

# ICANN-APPROVED TRANSFERS

## INTRODUCTION OF CURRENT APPLICABLE POLICY LANGUAGE

### Current Transfer Policy Text re: ICANN-Approved Transfers

#### **I.B. ICANN-Approved Transfers**

1. Transfer of the sponsorship of all the registrations sponsored by one Registrar as the result of (i) acquisition of that Registrar or its assets by another Registrar, or (ii) lack of accreditation of that Registrar or lack of its authorization with the Registry Operator, may be made according to the following procedure:
  - 1.1 The gaining Registrar must be accredited by ICANN for the Registry TLD and must have in effect a Registry-Registrar Agreement with Registry Operator for the Registry TLD.
  - 1.2 ICANN must certify in writing to Registry Operator that the transfer would promote the community interest, such as the interest in stability that may be threatened by the actual or imminent business failure of a Registrar.
2. Upon satisfaction of these two conditions, Registry Operator will make the necessary one-time changes in the Registry database for no charge, for transfers involving 50,000 name registrations or fewer. If the transfer involves registrations of more than 50,000 names, Registry Operator will charge the gaining Registrar a one-time flat fee of US\$ 50,000.

## CHARTER QUESTIONS

### GAINING FOA

i1) In light of these challenges\* described in section 3.1.7.2 of the Final Issue Report, should the required fee in Section I.B.2 of the Transfer Policy be revisited or removed in certain circumstances?

\*Note: the challenges referenced in Section 3.1.7.2 of the [Final Issues Report](#) are provided below for ease of reference:

“In preparing this report, ICANN org Policy staff consulted with other departments within ICANN org. Colleagues from Global Domains and Strategy (GDS), who manage the De-Accredited Registrar Transition Procedure, have noted that the requirements in Section I.B.2 of the Transfer Policy have caused challenges in certain instances of de-accreditation. Specifically, the requirement for a gaining registrar to pay a one-time flat fee of \$50,000 can make it difficult to secure a gaining registrar. By way of example, when the pool of potential gaining registrars perceive the value of a domain portfolio to be minimal, where the terminating registrar’s domains are known or suspected to have a significant portion of abusive registrations, data escrow issues (the data in escrow is outdated or incomplete), or expectations of renewal rates are low (in the case of aggressive promotions), the requirement for a gaining registrar to pay a one-time flat fee of \$50,000 USD to the registry operator makes it difficult to secure a gaining registrar to accept the domains. This, in turn, poses a risk to the registrants who have utilized the services of the terminating registrar. Furthermore, ICANN has limited ability to determine the quality of the domains or make representations to potential gaining registrars as to the value of the domains.” - pp. 50-51 of [Final Issues Report](#).

**Early Written Input Received:**

**RySG:** The RySG recommends a review of both the required fee in Section I.B.2 and the quantity threshold in the same section, possibly to include removal in the event of the exercise of the De-Accredited Registrar Transition Procedure. Additionally, the RySG notes that frequently during the De-Accredited Registrar Transition Procedure, the De-Accredited Registrar has accrued substantial debt in its account with the RO due to unpaid autorenew transactions. Another factor to be considered is that the timing of deaccreditation by ICANN impacts the accumulation of names.

The RySG notes that these values (US\$ 50,000 and 50,000 registrations) are not indexed relative to the size of the RO nor to a Registrar’s size relative to other Registrars. Nor is there a mechanism that allows these values to change over time.

**RrSG:** For transfers under 50,000 domains, there is no fee. Above 50,000 domains, then the registrar must pay the registry \$50,000. This is for each registry, so several scenarios are possible: a) needing to pay \$50,000 to multiple registries. This can be cost prohibitive to some registrars. b) it is possible that the bulk transfer may cover 100,000 domain names, but spread across multiple registry operators so the 50,000 threshold is not covered. Can ICANN provide more information about the frequency and total domains for these bulk transfers? This will help the RrSG to properly consider this request.

**BC:** If it is the case that the \$50,000 flat rate fee has shown itself to be a problem in terms of securing a registrar to take over a de-accredited registrar, then there could be consideration of a fee dependent on volume.

