. Collateral must be market-priced greater than the invested amount on a daily basis (minimum of 102%). Up to a maximum of 10% of the portfolio may be invested with one counterparty. Transactions are limited to 15-day maturities.

#### e - Money Market Funds

Institutional money market funds that comply with SEC 2a-7, offer daily liquidity and do not have a fluctuating net asset value (NAV). Enhanced cash, LIBOR Plus funds that are not SEC 2a-7 compliant and whose net asset value (NAV) may fluctuate are not permissible as money market funds.

#### f - Money Market Instruments

Short-term obligations of financial institutions and corporations including but not limited to commercial paper, asset-backed commercial paper (ABCP), time deposits, certificates of deposit (CDs). Instruments must have a minimum short term rating of A-1 by S & P or P-1 by Moody's.

#### g - Corporate Debt Instruments

Unsecured promissory notes issued by corporations or financial institutions including but not limited to Medium-Term Notes, Deposit Notes, 144(a) Securities, Eurodollar Notes and Yankee Notes and Bonds must be rated at least Baa3 by Moody's or BBB- by S&P or equivalent.

#### h - Non-US Sovereign, Supranational Organizations or International Agencies

Notes, bonds or debt instruments issued by non-U.S. sovereigns that are direct obligations of the sovereign or supported by the full faith and credit of that sovereign are eligible investments. Supranational organizations or international agencies including but not limited to World Bank (WLDDB), Asian Development Bank, Inter-American Development Bank, Agency for International Development (AID) are eligible investments. All investments must have a minimum long-term debt rating of Aa3 by Moody's or AA- by S&P or equivalent. All securities must be U.S. dollar denominated.

#### i - Non-US Governmental or Federal Agencies

Senior debentures of any governmental or federal agency which obligations are guaranteed by the sovereign nation or represent the full faith and credit of the sovereignty must have a minimum rating of Aa3 by Moody's or AA- by S&P or equivalent. All securities must be U.S. dollar denominated.

#### j - Local Governments or Authorities

Debt obligations of provinces, states, municipalities or local governments guaranteed by a governmental body must have a minimum long term debt rating of Aa3 by Moody's or AA- by S&P or equivalent. All securities must be U.S. dollar denominated.

#### k - Asset-Backed Securities (ABS)

ABS are bonds, including commercial paper, backed by the monthly cash flows associated with consumer and business receivables that are packaged by a company and sold in the securities markets. Securities supported by assets, such as automobile loans, truck loans, credit card receivables, rate reduction bonds, floorplans and other loans or assets that are owned by the issuer

and, usually, placed with a trustee. Assets that are second liens, home equity loans, manufactured housing with long stated final maturities and are sensitive to prepayment changes and extension risk are not eligible. Eligible securities must be senior notes, have a WAL (Weighted Average Life) of 3.5 years or less, must be rated at least Aa3 by Moody's or AA- by S & P or equivalent.

#### I - US Municipal Obligations or Local Authority

Direct obligations of or obligations fully guaranteed by a state, territory, or a possession of the United States must have a minimum rating of A3 by Moody's or A- by S&P or equivalent.

Pre-Refunded bonds or Escrowed to maturity for principal and interest by U.S. Treasury and/or U.S. Federal Agency securities are eligible investments.

Approved credit enhancements for securities when issuer's standalone credit rating is A3 by Moody's or A- by S&P or higher and subject to a 5% per issuer limit include:

- Bank Letter of Credit (LOC), irrevocable and unconditional, rated A-1 by S&P or P-1 by Moody's or equivalent. Limited to 5% of portfolio value per LOC provider.
- Insurance by any monoline insurer rated Aa3 by Moody's or AA- by S&P or equivalent. Limited to 5% of portfolio value per insurer.

## **5. COMMUNICATION**

### **5.1 Reporting requirements**

Each Investment Manager will report results to ICANN monthly. In addition to the net investment performance detailed above, written reports will include a review of the credit quality and risk characteristics of the portfolio, portfolio cash flows and a synopsis of the Investment Manager's economic and investment outlook.

ICANN will monitor the Investment Manager(s) on a continual basis for compliance with the investment guidelines, liquidity and investment risk as measured by asset concentration and market volatility.

### **5.2 Cash flow communication**

ICANN will communicate regularly as to its cash flow needs in order for the Investment Manager(s) to modify the portfolio accordingly. ICANN will be responsible for advising the Investment Manager in a timely manner of ICANN's distribution requirements from any managed portfolio or fund. The Investment Manager is responsible for providing adequate liquidity to meet such distribution requirements. ICANN's Chief Financial Officer will be responsible for communicating the cash flow requirements to the Investment Manager in a timely manner.

## **6. GOVERNANCE**

### **6.1 Responsibilities of the ICANN Board of Directors**

The Board of Directors of ICANN will direct the ICANN New gTLD Investment Policy, including:

- Approve the new gTLD Investment Policy and any suggested changes to it.
- Maintain and update the Investment Policy periodically (at least annually).
- Delegate to the Board Finance Committee (BFC) specific duties and responsibilities related to the monitoring of the Investment Policy, including:
  - Ensure that an adequate process of selection of external resources is in place.
  - Periodically review the compliance to the Investment policy and report to the full board the compliance with the Investment Policy.
  - Periodically reviews the performance of the invested portfolio.

### **6.2 Responsibilities of the ICANN Staff and CFO**

ICANN's CFO, with the assistance of ICANN staff, will oversee the administration of the Investment Policy, including:

- Monitors and direct all activities related to funding daily operations.
- Manages the selection process for selecting external resources
- Appoints external resources.
- Monitors the activities of the Investment Manager(s).

Periodically reports to the Board of Directors on the liquidity, performance of the Fund and compliance with the Investment Policy.

## **7. EXCEPTIONS**

Any intended exceptions to this Investment Policy by an external manager must be documented by written approval from ICANN's Chief Financial Officer prior to execution of the transaction. In the event that any unintended exceptions to this Investment Policy do occur, it will be reported to ICANN as soon as the external Investment Manager becomes aware of the violation. Actions to eliminate any unauthorized exception to this Investment Policy will be cured immediately and at the expense of the external Investment Manager. If an investment rating for a security is reduced below the minimums set by this Investment Policy, the external investment manager will contact ICANN immediately and an action plan will be agreed upon by both parties.

## **8. ACCOUNTING**

Potential investments should be analyzed in light of ICANN's tax-exempt status as a nonprofit organization. This Investment Policy permits trading securities (realizing gains/losses) by the Investment Manager within specific constraints.

All portfolio managers must notify the Chief Financial Officer immediately to obtain pre-authorization in order to realize a net loss in any given month. Any material event that affects the value of the portfolio must be reported immediately.

If the portfolio's exposure to an individual issuer is increased in excess of 5% due to an unexpected cash withdrawal, the portfolio manager will contact the Chief Financial Officer within 48 hours to continue to hold the bonds or will have the discretion to sell bonds to reduce the exposure to below 5%.

For investment accounting purposes the portfolios will be subject to Statement of Financial Accounting Standards Board Statement No. 124, "Accounting for Certain Investments Held by Not-for-Profit Organizations."



## APPENDIX

### ELIGIBLE INVESTMENTS AND CREDIT QUALITY

All eligible securities must carry at least one credit quality rating from Moody's, Standard & Poor's, Fitch, or DBRS. In the case of split ratings, the lower of the ratings will be considered the overall credit rating. The Investment Manager's responsibility for assessing the credit quality of eligible securities is ongoing on a daily basis and is not limited to credit quality at the time of purchase.

#### Senior Securities

All eligible securities must be senior notes or senior classes of the capital structure of the issuer or the senior tranche or class of the collateralized issue. Notes, tranches or classes, preferred shares and equities that are all junior to senior notes of all eligible issuers are prohibited.

#### Floating Rate Securities

Floating rate securities whose interest rates are linked to a well-recognized money market index such as the Treasury Bill, LIBOR or Federal Funds with coupon resets weekly, monthly, quarterly semi-annually or annually are eligible investments. Stated final maturities permissible up to 5 years.

#### Fixed Rate Securities

Fixed rate securities are limited to 3.5 years stated final maturity or 3.5 year weighted average life (WAL).

