

Transfer Dispute Resolution Policy (TDRP)

CURRENT APPLICABLE POLICY LANGUAGE

Full text of the Transfer Dispute Resolution Policy is available here:

<https://www.icann.org/resources/pages/tdrp-2016-06-01-en>

The following summarizes key elements of the procedure (from Final Issue Report):

- *A dispute must be filed no later than twelve (12) months after the alleged violation of the Transfer Policy (Section 2.2). The complainant may be either a Losing Registrar (in the case of an alleged fraudulent transfer) or a Gaining Registrar (in the case of an improper NACK) (Section 1.1).*
- *The complainant submits the complaint and supporting documentation to the dispute resolution provider (Section 3.1).*
- *The respondent submits a response to the complaint within seven (7) calendar days (Section 3.2).*
- *The dispute resolution provider panel must reach a conclusion no later than thirty (30) days after receipt of response from the respondent (Section 3.2.4).*
- *Resolution options for the dispute resolution panel are limited to either approving or denying the transfer (Section 3.2.4.v). The dispute resolution panel may not issue a finding of "no decision." It must weigh the applicable evidence in light of the Transfer Policy and determine, based on a preponderance of the evidence, which registrar should prevail in the dispute and what resolution to the complaint will appropriately redress the issues set forth in the complaint (section 3.2.4.iv).*
- *The TDRP does not prevent a registrar from submitting a dispute to a court of competent jurisdiction for independent resolution before the administrative proceeding is commenced or after it is concluded (section 3.4).*

SURVEY INPUTS - POLICY STATUS REPORT

See <https://www.surveymonkey.com/results/SM-Q2J8JZRQV/>

Question 1: "On a scale of 1 to 10, how effective is the transfer policy generally as it exists today (10 being most effective)?"

- *The Registrar Stakeholder Group responded to this question with a "6 or 7" for the Transfer Policy overall, but ranked the dispute process at "0," stating "**The Dispute policy is ineffective. It cannot be used at this time to reverse a transfer**, so that section of the policy gets a 0."*

Question 5: “The transfer policy has evolved over the last six years. In your opinion, have the policy modifications improved, worsened, or had no effect on the process for transferring domains between registrars and/or registrants ? Please provide details to support your answer.”

- “For registrants it is overly complicated and a bad experience. This is primarily due to **issues with fraudulent transfers and not having effective and efficient means to address them.**”

Question 6: “Many of the recent IRTP changes centered around protecting registrants from domain name hijacking. Do you believe the policy changes helped to mitigate this threat? Why or why not?”

- No, recent changes do not help mitigate the threat and the **TDRP process does not help with domain name recovery.**

Question 19: “In general, what issues are your customers having, if any, as they relate to transfers?”

- “. . . in general a **lack of good dispute mechanisms**” is a problem.
- “. . . If a domain is **hijacked, there is no effective dispute or resolution mechanism. . .**”

Question 21: “What do you think the ideal transfer process should look like from a policy and a technical perspective?”

- “**Effective and accessible dispute mechanism** that puts the burden of proof on the gaining registrar and the requesting registrant.”

TDRP Cases

ADNDRC: <https://www.adndrc.org/decisions/tdrp>

Case No	Filing Registrar / Appellant	Respondent Registrar / Appellee	Contested Domain Name(s)	Decision
HKT-0900001	HiChina Zhicheng Technology Ltd.	eNom Incorporated	GUPZS.com	<u>Domain Name Return to Filing Registrar</u>

HKT-1100002	Web Commerce Communications Limited	eNom Incorporated	26888.com	<u>No jurisdiction</u>
HKT-1100003	Web Commerce Communications Limited	internet.bs	34508.com	<u>Appeal denied</u>
HKT-1100004	Web Commerce Communications Limited	eNom Incorporated	268888.com	<u>Appeal denied</u>

FORUM: <https://www.adrforum.com/domain-dispute/search-decisions>

Case No	Domains	Case Name	Status	Decision
1933246	patterns.com	Network Solutions, LLC v. Bizcn.com, Inc. 5/F Tongda International Center No. 18.	<u>Claim Denied</u>	3/18/21
1749613	syria.net	TierraNet, Inc.v. Lexsynergy Ltd.	<u>Claim Denied</u>	10/13/17
1505106	namechea.com, naecheap.com, namehceap.com, , nameceap.com, nmecheap.com,	Namecheap, Inc. v eName Technology Co., Ltd.	<u>Claim Denied</u>	7/26/13

	mamecheap.com, namecehap.com			
1767303	cv.com	-	Withdrawn	

In addition, the [Transfer Policy Status Report](#) includes, in Annex 8.4, summaries of cases obtained from the dispute resolution providers' websites to provide a deeper look into the details of a transfer dispute.