## **DELIBERATIONS**

Following the first two meetings on this topic, the Working Group seemed to agree that in the event of an involuntary termination involving a bulk transfer, the mandatory bulk transfer fee should be waived.

The WG noted it needs to further discuss the mandatory bulk transfer fee, i.e.,

- Should the mandatory fee be removed from the policy and left between Ry/Rr?
- Should the mandatory fee be tiered based on volume rather than one lump sum?
- Should the mandatory fee language remain as is?
- Other options?

Generally speaking, the Working Group noted that language in Section I.B.2 needs some rethinking in terms of clunky and confusing wording. (For example, not all bulk transfers are included in this policy.)

Proposed text for WG Review:

**Proposed Preliminary Agreement #1:** (i) The Working Group recommends that a Registry Operator MAY charge a fee to implement a full domain name portfolio transfer<sup>1</sup> of 50,000 or more domain names from one ICANN-accredited registrar to another ICANN-accredited registrar, provided the conditions described in sections I.B.1.1 and I.B.1.2 are satisfied. (ii) The Registry MAY waive the fee associated with full portfolio transfers; however, in full portfolio transfers resulting from an involuntary registrar termination, i.e., where a registrar is terminated by ICANN due to non-compliance with the Registrar Accreditation Agreement, the Working Group recommends the Registry MUST waive any fee associated with a full portfolio transfer.

Rationale: There may be instances when a Registry Operator chooses to waive this fee, so the Working Group is recommending a change from the current language where the fee is mandatory for transfers involving 50,000 names or more. The carve out for instances of a full portfolio transfer resulting from an involuntary termination/non-renewal is in recognition of the difficulty ICANN org has noted in procuring a gaining registrar to take on a failing or unresponsive registrar's domain name portfolio.

**Prelim. Rec. #2:** The Working Group recommends retaining both (i) the current minimum number of domain names that trigger the fee at 50,000 names and (ii) the current price ceiling of USD \$50,000. If the full portfolio transfer involves multiple Registry Operators, the affected Registry Operators MUST ensure the collective fee does not exceed the recommended ceiling of USD \$50,000, and the fee MUST be apportioned based on the number of domain names transferred.

Rationale: The Working Group has noted retaining a price ceiling promotes transparency and has recommended keeping the status quo; however, the Working Group believes it is important to specify the price ceiling encompasses a collective fee. In other words, the \$50,000 fee is the total amount a registrar would pay for a full portfolio transfer. The Working Group made this update in recognition of the changes to the industry that have occurred since this policy was first drafted, i.e., the number of Registry Operators and TLDs has increased significantly, which could result in unintended high fees.

**Proposed Preliminary Agreement #3:** Due to the variable nature of the fee associated with full portfolio transfers, the Working Group recommends that Registry Operators MUST provide notice to registrars of any fees associated with full portfolio transfers upon request and prior to the completion of the full portfolio transfer. How Registry Operators choose to provide notice of fees will be up to the Registry to decide, i.e., password protected portal,

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<sup>1</sup> Note: this could include all of the domain names a registrar has within a gTLD or all of the gTLD domain names a registrar has under management.

website, written notice, etc.

**Prelim. Rec. #4:** The Working Group recommends that if the full portfolio transfer involves multiple Registry Operators, and one or more affected Registry Operators chooses to waive its portion of the collective fee, the remaining Registry Operators MUST NOT adjust their fees to a higher percentage due to another Registry Operator's waiver.

Rationale: The Working Group notes the fee apportionment was designed to be equitable, and this recommendation aims to ensure a voluntary fee waiver does not result in an unintended consequence or gaming.

**Prelim. Rec. #5:** The Working Group recommends that following the completion of the transfer, the Registry Operator(s) MUST provide notice to ICANN that the transfer is complete, and the notice to ICANN MUST include the number of domain names transferred.

Rationale: As the entity responsible for effecting the transfer, the Registry Operator is responsible for providing the official number of domain names transferred to ICANN.

**Prelim. Rec. #6:** The Working Group recommends that following receipt of notices from all affected Registry Operators, ICANN MUST send a notice to affected Registry Operators with the reported numbers and corresponding percentages of domain names involved in the bulk transfer, e.g., 26% of names for .ABC and 74% of names for .DEF. The Registry Operators MAY then charge the Gaining Registrar a fee according to their schedule.