#### Issuer Exposure

|                                     |   |
|-------------------------------------|---|
| Per Issuer                          | 5% of portfolio per issuer; no per issuer limit for U.S. Treasury and Federal Agency Securities |
| Per Repurchase Agreement            | 10% maximum per counterparty  |
| Per ABS, MBS, CMBS, CMO trust issue | 5% of the portfolio per trust, different collateral, different CUSIP                            |
| Money Market Funds                  | 5% of specific money fund's assets  |
| Per GSE Debenture Issuer            | 20%   |

| Eligible Investments   | Minimum Credit Quality | Additional Limits         | Diversification Limits (%) Portfolio |
|--|------------------------|---------------------------|--------------------------------------|
| <b>US Treasury Securities</b>  | NA                     |                           | 100%                                 |
| <b>US Government Agency Securities<br/>Federal Agency Securities</b> | NA                     |                           | 100%                                 |
| <b>US Government Sponsored Enterprises (GSEs)</b>                    | NA                     | 20% per issuer            | 100%                                 |
| <b>Tri-Party</b>   | Counterparty           | 102% collateral; 15 days; | 20%                                  |

|  |                        |   |                               |
|--|------------------------|---|-------------------------------|
| <b>Repurchase Agreements</b>   | rated A3/A-            | 10% per counterparty  |                               |
| <b>SEC 2a-7 Money Market Funds</b>   | NA                     | 5% of money fund's assets   | 25%                           |
| <b>Money Market Instruments</b><br>(CP, ABCP, CD)  | A-1/P-1                |   | 50%                           |
| <b>Corporate Debt Instruments</b><br>(MTN, 144a, notes, bonds)   | Baa3/BBB-              |   | 45% >A rated<br>15% BBB rated |
| <b>Non-US Sovereign Supranational Organizations International Agencies</b>   | Aa3/AA-                | U.S. dollar denominated   | 40%                           |
| <b>Non-US Governmental Agencies Federal Agencies</b>   | Aa3/AA-                | U.S. dollar denominated   | 30%                           |
| <b>Non-US Governmental or Federal Agencies</b>   | Aa3/AA-                | U.S. dollar denominated   | 30%                           |
| <b>Local Governments or Authorities</b>  | Aa3/AA-                | U.S. dollar denominated   | 25%                           |
| <b>Asset-Backed Securities (ABS)</b>   | Aa3/AA-                | Assets that are second liens, home equity loans, manufactured housing with long stated final maturities or extension risk are excluded.     | 15%                           |
| <b>US Municipal Obligations Local Authority</b>  | A3/A-                  |   | 15%                           |
| <b>Credit Enhancements</b><br>- Bank Letter of Credit (LOC), Irrevocable and unconditional<br>- Monoline insurance | A-1/P-1<br><br>Aa1/AA+ | 5% per issuer limit<br>- Irrevocable and unconditional LOC, 5% of portfolio per LOC or liquidity provider.<br>- 5% of portfolio per insurer |                               |
| <b>Currencies</b>  |                        | - All eligible investments will be U.S. dollar-denominated.   |                               |
| <b>Average Portfolio Quality</b>   | A3/A-                  |   |                               |
| <b>Average Portfolio Duration</b>  |                        | To be determined.   |                               |



# 2012-12-20-01h-Annex-November-2013-Meeting.doc

**ANNEX TO BOARD SUBMISSION No. 2012-12-20-01h**  
**Location of November 2013 ICANN Meeting**

**DETAILED ANALYSIS:**

**1. Background:**

In April 2011, ICANN called for expressions of interest to assist as host of the 2013 Latin America/Caribbean Meeting. Because no viable proposals to serve as host were received, the meetings staff performed a thorough search to identify available facilities in Latin America/Caribbean that meet the pre-defined [Meeting Selection Criteria](#).

**2. Site Visits:**

A site visit to Buenos Aires, Argentina was conducted in September 2012.

**3. Discussion of Issues:**

Buenos Aires, Argentina

- Sheraton Buenos Aires Hotel & Convention Center: This is an excellent venue for an ICANN Meeting, meeting most requirements identified in the Meeting Selection Criteria. The hotel will be used to house the ICANN board, ICANN staff members, funded travelers, and some delegates. The adjacent convention center has the space needed to accommodate all meeting sessions and functions.
- Area Hotels: Various hotels in the area surrounding the Sheraton Hotel, which provide accommodations at varying price points, will be used to house the remainder of ICANN Meeting delegates. The hotels are within walking distance of the Sheraton. Shuttle buses will not be required.
- Air Travel: Air access to Buenos Aires is excellent, with many direct flights from North America and Europe.
- Ground Transportation: The Ministro Pistarini International Airport is approximately 40 minutes/35km/21 miles from the meeting venue.
- Gala: The Gala is normally provided by the meeting host. As we do not have a host for this meeting, we will seek a sponsor(s) from the ICANN community for a Gala.
- Internet: Bandwidth is normally provided by the meeting host. As we do not have a host for this meeting, we will seek a sponsor(s) from the ICANN community for Internet bandwidth.

Staff recommends that the board approve Buenos Aires, Argentina as the location of the November 2013 ICANN Meeting.

A budget of US\$2.37M is proposed for the ICANN Meeting in Buenos Aires, Argentina. It includes all expenses for the Meeting, including travel for the ICANN Board, staff, meeting contractors, Fellows, ALAC, GNSO and ccNSO.

**\*\*\* Confidential Proposal Information Set Forth Below\*\*\***

Confidential Business Information

**\*\*\*Confidential Proposal Information Set Forth Above\*\*\***

**\*\*\*Confidential Budget Estimate Information Set Forth Below\*\*\***  
Confidential Business Information

**\*\*\*Confidential Budget Estimate Information Set Forth Above\*\*\***

**2012-12-20-02a-Proposed-bylaws-revision-board-terms-  
redline-04sep12-en.pdf**



# Proposed Bylaws Revisions to Effectuate Alignment of Board Member Terms

## Article VI, Board of Directors

### Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:
  - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
  - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
  - c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
  - d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN's ~~Mid-year Meeting after~~ ICANN's annual meeting in 2015~~4~~. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN's annual meeting in 2015~~2~~ and the Mid-year Meeting occurring after the 2011 ICANN annual meeting and each ICANN annual meeting every third year after 2015~~4~~;
  - e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's ~~Mid-year Meeting after the 2012 ICANN~~ annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ~~the Mid-year Meeting occurring after the 2012~~ ICANN's annual meeting in 2013 and each ICANN annual meeting every third year after 2013~~3~~; and
  - f. The terms of Seats 11, ~~and 14 and 15~~ shall continue until the begin at the conclusion of ICANN's ~~Mid-year Meeting after the 2010 ICANN~~ annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN's annual meeting in 2014, and each ICANN annual meeting every third year after 2014~~0~~.
  - g. ~~The first regular term of Seat 15 shall begin at the conclusion of ICANN's Mid-year Meeting after the 2010 ICANN annual meeting and each ICANN annual meeting every third year after 2010. (Note: In the period prior to the beginning of the regular term of Seat 15, Seat 15 is deemed vacant. Through a process coordinated by the At Large Advisory Committee, the At Large Community made the selection of a Director to fill the vacant~~

## Proposed Bylaws Revisions to Effectuate Alignment of Board Member Terms

~~Seat 15 and provided the ICANN Secretary written notice of its selection. The vacant Seat 15 was filled at the conclusion of the ICANN annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws. Until the conclusion of the ICANN annual meeting in 2010, there was a non-voting Liaison appointed by the At Large Advisory Committee who participated as specified at Sections 9(3) and 9(5) of this Article.)~~

~~h. For the purposes of this Section, the term "Mid-year Meeting" refers to the first ICANN Public Meeting occurring no sooner than six and no later than eight months after the conclusion of ICANN's annual general meeting. In the event that a Mid-year Meeting is scheduled and subsequently cancelled within six months prior to the date of its commencement, the term of any seat scheduled to begin at the conclusion of the Mid-year Meeting shall begin on the date the Mid-year Meeting was previously scheduled to conclude. In the event that no Public Meeting is scheduled during the time defined for the Mid-year Meeting, the term of any seat set to begin at the conclusion of the Mid-year Meeting shall instead begin on the day six months after the conclusion of ICANN's annual meeting.~~

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.
3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.
4. At least ~~two~~ six months before the date specified for the commencement of the term as specified in paragraphs 1.d-~~fg~~ above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN written notice of its selection.
5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the

