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| <b>ICANN</b><br>POLICY FORUM               | <b>77</b> |
| <b>WASHINGTON, D.C.</b><br>12-15 June 2023 |           |

**Transfer Policy Review Working Group Session**  
**ICANN77**  
**Thursday, 15 June 2023**



# Agenda

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1. Welcome and Session Overview
2. Preliminary Findings on Transfer Emergency Action Contact (“TEAC”)
3. Preliminary Findings on Transfer Dispute Resolution Policy (“TDRP”)
4. Discussion of Registrant Access to TDRP or Similar Mechanism
5. AOB

# Preliminary Findings on Transfer Emergency Action Contact ("TEAC")

# What is the Transfer Emergency Action Contact (“TEAC”)?

- ❖ Used for urgent communications relating to transfers (I.4.6.1)
- ❖ Establishes a real-time conversation between registrars in an emergency (I.4.6.1)
- ❖ For use by registrars, registries, ICANN org (not registrants) (I.4.6.2)
- ❖ Responses from the TEAC must be non-automated (I.4.6.3)
- ❖ Responses are required within 4 hours of the initial request (I.4.6.3)
- ❖ Final resolution of the issue may take longer than 4 hours (I.4.6.3)



# Charter Questions Related to TEAC (f1)

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

- WG reviewed:
  - Survey results
  - Metrics from ICANN's Contractual Compliance department
  - Anecdotal input from Registrar and Registry representatives
- WG agreed the above data were sufficient to inform deliberations
- WG noted the decentralized nature of the TEAC mechanism makes it difficult to consistently track information about utilization of the channel and that in practice, potentially useful data points are not readily available.

# Charter Questions Related to TEAC (f2/f3)

f2/f3) 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. Does this timeframe need to be adjusted?

- WG took note of feedback and observed Survey results and noted the potentially significant consequences of not responding within 4 hours
- Ultimately, the working group agreed that a longer timeframe for initial response is warranted based on concerns across time zones, holidays, etc.
- **DRAFT REC:** The working group is recommending that the policy must be revised to update the required timeframe for initial response from 4 hours to 24 hours / 1 calendar day.



# Charter Questions Related to TEAC (f4)

f4) Is additional guidance needed to define a “reasonable period of time” after which registrars should be expected to use a standard dispute resolution process?

- 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 working group agreed that the most appropriate path forward is to set a clear expectation for a “reasonable period of time” while also providing an opportunity to use the TEAC channel after a longer period under extenuating circumstances
- WG discussed the 30-day inter-registrar transfer restriction after transfers/new registrations (Phase 1(a)) - the purpose of the 30-day restriction is to provide an opportunity for the registrant and Registrar to identify and act on unwanted or unauthorized activity before a subsequent inter-registrar transfer can take place

# Charter Questions Related to TEAC (f4)

f4) Is additional guidance needed to define a “reasonable period of time” after which registrars should be expected to use a standard dispute resolution process?

- **DRAFT REC:** The working group recommends that the Transfer Policy must be updated to state that the initial communication to a TEAC is expected to occur no more than [30 days] following the alleged unauthorized loss of a domain. 
- **DRAFT REC:** Once a Gaining Registrar has provided an initial non-automated response to a TEAC communication as described in Section I.A.4.6.3 of the Transfer Policy, the Gaining Registrar must provide additional, substantive updates by email to the Losing Registrar every 72 hours / 3 calendar days until work to resolve the issue is complete. These updates must include specific actions taken by the Gaining Registrar to work towards resolution. 

# Charter Questions Related to TEAC (f5)

f5) 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? 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?

- Some Registrar representatives in the WG opposed rigid requirements regarding the method of contact by which TEAC communications occur. From this perspective, when handling an emergency, it is beneficial to have flexibility.
- Some working group members expressed that if TEAC communications are limited in number, such a transition to an authoritative system of record may not be worth the effort. Working group members also noted that a centralized system creates a single point of failure, which may be undesirable when handling emergency situations.
- The working group agreed that Registrars should have the discretion to use the method of communication they choose, including text messages and phone calls, but if the initial contact occurs by means other than email, Registrars must supplement this communication with an email exchange.

