ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 02 May 2023 at 16:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: https://community.icann.org/x/9YLKDQ

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
http://gnso.icann.org/en/group-activities/calendar

JULIE BISLAND: Okay. Well, good morning, good afternoon, and good evening. Welcome to the Transfer Policy Review PDP Working Group Call taking place on Tuesday the 2nd of May 2023. For today's call, we have apologies from Raoul Plommer, NCSG, and Crystal Ondo, RrSG. They have formally assigned Juan Manuel Rojas, NCSG, and Essie Musailov, RrSG as their alternate for this call and for remaining days of absence. As a reminder, an alternate assignment must be formalized by way of a Google assignment form, the link is available in all meeting invite emails. All members and alternates will be promoted to panelists, observers will remain as an attendee and will have access to view chat only.

Statements of interest must be kept up to date. Does anyone have any updates to share? If so, please raise your hand or speak up now. Seeing no hands, please remember to state your name before speaking for the transcription. Recordings will be

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

posted on the public wiki space shortly after the end of the call. And as a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior. Thank you. And over to our chair, Roger Carney. Please begin, Roger.

ROGER CARNEY: Great. Thanks, Julie. Welcome, everyone. Just a couple of updates before we get started on the agenda today. I hope everyone noticed that we did receive one more early input comments from the SSAC. And, again, hopefully, everybody's reading those comments so that we can talk about them as we touch on those topics that they've provided comments on. Again, we did receive several comments, so please make sure you read through those and make sure that you're prepared to discuss those items as we hit.

Also, ICANN77 is just around the corner now, actually. Not sure of the exact timeline, but we'll say weeks now. And our focus there is going to be covering the draft recommendations on any changes or proposals to update or change the TEAC or TDRP. So again, trying to get the focus for these last few weeks toward that discussion of any recommendations that we come up with for the TEAC or to TDRP. Excuse me there. And maybe I'll turn it over to Emily really quick, sorry, to go over our work plan. Thank you.

EMILY BARABAS:	Sure. I'm happy to take over for a moment. Hi, everyone. It's Emily from Staff. So as is now our tradition for this group, I'm just going to briefly share the current project plan for the coming weeks. Again, not a lot of surprises here. One outstanding action item, which was first Staff to revise the text based on last week's discussion of the Recommendation 27 way of one working document. And we'll close that out today since that's what we're going to be going over as the second substantive item on the agenda.
	And then today, we're going to be focusing on the Small Team proposal and what the full working group wants to do with that in terms of next steps and we'll also be spending a little bit of time going over possible edits in response to last week's discussion on the Rec 27 items. And then the hope is that we have five more calls before ICANN77 and the hope is that we can spend a lot of that time really digging back into or core charter questions on TEAC and TDRP and getting some draft recommendations together to present at ICANN77 to the broader community. So that's where we are on work plan, and I will hand it back to Roger, if he's able to speak. Thanks.
ROGER CARNEY:	Great. Thanks, Emily. Yes. Sorry about that, everyone, and thanks, Emily, for going over that real quick with us. Okay. I think I'll open the floor up to any stakeholder groups that want to bring anything forward that they've been discussing outside of this meeting or any comments or questions that they have that the group can ponder. So, I'll open the floor up to any stakeholder groups for anything they want to bring forward. Okay. Well, I

think we'll go ahead and jump into our agenda then, and I'll turn this over to Rich who will walk us through what the Small Teams have been working on the last couple weeks and where they're at now. So, Rich, if you want to take over, please, go ahead.

RICHARD BROWN: Hi, everybody. Rich Brown for the record. Do I sound all right? I didn't do a mic check earlier.

ROGER CARNEY: Sounds great, Rich. Thanks.

RICHARD BROWN: All right. Thank you. Let me pull this up here on a bigger screen. So, I think a couple of weeks ago, a small group was tasked to codify what the informal process of transfer disputes is between registrars. The main point of this exercise was, one, this is something that most registrars do, but this is not written down or codified anywhere. Two, the TDRP process also states that prior to any TDRP, and I'm paraphrasing, that registrar should try to resolve any dispute process. So, the small group was tasked with putting together what that process is.

Now, as for how this write up is used, some believe it should be turned into a policy., some believe it should not, it should just be there as a guideline and, of course, every opinion in between. But we decided that's for the main group to decide as a whole and so we focused on our task of actually putting together the actual process. So, I'm going to quickly go through it, and then there are

notes and points of discussion at the end, which obviously should go to the main group.

So, the basic process is, upon notice of an unauthorized transfer from as we say, the old registrant to the losing registrar, the losing registrar will then contact the gaining registrar. Normally, this contact is asking to reverse the transfer. Upon receipt, the gRr, some will lock the domain to prevent further transfer during the dispute, some will not, thus we have it as may, that is an item of discussion for later. And this lock should remain in place during this dispute. Basically, it's like the UDRP idea of while there's a dispute going on, let's maintain the status quo and hold the domain where it is.

Now also, normally, this is more contention, but upon request from the losing registrar, the gaining registrar may also revert the DNS to what it was prior to transfer. This will help maintain the resolution of the domain as it was prior to transfer. There are reasons not to do this, once again, that's something to discuss. Also, one thing to note, if the losing registrar does request such a reversal, they should provide those nameservers just in case the gaining registrar has issue recovering those.

Then basically, the losing registrar should provide reasons why the transfer should be reversed. I think that's pretty straightforward. They should also provide any supporting information data and then identify it's an emergency situation. I think most people see transfer disputes as an emergency situation, but what we mean here is the losing registrar should make it known to the gaining registrar what kind of level of priority they're expecting. Is this an emergency they want immediate

updates? Or is this something we can discuss and take care of over the week, etc.? That's why that line is put together that way.

