

ARTICLE 19 response to the ICANN Initial Report on the Transfer Policy Review - Phase 1(a)

Introduction

ARTICLE 19 welcomes the efforts of the Internet Corporation for Assigned Names and Numbers (ICANN) to engage in a multi-stakeholder process by holding this Public Comment Process for the ICANN Initial Report on the Transfer Policy Review - Phase 1(a).¹

This consultation is an important opportunity, as the goal of the Transfer Policy is to provide for enhanced domain name portability, resulting in greater consumer and business choice and enabling Registrants to select the Registrar that offers the best services and price for their needs. Importantly, this policy will allow Registrants to have the opportunity to easily move their domains and this impacts considerably the human rights of internet users. We thus appreciate the opportunity to provide ICANN with our position on the topic and we look forward to the discussions that will follow.

This statement is made on our own behalf. We also endorse comments by the At-Large Advisory Committee (ALAC), the Non Commercial Stakeholder Group (NCSG) and Non Commercial User Constituency (NCUC).

About ARTICLE 19

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press, and the right to access information. With regional programmes in Africa, Asia, Europe, Latin America, and the Middle East and North Africa, we champion freedom of expression at the national, regional, and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance.

At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organisation (GNSO) under the Non-Commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organisation (EURALO). We work within the ICANN community with the main purpose of raising awareness of how the Domain Name System (DNS) affects

¹ ICANN Initial Report on the Transfer Policy Review - Phase 1(a)

<<https://www.icann.org/en/public-comment/proceeding/initial-report-on-the-transfer-policy-review-21-06-2022>> accessed on 12 July 2022

human rights. This aim would ensure that Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws with an impact on human rights are implemented in full and put the user at the centre of policy development processes.

Summary

At the end of June 2022, ICANN published the ICANN Initial Report on the Transfer Policy Review - Phase 1(a), seeking input from the community.

We welcome the work of ICANN on releasing the document in line with Workstream 2 Recommendations on ICANN Transparency. The policy governs the procedure and requirements for Registrants to transfer their domain names from one Registrar to another, also referred to as an inter-Registrar transfer. Our analysis shows that, primarily, the document contains several positive and commendable provisions, such as those related to ensuring that Registrants have the ability to easily transfer domains between Registrars.

We also welcome the updates to terms that have been made to ensure that terms are easily understandable by Registrants and also welcome the implementation of data protection provisions through the Transfer Policy.

ARTICLE 19 notes that this Policy process is the first step towards review of the Transfer Policy. We look forward to the next two processes including:

- Phase 1(b): Change of Registrant (including EPDP Phase 1, Recommendation 27, Wave 1 Change of Registrant issues).
- Phase 2: Transfer Emergency Action Contact and reversing inter-Registrar transfers, Transfer Dispute Resolution Policy (including EPDP Phase 1, Recommendation 27, Wave 1 TDRP issues), ICANN-approved transfers.

ARTICLE 19 therefore urges ICANN to consider the recommendations below, which would help align the ICANN Status ICANN Initial Report on the Transfer Policy Review - Phase 1(a) more closely with international law and best practice.

Preliminary Recommendation 1

We welcome the elimination of the requirement that the Gaining Registrar should send a Gaining Form of Authorization (GFA). Importantly, this would be in compliance with the principles of data minimisation and privacy by design, which require that only the data that is strictly necessary to the intended purpose of use is collected and stored for only the minimum time necessary in line with this purpose. We also note that the GFA was redundant, as it required the transfer of personally identifiable information (PII) of the Registrant (Registered Name Holder- RNH) back to the Registrar of Record, despite the fact that the Registrar

of Record had already transferred this data to the Gaining Registrar; thus, the data did not serve any purpose and there was no clear policy of deletion of the data and retention periods under this transfer.

By eliminating this data, ICANN would ensure that Registries minimise risks to Registrants' human rights by having their data accidentally leaked by a service provider that they were no longer affiliated with.

Preliminary Recommendation 2

We welcome the elimination of the requirement that the Registrar of Record should send a Losing Form of Authorization (LFA) to the Gaining Registrar. First, the use of this form delays the process of transfer of a domain from one Registrar to another by five days. Eliminating this requirement makes it easier for a Registrant to exercise their right to choose their Registrar as seamlessly as possible and without undue delay.

Second, the data collected via this form is not necessary and therefore not compliant with the principles of data minimisation and privacy by design. Additionally, the LFA was redundant, as its purpose was already achieved through the Transfer Authorization Code (TAC), a token created by the Registrar of Record and provided upon request to the Registrant or their designated representative and available to the Gaining Registrar in order to facilitate the transfer of a domain name to the new Registrar.

