

IRTP-C Implementation Issues

Background

IRTP-C was part of a GNSO PDP to revise the Inter-Registrar Transfer Policy. The aim of IRTP-C, specifically, was to reduce the instances of domain name theft. In addition to requiring that an FOA (transfer authorization) expire after 60 days, the Final Report recommended that a “Change of Registrant” (CoR) process be incorporated into the transfer policy, which establishes two new requirements:

- Registrars must collect consent from both the prior and new registrant before any material change is made to a registrant’s name, company name, or email address and notify registrants of changes made; and
- Registrars must impose a 60-day lock following the above changes (unless a prior opt-out has been received from the registrant).

This goal of the CoR is to ensure that changes made to registrant information are properly authorized. Implementation is currently targeted for December 1, 2016.

Issue Summary

In the context of registrations that use privacy and proxy (P/P) services, registrars maintain two sets of contact data, one for the P/P provider that is reflected in the public-facing WHOIS, as well as the customer data which is stored by the registrar but not published. The IRTP (as revised by the IRTP-C recommendations) is silent on how these two policies overlay, namely, whether a CoR should be triggered by changes to the P/P provider data or the underlying customer information.

After the policy was published, ICANN staff informed several registrars that the CoR process must be triggered when a change to the public data is made, but not to the underlying customer data. This position has been taken despite the actual policy being silent on how IRTP-C should be applied for privacy users and near-universal disagreement across registrars with the interpretation posited by ICANN. This approach is untenable as it guts the intent of the Transfer Policy (as the actual registrant may change without the process being triggered) and creates significant operational complications for routine changes carried out by P/P providers.

Primarily, the issues faced with IRTP-C are not captured in the policy itself, but within the implementation. It’s worth noting here that while registrars participated in the IRT, the issues raised below went unnoticed until actual implementation began.

Proposal:

The CoR procedure should be initiated when a customer is changing because the domain's ownership record is changing and not due to routine changes that occur in relation to the P/P provider where there is no change of registrant. Several concerns with the alternative are outlined below.

(1) Privacy/Proxy Service Not the Registrant

Many registrars offer P/P services to allow registrants to protect their privacy or prevent spam resulting from whois record harvesting, etc. Registrars publish P/P contact information in the public whois and with registries. However, for registrars, the registrant information in the registrar database is the customer data.

ICANN has advised that any change to the public whois records is considered a change of registrant that is subject to the process defined through IRTP-C. Thus, turning a P/P service on or off is, from ICANN's view, a change of registrant. It requires the CoR process to be followed and more importantly could result in a registrant exposing his/her information in the public whois for 60 days. This could threaten privacy for at-risk registrants without clear benefit.

ICANN's view contradicts Section 1.2 of the 2013 RAA which states P/P service providers are *not* the registrant. This was also clear in discussions within the PPSAI PDP working group.

(2) Underlying Registrant Data Change Without Privacy/Proxy Service Change

In ICANN's proposed scenario, the underlying registrant data could change without any change made to the P/P service. If ICANN defines a change of registrant as a change reflected in the public whois, then it would appear that a change such as this is exempt from the Transfer Policy, which completely contravenes any effort to reduce domain name theft. This would create a situation where any benefits provided by the IRTP-C benefits are not applicable for 15 to 25 percent of the registrant pool.

(3) P/P Service Email Cycling to Prevent Spam

Another problematic scenario is that many P/P services regularly generate new email addresses for domains in an effort to reduce spam. This procedure would no longer be possible, and registrants may be subject to unwanted messaging. Implementing the CoR for email changes that some providers do as often as every 3-5 days is not feasible.

(4) "Solutions" Proposed by ICANN Undermine the Very Intent of IRTP-C

Rather than addressing the aforementioned issues with its proposed implementation head on and reconsidering its proposed implementation, ICANN has encouraged registrars to simply implement the policy via Designated Agents. Specifically, registrars have been encouraged to include in their blanket terms of service language designating themselves or

their P/P provider as a designated agent and opting out of the transfer hold window following a change of registrant process.

While this may address specific policy interactions that the registrar community has raised as problematic, it raises several issues. First, it nullifies any potential benefits that could be derived from implementation of the IRTP-C recommendations. The registrant confirmation process and the transfer-freeze period were both proposed as mechanisms to help prevent against fraudulent transfers; addressing them through blanket terms of service rather than as an actual process in which the registrant is engaged does away with this. Further, it unjustifiably forces registrants to surrender their discretion to their P/P provider or registrar by allowing them to act as designated agents.

While there are certain situations or registrar operational models that may justify recourse to the designated agent model, we believe that requiring it across the board for registrants using privacy seriously undermines the policy, and casts in doubt any benefit to the proposed policy.

Discussions With ICANN

RrSG leadership has discussed these issues with GDD staff without resolution. GDD staff seems somewhat sympathetic to these challenges; however, ICANN staff are obliged to represent what they see as set by the IRTP-C IRT. Registrars are very hesitant to allow these challenges to be forced into operation, negatively impacting registrants and contravening the intent of the Transfer Policy.

Resolution

We believe that the issue at hand refers to implications in how two ongoing policy matters, the IRTP and the framework for P/P providers, overlay. As these policies and implementation proposals were being developed contemporaneously and in parallel tracks, the question of how CoR would be applied for P/P users was not explicitly covered in the revisions to the IRTP that followed from the Part-C working group. There is value in establishing consistency across registrars and agreement within the community about what circumstances should trigger a CoR for users of P/P services.

We believe that the additional context and information presented both by the finalization of the P/P recommendations, and by ICANN providing an independent view of how the two policies should interact warrants further consideration by an implementation review team.

Ideally, the issue would have been jointly considered by the PPSAI and IRTP-C Implementation Review Teams. However, as the IRTP-C IRT was disbanded in May 2016, we believe that the most appropriate course forward is discussion within the PPSAI IRT with consultation with members of the IRTP-C IRT, where possible.

The PPSAI IRT is well suited to resolve these issues for two primary reasons. First, issues of what is or is not a registrant were thoroughly discussed inside of the PPSAI PDP, and this

expertise lies within members of the PPSAI IRT. Secondly, the PPSAI IRT has just commenced and we can be sure that these issues can be addressed in a timely fashion.

We respectfully request the opportunity to discuss with the GNSO how these challenges can be temporarily removed from the Transfer Policy jurisdiction while the PPSAI IRT evaluates the issues and prepares recommendations.

References

- IRTP-C GNSO page: <https://gnso.icann.org/en/group-activities/active/irtp-c>
- IRTP-C Final Report: <https://gnso.icann.org/en/issues/irtp-c-final-report-09oct12-en.pdf>
- IRTP-C Wiki: <https://community.icann.org/display/gnsoirtpdpwg/Home>
- 2013 RAA Specification on Privacy and Proxy Registrations: <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#privacy-proxy>
- Transfer Policy: <https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en>