Rationale: The Working Group noted that ICANN org is the appropriate entity to notify affected Registry Operators of the numbers transferred after receiving notice from the affected Registries. The Working Group provided example percentages for clarity of implementation.

**Proposed Preliminary Recommendation #7:** The Working Group recommends that the Gaining Registrar MUST be responsible for paying the relevant Registry's fee (if any).

Rationale: The Working Group recognizes that a voluntary request to transition a domain name portfolio to another registrar will require internal coordination and work from the relevant Registry Operator, and accordingly, the Registry Operator may charge a fee for this process. Due to the voluntary nature of the portfolio transfer request, the Gaining Registrar should be responsible for paying this fee to the Registry Operator as (i) the Gaining Registrar, through the transfer, is inheriting new customers, and (ii) the Losing Registrar may be going out of business and, accordingly, may be unable to pay the fee.

*During Meeting #100 on 15 August 2023, the WG further discussed the above preliminary agreement (#5) and noted there needs to be more guidance around transfers involving multiple registry operators. Support Staff has attempted to capture the conversation from the meeting by dividing the preliminary agreement into concrete concepts for the group to consider. Note the below concepts apply to **full portfolio transfers**.*

**Concept 1:** The Working Group recognizes that a fee may be involved in a full portfolio transfer but believes flexibility is necessary, and the number should not be explicitly prescribed in the Transfer Policy.

**Concept 2:** The Working Group also recognizes, however, that a price ceiling is helpful to include in the policy language in order to promote transparency in pricing.

**Concept 3:** In light of Concept 2, the Working Group believes the total fee for a full portfolio transfer must not exceed [\$50,000 or \$1.00 per domain name transferred].

**Concept 4:** If the full portfolio transfer involves multiple registries, the affected registries must ensure the collective fee does not exceed the recommended ceiling, and the fee should be apportioned based on the number of domain names. By way of example, if a registrar has 60,000 domains under management under two TLDs, e.g., 40,000 names under .ABC, and 20,000 names under .DEF, the combined fee cannot exceed \$50,000 USD (per concept 3). Since two thirds of the names under management are registered to .ABC, .ABC registry MAY bill the Gaining Registrar up to 66.66% of the total fee [of \$50,000], e.g., \$33,333.33, and .DEF MAY bill the Gaining Registrar up to 33.33% of the total fee [of \$50,000], e.g., \$16,666.67.

**Concept 4(a):** [Following the completion of the transfer, the Registry Operator(s) MUST provide notice to ICANN that the transfer is complete, and the notice to ICANN MUST include the number of domain names transferred. Following receipt of notices from all involved registries, ICANN will send a notice to affected Registry Operators with the reported numbers and corresponding percentages of domain names involved in the bulk transfer, e.g., 26% of names for .ABC and 74% of names for .DEF. The Registry Operators MAY then charge the Gaining Registrar a fee according to their schedule.]

**Concept 5:** The Working Group notes the Registry Operator should have flexibility to establish and waive fees associated with full portfolio transfers and accordingly, does not recommend a required price floor. So long as the Registry Operator's fee is below the maximum ceiling, the Registry Operator may establish its price schedule as it chooses, provided the price schedule

is communicated transparently to the requesting registrar [(see Rec. x, currently Proposed Preliminary Agreement #4)].

**Deliberations:**

The WG noted that it still has questions to answer with regard to Concepts 1-5:

1. Regarding Concept 3, is \$50,000 the final number to be used for the proposed price ceiling?

Name	Response

2. In the current policy, there is no charge to transfer less than 50,000 domains, but transferring 50,000 or more comes with a flat fee of \$50,000. Is this concept of having a minimum/“ledge” of domain names still applicable?

Name	Response

3. Regarding Concept 4, if there is a sharing of the fee between registries, is there a minimum number of domain names a registry must have involved in order to qualify to share the fee? (e.g. if there are 10 registries involved and one only has 2% of the total domains involved, should they be able to partake in the sharing?)

Name	Response


4. If so, what is that minimum number of domain names? (e.g. is the registry allowed to bill for one domain name?)

Name	Response

5. How would this process be handled? Considering Concept 4(a), would ICANN org need to be involved further to help manage this process, and if so, why?