# Charter Questions Related to TEAC (f5)

f5) 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? 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?

- **DRAFT REC:** The working group recommends that initial communication to the TEAC described in Section I.A.4.6.2 of the Transfer Policy must either be in the form of email or be accompanied by an email communication to the TEAC. This email “starts the clock” for the 24-hours response timeframe specified in Preliminary Recommendation #G2-1. The Gaining Registrar receiving the TEAC communication must respond by email within 24 hours.



# Preliminary Findings on Transfer Dispute Resolution Policy ("TDRP")

# What is the Transfer Dispute Resolution Policy (“TDRP”)?



Designed for **cases of alleged invalid inter-registrar transfers**, where registrars are unable to resolve the issue amongst themselves



Must be filed by **Registrar (not Rt) within 12 months of alleged invalid transfer** (TDRP Sec. 2.2)



Decided by **independent panelist(s)** appointed by the Provider (TDRP, Sec. 1.3)



Complainant must **pay fee to file a TDRP** (may be transferred to respondent in some instances) (TDRP, Sec. 3.3)



**Documentation** of alleged improper transfer is required (TDRP, Sec. 3.1, 3.2)

# Charter Questions Related to TDRP (g1)

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?

- WG reviewed limited available data including:
  - Published TDRP decisions
  - ICANN Compliance data related to TDRP
- WG noted that the data is limited because many transfer-related disputes are handled b/w registrars outside of the TDRP (informal resolution)
- WG noted that small number of filings does not, alone, indicate an issue with the TDRP - the scope of the TDRP is very limited, and the WG believes it is an effective mechanism to address the types of disputes it was designed to address: alleged violations of the Transfer Policy

# Charter Questions Related to TDRP (g2)

g2) 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?

- In responding to this question, the WG reviewed:
  - (i) text of the TDRP relating to the documentary information required to be provided by filing and responding parties,
  - (ii) specific cases published on the TDRP providers' websites, and
  - (iii) existing information ICANN org provides on its web pages related to transfer disputes and transfer-related issues.
- WG noted the TDRP requirements are sufficiently clear and do not need adjustments at this time
- WG noted that for requirements that change as a result of new policy recommendations need to be drafted in a clear and user-friendly way to assist parties, providers, and panelists

# Charter Questions Related to TDRP (g4/g5)

g4/g5) Are requirements for the processing of registration data, as specified in the TDRP, compliant with data protection law? Are the requirements appropriate based on principles of privacy by design and data processing minimization?

- In responding to this question, the WG reviewed:
  - the data points that are transferred b/w parties, provider, and panelist
- WG noted some TDRP evidentiary requirements need to be updated based on EPDP - Temp Spec - Phase 1, Rec. 27, including outdated terminology, as well as Transfer Policy Review WG Phase 1(a) - removal of Gaining FOA

# Registrant Access to TDRP or Similar Dispute Mechanism

# Charter Questions Related to Registrant Access TDRP (g3)

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?

- Registrants who believe a violation of the transfer policy has occurred currently have 3 options:
  - Request registrar to resolve the issue informally with other registrar
  - If informal resolution is unsuccessful, convince registrar to file TDRP
  - Go to court
- Some WG members have noted this is not ideal for registrants and believe a new mechanism may be needed

# New Dispute Resolution Mechanism for Registrants?

| PROS  | CONS  |
|---|---|
| <ul style="list-style-type: none"><li>• Provides an additional option for registrants who believe a transfer policy violation has occurred and:<ul style="list-style-type: none"><li>• Registrar does not wish to file a TDRP</li><li>• Registrar is unresponsive</li></ul></li><li>• Potential time + cost savings</li></ul> | <ul style="list-style-type: none"><li>• New mechanism could result in increased abuse and gaming</li><li>• TDRP requires a lot of documentary evidence that the registrant likely does not have</li><li>• Some have proposed new mechanism to address more than transfer policy violations (such as domain theft), which would introduce a lot of complexity (property laws across jurisdictions, such as bona fide purchaser laws)</li></ul> |