

# Registries Stakeholder Group Statement



## Transfer Policy Review PDP - Early input on group 2 topics

17 April 2023

### Background<sup>1</sup>

*On 28 February 2023 the GNSO PDP WG tasked with reviewing the Transfer Policy shared a request for early input on Group 2 Topics with ICANN Supporting Organizations, Advisory Committees, GNSO Stakeholder Groups, and GNSO Constituencies.*

### *Related RySG comments*

- [RySG feedback Transfer Policy PDP - Request for Early Input](#) August 2021
- [RySG comment Initial Report on the Transfer Policy Review - Phase 1\(a\)](#) July 2022

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## Registries Stakeholder Group Comments

### I. RySG Overarching Comments

The Registries Stakeholder Group (RySG) welcomes the opportunity to provide early input to the GNSO Transfer Policy Review Policy Development Process Working Group. The RySG appreciates that the Transfer Policy Review PDP Working Group is examining various user scenarios, both as a result of changes due to the Temporary Specification and looking for opportunities to improve the experience of registrants. We look forward to reviewing the details that come from this analysis.

The RySG looks forward to continuing to engage in the ongoing work of the PDP to discuss these topics further.

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<sup>1</sup> Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

## II. RySG Feedback on the Request for Early Input questions

### 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?*

#### RySG comment:

The RySG believes that the effectiveness of the TEAC mechanism could be better evaluated if there was more data available from Registrars on:

- The frequency of TEAC exercise (both absolute quantities and relative to number of transfers),
- The types mechanisms (if any) that are used prior to exercising the TEAC,
- The types of situations that typically cause TEAC exercise,
- The frequency of TEAC exercise issues (both absolute quantities of TEAC issues and relative to number of transfers),
- The types of situations that typically surround TEAC exercise issues,
- Situations in which TEAC usage has been involved in a fraudulent transfer (i.e. TEAC was abused).

*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?*

#### RySG comment:

There are two issues entangled in this question: time zone and language. Both are challenges primarily due to the 4-hour response timeframe and the phone-oriented nature of the TEAC mechanism.

On language:

The RySG notes that registries and registrars need to communicate as part of the general need to do business and operate in a global environment. So, for each party to have a pair of contacts that can communicate by phone in an emergency does not seem to be unreasonable.

On time zone:

The RySG notes the obvious fact that the internet operates 24/7/365. So, for each party to have staff that are on-call is part of the burden of operating in the internet infrastructure space.

Thus, “on paper”, the 4-hour timeframe for registrars to respond might seem reasonable. (And perhaps it did when it was designed and decided during previous policy work.) But we observe that as a practical matter, the 4-hour timeframe and the telephone-driven nature of the TEAC mechanism can lead to suboptimal outcomes. This is mostly because the combination of the two opens a vehicle for abuse by clever actors in certain operational situations.

Research of prior RySG [comments](#) on the IRTP Part B (March 2011) indicates (at that time) most voicing an opinion within the RySG supported a timeframe of 24 hours.

Therefore, the RySG encourages a review of and update to the TEAC mechanism, albeit not for the reasons implied by this question.

*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?*

RySG comment:

As described in the RySG comment to (f2), the RySG would support a review of both the 4-hour timeframe and the telephone-oriented mechanism that currently comprise the TEAC.

The 4-hour timeframe seems worthy of a careful review, even in the absence of any other changes.

The RySG encourages the exploration of integrating a TEAC-like function into the ICANN nSP such that a Losing Registrar could “open a TEAC case” on a particular domain name registration transfer, involving a Registry and a Gaining Registrar. And this would cause the nSP to send a notification to the Gaining Registrar’s TEAC contact(s) via the Gaining Registrar’s configured contact mechanism(s) (e.g., email, text, phone, etc). Then, the Gaining Registrar’s contact would have the opportunity to respond in the nSP. And after an appropriate window, the Registry could be notified if a policy-driven transfer reversal was required.

*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?*

RySG comment:

The RySG supports the providing of both additional guidance and/or specific limits on the use of the TEAC mechanism related to the period of time following the alleged unauthorized loss of a domain. The RySG notes that the Transfer Policy states that “communications to a TEAC must be initiated in a **timely** manner” (emphasis added) and uses the qualification “following the alleged **unauthorized loss** of a domain” (emphasis added).

The Transfer Policy makes no statements about either the (prior) Registered Name Holder (or the Losing Registrant) becoming *aware* of the unauthorized loss of a domain name.

We further note that the TDRP has a defined Statute of Limitations (see Section 2.3) which requires that: “A dispute must be filed no later than six (6) months after the alleged violation of the Transfer Policy.”