Lastly, the elimination of the LFA and the enforcement of the TAC effectively serves two purposes that places more information in the hands of Registrants and therefore strengthens their power as stakeholders in these processes:

1. The Registrant is informed of inter-Registrar transfers, which provides the Registrant/ user with the information necessary to appeal the transfer and assert any privileges that may be attached to their domain name; and
2. A sufficient record of the process is maintained, which supports any investigation of complaints raised by Registrants and the resolution of disputes.

Preliminary Recommendation 3

We welcome the introduction of the requirement that the Registrar of Record must send a "Notification of TAC Provision" to Registrants without undue delay but no later than 10 minutes. We specifically welcome the requirement to include the following elements in the notification:

- The domain name(s) being transferred;

- The date and time that the TAC was provided and information about when the TAC will expire;
- Instructions detailing how the RNH can take action if the request is invalid (how to invalidate the TAC); and
- The TAC, if the TAC has not been provided via another method of communication.

The introduction of these elements ensures that a Registrant would have a meaningful opportunity to respond in the case that their domain is being transferred to another Registrar under circumstances that are objectionable to them such as in instances where the domain is being transferred without their authorization.

Lastly, the Recommendation supports Recommendation 1 and 2 in elimination of the LFA and the GFA and the aim of strengthening data protection.

Preliminary Recommendation 4

We welcome the introduction of the requirement that the Losing Registrar must send a “Notification of Transfer Completion” to the Registrant, at the time of the transfer request, without undue delay but no later than 24 hours after the transfer is completed. We specifically welcome the requirement to include the following elements in the notification:

- The domain name(s) transferred;
- Written confirmation that the domain name was transferred;
- The date and time that the transfer was completed; and
- Instructions detailing how the RNH can take action if the transfer was invalid (how to initiate a reversal).

Lastly, the Recommendation supports Recommendation 1, 2 and 3 in elimination of the LFA and the GFA and the aim of strengthening data protection.

Preliminary Recommendations 5, 6, 7 and 8

We welcome the requirement that all related policies must use the term “Transfer Authorization Code (TAC)” in place of the currently-used term “AuthInfo Code” and related terms. Importantly, this change in terminology allows for Registrants to easily understand the policies and the purpose of the term in Registrar-Registrant contracts.

We also welcome the requirement that the information of the TAC should be recorded in an encrypted format, in line with RFC 9154², which ensures that data

² RFC 9154 <<https://datatracker.ietf.org/doc/rfc9154/>> accessed on 12 July 2022

is accessed in accordance with the European Union General Data Protection Regulations (GDPR).

Preliminary Recommendations 9, 10 and 11

We welcome the requirement that all requests to transfer domain names should only be generated upon the request of the Registrant or their representative. This provision is important, as it mitigates the threat of domain hijacking by malicious actors.

Preliminary Recommendations 12, 13, 16 and 17

We welcome these recommendations, as they set clear time limits for Registrars and Registrants within which to complete transfers of domains from one Registrar to another. The communication of these clear timeframes to Registrants will help them to make decisions regarding whether they wish to appeal or halt the process before it is carried out.

Preliminary Recommendations 14 and 15

We welcome these recommendations, as they update key terms in ways that improve clarity and transparency. These changes include the following:

1. The term "Whois data" shall have the same meaning as "Registration Data".
2. The term "Whois details" shall have the same meaning as "Registration Data".
3. The terms "Administrative Contact" and "Transfer Contact" are replaced with "Registered Name Holder".

These changes in terminology allow for Registrants to more easily understand the policy and the purpose of the terms in Registrar-Registrant contracts.

Preliminary Recommendation 18

We welcome the introduction of the requirement that the Registrant must be notified of the reasons for denial, whenever a decision for denial has been made. This would ensure that a Registrant is fully informed to be able to appeal such a decision, if they choose.

Conclusion

ARTICLE 19 is grateful for the opportunity to engage with ICANN in this process, in light of the Workstream 2 Recommendations and the five objectives under ICANN's Strategic Plan for Fiscal Years 2021-2025.

We look forward to continued collaboration to strengthen human rights considerations in the Domain Name System and particularly in ICANN's policies and procedures. We welcome further engagement opportunities and avail ourselves in case of any questions or concerns.

If you would like to discuss this analysis further, please contact Ephraim Percy Kenyanito, Senior Digital Program Officer, at ephraim@article19.org. Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Digital Programme, you can contact us by e-mail at digital@article19.org.