GNSO Transfer Policy Review Policy Development Process Working Group (PDP WG) - Request for Early Input on Group 2 Topics

To: ICANN Supporting Organizations / Advisory Committees / GNSO Stakeholder Groups / GNSO Constituencies

From: Transfer Policy Review PDP WG

Subject: Request for Early Input on Group 2 Topics

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28 February 2023

Dear Community Leader:

I am writing to you on behalf of the GNSO PDP WG that is tasked with reviewing the Transfer Policy and determining if changes to the policy are needed to improve the ease, security, and efficacy of inter-registrar and inter-registrant transfers. On 30 June 2021, in accordance with GNSO policy development process requirements, the PDP WG sought the written opinion on its first set of charter topics from each Supporting Organization, Advisory Committee and GNSO Stakeholder Group / Constituency. The WG is now transitioning to work on its second set of charter topics and is seeking input on an additional set of questions.[1]

In order to ensure that this PDP can continue to progress efficiently, we are requesting input within 35 days from today, i.e., **no later than [4 April 2023]**.

The working group's scope of work is defined through a series of questions presented in the working group's charter. Currently, the working group is seeking input on the following topics:

1. Transfer Emergency Action Contact (TEAC)
2. Transfer Dispute Resolution Policy (TDRP)
3. ICANN-approved Transfers
4. Items raised in the Expedited Policy Development Process Recommendation 27, Wave 1 Report

Please see attached for the list of questions. To the extent possible, you are requested to provide your responses in the attached document with responses provided to individual questions. It is not necessary to respond to every question and you are welcome to provide any other input that you deem helpful in facilitating the deliberations. At the same time, in order to support focused and organized deliberations, input on the questions presented will be most valuable.

Please submit your response to gnso-secs@icann.org. Timely input will be incorporated into a summary document and provided to the working group. Input received after the due date may be

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[1] The PDP was originally chartered to take place in two distinct phases, but following deliberations on the phase 1 topics, the WG identified dependencies between charter topics that make it more logical to address all charter questions in the PDP iteratively as a single phase of work. Therefore, the WG is now beginning to discuss charter questions that were originally planned for phase 2. For additional information about the adjustment to the WG's project plan, please see the Project Change Request submitted to the GNSO Council on 6 February 2023: https://gnso.icann.org/sites/default/files/policy/2023/correspondence/carney-et-al-to-gnso-council-et-al-06feb23-en.pdf.

introduced into the discussion by your SO/AC/SG/C representative, ICANN support staff, or me as the pertinent topic arises.

Thank you very much and I look forward to receiving your input.

On behalf of the PDP WG,

Roger Carney
PDP WG Chair

BACKGROUND

The Transfer Policy, formerly referred to as the Inter-Registrar Transfer Policy (IRTP), is an ICANN consensus policy governing the procedure and requirements for registrants to transfer their domain names from one registrar to another.

On April 22, 2019, ICANN Org delivered the Transfer Policy Status Report to the GNSO Council pursuant to Recommendation 18 of the Inter-Registrar Transfer Policy (IRTP) Part D PDP Working Group's Final Report. Recommendation 18 states, "[t]he Working Group recommends that contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts."

During its meeting on September 19, 2019, the GNSO Council agreed to launch a call for volunteers for a Transfer Policy Review Scoping Team. The Scoping Team was tasked with advising the GNSO Council by providing recommendations on the approach to the review (for example, by initiating a new PDP), the composition of the review team or PDP working group, and the scope of the review and future policy work related to the Transfer Policy.

On April 6, 2020, the Transfer Policy Review Scoping Team delivered its Transfer Policy Review Scoping Paper to the GNSO Council for its consideration. The Scoping Team recommended that the GNSO Council instruct ICANN Policy staff to draft an Issues Report, outlining, et.al., the issues described in its Scoping Paper. On 23 June 2020, the GNSO Council voted to approve a motion requesting a Preliminary Issue Report, for delivery as expeditiously as possible, on the issues identified in the Transfer Policy Initial Scoping Paper, to assist in determining whether a PDP or series of PDPs should be initiated regarding changes to the Transfer Policy.

On 18 February 2021, the GNSO Council passed a resolution to initiate a PDP to review the Transfer Policy. The PDP working group is tasked with determining if changes to the policy are needed to improve the ease, security, and efficacy of inter-registrar and inter-registrant transfers.