CHARTER QUESTIONS

Early Written Input from ALAC applying to all Charter Questions:

The recommendations provided in Phase 1a aim to enhance the security of Inter-Registrar transfers, which could reduce the necessity for a TDRP. Nevertheless, At-Large recognizes the importance of having an efficient and transparent dispute resolution policy in place and will closely follow the ongoing discussions.

At-Large is aware of the fact that the majority of transfer disputes are solved directly between the losing and gaining registrars. In addition, data from ICANN org Compliance indicates a low volume of formal addressed cases using the present TDPR.

The five TDPR charter questions do not directly ask the working group to discuss why the TDPR is seldom used. At-Large asks the GNSO-TPR WG to add a question on why the TDPR is seldom used to the charter questions. At-Large believes that the adding a question on the usage of the TDPR may help explain why there is such a low volume. At minimum, it will cause the working group to review current data.

The present TDRP prevents a Registered Name Holder (RNH) from initiating a transfer dispute. The current charter questions are worded in a way that the TPR working group may be unable to discuss the development of transfer dispute policy as an option for a RNH to initiate a transfer dispute.

ACTION: At-Large strongly recommends adding a charter question for deliberation that includes the possibility for a RNH to initiate a transfer dispute using the TDPR.

g1) Is there enough information available to determine if the TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP? If not, what additional information is needed to make this determination?

In addition to the survey inputs and TDRP cases listed above, the following are included in the Transfer Policy Status Report:

- *Amount of Transfer Dispute Cases, Won/Lost/No Decision, 2010 - 2017, see page 30*
- *Transfer Complaints Handled by Contractual Compliance, organized by closure code, pages 37-45*
- *Transfer-Related Inquiries Received by ICANN's Global Support Center, 1 January 2015 - 23 May 2018, page 47*
- *Global Support Center Transfer-Related Inquiries Received, 2015 - 2018, page 48*
- *Examples of Transfer Dispute Cases, pages 83 and 84*

Note: ICANN's Contractual Compliance department checked cases from 1 September 2020 to 31 December 2022 to determine if there was relevant data to provide. Compliance found no valid cases initiated during that period with the registrar referring to TDRP related obligations.

Early Written Input from RySG:

Firstly, we note that the TDRP is not meant to be the only mechanism for resolving disputes. We note important text in the introduction to the policy:

"In any dispute relating to Inter-Registrar domain name transfers, Registrars are encouraged to first of all attempt to resolve the problem among the Registrars involved in the dispute. In cases where this is unsuccessful and where a registrar elects to file a dispute, the following procedures apply. It is very important for Registrars to familiarize themselves with the Transfer Dispute Resolution Policy (TDRP) as described in this document before filing a dispute. Transfer dispute resolution fees can be substantial. It is critical that Registrars fully understand the fees that must be paid, which party is responsible for paying those fees and when and how those fees must be paid."

Our reading of this paragraph indicates the part of the goal is to help encourage the parties to be sufficiently familiar with the Transfer Policy and the TDRP such that they can have sufficient outcome predictability such that they resolve the problem among the registrars involved. From this, we offer three observations on the effectiveness of the TDRP:

- ***The TDRP could be sufficiently effective even if it is never used.***
- ***Inspecting case statistics likely imparts more information about those involved in the disputes than it does about the effectiveness of the TDRP.***
- ***Information coming from TDRP cases likely tells more about the effectiveness and clarity of the Transfer Policy.***

These comments notwithstanding, it would be interesting to see statistics on:

- ***The percentage of cases that were filed at the "First Level" (with the Registry Operator) vs. at the "Second-Level" (with the Dispute Resolution Panel).***

