Final Issue Report on a Policy Development Process to Review the Transfer Policy

At-Large Consolidated Policy Working Group (CPWG) Call

ICANN

3 March 2021

Agenda

- Background

- Overview of Topics

- Draft Charter

- Current Work and Next Steps

Background

About the Transfer Policy

- ICANN **consensus policy** governing the procedure and requirements for **registrants to transfer their domain names from one registrar to another**, also referred to as an inter-registrar transfer.

- Goal: provide for enhanced **domain name portability**, resulting in greater consumer and business choice and enabling registrants to select the registrar that offers the best services and price for their needs.

- Formerly referred to as the **Inter-Registrar Transfer Policy (IRTP)**, went into effect on 12 November 2004.

- First review of the policy took place right after implementation. The new PDP will be the second review.

Background on the Issue Report

- **April 2019**: ICANN Org delivered the Transfer Policy Status Report to the GNSO Council, as anticipated by the Inter-Registrar Transfer Policy (IRTP) Part D PDP WG's Final Report.

- **September 2019**: Council agreed to launch a call for volunteers for a Transfer Policy Review Scoping Team.

- **April 2020**: Scoping Team delivered its Transfer Policy Review Scoping Paper to the Council.

- **June 2020**: Council requested a Preliminary Issue Report.

- **January 2021**: A Final Issue Report was submitted to the GNSO Council, following a public comment period on the Preliminary Issue Report.

- **February 2021**: The GNSO Council voted to initiate a PDP.

Issue Report Topics

The eight issues addressed in the Final Issue Report are:

- Gaining & Losing Registrar Form of Authorization (FOA)
- AuthInfo Code Management
- Change of Registrant (CoR)
- Transfer Emergency Action Contact (TEAC)
- Transfer Dispute Resolution Policy (TDRP)
- Reversing/NACKing Transfers
- ICANN-Approved Transfers
- EPDP Rec. 27

Structure of Each Issue Report Section

- For each issue, the Final Issue Report includes:

- An **overview** of the issue, including any previous policy development work.

- Relevant **inputs and data** on the issue from the following sources:
  - Transfer Policy Status Report, including a survey of registrars and registrants, as well as metrics from ICANN org's Global Support Center, Monthly Registry Reports, and Contractual Compliance Department.
  - Inputs from the Contracted Party House Tech Ops Group.
  - Feedback from ICANN org departments working directly with the Transfer Policy.
  - Public comments on the Preliminary Issue Report.

- Proposed **questions** for consideration by the PDP, also included in the draft Charter.

Overview of Topics

Gaining & Losing Registrar Form of Authorization (FOA)

Overview:

- **Prior to the Board's adoption of the Temporary Specification**, the Gaining Registrar in a transfer was **required** to get confirmation of intent to transfer the domain via a Form of Authorization (**Gaining FOA**). A Losing Registrar must also send notice of the pending transfer to the Registered Name Holder (**Losing FOA**).

- Under the **Temp Spec**, if the Gaining Registrar is unable to send the Gaining FOA due to its inability to obtain current registration data via the public Registration Data Directory Services (RDDS):

  - **The Gaining FOA is not required**.

  - Registered Name Holder independently re-enters registration data with the Gaining Registrar.

  - Identity of the Registered Name Holder is verified by providing the AuthInfo Code.

  - Losing FOA is still required.

- **EPDP included this workaround in its recommendations**, which were **adopted by the ICANN Board**.

Gaining & Losing Registrar Form of Authorization (FOA)

Overview (continued):

- Registrars identified challenges in ICANN org's position that a Gaining Registrar is required to send a Gaining FOA where the email address "is available", as there is no guarantee that the email goes directly to the registrant.

- ICANN Board passed a resolution to **defer contractual compliance enforcement of the Gaining FOA requirement** pending further work in this area.

- Contracted Party House Tech Ops Subcommittee has developed a proposal for a proposed transfer process.

Gaining & Losing Registrar Form of Authorization (FOA)

Focus of Charter Questions:

- Is the requirement of the **Gaining FOA still needed**, and if so, are updates necessary? If not, does the AuthInfo Code provide sufficient security and "paper trail"?