The PDP was originally chartered as a two-phased PDP, with a set of deliverables for each phase. On June 21, 2022, the WG published an Initial Report focused on a sub-set of the charter questions associated with phase 1(a) of the PDP.[2] The WG has since reviewed public comments on the Initial Report and revised the preliminary recommendations, where appropriate, to incorporate the input received. The WG has also conducted preliminary deliberations on phase 1(b) topics.[3]

In the course of deliberations on the phase 1 topics, the WG identified dependencies between charter topics that make it more logical to address all charter questions in the PDP iteratively as a single phase of work. Therefore, the WG is now beginning to discuss charter questions that were originally planned for phase 2. For additional information about the adjustment to the WG's project plan, please see the Project Change Request submitted to the GNSO Council on 6 February 2023.

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[2] Phase 1(a) topics: Gaining & Losing Registrar Form of Authorization ("FOA"), including items raised in the Expedited Policy Development Process Recommendation 27, Wave 1 Report as they relate to FOA requirements; AuthInfo Code Management; Denying Transfers.
[3] Requirements associated with Change of Registrant.

Transfer Policy Review PDP WG

Questions for Community Input

Questions

This request for input is focused on the following topics:

- Transfer Emergency Action Contact (TEAC)
- Transfer Dispute Resolution Policy (TDRP)
- ICANN-approved Transfers
- Items raised in the Expedited Policy Development Process Recommendation 27, Wave 1 Report

f) Transfer Emergency Action Contact (TEAC)

f1) Is additional data needed to support evaluation of the effectiveness of the TEAC mechanism? If so, what data is needed?

It would be helpful to have some data from registrars as to;
a) How often the TEAC procedure has been invoked;
b) How often and under what circumstances parties have attempted to abuse or game the TEAC procedure;
c) Whether the current modes of contact are satisfactory to registrars; and
d) Whether the current time frame for response and the default transfer as a aresult of non-response, have been satisfactory to registrars and registrants.

f2) The time frame (4 hours) for registrars to respond to communications via the TEAC channel has been raised as a concern by the Transfer Policy Review Scoping Team and in survey responses. Some have expressed that registries must, in practice, have 24x7 coverage by staff members with the appropriate competency to meet this requirement and the language skills to respond to communications from around the world. Is there merit to concerns that the requirement disproportionately impacts certain registrars, namely:

> i. Registrars located in regions outside of the Americas and Europe, because of significant time zone differences?
> ii. Small and medium-sized registrars, which may not have a sufficiently large team to have 24x7 staff coverage with the necessary competency?
> iii. Registrars in countries where English is not the primary language, who may, in practice, need to have English-speaking TEAC contacts to respond to requests in English?

f3) To what extent should the 4-hour time frame be revisited in light of these concerns? Are there alternative means to address the underlying concerns other

than adjusting the time frame?

The BC is unable to comment from the perspective of registrars, however depending on the frequency and effectiveness of use, the four-hour time frame seems generally appropriate for emergency situations, though it can perhaps be expanded somewhat to 12 or 24 hours. Nevertheless, the apparent infrequency of the use of the TEAC procedure combined with lack of any data regarding dissatisfaction with it, would seem to mitigate in favour little change to the current approach.

f4) Section I.A.4.6.2 of the Transfer Policy states that "Communications to a TEAC must be initiated in a timely manner, within a reasonable period of time following the alleged unauthorized loss of a domain." The Transfer Policy Review Scoping Team noted that this timeframe should be more clearly defined. Is additional guidance needed to define a "reasonable period of time" after which registrars should be expected to use a standard dispute resolution process?

Yes, an emergency should be within a defined period of time, of perhaps no longer than 5 days from the impugned transfer. Nevertheless, the apparent infrequency of the use of the TEAC procedure combined with lack of any data regarding dissatisfaction with it, would seem to mitigate in favour little change to the current approach.

f5) According to section I.A.4.6.2 of the Transfer Policy, the TEAC may be designated as a telephone number, and therefore some TEAC communications may take place by phone. The Transfer Policy Review Scoping Team flagged this provision as a potential item for further consideration. Do telephone communications provide a sufficient "paper trail" for registrars who may later wish to request a transfer "undo" based on failure by a TEAC to respond? Such a request would require the registrar to provide evidence that a phone call was made and not answered, or a call back was not received within 4 hours. Noting this requirement, should the option to communicate by phone be eliminated? Is an authoritative "system of record" for TEAC communications warranted? If so, what are the requirements for such a system?