## Proposed Bylaws Revisions to Effectuate Alignment of Board Member Terms

~~period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.) Any prior service in Seats 9, 10, 11, 12, 13 and 14 as such terms were defined in the Bylaws as of [insert date before amendment effective], so long as such service was not to fill a vacancy, shall be included in the calculation of consecutive terms under this paragraph.~~

6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

# **2012-12-20-02a-Public Comments-Report Template- Board Term Alignment.doc**

## Report of Public Comments

|   |  |                                    |  |
|---|--|------------------------------------|--|
| <b>Title:</b>   | <b>Proposed Bylaws Amendments to Align Board Terms</b> |                                    |  |
| <b>Publication Date:</b>  |  |                                    |  |
| <b>Prepared By:</b>   | Samantha Eisner, Senior Counsel                        |                                    |  |
| <b>Comment Period:</b>  |  | <b>Important Information Links</b> |  |
| Open Date:  | 18 September 2012                                      | Announcement                       |  |
| Close Date:   | 13 November 2012                                       | Public Comment Box                 |  |
| Time (UTC):   | 23:59 UTC  | View  Comments  Submitted          |  |
| <b>Staff Contact:</b>   | Samantha Eisner  | <b>Email:</b>                      | <a href="mailto:Samantha.eisner@icann.org">Samantha.eisner@icann.org</a> |
| <b>Section I: General Overview and Next Steps</b>   |  |                                    |  |
| <p>Two comments were received regarding these proposed Bylaws amendments, and neither expressed an objection to the proposed amendments. One, from the At-Large Advisory Committee, was in favor of the recommendations. The other, from Kieren McCarthy, cautioned against frequent changes to the Bylaws, identified some areas where he was not clear as to the effect of the Bylaws change, and noted the import of advance communication with the groups within ICANN that will be most affected by the alignment of the terms. As no changes to the proposed Bylaws revisions were identified as necessary to address the comments, the next step is to provide the Bylaws to the Board for potential adoption.</p> |  |                                    |  |
| <b>Section II: Contributors</b>   |  |                                    |  |
| <p><i>At the time this report was prepared, a total of two (2) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>   |  |                                    |  |
| <u>Organizations and Groups:</u>  |  |                                    |  |
| <b>Name</b>   | <b>Submitted by</b>                                    | <b>Initials</b>                    |  |
| At-Large Advisory Committee   | At-Large Staff   | ALAC                               |  |
| <u>Individuals:</u>   |  |                                    |  |
| <b>Name</b>   | <b>Affiliation (if provided)</b>                       | <b>Initials</b>                    |  |
| Kieren McCarthy   |  | KM                                 |  |
| <b>Section III: Summary of Comments</b>   |  |                                    |  |
| <p><i>General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full</i></p>  |  |                                    |  |

*context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The ALAC noted its full support for the proposed Bylaws changes.

KM identified some areas he wished to see clarified, such as whether Board members will have longer or shorter terms in order to give effect to the alignment, as well as the extent of communication with those entities that are responsible for selecting the Board members. KM also discussed the care that should be taken prior to changing the Bylaws, as they should be changed as infrequently as possible, and changes should be made that will have lasting effect. KM also requested that information on arguments for and against changes such as this be presented to the community.

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

The comments received do not reveal any changes to the proposed Bylaws revisions prior to presentation to the Board for consideration. Some of the suggestions for information that could be provided to the community when Bylaws revisions are posted for comment are well-taken and will be considered upon future posting. Notably, some of the issues identified for further information (such as a request for information on the historical reason for the dual selection schedule) were included in the information accompanying the public comment posting.

# 2012-12-20-02b-Annex-ASEP.doc

**ANNEX TO ICANN BOARD SUBMISSION NO. 2012-12-20-02b**

**TITLE: Accountability Structures Review**

Attachment A to this Annex is the full report of the Accountability Structures Expert Review Panel (ASEP).

Attachment B to this Annex is the proposed revision to Article IV, Section 2 of the ICANN Bylaws, addressing the Reconsideration Process.

Attachment C to this Annex is the proposed revision to Article IV, Section 3 of the ICANN Bylaws, addressing the Independent Review Process.

Attachment D to this Annex is a proposed Cooperative Engagement Process for Independent Review that is expected to be incorporated by reference into the revised Bylaws. This is provided for information only, and was also posted for public comment.

Attachment E is the Summary and Analysis of Public Comment received.



# 2012-12-20-02b-Annex-ASEP-Attachment A.pdf

# Report by Accountability Structures Expert Panel (ASEP)

October 2012

# Basis for ASEP Review

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- ICANN's Articles of Incorporation, Bylaws, and Affirmation of Commitments, calling for:
  - Open and transparent governance
  - Accountability to multi-stakeholder community
  - Effective, efficient, open and inclusive reconsideration and review of ICANN decisions

# Scope of ASEP Review

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- **ATRT Recommendations 23/25**
  - Researched development and use of Reconsideration & Review structures
  - Reviewed Improving Institutional Confidence (IIC) Recommendations and community comment
  - Understood community concern and lack of consensus on IIC recommendations

# Guiding Principles

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## The Four Es:

- Enhancing effectiveness of structures
- Efficiency in process
- Allowing expeditious resolution
- Enhancing community's ease of access to accountability structures

The Board must always act with objectivity and fairness in the best interests of ICANN, but in doing so take account of the legitimate needs, interests and expectations of stakeholders material to the issue being decided. Staff must act in same manner.

# Guiding Principles (cont.)

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- Bring fresh perspective to ICANN, accounting for today's circumstances
- Build on prior recommendations where possible
- Make improvements; give ICANN a base for future consideration & improvement
- Focus on enhancement and clarifications to structures, not restrictions



# Guiding Principles

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- Create stability through building of precedent
- Where possible, reduce burden and costs to those accessing structures
- Accountability structures should not preclude any party from filing suit against ICANN in court of competent jurisdiction

# Current Accountability Structures

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- Ombudsman, Bylaws, Art. V
- Reconsideration Request - considered by Board Governance Committee (BGC), Bylaws, Art IV, Section 2
- Independent Review - administered by International Centre for Dispute Resolution, Bylaws, Art IV, Section 3



# Current Accountability Structures

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- No change recommended to role of Ombudsman
  - Ombudsman undertaking own review of work in line with international standards
  - Ability to bring claims of unfairness across ICANN community seems to be working well
- Reconsideration and Independent Review processes to remain, but improvement required

# Key Recommendations

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# Summary of Recommendations

## RECONSIDERATION

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- Improve access - add claims for consideration of inaccurate material information
- Define key terms, such as “material information”, “materially harmed”
- Modify time limits for submissions
- Include terms and conditions in request form
- Allow for urgent review in place of stay
- Allow for summary dismissal when warranted
- Allow “class” filings/consolidation
- Require allegations of standing

## INDEPENDENT REVIEW

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- Create omnibus standing panel
- Define key terms
- Introduce optional cooperative engagement and conciliation phases to narrow issues and improve efficiency
- Require submission form with terms and conditions
- Introduce: (i) time limits for filing and decision; (ii) and page limitations for argument
- Eliminate in-person proceedings absent real need
- Allow “class” filings/consolidation
- Require allegations of standing

# Reconsideration Process

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# Reconsideration Process Recommendations

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## **Form of Reconsideration Model**

- BGC to continue reconsideration of Board's prior decisions.
- The full BGC, and not a subset, should remain as the body considering Reconsideration Requests.

# Reconsideration Process Recommendations

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## What May Be Reconsidered?

- Staff action: Policies that can be basis for challenging staff action/inaction should be those that are approved by the Board (after community input) that will impact the community in some way.
  - For those processes/procedures that are not policies, complaints regarding staff action/inaction are more appropriately addressed to ICANN management, or the Ombudsman if unfairness can be alleged.



# Reconsideration Process

## Recommendations

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### What May Be Reconsidered?

- Board action: Grounds for Reconsideration should be expanded to include both:
  - If information was available at time of Board decision, but not presented to Board, except where the requestor could have submitted but did not submit the information, and the information could have formed the basis for the decision.
  - If the requestor can demonstrate that inaccurate/false/misleading information was presented to, and formed the basis for, the challenged Board action or inaction, if it materially and adversely affected a party.
  - Requires more than allegation of inaccuracy; requestor must demonstrate inaccuracy and the causal connection between the inaccuracy and the challenged Board decision.

