



ALAC BOARD ADVICE
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ALAC INPUT ON TRANSFER POLICY PDP CHARTER RECOMMENDATIONS PHASE 2 G3

The TDRP Phase 1 Charter question 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?

Draft Preliminary Recommendation:

The Working Group recommends the GNSO request an Issues Report or other suitable mechanism to further research and explore the pros and cons of (i) expanding the TDRP to registrant filers and (ii) creating a new standalone dispute resolution mechanism for registrants who wish to challenge improper transfers, including compromised and stolen domain names. In making this recommendation, the Working Group recognizes that if such an effort were ultimately adopted by the GNSO Council, this request could be resource-intensive and will require the Council to consider the appropriate timing and priority against other policy efforts.

ALAC Comment to the Draft Recommendation

At-Large is in the opinion that the Registrant should be given the opportunity to initiate a TDRP. Further that this should be included in the recommendations given by the Working Group.

At-Large finds it unreasonable that the only option for a Registrant is to take a dispute to court.

At-Large acknowledges that the TDRP is connected to the transfer process only and not any other scenarios where the Registrant has “lost his/her domain name”. At-Large is therefore in favor of asking GNSO to *further research and explore the pros and cons of (i) expanding the TDRP to registrant filers and (ii) creating a new standalone dispute resolution mechanism for registrants who wish to challenge improper transfers, including compromised and stolen domain names.*

Rationale for ALAC Comment to the Draft Resolution

1. The GNSO-TPR recommendations given in Phase 1 will set a complete new set of processes to the Losing and Gaining Registrars. Based on experience, the accredited Registrars will interpret the new policy differently. This may create a situation where the Registrars are not willing to admit their error and thereby not willing to initiate a TDRP.
2. It has been argued that it is only the Registrars that can update the Transfer Dispute Panel with relevant data. In our view, the panel appointed in a TDRP process, will have the authority to collect data from the Losing and Gaining Registrars. Adopting a similar process as with UDRP proceedings will assure the Transfer Dispute Panel gets required data.
3. The Registrant may submit a dispute to ICANN Compliance. According to information given by ICANN Compliance, ICANN Compliance *will have no contractual authority to return the domain name or instruct the registrar to return the domain name to previous registrant.*

[Chat message ICANN77 Holida Yanik - ICANN Org 03:15:44](#)

ICANN's authority extends to the enforcement of the requirements outlined in the agreements it has with contracted parties and ICANN consensus policies. If a failure to comply with the agreement or policy is found, Compliance addresses the identified noncompliance with the registrar, but will have no contractual authority to return the domain name or instruct the registrar to return the domain name to previous registrant.

4. The majority of all transfer disputes are being sorted by the Registrars involved and not with use of the TDRP. Based on the very low volume of TDRP cases, At-Large does not expect a significant increase of TDRP cases with the new proposed policy, hence allowing a Registrant to initiate a TDRP will not create additional and unnecessary work.

MDP WORKING DRAFT

ALAC Comment to the Draft Recommendation

In accordance with the ICANN By-Laws, the role of the At Large Advisory Committee (ALAC) is to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. ALAC respectfully disagrees with the current draft recommendation as it presupposes an outcome that is detrimental to the interests of individual internet users and instead benefits the economic interest of contracting parties. Given the substantial representation of contracting parties within the Transfers Policy Working Group and at the GNSO Council, ALAC is not naive that this request will likely be rejected. Notwithstanding, ALAC believes it is important to document the perceived injustice to individual Internet users so that they may be able to seek recourse through other fora if ICANN elects not to address this issue in a timely manner.

ALAC fully supports the efforts of the Transfers Policy Working Group to facilitate the prompt and secure transfer of domain names to a registrar/reseller of their choice. This is clearly within ICANN's Core Mission "to promote and sustain a competitive environment in the DNS market." However, ALAC believes there is a growing body of evidence that domain names are being transferred (intra-register and inter-registrar) without the consent of the original registrants and this negatively impacts the trust of end internet users in ICANN and its ability to provide a safe and secure namespace.

Listed below are two recent examples involving the transfer of a domain name from the original registrant's account that has resulted in the initiation of a legal proceeding. The unique nature of these cases demonstrate why only in the rarest of cases will a court proceeding be initiated, and why the vast majority of registrants are left with no recourse.

Uzi Nissan for

<https://domainnamewire.com/2023/06/28/estate-of-uzi-nissan-says-nissan-com-is-stolen/>