- In light of provisions of the Temporary Specification, what secure methods (if any) currently exist to allow for the **secure transmission** of then-current **Registration Data** for a domain name subject to an **inter-registrar transfer request**?

- Should **mandatory domain name locking** be included in the Transfer Policy?

- Is the **Losing FOA still required**, and if so, are updates necessary?

- Is **CPH Proposed Tech Ops Process** a logical starting point for future work on this issue? Other proposals to consider?

AuthInfo Code Management

Overview:

- **Unique code** created by a registrar on a per-domain basis to **identify the registrant** of the domain name.
- AuthInfo Code is **required for the registrant to transfer** its domain name from one registrar to another.
- The losing registrar may provide the AuthInfo Code via control panel, or by other means within 5 calendar days (email, SMS, etc).

Focus of Charter Questions:

- Is the **AuthInfo Code still a secure method** for inter-registrar transfers?
- Should the **registrar remain the authoritative holder** of the AuthInfo Code or should it be the registry?
- Is the current **SLA** for provision of the AuthInfo Code still appropriate?
- Should the AuthInfo Code **expire** after a certain amount of time?
- Should there be additional policy work on **bulk use** of AuthInfo Codes?

Change of Registrant (CoR)

Overview:

- Requirements that seek to prevent domain name hijacking by **ensuring that certain changes to registrant information have been authorized**.

- Registrars must **obtain confirmation from the Prior Registrant and New Registrant before a material change is made** to one or more of the following: the Prior Registrant name, Prior Registrant organization, Prior Registrant email address, and/or Administrative Contact email address, if there is no Prior Registrant email address.

- "**60-day inter-registrar transfer lock**" prevents transfer to another registrar for sixty (60) days following a CoR.

- The Transfer Policy includes provisions for a **Designated Agent**, an individual or entity that the Prior Registrant or New Registrant authorizes to approve a CoR.

- Currently, **compliance enforcement is being deferred** in relation to Change of Registrant as it applies to removal or addition of **privacy/proxy services**, pending further work to clarify implementation of relevant IRTP Part C provisions.

Change of Registrant (CoR)

Focus of Charter Questions:

- Does the **policy achieve its stated goals**? Is it still relevant in the current domain ownership system?

- Can **requirements be simplified** to make them less burdensome and confusing, especially regarding the 60-day lock?

- To what extent **should the Change of Registrant policy, and the 60-day lock, apply** to underlying registrant data when the registrant uses a **privacy/proxy service**?

- Is the **Designated Agent function operating as intended**? If not, should it be retained and modified? Eliminated?

Transfer Emergency Action Contact (TEAC)

Overview:

- **Registrars are required to designate a TEAC** to facilitate urgent, **real-time communications** relating to transfers in an emergency.

Focus of Charter Questions:

- Is the **time frame (4 hours)** for registrars to respond to communications via the TEAC **fair and appropriate**?
- Should the **timeframe for initial communications** to a TEAC be more clearly defined?
- Is **phone still an appropriate method** of contacting the TEAC, given the difficulty in establishing a "paper trail" of communication?
- Are **additional changes needed to support a Registry Operator** in its obligation to **"undo" a transfer** where the Gaining Registrar has not responded to a message via the TEAC within the specified timeframe?

Transfer Dispute Resolution Policy (TDRP)

Overview:

- Policy detailing the requirements and process for **registrars to file disputes** relating to **inter-registrar domain name transfers**.

Focus of Charter Questions:

- Is the TDRP an **effective** mechanism for resolving disputes?
- If not, are **additional mechanisms needed** to supplement the TDRP or should the approach to the TDRP itself be reconsidered?
- Are TDRP requirements for the **processing of registration data** compliant with **data protection law** and consistent with principles of privacy by design and data processing minimization?

Reversing/NACKing Transfers

Overview:

- Losing Registrar **may deny (NACK)** a registrant's inter-registrar transfer request in **specific instances**.