Name	Response

**Proposed edit to Section I.B.1**

Current language: I.B.1 Transfer of the sponsorship of all the registrations sponsored by one



Registrar as the result of

(i) a Registrar acquisition of that Registrar or its assets by another Registrar, or (ii) lack of accreditation of that Registrar or lack of its authorization with the Registry Operator, may be made according to the following procedure:

Potential Update for WG editing: [There are some instances that fall outside of the requirements in Section I(A) of the Transfer Policy. Specifically, ICANN org may authorize the transfer of a registrar's domain names through an ICANN-approved bulk transfer without the prior approval of the Registered Name Holder in the following instances:

(i) the Registrar or its assets are acquired by another ICANN-accredited Registrar;

(ii) the Registrar is no longer accredited with ICANN org;

(iii) the Registrar is no longer accredited with a Registry Operator(s) in a TLD(s), e.g., termination of Registry-Registrar Agreement(s)\*

2. [Additional instances that fall outside of the requirements in Section I(A) of the Transfer Policy include partial bulk transfers pre-authorized<sup>2</sup> by ICANN org and offered by some Registry Operators. Specifically, a Registry Operator MAY permit a consenting Registrar to transfer a portion but not all of its domain names to another consenting Registrar in the following instances:

(i) one ICANN-accredited Registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited Registrar's domain name portfolio in the TLD,

(ii) a newly-accredited Registrar (Gaining Registrar) requests a transfer of all domain names from the losing Registrar for which the gaining Registrar has served

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<sup>2</sup> ICANN org authorizes partial bulk transfers through the Registry Services Evaluation Policy (RSEP) process. Upon approval of an RSEP request for the specified Registry Service, the registry operator and ICANN org would proceed to execute a Registry Agreement amendment

as the Reseller, or

(iii) [an agent of the Registrar, such as a Reseller or service provider, elects to transfer its portfolio of domain names to a new gaining registrar, and the registration agreement explicitly permits the transfer]

### **Preliminary Agreements for Charter Question i2 (partial bulk transfers)**

**Preliminary Recommendation #1: Prelim. Rec. #xx.1:** The Working Group recommends that [the standard Bulk Transfer After Partial Portfolio Acquisition (BTAPPA)] be expanded to include circumstances where an agent of the Registrar, such as a Reseller or service provider, elects to transfer its portfolio of domain names to a new gaining registrar, and the registration agreement explicitly permits the transfer.

**Preliminary Agreement #2:** In the event a change of sponsorship<sup>3</sup> is permitted by the Registry operator, Registrars shall either notify or ensure their Resellers (where applicable) notify affected Registrants approximately one month<sup>4</sup> at least [30 days] before the change of sponsorship will occur.

Rationale: Advance notice would give affected registrants the ability to transfer their name elsewhere if they so desire. [Clarifying when the transfer will take place, to which registrar it will transfer, and what their terms of service are enables registrants to familiarize themselves with the new registrar and their terms before the change of sponsorship takes place.]

**Preliminary Agreement #3:** For a change of sponsorship, the expiration dates of transferred

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<sup>3</sup> Within this Report, the Working Group has defined Change of Sponsorship as circumstances where (i) one ICANN-accredited registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited registrar's domain name portfolio in the TLD; (ii) a newly accredited registrar (gaining registrar) requests a transfer of all domain names from the losing registrar for which the gaining registrar has served as the Reseller; or (iii) where an agent of the Registrar, such as a Reseller or service provider, elects to transfer its portfolio of domain names to a new gaining registrar, and the registration agreement explicitly permits the transfer.

<sup>4</sup> The WG recognizes that some flexibility is required in the timing of Change of Sponsorship (BTAPPA) notifications. As such, one month should be treated as no less than 26 and no more than 35 days. A registrar is not precluded from sending additional notifications earlier or later than this required one month notification.

registrations are not affected and, therefore, there are no ICANN fees. Once the change of sponsorship is complete, there is no grace period to reverse the transfer.