- ***The percentage of cases that were impacted by documentation shortcomings (i.e. one of the parties involved was not able to produce documents required to support its position), as implied by (g2) below.***

Early Written Input from RrSG:

The fact that there have been only 4 cases under the TDRP over a period of approximately 10 years shows that this policy, while laudable, is not effective for addressing the full landscape of disputed transfers. This may be because the TDRP is intended for violations of the transfer process itself and not situations of human error in a transfer or where a bad actor first takes over the domain (listening themselves as the owner) and then does a transfer following the correct process. The team should consider how to update the TDRP to cover this circumstance; otherwise it may be preferable to or supplement it with another lightweight policy for transfer reversals.

Early Written Input from NCSG:

According to what has been discussed the TDRP is not an effective mechanism because there are not many cases raised where a request has been solved, also there is a general concern about the costs of the process and because many registrants do not respond to those requests.

The effectiveness of the Transfer Dispute Resolution Policy (TDRP) in resolving disputes between registrars in cases of alleged violations of the Inter-Registrar Transfer Policy (IRTP) is a subject of debate. While some information is available regarding the TDRP's use and outcomes, it is unclear whether this is sufficient to determine its overall effectiveness.

Additional information that may be useful in evaluating the TDRP's effectiveness includes:

- ***The number of disputes that have been resolved through the TDRP compared to those resolved through other means, such as court proceedings or arbitration***
- ***The average length of time it takes for disputes to be resolved through the TDRP***
- ***Feedback from registrars and other stakeholders regarding their experiences with the TDRP, including whether they believe it to be an effective mechanism for resolving disputes.***
- ***Furthermore, it may be beneficial to examine whether any systemic issues contribute to disputes between registrars and, if so, to identify ways to address these issues.***
- ***While some information regarding the TDRP's use and outcomes is available, additional data and stakeholder feedback may be needed to determine its Effectiveness.***

Early Written Input from BC:

We know that the TDRP is only infrequently used from reviewing the TDRP decisions. It would be helpful to know how often the informal resolution process between registrars occurs and to

what extent it is seen as satisfactory. It would also be helpful to have some data as to the volume of hijackings that occur, even if this data is obtained from registrars, anonymously.

Deliberations:

- In initial discussions, working group members noted that survey responses point to concerns about the effectiveness of the TDRP.
- Additional data points are limited. Because there are so few cases to draw on, it is difficult to identify patterns in the cases.
- Working group members noted that it is difficult to determine why there have been so few cases, but considered several possible factors:
 - Cost of filing a TDRP complaint (loser pays model)
 - Registrars work out the issue amongst themselves and do not resort to filing a TDRP
 - Length of time between filing and panel decision
 - Ultimately, it is registrants who have a real commercial interest in undoing the transfer, but it is the registrar who needs to file the case. Registrants need to convince registrars to initiate a case, and registrars may not always be willing to do so, because they need to take into account their own interests, including potential impact on their reputation.
- It was noted that the small number of cases does not necessarily point to a problem. One working group member pointed out that if the TDRP is modified to encourage the filing of more disputes, it may encourage more bad actors to “game” the system. Therefore, it may not be wise to change to policy significantly absent strong evidence that it is necessary to do so.
- It was noted that with the redaction of data from the public WHOIS, there may be fewer cases of domain hijacking and therefore reduced need for dispute resolution, but it is difficult to point to evidence that this is the case.
- Working group members noted that there is no obligation for registrars to track and report on cases that they resolve informally (those that do not end up on the providers’ websites as listed above).
- In initial discussions, there was no clear agreement about whether additional reporting requirements may be appropriate.
- One working group member suggested that there should be tracking of inter-registrar transfers of each domain over a period of time to provide additional data points about instances of domain washing. This might inform future work on lock periods and dispute resolution channels.
- Additional data tracking of Change of Registrant occurrences for a single domain may assist with understanding incidence of domain thefts involving repeated change of ownership coupled with inter-registrar transfers.
- [Support staff received one additional data point after reaching out to the TDRP Providers. The Forum noted that it received 11 TDRP decisions in total, including 9 decisions and 2 withdrawals. Five of these decisions were issued prior to the mandatory publication. NOTE: Following this call, Support Staff received a note from ADNDRC that its case listing have been updated; the website now reflects five filed TDRP cases.]

g2) The ADNDRC reported to the IRTP Part D Working Group that in some of the cases it processed, appellees and appellants failed to provide sufficient information to support arbitration. Is this an issue that needs to be examined further in the context of the policy?
i. Are the existing informational materials about the TDRP sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they need to give to the dispute resolution provider?