    - Examples: Evidence of fraud; Reasonable dispute over the identity of the Registered Name Holder or Administrative Contact; Express objection to the transfer by the authorized Transfer Contact.

- Losing Registrar **must deny (NACK)** a registrant's inter-registrar transfer request in **specific instances**.

    - Examples: A pending UDRP or URS proceeding or URS suspension that the Registrar has been informed of; Court order by a court of competent jurisdiction; Pending dispute related to a previous transfer pursuant to the TDRP.

Focus of Charter Questions:

- Are the **current reasons** for denying or NACKing a transfer sufficiently **clear**? Should additional reasons be considered?

- Should there be **additional guidance around cases subject to a UDRP decision**?

ICANN Approved Transfers

Overview:

- De-Accredited Registrar Transition Procedure governs **circumstances where a registrar's domain names need to be transferred to another ICANN-accredited registrar**, most commonly when a registrar's RAA is terminated or expires without renewal.

Focus of Charter Questions:

- Should the **one-time flat fee** of $50,000 that the gaining registrar is required to pay be **revisited or removed** in certain circumstances?
- Should the **scope of voluntary bulk transfers**, including partial bulk transfers, **be expanded and/or made uniform** across all of ICANN's contracted parties? If so, what types of **policy considerations** should govern voluntary bulk transfers and partial bulk transfers?

EPDP Recommendation 27

Overview:

- Recommendation 27 in the EPDP Team's Phase 1 Final Report recommends **updating existing policies / procedures** to ensure **consistency** with the EPDP's outputs.

- In its Wave 1 Report, **ICANN org performed a detailed analysis** of 15 policies and procedures, including the Transfer Policy and Transfer Dispute Resolution Policy.

Focus of Charter Questions:

- How **should the issues in the Wave 1 report be addressed with respect to the Transfer Policy and TDRP**? Do any need to be resolved urgently rather than waiting for the respective PDP Working Group?

- Can issues in the Wave 1 report related to FOA, Change of Registrant, and TDRP be discussed and reviewed by the PDP Working Group during its review of those topics?

Draft Charter
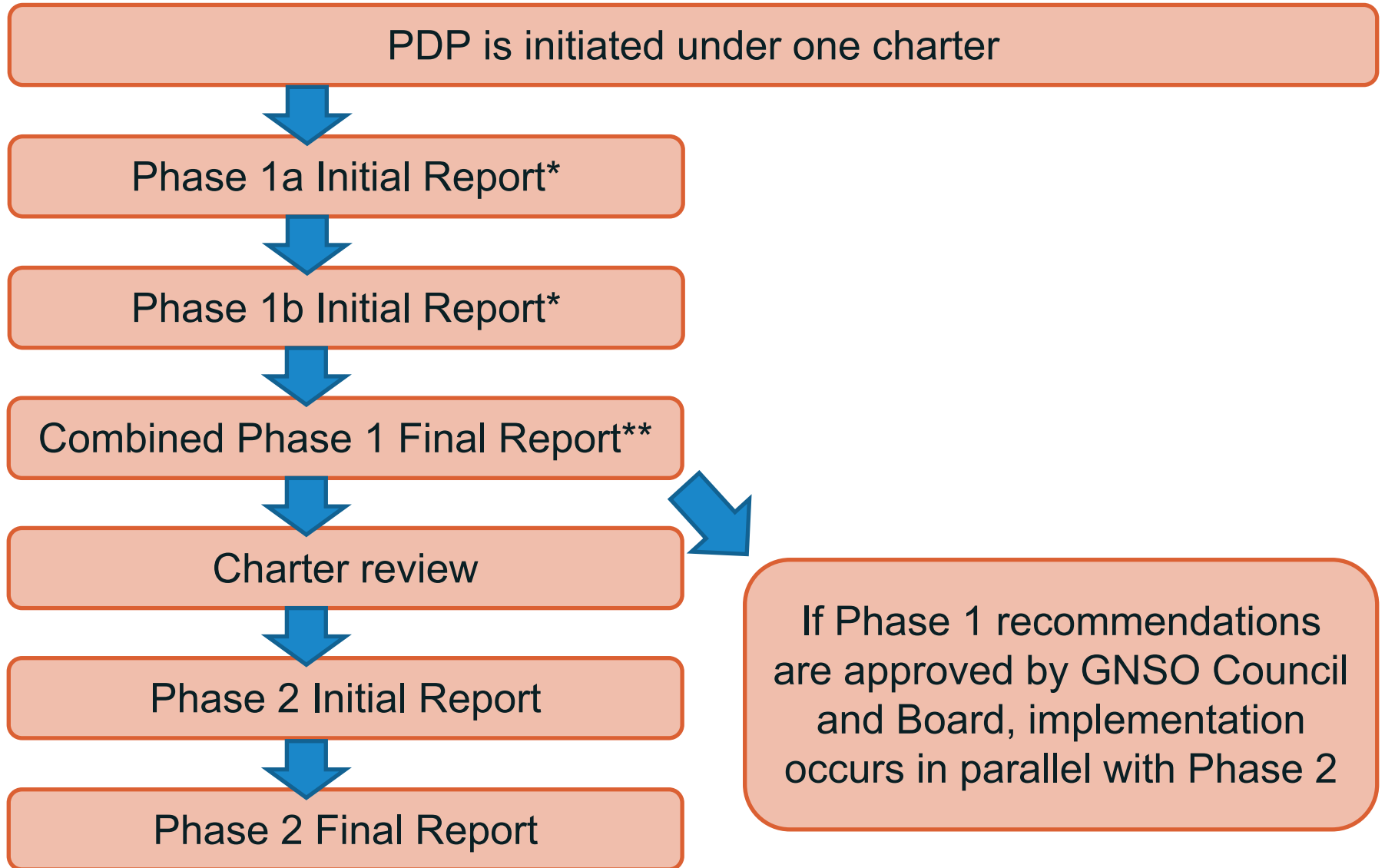
Draft Charter – PDP Scope and Phased Structure