# Reconsideration Process

## Recommendations

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### What May Be Reconsidered?

- Standard for “materially harmed” and “adversely impacted”
  - Aggrieved party must demonstrate: a loss or injury suffered (financial or non-financial) that is directly and causally connected to challenged Board or staff action or inaction.
  - Aggrieved party must set out the loss or injury and the direct nature of that harm in specific and particular details.
  - The relief requested must be capable of reversing the alleged harm.
  - Injury or harm caused by third parties as a result of acting in line with the challenged decision is not a sufficient ground for reconsideration.
  - The impact of the injury or harm must be in itself of sufficient magnitude to justify the reconsideration and not exacerbated by the actions or omissions of a third party.
  - The request may be summarily dismissed, with due notice in the request form, if the facts relied on do not evidence “harm” or “impact”.



# Reconsideration Process Recommendations

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## **What May Be Reconsidered?**

### ● Define “Material Information”

- “Material information” = Facts that are material to the Board’s decision.

### ● Revise Reconsideration Request Form to Incorporate Definitions

- The Reconsideration Request form should include terms and conditions and be modified to call for information specific to the definitions laid out here.

# Reconsideration Process Recommendations

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## **Clarification of Process - New Time Limitations**

- For Board actions, Requests must be filed within 15 days of posting of the resolution at issue, or from the initial posting of the rationale (if rationale is not posted with resolution).
- For staff actions, requests should be received within 15 days of the staff action/inaction taking effect.
- The BGC must issue recommendation on the Request within 30 days of filing, or as soon thereafter as feasible. The feasibility of time limits depend on issues such as the complexity of the request, the number of requests pending simultaneously, or similar situations.
- The Board to issue determination on the BGC recommendation within 60 days of receipt or as soon thereafter as feasible; circumstances that delay the Board action should be published on the website.

# Reconsideration Process Recommendations

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## **Clarification of Process - Page Limitations**

- Incorporating a page limitation for the submission of argument is not anticipated to curtail any of the principles identified.
- Efficiency, expeditiousness and ease of access will be enhanced by limiting argument (legal submissions) to no more than 25 pages of double-spaced, 12-point font.
- Requestors may submit all facts necessary in the request form, without limitation, to demonstrate why the decision should be reconsidered.

# Reconsideration Process Recommendations

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## **Clarification of Process - BGC Role in Considering Staff Action/Inaction**

- When a reconsideration request is brought to challenge a staff action/inaction, BGC should have delegated authority from the Board to make the final determination.
- In these situations, as the staff action/inaction was not initially a matter before the Board, there is no need for the Board as a whole to review these recommendations.
- The BGC may determine if it is appropriate to take a recommendation of this type to the Board, and the BGC retains the authority and discretion to do so.
- This vesting of responsibility to the BGC may necessitate a modification to the BGC Charter.



# Reconsideration Process Recommendations

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## **Clarification of Process - Summary Review and Dismissal**

- The BGC should have the power to dismiss a reconsideration request summarily; there is no benefit to continue process when there is no substance to request or if it is frivolous, querulous or vexatious.
- Reconsideration Request form should be modified to put requestors on notice of the potential for a summary dismissal.
- A question similar to the following must be included in the form: “Please state specifically the grounds under which you have the standing and the right to assert this claim.” This question may be tailored to address the definition of “materiality” that will be incorporated into the Request Form.

# Reconsideration Process Recommendations

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## **Clarification of Process - “Stay” Not Feasible; Provide for Urgent Review Instead**

- A stay adds – not diminishes – uncertainty to the process. ICANN is not able to grant the relief to third parties that normally accompany a stay in other scenarios, such as a right to a bond in the event the stay is improperly taken.
- Many people or entities, not just a Requestor, rely upon the Board’s action. The ASEP does not view this lightly; it is important to note that ICANN is to be accountable to all, not just those aggrieved by a particular decision.

# Reconsideration Process Recommendations

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## **Clarification of Process - “Stay” Not Feasible; Provide for Urgent Review Instead (cont.)**

- Provide a right to apply to the BGC for urgent reconsideration.
- An request for urgent consideration must be made within two business days (calculated at ICANN’s headquarters in Los Angeles, California) of posting of the resolution at issue; must set out why the matter is urgent for reconsideration; and must demonstrate a likelihood of success in the resolution of a request for reconsideration.
- The BGC must respond in two working days or as soon as feasible thereafter as to whether the matter is urgent.
- If the matter is deemed as urgent, the requestor will be given an additional two business days to complete the submission of a Reconsideration Request. The BGC must consider this issue as a matter of urgency within seven days thereafter.



# Reconsideration Process Recommendations

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## **Clarification of Process - Hearings Not Required**

- No hearing is required in the Reconsideration Process. However, the BGC retains the absolute discretion to call people before it to provide additional information.
- Complainants may request an opportunity to be heard by the BGC; the BGC decision on such a request to be heard is final.
- This should be included in the Request form.



# Reconsideration Process Recommendations

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## **Clarification of Process - Combined/Consolidated Request**

- “Class” type filings may be appropriate within the reconsideration process. The definition of the standard for review of the feasibility of “class” treatment should be “Is the alleged causal connection and the resulting harm the same for all of the complaining parties?”
- Representational complaints, such as those brought by a trade group on behalf of membership, may only be submitted if the requestor itself can demonstrate that it has been materially harmed and adversely impacted by the action/inaction giving rise to the request.
- As needed, the BGC shall have the ability to consolidate the consideration of reconsideration requests if they are sufficiently similar.

# Reconsideration Process Recommendations

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## **Clarification of Process - Third Party Participation in Process**

- All material information relevant to the request should be provided through the requestor.
- However, if information comes to the BGC through another channel the BGC should provide that information to the requestor and post it on the ICANN website.

# Reconsideration Process

## Recommendations

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### **Effect Of Outcomes - No Right to “Appeal” Decisions on Reconsideration**

- The Board’s decision on the BGC’s recommendation is final (i.e., not subject to a Reconsideration Request).
- In the event the matter is about Staff action/inaction, the BGC’s determination is final.
- Notice of this should be made clear to those seeking reconsideration through the introduction of a Terms and Conditions section in the form provided for the submission of Reconsideration Requests.

# Reconsideration Process

## Recommendations

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### **Effect Of Outcomes - Precedential Value of Decision**

- **Board Action:** When a reconsideration request is about Board action, the concept of “precedent” is not relevant, as the question focuses on whether or not the Board considered material information in a specific instance.
- **Staff Action:** When the request is about staff action, the BGC consideration of violation of the policy should have precedential value. The fact of precedential value carried by prior recommendations on Reconsideration should be noted in the Reconsideration Request form.



# Reconsideration Process Recommendations

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## **Metrics to Identify Effectiveness**

- It is difficult to identify metrics to show that the Reconsideration process adds value, as it should not be based solely upon how many requests are filed or how many requests succeed. The fact of use of the process may show that the availability of the process as means to make sure the Board and staff act appropriately is of value. When the process is invoked, it will be important to evaluate if the BGC/Board performed the process in a consistent and transparent manner.
- For complaints of staff action, a proposed metric is: If the BGC determines that staff did not follow a policy, did staff properly re-evaluate and follow policy thereafter?

# Independent Review Process (IRP)

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# Independent Review Process Recommendations

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## **Independent Review - Omnibus Standing Panel**

- The ASEP recommends establishing an omnibus standing panel of six-to-nine members, taking account of geographic diversity. Each member should receive an annual retainer, and a small per-diem fee as they are called for service.
- Each IRP panel will be selected from among the omnibus standing panel members.
- The expertise desired on the standing panel include jurisprudence, judicial experience, alternative dispute resolution, and knowledge of ICANN's mission and work.
- For consistency in IRP panel decisions and administration of proceedings, due care must be given in the selection of panelists to assure a broad range of experience and meeting of objective criteria for service.

# Independent Review Process Recommendations

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## **Independent Review Panel – Omnibus Standing Panel (cont.)**

- The standing panel should have a Chair that may, at his/her discretion, serve on any or all selected panels during his/her tenure (not to exceed three years) as another measure of continuity throughout the proceedings. There should be administrative support for the standing panel.
- Appointment periods for the panelists should be staggered to allow for continued review of whether the panel has the correct number of members and the required skills and capacity.