- Section 3.1 of the [Transfer Dispute Resolution Policy](#) specifies information that must be included with the complaint.
- Section 3.2.1 of the [Transfer Dispute Resolution Policy](#) specifies information that must be included in the response by the respondent.

Early Written Input from RySG:

The RySG understands and agrees that the Transfer Policy and the TDRP have certain complexities related to both operations and documentation.

Some of the TDRP details (especially those involving documentation) may need revision after the completion of the changes to the Transfer Policy. That would likely be an opportune time for ICANN Org engage in revision of the informational materials about the registrars.

Early Written Input from RrSG:

It is also possible that registrars are not aware of the TDRP (or its requirements), which could explain insufficient information and documentation for TDRPs.

Early Written Input from NCSG:

The Policy is published and available to anyone who needs it. We believe that information provided by a requestor never is enough to solve an issue like this, therefore this should be examined in detail further more.

The issue of registrars failing to provide sufficient information to support arbitration is a concern that may need further examination in the context of the policy. It may be necessary to evaluate whether the existing informational materials about the TDRP are sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they must provide to the dispute resolution provider.

If registrars are unaware of the information required to support their case, it could lead to delays and inefficiencies in the dispute resolution process. It may be necessary to provide additional guidance and training to registrars on the TDRP process and the types of information required to support their claims.

Additionally, it may be necessary to evaluate whether the TDRP rules and procedures need to be updated to provide more clarity on the types of information that must be provided by the parties to the dispute. This could help ensure that all parties have a clear understanding of the evidence required to support their case and can provide it promptly and efficiently.

Additional examination and potential updates may be necessary to ensure that the TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP.

Early Written Input from BC:

The TDRP does not itself contain much to guide the evidentiary requirements and as such additional material would be helpful. Nevertheless, the systemic issues which have led to its near non-use are the real culprits here, namely the high cost of commencing a TDRP and the fact that it falls upon registrars rather than registrants to initiate and deploy the procedure.

g3) If the TDRP is considered to be insufficient:

- i. Are additional mechanisms needed to supplement the TDRP?
- ii. Should the approach to the TDRP itself be reconsidered?

Early Written Input from RySG:

i. There have been discussions of creating a structured process to the informal efforts to resolve a transfer-related problem among the registrars involved in the group. (See quoted paragraph in (g1) above). The RySG is generally supportive of these discussions. However, we note that the RySG does not seek to have a RO serve as an intermediary in any such possible “additional mechanism” or become otherwise involved. The RySG notes that the actual title of the TDRP is the “Registrar Transfer Dispute Resolution Policy” and notes its position as a third-party.

ii. The RySG is not currently aware of reasons or suggestions that would warrant a reconsideration of the approach to the TDRP.

Early Written Input from RrSG:

Yes, an additional transfer reversal process is necessary. This should be something like:

- 1. Notification by Losing to Gaining Rr of problem*
- 2. Gaining Rr returns NS to pre-transfer settings (provided by Losing Rr in step 1)*
- 3. Interaction to confirm that the transfer was invalid, including evidence*
- 4. Requirement for Gaining Registrar to respond within specific time period*
- 5. If both Rrs agree, Ry returns domain to Losing (pre-transfer) Registrar and reverses related fees*
- 6. If both Rrs do NOT agree, escalation to third-party TDRP*

Early Written Input from NCSG:

If the TDRP is found to be insufficient, additional mechanisms may need to be considered to supplement it. For example, an alternative dispute resolution mechanism could be developed, or existing tools could be enhanced. It may also be necessary to reconsider the approach to the TDRP itself, such as revising the criteria for eligibility to use the TDRP, providing more detailed guidance on the types of disputes that may be resolved through the TDRP, or increasing the role of ICANN in the TDRP process. Ultimately, the effectiveness of the TDRP will depend on how well it is designed and implemented and whether it adequately addresses the needs of registrars and the wider community.