Final Issue Report includes a Draft Charter for Council to consider

Mission and Scope: PDP to conduct a **review of the Transfer Policy** and determine if changes to the policy are needed to improve the ease, security, and efficacy of inter-registrar and inter-registrant transfers.

Conducted in **Phases under a single charter**:

- Phase 1(a): Form of Authorization (including Rec. 27, Wave 1 FOA issues) and AuthInfo Codes
- Phase 1(b): Change of Registrant (including Rec. 27, Wave 1 Change of Registrant issues)
- Phase 2: Transfer Emergency Action Contact and reversing inter-registrar transfers, Transfer Dispute Resolution Policy (including Rec. 27, Wave 1 TDRP issues), NACKing transfers, ICANN-approved transfers

Draft Charter – Sequence of Milestones

PDP is initiated under one charter

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Phase 1a Initial Report*

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Phase 1b Initial Report*

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Combined Phase 1 Final Report**

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Charter review

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Phase 2 Initial Report

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Phase 2 Final Report

If Phase 1 recommendations are approved by GNSO Council and Board, implementation occurs in parallel with Phase 2

* Phase 1a and Phase 1b Initial Reports will each have their own public comment period
** Combined Phase 1 Final Report helps to ensure coherence/consistency between 1a and 1b recs

Draft Charter – Working Group Composition

- Working group with limited membership following a representative model.

- Membership structure:
    - **Members**, who are responsible for active participation, preliminary deliberations, and consensus;
    - **Alternates**, who only participate if a Member is not available, but will be responsible for keeping up with Working Group;
    - **Observers**, who may follow the work but do not have posting or speaking rights during WG meetings.

- Membership is not limited to GNSO Stakeholder Groups and Constituencies, noting that some groups in the ICANN community may be more interested in this topic than others.

Current Work and Next Steps

Current Work and Next Steps

- Small group of Councilors is finalizing the Charter with a focus on the precise composition of the WG.

- GNSO Council to adopt Charter, likely during it's meeting at ICANN70.

- SO/AC/SG/Cs to appoint members to the WG.

- Selection of WG leadership.