The telephone contact appears to remain an effective means of communications for the initial contact, however there should perhaps be an additional logging mechanism via a written report to ICANN, for example, or even via email correspondence which would have a paper trail. Nevertheless, the apparent infrequency of the use of the TEAC procedure combined with lack of any data regarding dissatisfaction with it, would seem to mitigate in favour little change to the current approach.

f6) The Transfer Policy Review Scoping Team indicated that there are several factors that make a Registry Operator's obligation to "undo" a transfer under Section 6.4 of the Transfer Policy challenging:

   i. Registry Operators do not have access to the designated TEACs for each Registrar, making validation of an undo request nearly impossible.

ii. There is no way for Registry Operators to independently verify that a Registrar did not respond within the required time frame or at all since Registry Operators are not a party to, or copied on, communications between the Registrar TEACs.

iii. Transfer "undo" requests associated with the failure of a TEAC to respond are unilateral so there is no validation required prior to a Registry Operator taking action. This has, on occasion, led to a "he said", "she said" scenario.

iv. Follow on to f6 iii., if the policy were to be updated to allow for some level of validation by the Registry Operator prior to taking action, the requirement to "undo" a transfer within 5 calendar days of receiving an TEAC undo request leaves little to no time to attempt to validate the request prior to taking the action.

f7) To what extent are changes to the policy needed to address these concerns? Are there other pain points for Registry Operators that need to be considered in the review of the policy in this regard?

These appear to be valid concerns, however in the absence of much data concerning dissatisfaction with a very infrequenetly used procedure, would seem to mitigate in favour little change to the current approach.

g) Transfer Dispute Resolution Policy (TDRP)

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?

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 registars 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.

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?

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 registrantws

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?

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

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

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?

No Comment.

i) **ICANN-approved Transfers**

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?

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.

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?

No Comment.

j) **Wave 1, Recommendation 27 Report (Inter-Registrar and Inter-Registrant Transfers)**

j1) How should the identified issues be addressed?

See above re TEAC.

j2) Can the identified Transfer Policy Dispute Resolution Policy Issues (noted in TDRP questions 1-5 of the Wave 1 report) be discussed and reviewed during the review of the TDRP?

Yes.

j3) Are there any Transfer Policy or Transfer Dispute Resolution Policy issues that were not captured in the Recommendation 27 Wave 1 Report that need to be considered?

Yes, there should be a recommendation for a registrant-initiated transfer dispute resolution procedure to address domain name theft.

j4) Should these issues, or a subset of these issues, be resolved urgently rather than waiting for the respective PDP Working Group?

No Comment.

Additional Question for Community Input

The following is question is not included in the PDP charter, but the working group would nonetheless appreciate community input to support its deliberations:

The Transfer Policy, formerly known as the Inter-Registrar Transfer Policy (IRTP), has been the subject of previous policy development work through a series of PDPs known as IRTP Parts A-D. In 2010, the IRTP Part B Working Group published an Initial Report, which included a proposal to establish an Expedited Transfer Reversal Policy (ETRP) that would create a mechanism for "the timely, cost-effective reversal of an Inter-Registrar domain name transfer, restoring the registration to its pre-transfer state."[4]

The proposal was met with criticism from some parts of the community. In particular, public comments on the Initial Report stated that the proposal would create uncertainty for the acquiring party, disrupt the secondary domain name marketplace, and be subject to abuse.[5] The ETRP was ultimately not included in the IRTP Part B Proposed Final Report.[6]

Some Transfer Policy Review working group members have expressed that they see value in re-considering the possibility of introducing a "quick undo" process like the ETRP to exist alongside the TEAC and TDRP. The working group would appreciate input on the following questions:

- *Is there value in reviving the ERTP proposal or a modified version of the proposal? If so, what changes may be appropriate to address concerns expressed by the community in 2010?*

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[4] Details about the ETRP proposal are available in Annex C of the IRTP Part B Initial Report on pages 49-54: https://gnso.icann.org/sites/default/files/filefield_12531/irtp-b-initial-report-29may10-en.pdf
[5] See comments on the IRTP Part B Initial Report here: https://forum.icann.org/lists/irtp-b-initial-report/
[6] The IRTP Part B Proposed Final Report summarizes the input received and reasons that the ETRP proposal was abandoned. See pages 14-19: https://gnso.icann.org/sites/default/files/filefield_22303/irtp-b-proposed-final-report-21feb11-en.pdf

Past experience had clearly demonstrated that there is no reasonable possibility of creating a transfer reversal procedure beyond what exists with the TEAC and the informal resolution undertaken by registrars. No further time or effort should be wasted on this front.

- *Are there new facts or circumstances that would make it possible for such a proposal to achieve consensus support now when it was not possible in 2010?*

No.

- *What specific needs would the "quick undo" meet that cannot be met by the TEAC and TDRP?*

The dangers of a "quick undo" have been extensively canvassed previously and there is no practical solution beyond what current exists.