# Independent Review Process Recommendations

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## **Independent Review - Size of IRP Panel**

- While the parties can request that an IRP be heard by a one- or three-member panel, the Chair of the standing panel retains the right to decide on the size of the panel and make recommendations on who will be on the panel, based upon issues such as the complexity of the matter alleged and whether any particular expertise is called for.
- The terms and conditions section of IRP submission form will describe the panel selection process.

# Independent Review Process Recommendations

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## **What May Be Subject of IRP? – Complainant must be “materially harmed”:**

- The complainant must demonstrate, in specific and particular details, the injury or harm suffered (financial or non-financial) that is a directly and causally connected to the Board’s alleged violation of the Bylaws or Articles of Incorporation.
- The decision of the panel (as reviewed and acted upon by the Board) must be capable of reversing the injury alleged by complainant.
- Injury or harm caused by third parties as a result of acting in line with the Board’s decision is not a sufficient ground for independent review.
- The impact of the injury or harm must be in itself of sufficient magnitude to justify the review and not exacerbated by the actions or omissions of a third party.
- The request may be summarily dismissed, with due notice in the IRP submission form, if the facts relied on do not evidence “injury” or “harm” as defined.

# Independent Review Process Recommendations

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## **What May Be Subject of IRP? - Material Standing Requirement:**

- There has to be some definition of locus to ICANN. The person or entity bringing an IRP against ICANN must be able to specifically identify how it has been directly impacted by an ICANN Board decision, and not by the actions of third parties.
- This will be called for in the IRP submission form.

# Independent Review Process Recommendations

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## **Clarification of Process – Time Limitations**

- A reasonable but not excessive limitation must be imposed. The request must be filed within 30 days of the posting of approved minutes (and accompanying Board Briefing Materials) that demonstrate the requestor's contention that ICANN violated its Bylaws or Articles of Incorporation. If the request is not filed within that time, the requestor is time barred.



# Independent Review Process Recommendations

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## **Clarification of Process - Time Limitations (cont.)**

- It is generally recommended that an IRP conclude to determination within four-to-six months of filing.
- The IRP Panel will retain ultimate responsibility and control of the timing of each IRP and the schedule for the parties to follow.
- The form for requesting an IRP should include a term and condition that the IRP Panel sets the timetable for the proceeding and violations of the IRP Panel's timetable may result in an appropriate order.

# Independent Review Process Recommendations

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## Clarification of Process - Cooperative Engagement

- It is recommended that the complainant initiate a period of cooperative engagement with ICANN prior to seeking independent review.
- The cooperative engagement mechanism will be an opportunity for ICANN and the complainant, in good faith and without outside counsel, to discuss the ways in which the party alleges the Board has violated ICANN's Bylaws or Articles of Incorporation and to determine if the issue can be resolved without an IRP, or if the issues can be narrowed.
- When the cooperative engagement is initiated, ICANN will designate a representative for the discussions, and in-person consultation is recommended, if reasonable.

# Independent Review Process Recommendations

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## **Clarification of Process - Cooperative Engagement (cont.)**

- The cooperative engagement period should last for approximately 14 days.
- Cooperative engagement is not mandatory, but recommended.
- All matters discussed during cooperative engagement are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
- Cooperative engagement period should be initiated prior to a requestor incurring fees for preparing filings for an IRP.



# Independent Review Process Recommendations

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## **Clarification of Process – Conciliation**

- Upon the filing of an IRP a period of good faith conciliation is recommended, to resolve or narrow the remaining issues.
- A conciliator will be appointed by Chair of the omnibus standing panel from among the standing panel members (if the creation of a standing panel is adopted).
- The conciliator will receive a limited per-diem fee.
- The conciliator will not serve on the IRP panel.
- The IRP panel chair may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues.
- The conciliation period should last for approximately three weeks.
- All matters discussed during conciliation are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.



# Independent Review Process Recommendations

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## **Clarification of Process - Effect of Not Using Cooperative Engagement or Conciliation**

- Neither cooperative engagement nor conciliation is required, but if IRP complainant does not avail itself in good faith of cooperative engagement or conciliation AND the IRP complainant is not successful, the IRP panel must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.
- ICANN is expected to participate in the cooperative engagement and conciliation processes, as requested, in good faith.
- This should be included as a term and condition in the IRP submission form.

# Independent Review Process Recommendations

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## Clarification of Process - Summary Review and Dismissal

- An IRP should be summarily dismissed for lack of standing, lack of substance., being frivolous or vexatious.
  - Allowing a claim to proceed and use community resources when there is no merit to the claim is not an enhancement to accountability and is not in the interest of the community.
- Notice of the option of summary dismissal must be in the IRP Form. A question similar to the following must be included: “Please state specifically the grounds under which you have the standing and the right to assert this claim and the specific grounds on which you rely.”
- A question may be tailored to address the definition of “materiality” that will be incorporated into the IRP.

# Independent Review Process Recommendations

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## **Clarification of Process - Page Limitations**

- Written submissions of legal argument to the IRP Panel should be limited to 25 pages, double spaced and in 12-point font (both requestor and ICANN are subject to the same limits). This does not include evidence.
- All necessary evidence to demonstrate the claims that ICANN violated its Bylaws or Articles of Incorporation should be submitted in the IRP form.

# Independent Review Process Recommendations

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## **Clarification of Process - Expert Submissions Allowed**

- The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence by exchange of the written objections with written rebuttals filed within 14 days of receipt of the written expert evidence.



# Independent Review Process Recommendations

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## **Clarification of Process - In-Person Hearings Not Authorized**

- The nature of the IRP panel is to determine if ICANN followed its Bylaws or Articles of Incorporation, which does not seem to lend to hearings.
- In general, there should not be an in-person hearing. The parties should maximize electronic communication in their submissions.
- If there is need for a hearing, in the discretion of the IRP Panel, the hearing should be limited to argument only; all evidence (including witness statements, expert statements, etc.) shall be submitted in writing.

# Independent Review Process Recommendations

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## **Clarification of Process – Panel Selection**

- Once the size of the panel is determined, the parties may agree on panel selection process.
- Panelist selection must be completed within 21 days after the completion of the conciliation phase (or if no conciliation phase, the filing of the IRP).
- If the parties have not agreed on the selection at that time, the Chair of the standing panel shall complete selection of panelists within seven days.
- This will be identified in the IRP filing terms and conditions.

# Independent Review Process Recommendations

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## **Clarification of Process – Combined/Consolidated Proceedings**

- “Class” type filings may be appropriate within the IRP process. The definition of the standard for review of the feasibility of “class” treatment should be “Is the causal connection between the circumstances of the complaint and the harm the same for all of the complaining parties?”
- Representational complaints, such as those brought by a trade group on behalf of membership, may only be submitted if the requestor itself can demonstrate that it has standing and has been materially impacted by the Board action in violation of the Articles of Incorporation or Bylaws that gives rise to the request.
- As needed, the IRP Panel shall have the ability to consolidate IRP requests if they are sufficiently similar.

# Independent Review Process Recommendations

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## **Clarification of Process - Third Party Participation**

- If third parties believe that they have information to provide to the IRP, that information should be provided through the claimant.



# Independent Review Process Recommendations

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## **Clarification of Process - A Defined Standard of Review Must Be Incorporated**

- The IRP should be subject to a defined standard of review, including: (i) did the Board act without conflict of interest in taking its decision; (ii) did the Board exercise due diligence and care in having a reasonable amount of facts in front of them; (iii) did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
- If a complainant demonstrates that the Board did not make a reasonable inquiry to determine it had sufficient facts available, Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the complainant will have properly stated grounds for review.

# Independent Review Process Recommendations

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## **Effect of Outcomes - Outcomes of the IRP Process are Final**

- The declarations of the IRP, and ICANN's subsequent actions on those declarations, should have precedential value.
- If an IRP is later initiated on the same issue, the prior decision may serve as grounds for a summary dismissal.
- The terms and conditions within the submission form must note that the ultimate Board decision following on from the IRP determination is final and creates precedent.

# Future Work & Next Steps

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# Next Steps

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- The ASEP recommends that ICANN Community carefully consider the recommendations.
- If comments are received that suggest modifications to these recommendations would further ICANN's accountability and transparency, the ASEP will take those into consideration.
- The ASEP encourages a further schedule of review of the accountability structures once there is experience with the structures as modified.
- The ASEP also encourages future consideration of adoption of new accountability structures as would serve the global public interest.

