Dr. Steve Crocker
Chair, ICANN Board of Directors

Re: ICANN Transfer Policy

Dear Dr. Crocker,

On behalf of the GNSO Council, I am writing to you regarding ICANN's Transfer Policy (*see* https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en), specifically Part C, which goes into effect on 1 December 2016. The Registrar Stakeholder Group has identified a critical problem with one piece of the implementation and requested that the GNSO Council ask the Board to direct ICANN staff to move the problematic piece into the currently underway Privacy & Proxy Services Accreditation Issues Implementation Review Team (PPSAI IRT) for further evaluation and subsequent recommendation.

As background, the Transfer Policy is the result of a GNSO PDP to revise the Inter-Registrar Transfer Policy (IRTP) (*see* https://www.icann.org/resources/pages/policy-transfers-2014-07-02-en). The aim of IRTP Part C, specifically, was to reduce the instances of domain name theft. The Final Report recommended that a "change of registrant" (CoR) process be incorporated into the implementation of the Transfer Policy. This goal of the CoR is to ensure that changes made to registrant information are properly authorized. This will be accomplished by requiring registrars to 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.

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 WHOIS, as well as the registrant data which is stored by the registrar but not published. If a registrant enables or disables P/P services, the public WHOIS record changes, but no change takes place in the registrar's database about the registrant.

Although the the IRTP Part C policy recommendations are silent on the issue, ICANN staff, based on initial guidance from the IRTP Part C Implementation Review Team, interprets the Transfer Policy to require registrars to implement the CoR when any change is made to the public WHOIS data, even when that change does not result in a change to the underlying customer data. The RrSG has pointed out, however, that 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.[1] While ICANN staff is sympathetic to these challenges, they are obliged to represent what they see as the direction provided by the IRTP Part C Implementation Review Team (IRTP-C IRT).

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.

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[1] The Registrar Stakeholder Group has outlined four use cases that poses significant operational complications in the attached Appendix A.

Ideally, the issue would have been jointly considered by at least the PPSAI IRT and IRTP-C IRT. However, the IRTP-C IRT was disbanded in May 2016, before the PPSAI IRT started. We believe the most appropriate path forward is discussion within the PPSAI IRT (in consultation with members of the IRTP-C IRT, where possible), to reconstitute the IRTP-C IRT, or to consider some other new mechanism available. However, it is not feasible to evaluate and choose among these alternatives before the Transfer Policy goes into effect on 1 December 2016.

As a result, the GNSO Council respectfully requests the ICANN Board of Directors to (1) instruct staff to work with the RrSG and other interested parties to evaluate alternatives for evaluation of the implementation concerns, which could include moving this issue to the PPSAI IRT, reconstituting the IRTP-C IRT, or employing some other new mechanisms under Policy & Implementation, and (2) instruct ICANN staff to defer any privacy/proxy service compliance enforcement from the Transfer Policy relating to the enabling or disabling of privacy/proxy services pending further consultation and determination of this issue.

With best regards,

James Bladel
Chair, GNSO Council

APPENDIX A - PRIVACY/PROXY SERVICE SCENARIOS

(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.