

January 7, 2019

Re: *WIPO Arbitration and Mediation Center comments on IRTP Status Report, as Prepared by ICANN Org for the Consideration of the GNSO Council, November 2018*

Please find below comments from the WIPO Center on the IRTP Status Report.

We note by way of summary that ICANN's IRTP Status Report intends to help assess the effectiveness of the IRTP in terms of (i) portability for registrants and registrars, (ii) preventing abuse/theft, and (iii) information/educational resources.

It is vital that the IRTP accommodate the UDRP – in particular as to domain name locking and unlocking, decision implementation/case suspension and settlement, and cyberflight.

Thus while the Status Report may assist certain registrant and registrar concerns, especially as to information/educational resources, we take this opportunity to bring a few UDRP case-related observations to ICANN's attention.

Domain name locking and unlocking:

The IRTP recognizes that UDRP cases provide sufficient grounds for blocking certain transfers of a domain name (Status Report footnote 20, IRTP 3.8.1).

The responsibility for preventing a domain name subject to a UDRP case from being transferred in violation of the IRTP falls to the registrar of record/losing registrar.<sup>1</sup>

Despite an attempt to clarify domain name “lock” status (both through ICANN's *Locking of a Domain Name Working Group PDP* and the present IRTP effort), there remains some ambiguity in applying an agreed/understood definition of “lock” in the context of intra-registrar transfers; as a result, a domain name may inadvertently be transferred despite a “lock” apparently having been applied.

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<sup>1</sup> Fulfilling this responsibility could flow inter alia from such registrar applying a “lock” to the domain name (Status Report footnote 6).

We have additionally observed instances where a transfer request is initiated *after* submission of a UDRP complaint to the WIPO Center, but before a lock has been applied.

The efficacy of the IRTP and UDRP (notably, paragraph 8) is additionally impacted by the fact that the gaining registrar may not be on notice of the existence of a UDRP case prior to initiating the transfer process.

This is further complicated by the failure of the registrar of record/losing registrar to timely object to/prevent an intra-registrar transfer.

- **We recommend** that, to avoid transfer of a domain name subject to a UDRP case, except in limited permitted circumstances (e.g., party settlement or panel decision), ICANN establish a standardized process for (i) indicating that a domain name is “locked” subject to a UDRP case – which may include designation via an existing or new EPP code, and (ii) communication between the registrar of record/losing registrar and a prospective gaining registrar (i.e., further to Status Report footnote 6) to clarify an obligation for a prospective gaining registrar to confirm an “unlocked” status prior to allowing a transfer.
  - This would include scenarios where a transfer is initiated after the filing of a UDRP case, but prior to a registrar having “locked” the domain name.

#### Decision implementation/case suspension and settlement:

Registrar action to be taken in the implementation of a decision per UDRP paragraph 4(k)/a settlement agreement between the parties per UDRP Rules paragraph 17 – namely, the transfer of a domain name to the complainant – are functionally equivalent under the IRTP.

We note that the WIPO Center often receives registrar queries as to the process by which such a transfer should take place. Given our narrow role as a UDRP provider however, we are limited to referring registrars and parties to the applicable rules and encouraging them to cooperate to facilitate the secure transfer of an impacted domain name.

Two issues related to the IRTP in particular seem to negatively impact UDRP processes:

(i) apparently unaware of UDRP Rules paragraph 17 (in particular clauses (iv)-(vi)), some registrars purport to disclaim responsibility for transfers out to the complainant or to their chosen (gaining) registrar, claiming only to be able to unlock the relevant domain name;

(ii) in some instances an intra-registrar transfer has been rejected as it was requested within 60 days of the creation date or last transfer date. In some instances this may be due to the action of the registrar itself where it modifies the relevant registrant details (e.g., by moving the domain name to a secure account, or by modifying the registrant information pursuant to RAA paragraph 3.7.5.7 in the event of domain name expiry).

- **We recommend** that ICANN provide further education, and policy and process safeguards, for intra-registrar transfers in the context of UDRP disputes.

Cyberflight:

Following the adoption of the recommendations of the *Locking of a Domain Name Subject to UDRP Proceedings PDP*, the incidence of “cyberflight” (the unauthorized transfer of a domain name to a new registrant or registrar during a UDRP case) has decreased; unfortunately it does still occasionally happen.

In the context a change of registrar, we note that the Status Report provides that “transfer [ ] back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs” should not be prevented (footnote 20).

Such transfer back in practice however has proven difficult or elusive.

- **We recommend** that ICANN consider providing instructions and/or a process for dispute resolution service providers to engage with registrars and, in appropriate circumstances, require a transfer back of registrar or registrant.

Additional points:

Regarding ICANN Contractual Compliance Transfer-Related Metrics, 2012-2018 (Status Report page 25), there does not appear to be a mechanism or metric by which a UDRP provider may report IRTP breaches.

Further to the above discussion on cyberflight, we would appreciate understanding the breakdown in “naked” transfers attributed to “pending [UDRP cases] that the Registrar has been informed of” (Status Report footnote 20; Table 1).

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Thank you for your attention to the WIPO Center’s comments on the IRTP Status Report, and please do not hesitate to contact us if we can provide further background in this regard.

These observations are posted on the WIPO website at:  
[www.wipo.int/amc/en/domains/resources/icann](http://www.wipo.int/amc/en/domains/resources/icann).

Yours sincerely,



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