# The Experts

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# Accountability Structures Expert Panel



## **Mervyn King**

- **Senior Counsel and former Judge of the Supreme Court of South Africa**
- **Professor Extraordinaire at the University of South Africa on Corporate Citizenship**
- **Chair of King Committee on Corporate Governance (S.A.)**
- **Former Chair, UN Committee on Governance and Oversight**
- **Chairman of the International Integrated Reporting Council**

# Accountability Structures Expert Panel



## **Graham McDonald**

- **40 year legal career**
- **Inaugural Australian Banking Ombudsman**
- **Served 22 years as a Presidential Member of Australia's Administrative Appeals Tribunal**
- **On board of AuDA**

# Accountability Structures Expert Panel

## **Richard Moran**



- **CEO and Vice Chair, Accretive Solutions**
- **Director on several Boards**
- **Active with the National Association of Corporate Directors, working with boards to improve effectiveness**
- **Business author and radio host**



# 2012-12-20-02b-Annex-ASEP-Attachment B.pdf

## Proposed Reconsideration Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel

### Article IV, Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
  - a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
  - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
  - c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
  - a. evaluate requests for review or reconsideration;
  - ~~a. determine whether a stay of the contested action pending resolution of the request is appropriate;~~
  - b. summarily dismiss insufficient requests;
  - c. evaluate requests for urgent consideration;
  - ~~b-d.~~ \_\_\_\_\_ conduct whatever factual investigation is deemed appropriate;
  - ~~e-e.~~ \_\_\_\_\_ request additional written submissions from the affected party, or from other parties; ~~and~~
  - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
  - ~~d-g.~~ \_\_\_\_\_ make a recommendation to the Board of Directors on the merits of the request, as necessary.

4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs ~~which~~that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within ~~thirty~~thirty-five days after:
  - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a ~~preliminary report or minutes of the Board's meetings~~resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or
  - b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
  - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

- ~~2. All To properly initiate a Reconsideration Requests process, all requestors must include the information required by the Board Governance Committee, which shall include at least the following information:~~
- ~~a. name, address, and contact information for the requesting party, including postal and e-mail addresses;~~
  - ~~b. the specific action or inaction of ICANN for which review or reconsideration is sought;~~
  - ~~c. the date of the action or inaction;~~
  - ~~d. the manner by which the requesting party will be affected by the action or inaction;~~

6. ~~the extent to which, in the opinion of the party submitting the Request for and follow the Reconsideration, the action or inaction complained of adversely affects others; Request form posted on the ICANN website. at <INSERT URL>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.~~
  - e. ~~whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;~~
  - f. ~~in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);~~
  - g. ~~in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;~~
  - h. ~~what specific steps the requesting party asks ICANN to take i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;~~
  - i. ~~the grounds on which the requested action should be taken; and~~
  - j. ~~any documents the requesting party wishes to submit in support of its request.~~
3. ~~All Reconsideration Requests shall be posted on the Website.~~
7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
- 7.8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been

materially harmed and adversely impacted by the action or inaction giving rise to the request.

- ~~4.~~ The Board Governance Committee shall review each Reconsideration ~~Requests promptly~~Request upon its receipt ~~and announce, within thirty days,~~ its intention to either decline to consider or proceed to consider~~determine if it~~ is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request ~~after receipt of if: (i) the Request. The announcement shall be posted on the Website.~~
- ~~5.~~ ~~The Board Governance Committee announcement of a decision not to~~ hear~~requestor fails to meet the requirements for bringing a Reconsideration Request must contain an explanation of; (ii) it is frivolous, querulous or vexatious; or (iii) the reasons for its decision.~~
- ~~8-9.~~ requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee may request additional information or clarifications from the party submitting the Request for ReconsiderationCommittee's summary dismissal of a Reconsideration Request shall be posted on the Website.
10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
- ~~9-11.~~ The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.
- ~~10-12.~~ If the~~The~~ Board Governance Committee requires~~may request~~ additional information, it~~or clarifications from the requestor, and~~ may elect to conduct a meeting with the party seeking Reconsideration~~requestor~~ by telephone, e-mail~~email~~ or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

~~44-13.~~ The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.

~~42-14.~~ The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.

~~6. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Board Governance Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. Likewise, the Board Governance Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN's action.~~

15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

~~43-16.~~ The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within ninetythirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on the Website|ICANN's website.

~~44-17.~~ The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at

which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

~~7.20.~~ \_\_\_\_\_ The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

- a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
- ~~b. the number of Reconsideration Requests on which the Board Governance Committee has taken action;~~

~~c. the number of any~~ Reconsideration Requests that remained pending at the end of the calendar year ~~and~~, the average length of time for which such Reconsideration Requests have been pending;

~~d.b. \_\_\_\_\_, and a description of any Reconsideration Requests that were the reasons for any request pending at the end of the calendar year for more than ninety (90) days and the reasons that the Board Governance Committee has not taken action on them;~~

~~e. the number and nature of Reconsideration Requests that the Board Governance Committee declined to consider on the basis that they did not meet the criteria established in this policy;~~

~~f.c. for Reconsideration Requests that were denied,~~ an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and

~~g.d. \_\_\_\_\_~~ whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

~~8. Each annual report shall also aggregate the information on the topics listed in paragraph 19(a) (e) of this Section for the period beginning 1 January 2003.~~



# 2012-12-20-02b-Annex-ASEP-Attachment C.pdf

## Proposed Independent Review Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel

### Article IV, Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in [Section 2 of this Article](#), ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. [In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.](#)
3. [A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting \(and the accompanying Board Briefing Materials, if available\) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.](#)
- ~~3.4.~~ Requests for such independent review shall be referred to an Independent Review [Process Panel](#) ("IRP [Panel](#)"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. [The IRP Panel must apply a defined standard of review to the IRP request, focusing on:](#)
  - a. [The IRP did the Board act without conflict of interest in taking its decision?;](#)
  - b. [did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and](#)
  - c. [did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?](#)
5. [Requests for independent review shall be operated not exceed 25 pages \(double-spaced, 12-point font\) of argument. ICANN's response shall not exceed that same length. Parties may submit documentary evidence](#)

## Proposed Independent Review Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel

supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.

6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel.

4.7. All IRP proceedings shall be administered by an international arbitration dispute resolution provider appointed from time to time by ICANN ("the IRP Provider") using arbitrators under contract with or nominated), The membership of the standing panel shall be coordinated by that provider the IRP Provider subject to approval by ICANN.

5.8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

6.9. Either party may elect request that the request for independent review IRP be considered by a one- or three-member panel; in the absence Chair of any such election, the issue standing panel shall be considered by a one member panel make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.

7.10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels; provided that if ICANN so directs, the IRP Provider shall establish a standing panel to hear such claims.

8.11. The IRP Panel shall have the authority to:

a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

a.b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;

## Proposed Independent Review Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel

~~b-c.~~ \_\_\_\_\_ declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

~~e-d.~~ \_\_\_\_\_ recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP<sub>i</sub>;

~~9. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the IRP.~~

~~e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and~~

~~f. determine the timing for each proceeding.~~

~~10-12.~~ \_\_\_\_\_ In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.

~~11-13.~~ \_\_\_\_\_ The IRP All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.

~~14. Declarations of the IRP shall be in writing. The IRP~~Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.

~~15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.~~

**Proposed Independent Review Bylaws Revisions as of 26 October 2012 to Meet Recommendations of the Accountability Structures Expert Panel**

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.

~~12-18.~~ The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

~~13-19.~~ The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ~~the Website~~ICANN's website when they become available.

~~14-20.~~ The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

~~15-21.~~ Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

# 2012-12-20-02b-Annex-ASEP-Attachment D.pdf

Proposed Cooperative Engagement Process – Requests for Independent Review  
Draft as of 26 October 2012

As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be among ICANN and the requesting party, without reference to outside counsel.