**Preliminary Agreement #4:** A Registry Operator must reject a change of sponsorship request if there is reasonable evidence that the change of sponsorship is being requested in order to avoid fees otherwise due to the Registry Operator or ICANN. A Registry Operator has discretion to reject a change of sponsorship request if a registrar with common ownership or management or both has already requested a change of sponsorship within the preceding six-month period.

**Preliminary Agreement #5:** The Losing Registrar's existing Registration Agreement with customers must permit the transfer of domain names in the event of the scenarios described in the Transfer Policy with respect to a change of sponsorship.

**Preliminary Recommendation #6:** The Registry Operator MAY charge a fee for a change of sponsorship, but Registry Operators MUST provide notice to Registrars of any fees associated with a change of sponsorship upon request and prior to the initiation of the transfer. How Registry Operators choose to provide notice of fees will be up to the Registry to decide, i.e., password protected portal, website, written notice, etc.

**Preliminary Recommendation #7:** In the case of a change of sponsorship, the Losing Registrar MAY have to prevent certain locked domain names from proceeding with the sponsorship change: specifically, names that are locked due to: (i) Pending UDRP proceeding that the Registrar has been notified of by the Provider in accordance with the UDRP Rules, (ii) a court order by a court of competent jurisdiction, (iii) a pending dispute under the Transfer Dispute Resolution Policy, or (iv) Pending URS proceeding or URS suspension that the Registrar has been notified of by the Provider in accordance with the URS Procedure.

Rationale: The Working Group notes that the majority of domain name locks, including registrant-applied locks and EPP lock statuses, will remain in place following a change of sponsorship/BTAPPA scenario. However, domain names with locks applied as a result of the above specifically-named dispute proceedings/court orders involve jurisdictional challenges, and accordingly, will not be transferred to the Gaining Registrar.

**Prelim. Rec. #xx.8:** In the case of a change of sponsorship, the Gaining Registrar MUST NOT impose a new inter-registrar transfer lock preventing affected registrants from transferring their domains to another Registrar.

Rationale: The Working Group notes that a change of sponsorship is not initiated by registrants and does not affect their domain name expiration dates; therefore, the transfer lock that would otherwise follow a typical inter-registrar transfer should not apply in this instance. Transfer locks that are triggered by other means set out in the Transfer Policy would still apply.

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i2) Should the scope of voluntary bulk transfers, including partial bulk transfers, be expanded and/or made uniform across all registry operators? If so, what types of rules and considerations should govern voluntary bulk transfers and partial bulk transfers?

**Early Written Input Received:**

**RySG:** In this context, the RySG is distinguishing a “voluntary bulk transfer” from “near-simultaneous, traditional inter-registrar transfers” by assuming that the former is intended to mean “a transfer that does not include term extension”. The RySG supports an expansion of a RO’s ability to provide a voluntary bulk transfer capability.

However, the RySG does not support enforced uniformity of voluntary bulk transfer across all ROs. The RySG believes that an RO should be able to use its bulk transfer capability as a competitive differentiator. The RySG supports an approach to voluntary/partial bulk transfers (i.e. multi-domain, batch-oriented transfers without term extension) that simply involves tri-party agreement between RO, Sponsoring Registrar, and Gaining Registrar.

**RrSG:** While this would be desirable for registrars, what is the frequency of these transfers? Is it common enough that a uniform set of rules should be established? This will require process changes for registries, so the cost to make the changes should be justified through common usage. With this additional information, the RrSG can provide better feedback

## DELIBERATIONS

Regarding Charter question i2, WG members were presented with two poll questions in which a majority of participants answered affirmatively to both approaches for expanding/uniforming the scope of voluntary bulk transfers. **The WG will need to decide which approach to take:**

**Should the scope of voluntary bulk transfers, including partial bulk transfers, be expanded and/or made uniform across:**

1. all registry operators (via an update to the Transfer Policy)  
OR
2. all registry operators who offer the BTAPPA (via recommended updates to the BTAPPA)

Name	Comment

We have heard from WG members that:

- In cases where one registry uses BTAPPA but another does not, that can be a barrier to transferring (e.g. a normal transfer of 20,000 names can be expensive and inconvenient)
- A uniform approach can also include built-in flexibility.
- The [BTAPPA boilerplate](#) language could potentially be loosened to be more widely accessible while remaining a voluntary service.