Early Written Input from BC:

Yes, there should be a registrant-initiated procedure to tackle domain name theft with a similar process and costs as a UDRP.

Early Written Input from the ALAC:

The present TDRP prevents a Registered Name Holder (RNH) from initiating a transfer dispute. The current charter questions are worded in a way that the TDRP working group may be unable to discuss the development of transfer dispute policy as an option for a RNH to initiate a transfer dispute.

ACTION: At-Large strongly recommends adding a charter question for deliberation that includes the possibility for a RNH to initiate a transfer dispute using the TDRP.

Deliberations:

- In initial discussions, there was a general sentiment among working group members that the TDRP is insufficient and/or ineffective.
- One working group member noted that the TDRP might be effective for the cases that are handled through the mechanism, but the small number of cases indicates that the TDRP is not efficient and is perhaps too costly to be used regularly.
- Some working group members expressed that it would be helpful to understand and flesh out the goals of the TDRP before making this determination.

Suggested area for further discussion:

- Reducing costs of the TDRP
- Reducing the time it takes for a TDRP to be completed.
- Introducing more formality, for example through accreditation
- Exploring the possibility of dispute resolution options that are directly accessible by the registrant. Working group members recalled that the IRTF considered whether the dispute resolution process should be directly available to registrants and determined that it should not.
 - It was noted that currently, registrants can either 1. Work through their registrar towards an informal resolution 2. Work through the courts, which can be costly or 3. Work through their their registrar to file a dispute

- From one perspective, the current dispute process does not give registrants a sufficiently direct path to seeking resolution. The registrar may disagree with the registrants about whether a dispute should be filed.
- It was noted that the current TDRP is designed around the assumption that the two parties are registrars. It relies heavily on internal registrar documentation. It would not be a simple change to adjust the mechanism. From this perspective, if the working group wanted to recommend enabling registrants to file disputes, a new mechanism would be needed. Further consideration would need to be given to the details: payment, procedure, evidence, role of registrars, etc. It may be possible to draw on the UDRP and other procedures for inspiration.
- One working group member raised the risk of increased abuse if dispute resolution were to be available to a wider group. It was noted that if a new resolution procedure were to be developed, appropriate guardrails would be needed to reduce the risk of abuse.
- The working group needs to consider the extent to which a new mechanism for registrant-initiated disputes is in scope for this PDP. Currently, the parties to the disputes are registrars who have a contractual relationship with ICANN. Registrants do not have contracts with ICANN. The WG could potentially recommend that further consideration is given to a new mechanism, but developing such a mechanism may be out of scope of the Transfer Policy Review.
- The WG noted that the TDRP is only applicable in cases where the Transfer Policy has been violated. A wrongful transfer in which the Transfer Policy has not been violated is not covered by the TDRP. Some WG members expressed that this is a gap/shortcoming.

g4) Are requirements for the processing of registration data, as specified in the TDRP, compliant with data protection law?

Working Group members should review Sections 3.1.2 and 3.1.4 of the Transfer Dispute Resolution Policy for additional context on this question.

Early Written Input from RySG:

The RySG suggests that this is a complicated question with jurisdictional complexities. However, we note that the question seems to be more oriented to the context of a dispute resolution proceeding, rather than “the processing of registration data”. It is also likely a determination between the involved parties (likely including ICANN) and thus cannot be described as either compliant or not.

Early Written Input from NCSG:

According to TDRP, specifically on 3.1.2 and 3.1.4, the complainant should include name, postal and e-mail addresses, and the telephone and fax numbers, and the same info for respondent and the evidence documents that apply for the case.

The answer to this question depends on the specific data protection laws in question, as requirements for processing registration data may vary by jurisdiction. However, the TDRP does include provisions related to data protection, such as requiring that all personal data be processed following applicable laws and regulations and providing for the redaction of specific personal data in documents submitted during the dispute resolution process.

If a specific jurisdiction has data protection laws that are more stringent than those outlined in the TDRP, it may be necessary to make adjustments to ensure compliance. Additionally, as data protection laws continue to evolve, it may be required to review and update the TDRP to ensure ongoing compliance periodically.