The Cooperative Engagement Process is as follows:

1. In the event the requesting party elects to proceed to cooperative engagement prior to filing a request for independent review, the requesting party may invoke the cooperative engagement process by providing written notice to ICANN at [independentreview@icann.org], noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue.
2. The requesting party must initiate cooperative engagement within fifteen (15) days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party's contends demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation.
3. Within three (3) business days, ICANN shall designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor.
4. Within two (2) business days of ICANN providing notice of its designated representatives, the requestor and ICANN's representatives shall confer by telephone or in person to attempt to resolve the issue and determine if any issues remain for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
5. If the representatives are not able to resolve the issue or agree on a narrowing of issues, or a reference to the ICANN Board, during the first conference, they shall further meet in person at a location mutually agreed to within 7 (seven) calendar days after such initial conference, at which the parties shall attempt to reach a definitive agreement on the resolution of the issue or on the narrowing of issues remaining for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
6. The time schedule and process may be modified as agreed to by both ICANN and the requester, in writing.

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

Pursuant to the Bylaws, if the party requesting the independent review does not participate in good faith in the cooperative engagement process and ICANN is the prevailing party in the independent review proceedings, the IRP panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees. ICANN is expected to participate in the cooperative engagement process in good faith.



# 2012-12-20-02b-Annex-ASEP-Attachment E.pdf

## Report of Public Comments

|   |  |  |
|---|--|--|
| <b>Title:</b>   | <b>Expert Recommended Improvement to ICANN's Accountability Structures</b> |  |
| <b>Publication Date:</b>  |  |  |
| <b>Prepared By:</b>   | Samantha Eisner, Senior Counsel  |  |
| <b>Comment Period:</b>  |  | <b>Important Information Links</b>   |
| Open Date:  | 26 October 2012  | Announcement   |
| Close Date:   | 8 December 2012  | Public Comment Box   |
| Time (UTC):   | 23:59 UTC  | View Comments Submitted  |
| <b>Staff Contact:</b>   | Samantha Eisner  | <b>Email:</b> <a href="mailto:Samantha.eisner@icann.org">Samantha.eisner@icann.org</a> |
| <b>Section I: General Overview and Next Steps</b>   |  |  |
| <p>Arising out of Recommendations 23 and 25 of the Accountability and Review Team's Final Report, ICANN convened a panel of three experts to review ICANN's Accountability Mechanisms and to provide recommendations for improvements. The Accountability Structures Expert Panel (ASEP) is comprised of three international experts in the fields of corporate governance, accountability, judicial review and international dispute resolution. After significant review and evaluation, the ASEP provided a report on recommended enhancements. Proposed Bylaws changes to give effect to the ASEP's recommendations were also posted for public comment.</p> <p>The two comments (one to the report and one reply) received, to the extent they called for changes to the ASEP's recommendations, were provided to the ASEP for consideration. After review of the comments, no changes to the ASEP recommendations are recommended, and the report will be forwarded to the Board for consideration and action, along with the proposed Bylaws amendments.</p> |  |  |
| <b>Section II: Contributors</b>   |  |  |
| <p><i>At the time this report was prepared, a total of two community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>   |  |  |
| <b>Organizations and Groups:</b>  |  |  |
| <b>Name</b>   | <b>Submitted by</b>  | <b>Initials</b>  |
| gTLD Registries Stakeholders Group  | Paul Diaz  | RySG   |
| <b>Individuals:</b>   |  |  |
| <b>Name</b>   | <b>Affiliation (if provided)</b>   | <b>Initials</b>  |
| Alejandro Pisanty   |  | AP   |

### Section III: Summary of Comments

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The RySG provided lengthy comment, primary of which is the application of the standard of review proposed for the Independent Review process (IRP), noting that it may be possible for the Board to violate its Articles of Incorporation or Bylaws while acting without a conflict of interest or acting in a manner it believes to be in the best interest of ICANN. The RySG noted its belief that this will “frustrate[] the overall purpose of the IRP.” The RySG also questioned the recommendation of implementing a standing panel for the IRP, and the eligibility for any tribunal should remain open. Three areas of clarification were also identified for the Reconsideration process. First, is a request that “participation” include participation through a constituency or stakeholder group, which is how many are involved in the ICANN Community. Second, the RySG questioned the introduction of terms and conditions as part of the submission of a Reconsideration Request, noting that it is important that nothing in those terms and conditions waives a right to proceed with alternative relief. Finally, the RySG emphasized the import of the Board following crisp timelines when considering Reconsideration Requests. In closing, the RySG commented on the time constraints placed on the ASEP’s work, and called for further time for consideration of the recommendations.

AP noted that the ASEP recommendations “go a long way into establishing clear processes, placing the burden of proof in complaints at the right place, and creating a commitment by all parties to the results of the processes they engage in.” AP commented in favor of the establishment of a standing panel, in contrast to the RySG, noting that “previous experience in the panels will become an asset” in terms of expediency and predictability of decisions. AP noted that there are items to be kept in mind, as the panel could focus more on legal and process knowledge and less on subject matter expertise, which may not be the right path. In addition, the creation of more formalized process gives the risk of entering more bureaucracy, so care has to be given to implementing the recommendations in a positive way.

### Section IV: Analysis of Comments

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

After review of the comments in coordination with the ASEP, in response to the RySG, it is important to note that the imposition of a standard of review into the Independent Review process assures that the process will be used for review, and not for a rehearing. There is a need for Board decisions to be able to be relied upon and implemented, unless there is the type of failure identified by the ASEP (decision taken in violation of the Articles of Incorporation or Bylaws, or with a conflict of interest, or not believed to be in the best interests of the organization). As suggested by AP, the inclusion of a standing panel will allow for more efficient decision making and a greater degree of consistency in

those decisions. The fact that there is a standing panel is not expected to infringe on the independence of that panel. AP's caution of not allowing the panel to add delay and bureaucracy is well taken, and should be considered in the final implementation of the revised IRP.

To address the RySG concern about the potential abrogation of rights to proceed to court, the recommendations do not include any suggestion that a party would have to waive rights to proceed to court, and that will not be a term and condition of a submission form.

Prior to submitting their report, the Board Governance Committee offered to the ASEP that more time could be allotted to finish their work. The ASEP declined this offer, as they did not believe that additional time would result in added value to their recommendations.

# 2012-12-20-02c-Annex 2014 ICANN Meetings.doc

**ANNEX TO BOARD SUBMISSION NO. 2012-12-20-02c**

**TITLE:** **Proposal on the location of ICANN Meetings in 2014  
and the Establishment of a Multi-stakeholder Meeting  
Strategy Working Group**

**DETAILED ANALYSIS:**

- Background:
  - In October 2012, a proposal on a modified geographic rotation for ICANN Public Meetings, known as the ICANN Consolidated Meetings Strategy, was posted for public comment. A main element of the strategy was a decrease in the frequency of ICANN Meetings in Africa and Latin America/Caribbean from once every 18 months to once every three years (see Exhibit A).
  - Comments received were largely against the modified geographic rotation, prompting the recommendation of the alternate, short-term approach to ICANN Meetings outlined in this board paper. An analysis of the comments received is attached (see Exhibit B).
  - Community involvement is essential for the development and acceptance of a workable strategy for future meetings and conferences. A proposal for the creation of the Multi-stakeholder Meeting Strategy Working Group is attached (see Exhibit C).

Submitted by: Sébastien Bachollet

Position: Chair, ICANN Board Public Participation Committee

Date Noted: 12 December 2012

Email and Phone Number: [sebastien@bachollet.com](mailto:sebastien@bachollet.com) +33 6 07 66 89 33

# 2012-12-20-02c-Exhibit A-2014 ICANN Meetings.pdf

## **ICANN MEETINGS**

### **RATIONALE FOR CONSOLIDATED MEETINGS STRATEGY PROPOSAL**

**Background:** The topic of ICANN meeting structure, purpose, execution and locations is not a new one; it has been evolving since the early days of ICANN. Documentation regarding ICANN's approach to its thrice a year meetings began in earnest with the [Meeting White Paper](#) posted by then Board member Susan Crawford in November 2006. The [ICANN Meetings Reform Discussion Paper](#) published in 2008 continued the discussion, and it persists today.