*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?*

RySG comment:

The RySG believes that having a primary mechanism involving telephone communications makes for a situation that is difficult to scrupulously document. While it is technically possible to extract call logs to capture definitive records, the operations can be time-consuming and of disproportionate effort.

The RySG is not prepared to recommend that the option for phone communication be eliminated without understanding the proposed option(s) for replacement.

As described in (f3) above: The RySG encourages the exploration of integrating a TEAC-like function into the ICANN nSP such that a Losing Registrar could “open a TEAC case” on a particular domain name registration transfer, involving a Registry and a Gaining Registrar. And this would cause the nSP to send

a notification to the Gaining Registrar's TEAC contact(s) via the Gaining Registrar's configured contact mechanism(s) (e.g., email, text, phone, etc). Then, the Gaining Registrar's contact would have the opportunity to respond in the nSP. And after an appropriate window, the Registry could be notified if a policy-driven transfer reversal was required.

Using this mechanism, optional phone communications could supplement required communications.

*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.*

RySG comment:

One item not mentioned in (f6) but intimated in (f4) is related to the timeliness (or lack thereof) of TEAC exercise relative to a particular transfer.

Another item not mentioned is the occurrence of TEAC-involving events during certain holiday or seasonal operational periods.

Regarding (i) above, the RySG's specific issue about TEAC contacts is that the information held by each RO can easily become outdated. The RySG has suggested that ICANN Org include the Rr TEAC in the list of Rr contacts that it regularly supplies to the ROs. In this context, (i) perhaps understates the availability of TEAC information. However, the validation of an undo request can be difficult.

Regarding (ii), (iii), and (iv), these are generally accurate.

*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?*

RySG comment:

In the context of this question, we take “these concerns” to refer to the concerns described in (f6) above, as augmented by our comments to (f6).

As stated elsewhere in this feedback, RySG supports improvements and updates to the TEAC mechanism to address these concerns and others.

### **g) TransferDisputeResolutionPolicy(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?*

RySG comment:

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.

*g2) The ADNDRC reported to the IRTF 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?*

RySG comment:

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.

*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?*

RySG comment:

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.

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

RySG comment:

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.

*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?*

RySG comment:

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.

**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?*

RySG comment:

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.

*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?*

RySG comment:

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.

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

*j1) How should the identified issues be addressed?*

RySG comment:

Recommendation 27 states that:

"The EPDP Team recommends that as part of the implementation of these policy recommendations, updates are made to the following existing policies / procedures, and any others that may have been omitted, to ensure consistency with these policy recommendations as, for example, a number of these refer to administrative and/or technical contact which will no longer be required data elements:"

The RySG recommends that the updates be made as part of the PDP. That is, the PDP should simply review the existing policy for such instances that refer to the administrative and/or technical contact and perform updates to accommodate such changes. In most cases, it is likely that a simple annotation of "(where available)" will suffice.

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?

RySG comment:

The RySG believes that the identified TDRP issues can be discussed and reviewed during the review of the TDRP that takes place during the PDP.

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?

RySG comment:

At this time, the RySG has not identified any issues related to the Registration Data Policy that relate to the Transfer Policy or the Transfer Dispute Resolution Policy.

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

RySG comment:

Consistent with RySG comments related to the EPDP, policy review should be undertaken by the GNSO Council. The RySG has previously expressed concerns that the wording of Recommendation 27 directs ICANN to make changes, which is inappropriate and out of ICANN's mandate.

**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."<sup>4</sup>*

*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.<sup>5</sup> The ETRP was ultimately not included in the IRTP Part B Proposed Final Report.<sup>6</sup>*

*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 ETRP 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?*

RySG comment:

The RySG encourages the review of the “Proposed Final Report on the Inter-Registrar Transfer Process - Part B Policy Development Process” [document](#) (dated 21 February 2011). The document includes a summary of the Public Comment Period on the Initial Report and provides context about the reasons it was removed from the [Initial Report](#) (dated 29 May 2010).

Additionally, we note that the Initial Report, in its Executive Summary, provides important context on the origin of the concept for the ETRP: a July 2005 Report from SSAC called “Domain Name Hijacking: Incidents, Threats, Risks, and Remedial Actions”, now referred to as [SAC-007](#).

Given the general increase in the sophistication within the industry as it relates to inter-registrar transfers during the 10+ years this the ETRP has been discussed, the RySG notes that registrant account compromise is a far more formidable threat as a domain control hijacking vector in today’s environment than transfer-based mechanisms.

While we are not opposed to the discussion of such a mechanism and welcome the introduction of well-considered approaches, we have not seen data to suggest there is a great need for such a mechanism in today’s market, and we suggest that there may be other areas of policy implementation that would provide a greater benefit to the community.