Early Written Input from BC:

Unknown.

g5) Are requirements for the processing of registration data, as specified in the TDRP, appropriate based on principles of privacy by design and data processing minimization?

Working Group members should review Sections 3.1.2 and 3.1.4 of the Transfer Dispute Resolution Policy for additional context on this question.

Early Written Input from RySG:

The RySG suggests that this is a complicated question with jurisdictional complexities. However, we note that the question seems to be more oriented to the context of a dispute resolution proceeding, rather than “the processing of registration data”. It is also likely a determination between the involved parties (likely including ICANN) and thus cannot be described as either compliant or not.

Separately, we note that, in our experience, concepts such as data minimization and privacy by design are typically part of the process to gain/maintain compliance with data protection law, but execution on these points does not necessarily provide compliance with data protection law.

Early Written Input from BC:

No Comment.

Statute of limitations: Is 12 months from the date of the alleged improper transfer an acceptable deadline to file a TDRP complaint?

Summary of previous work on this issue, from the Final Issue Report: “The IRTP Part D Working Group’s Recommendation 5 resulted in the extension of the statute of limitations to initiate a TDRP from 6 months to 12 months. In its deliberations, the Working Group noted that many

registrants do not regularly check the status of their domain names, and therefore 6 months may not be long enough to notice a disputable transfer and notify the registrar, who in turn would need to initiate a dispute. The Working Group considered registrars' obligation under the Whois Data Reminder Policy (WDRP) to contact registrants annually, and noted that an extension to 12 months may be desirable in this regard. According to the Working Group's Final Report, the extension could "mitigate multi-hop transfer problems by providing the losing registrant additional 'reaction time' to inquire with their registrar after they did not receive their annual reminder to update their contact information." In addition, the Working Group did not believe that that extension unduly burdened legitimate transfers."

- It was noted in reviewing the rationale for the IRTF Part D recommendation, in practice, registrants sometimes report that the annual reminder is not reaching them. In reality, the notice may not be the appropriate mechanism to trigger the registrant to realize that the domain has been transferred.
- In initial discussions, some working group members expressed that the timeline could potentially be shorter, although others thought the timeline could be longer or that the current timeframe remains appropriate. It was noted that the group should look at the problem it is trying to solve, as any timeframe will have downstream consequences.
- In support of a longer statute of limitations, it was noted that there could be situations that the RNH doesn't realize that their name was taken for an extended period of time.
 - If the period is longer, the working group would need to take into account that the domain may expire. If the domain has been deleted, there is no recourse.
 - It was noted that there could be a caveat that the procedure is not applicable in such cases.
- During an ICANN76 working session, a community member suggested that the statute of limitations could be different depending on whether the gaining or losing registrar initiates the dispute, namely:
 - When a gaining registrar initiates a TDRP because the losing registrar will not approve an outgoing transfer request, that gaining registrar and the registrant will know immediately that there is a problem. The statute of limitations could therefore be relatively short.
 - In the case that a losing registrar initiates the dispute, the statute of limitations may need to be longer, because it may take time for the registrant to notice that there is a problem.

Additional areas of discussion:

Link to recommendations for inter-registrar transfers: The current registrar is the one that has the best ability to help the registrant when there is an issue related to a transfer. That points to the importance of measures that offer checks along the way before the transfer takes place: Losing FOA, locking periods, ability for the registrant to make intentional choices upfront.

TDRP in relation to change of ownership: Is the TDRP sufficiently able to address cases where there is an unauthorized change in ownership followed an inter-registrar transfer initiated by the new (unauthorized) registrant? Does the TDRP need to be updated/modified to address rightful ownership of a domain name.

During ICANN76, a community member suggested that TDRP section 3.2.4 vi may be out of line with the concept of the bona fide purchaser. The community member further noted that, especially in light of lack of WHOIS history due to GDPR, which would assist with due diligence with respect to the provenance of the domain name, stronger COR procedures are needed.

Also during ICANN76, a community member pointed out that 3.2.4 subsection ii is outdated in light of changes related to GDPR and Temp Spec. It essentially requires a default judgment based on an outdated requirement, and therefore should be addressed as soon as possible, before the PDP has concluded. ICANN org is working on a temporary measure to address this item.