**Current Process for the Selection of ICANN Meeting Locations:** Since 1999, ICANN has used a host bid process for the identification and selection of ICANN Meeting locations. From 1999 to 2007, a majority of the planning and execution of ICANN Meetings was handled by the geographic host. In 2007, ICANN implemented a new policy, bringing most of the planning and execution in-house, but still relying on geographic hosts for government involvement, Internet bandwidth, gala, security, and other meeting elements. The process includes:

- ICANN announces a call for location recommendations for an upcoming meeting in a specific geography.
- Interested hosts complete and submit a location recommendation form identifying proposed hotels and meeting facilities.
- Staff evaluates those location recommendations to ensure that the proposed locations meet the basic requirements for hosting an ICANN Meeting.
- Staff then visits each location that meets the basic requirements, typically numbering two or three, to meet with the host team, others in the Internet community, and government officials, and to examine the facilities and infrastructure to ensure that an ICANN Meeting can, in fact, be held there.
- Staff then develops a recommendation on a single location and presents it to the ICANN Board Public Participation Committee, Board Finance Committee and Board Global Relations Committee for recommendations, then to the full ICANN Board for approval of the location.

**Issues with Current Process:**

- As ICANN Meetings have increased in size and scope, the number of facilities capable of hosting an ICANN Meeting has decreased considerably. In addition, the number of facilities that actually meet all of the established meeting location selection criteria is very limited.
- ICANN Meetings have already been held in more than 40 different cities worldwide. It is becoming increasingly difficult to identify new hosts, as well as new host cities with the appropriate facilities.

**Consolidated Meetings Proposal:**

ICANN is considering the implementation of a *Consolidated Meetings Strategy* for future ICANN Meetings. Elements of the strategy are:



- Using the selection criteria listed below, ICANN will identify the best facilities in the world for conducting an ICANN Meeting. These typically will be convention centers with adjacent supporting hotels.
- Availability of the facilities on published ICANN Meeting dates will be confirmed.
- Favorable, multi-year contracts with meeting facilities, which may include hotel chains or groups, and other service providers, e.g., hotels, audio-visual services and registration staffing, will be negotiated, resulting in reduced costs for the ICANN community, and ICANN.

An additional benefit of the consolidated meetings strategy is that it facilitates the long-term identification of future meeting locations.

**Criteria to be used to Select Consolidated Meeting Locations:**

- Venue must meet all ICANN meeting requirements, and allow for the ability to grow in the number of delegates and the number of meeting rooms
- Safe & secure environment
- Good international airline routes/access
- Reasonable airfare
- Reasonable visa requirements
- City center location
- Convention center with adjacent anchor hotel(s) or hotel with large meeting facilities
- Good selection of additional hotels within walking distance for all delegates, at varying price points
- Good selection of restaurants, snack bars, coffee shops and retail shops within walking distance
- Access to convenient and affordable public transportation
- Fully accessible for people with disabilities
- Adequate Internet infrastructure
- Reasonable expense for the ICANN community, and ICANN

**Consolidated Meetings Proposal for 2014, 2015 and 2016:**

- Hold the first meeting of the year in two cities in Asia Pacific.
- Hold the second meeting of the year in two cities in Europe.
- Rotate the third meeting of the year through North America (2014), Africa (2015) and Latin America/Caribbean (2016). These will be the Annual General Meetings for each year.

**Conclusion:**

ICANN realizes that, in seeking to improve operational efficiency, we may be impacting regional diversity. Issues for consideration are:



- Is equality of regional rotation important or not?
- Is it sufficient to rotate in a "non-equal" way?
- What can be done to mitigate any negative impact?

# 2012-12-20-02c-Exhibit B-2014 ICANN Meetings.docx

|               |  |
|---------------|--|
| <b>Title:</b> | <b>ICANN Consolidated Meetings Strategy Proposal</b> |
|---------------|--|

|                          |  |
|--------------------------|--|
| <b>Publication Date:</b> |  |
|--------------------------|--|

|                     |  |
|---------------------|--|
| <b>Prepared By:</b> |  |
|---------------------|--|

|                        |                  |   |  |
|------------------------|------------------|---|--|
| <b>Comment Period:</b> |                  | <b>Important Information Links</b>  |  |
| Open Date:             | 2 October 2012   | Announcement  |  |
| Close Date:            | 16 November 2012 | Public Comment Box  |  |
| Time (UTC):            | 23:59            | View  Comments  Submitted |  |

|                       |              |               |                        |
|-----------------------|--------------|---------------|------------------------|
| <b>Staff Contact:</b> | Nick Tomasso | <b>Email:</b> | nick.tomasso@icann.org |
|-----------------------|--------------|---------------|------------------------|

**Section I: General Overview and Next Steps**

Comments received on the ICANN Consolidated Meetings Strategy Proposal Final Report will be factored into subsequent Board consideration and action.

**Section II: Contributors**

*At the time this report was prepared, a total of [number] (16) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

Organizations and Groups:

| Name  | Submitted by         | Initials |
|---|----------------------|----------|
| At-Large Advisory Committee (ALAC)                                | ICANN At-Large Staff | ALAC     |
| Latin American and Caribbean ccTLDs (LACTLD)                      | Carolina Aguerre     | LACTLD   |
| Business Constituency   | Steve DelBianco      | BC       |
| Latin America/Caribbean At-Large Organization (LACRALO)           | Fatima Cambroner     | LACRALO  |
| Latin American and Caribbean Internet Addresses Registry (LACNIC) | Andres Piazza        | LACNIC   |
| ARI Registry Services   | Donna Austin         | ARI      |
| Top Level Domain Holdings / Minds + Machines                      | Antony Van Couvering | TLD / MM |
| GoDaddy.com   | Jill Titzer          | GD       |

Individuals:

| Name              | Affiliation (if provided)                                     | Initials |
|-------------------|---|----------|
| Yoav Keren        | GNSO council member & CEO of Domain The Net Technologies Ltd. | YK       |
| S. Subbiah        |   | SS       |
| Olga Cavalli      | Argentina GAC representative                                  | OC       |
| Joan Manuel Rojas | AGEIC DENSI Colombia  | JMR      |
| Fahd A. Batayneh  |   | FAB      |
| Michelle Chaplow  | Travel & Luxury Hotel Photographer                            | MC       |
| Kieren McCarthy   |   | KM       |
| Rubens Kuhl       |   | RK       |

### Section III: Summary of Comments

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

Please go to: [Summary Report of Public Comments \[PDF\]](#)

### Section IV: Analysis of Comments

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

Out of sixteen (16) submitted comments from organizations and individuals, more than half do not agree with the ICANN Consolidated Meetings Proposal. While the logistical challenges facing the Meetings Team are understood and appreciated, many view the proposed changes to be an inequitable rotation of meetings, which is perceived to be directly counter-productive to ICANN's recent declaration to further internationalize the organization.

While all suggestions and issues are heard and considered, the following recurring themes have emerged. In the cases where there are not many venues in a particular region that can meet ICANN's meeting requirements, some groups have expressed that repeating the same venue in a particular region would be acceptable. Also, it has been suggested that assessing how much effort is required by individuals from other regions is highly important and basing the decision to hold a meeting in a country that has minimal VISA requirements should be on the top of the list of priorities in the selection process.

Perhaps the most immediate alternative to the proposal is an evaluation of the current schedule/format. Adjustments to or the removal of similar meetings in an effort to pare down to a more manageable size could increase the likelihood of attracting potential hosts and the chance of securing viable venues while providing an effective meeting platform for the ICANN community.

The table below illustrates the conclusion of each submitted statement.

|   | <b>Inconclusive</b> | <b>Agree with reservations</b> | <b>Disagree</b> |
|---|---------------------|--------------------------------|-----------------|
| At-Large Advisory Committee (ALAC)                                |                     |                                | x               |
| Latin American and Caribbean ccTLDs (LACTLD)                      |                     |                                | x               |
| Business Constituency   | x                   |                                |                 |
| Latin American and Caribbean Internet Addresses Registry (LACNIC) |                     |                                | x               |
| Latin America/Caribbean At-Large Organization (LACRALO)           |                     |                                | x               |

|  |   |   |   |
|--|---|---|---|
| ARI Registry Services  |   | x |   |
| Antony Van Couvering, Top Level Domain Holdings / Mind + Machines        |   |   | x |
| GoDaddy.com  |   |   | x |
| Yoav Keren GNSO council member & CEO of Domain The Net Technologies Ltd. |   |   | x |
| S. Subbiah   |   |   | x |
| Olga Cavalli, Argentina GAC representative                               |   |   | x |
| Juan Manuel Rojas AGEIA DENSI Colombia                                   | x |   |   |
| Fahd A. Batayneh   | x |   |   |
| Michelle Chaplow   | x |   |   |
| Kieren McCarthy  |   | x |   |
| Rubens Kuhl  |   |   | x |