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?

RrSG: The data reviewed to date appear to be empirical rather than statistical and it is not clear whether additional broader statistics are available for consideration by the working group.

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?

> RrSG: The 4 hour time frame impacts all registrars worldwide, while businesses tend to be staffed only during local business hours. A registrar in Asia can make such a request to a registrar in the Americas that is overnight. Additional flexibility needs to be built into response deadlines to accommodate business hours around the world.

> ii. Small and medium-sized registrars, which may not have a sufficiently large team to have 24x7 staff coverage with the necessary competency?

> RrSG: 24x7 coverage for every day of the year is a concern for every registrar, regardless of size. While ensuring staffing outside of business hours is disproportionately difficult for small and medium sized registrars, this impacts large registrars as well. In the Americas and Europe, staffing is significantly reduced around the Christmas/New Year period and there are similar staffing concerns around the Lunar New Year in Asian countries. While it is laudable to ensure timely responsiveness for transfer issues, this can be a *significant* burden on many registrars (and the cost of compliance may far outweigh any benefits of faster response periods).

> 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?

Commented [1]: Should this be "registrars"?

RrSG: Although the working language of the RAA is English, and much of registrar/registry communication does occur in English, there is an additional burden on requiring TEAC communications to be in English (which can also lead to additional delays for the proper resources to be available). Perhaps optional other languages can be tracked for use where relevant, or requiring TEAC communications to be in writing to allow for the use of online translation services. Forcing English or any other language was never a consideration when the IRT team originally worked on the TEAC concept approximately a decade ago.

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?

RrSG: Prior to NSp, ICANN provided the RADAR system that could be used (but was not required) for TEAC communications. The system was simple, accessible to all registrars, and verifiable for compliance purposes. Recreating a similar process in NSp should be considered; this may be also beneficial in that it would allow reports to be sent within an already-known system, so they are not likely to be mistakenly flagged as spam by the email provider. While 4 hours may be too short, there should be a minimum response deadline (perhaps 48 hours) to ensure that emergency transfer disputes are addressed in a timely manner.

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?

RrSG: The timeframe should be aligned with when the registrar is made aware of the unauthorized transfer. This can be through internal review, system notification, or when the registrar is informed of an unauthorized transfer. There could be scenarios where a registrant does not discover the transfer until a month after the unauthorized transfer (e.g. during a long summer vacation) and the timeframe should not begin until the registrar is aware of the unauthorized transfer.

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?

RrSG: Opinion in the SG is split on this question. Some registrars do not believe that a phone call provides a sufficient paper trail to provide documentation that can be relied upon later—such as when providing proof of compliance to ICANN or requesting a registry reverse a transfer for failure to respond.

Other registrars prefer a phone call, either instead of or in addition to the email.

It may be ideal to allow each registrar to choose which form of contact they would prefer.

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 have indicated that they 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.

RrSG: There is no obligation for a registrar to provide TEAC contact records to the registry, so some Registrars suggest that the registry should be required to contact both registrars before taking action that could impact the domain in determining whether there is noncompliance.

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.

RrSG: Transfer undoes should only occur for TEAC noncompliance when a registry can conclude that the TEAC obligations of the gaining registrar were noncompliant, not in a scenario where evidence from the two registrars is conflicting. The group may benefit from considering requiring the creation of a communication path to pass these TEAC requests back and forth and ensure that the registry and ICANN also have visibility into them.

It may also be worth considering adding in a lock against further changes while the TEAC communication process is in progress, and/or considering a reversion of DNS Nameservers for domain in focus as a potential remedy for exigent matters where conflict is present between the losing and gaining Rr related to transfer reversion.

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.

RrSG: This can be expanded to ensure that the registry operator hears from both sides prior to making the decision to undo a transfer. Such a decision should not be based upon the claims of one registrar and the other registrar should be provided the opportunity to rebut claims; if they do not, the registry can assume that the other registrar's claims are valid.

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?

RrSG: Another pain point is lack of adoption/understanding by registrars of TEAC, which lessens the efficacy of the policy. As part of any updates to the policy, ICANN should ensure that all registrars are aware of the TEAC and encouraged to use it to resolve emergency transfer disputes.

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?

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.

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?

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.

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?

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

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

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?

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?

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?

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

j1) How should the identified issues be addressed?

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?

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?

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

Commented [3]: 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.

Commented [4]: 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.

Commented [5]: The RrSG does not have feedback on this section

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

Commented [6]: The RrSG generally support the undo process that the WG is already considered, but we can review ETRP to see what ideas they had which we should also look into, or what pitfalls were identified that we can learn from.

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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