Then on the gaining registrar side, they should communicate with the gaining registrant to letting them know one, there's been dispute, and two, check the validity of the new customer. Meaning, it is to see why they receive such a transfer, like if they bought the domain, is there a receipt, etc. Basically, investigate why the domain transfer happened from the side of the gaming registrant. Then, basically, the two registrars will communicate to each other and decide an outcome. One thing to point out is once a domain has been transferred, the gaining registrar has full power and control over the domain. They do not have to return it. Basically, they don't have to take any action as per policy, because there is no policy forcing them to do anything.

So, basically, the two parties will agree. If they agree to reverse the transfer, they will move forward and reversed domain will be returned to the beginning or losing registrar. If there is no response from the gaining registrant by the gaining registrar, basically, if the person who received the transfer doesn't respond or even mention why they got the transfer or whatnot, many people believe the transfer should be reversed, like a default decision.

Then the other option is, if both or if the gaining registrar decides to not return the domain, this can be either they received a good enough, their customers said "I bought the domain, here's a receipt". They received word that it was valid, so they believe them, and they say we're not returning the domain. Or they can even just say, like, "Honestly, we believe it was valid we're not

returning the domain." And if they don't, that leaves the losing registrar the option to either to escalate this matter via the TDRP, which as it works right now, really only monitors corrections where the transfer policy was not followed, which normally leaves out what you could technically call valid transfers, but from via unauthorized means like compromised accounts and data.

If a TDRP is if they are not going to escalate to a TDRP, then that's the end of the dispute, and the losing registrant should then be informed of whatever. Other escalation or resolution options are available like, for example, go to court or-- There's a question came in this morning, but other resolution, that's really just there in case as a placeholder if somebody had any other ideas. So that's the general process in a nutshell. So, I'm going to pause there. As I haven't been paying attention to chat or anything, but the main point, I think the main group should discuss many of the note options below.

For example, if this process is decided to be made policy or if parts of it are decided to be made policy, there are things that need to be decided like what time frame should this happen in, which is under debate. I personally say two weeks, other people say a month, I've heard a year. But anyway, the things like that decisions of that nature need to be decided on by the main group, and the small group didn't have to say, so we wrote that out so that it can be discussed later. Notice section two, I mentioned it earlier. Reverting the DNS. There was debate on whether It's something that should be done or must be done, the wording, but once again, we are not writing a policy here. This is writing what

the process is. But these are things if it's taken forward should be looked at.

Then, of course, there's the whole if there was no response from the new owner, whether or not a default decision should be made or not. Once again, if these things are moved into policy, those are notes that need to be discussed by the main group. That's all I have here, and thank you for your time. As an Alternate, it's rare.

ROGER CARNEY: Great. Thanks, Rich. Sarah, please go ahead.

SARAH WYLD: Thank you. Hi, this is Sarah. Oh, thank you so much to the whole Small Team for all of your work on this, and thank you too, Rich, for talking us through today. That was very helpful. I do think this is really well laid out. I'm sure it's no surprise to anyone. I think that this should be part of our policy. So, I will have some specific suggestions and comments, which I will leave in the document. And my first question I'm going to ask too before I stop talking. My first question is, what is the deadline for that feedback in the document?

Then my other specific question is about number three. If Emily could please scroll up on the screen? Thank you. Indicating that it is an emergency situation. Can we clarify how this interacts with the TEAC process? Like when I have first contacted the gaining registrar as TEAC contact person and already go through that and then when I submit this, I say, "Hey, I did also contact your TEAC person?" Or what would that be? Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Rich, any thoughts? Did the small group talk about that on number three?

RICHARD BROWN: Yeah. I can actually address that. First of all, that wording section three has been rewritten like five times, and the wording is pretty bad. So, we wanted to avoid-- When we first started writing the initial outline said that the losing registrar should use the TEAC to contact the gaining registrar out of the gain. And there was a lot of contention as to whether or not that should be there. So, we removed that because, obviously, the losing registrar just needs to contact the gaining registrar for the process. Because we remove that TEAC feel, there was still a lot of people felt that the TEAC should or the level of emergency or how important the dispute is should still be in here as well. So that's where that is.

Basically, the goal is the losing registrar should indicate the urgency, so that should set the tone for the back and forth that goes on between the two registrars. That's all that's referring to. As far as whether the losing registrar uses a TEAC as their point of contact or not, that's completely separate and up to the decision if this is pushed forward into policy. So, thank you again.

ROGER CARNEY: Great. Thanks, Rich. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger, and thanks Rich for doing the intro to this document. So, before we get too deep into the specifics of the document, maybe it's helpful to do a little bit of a level set in terms of the task at hand for the group. I know that Sarah asked the question, what is the deadline for providing feedback on specific elements of this? And I think before we even get there, there's a bigger question for the group, which is the small group took on the task of codifying the existing process, but I think in the course of the discussion in the small group, there were different interpretations of what codify means.

So, I think some people are interested in simply documenting what exists as standard practice, perhaps to include as an annex in the final report. Other people felt like this should be more of a best practice document with the gaining registrar should do this, and the losing registrar should do that. So, more of a guideline's document. And of course, if that were to be done, it would have to be determined who would own that document and what form it would take because that's sort of outside of the scope of policy development officially.

And then the third possibility is that these are policy recommendations ultimately to be included in the transfer policy, and therefore, there would be an enforcement element to that as well or an enforceability element. But I think what we saw in the small group is that there are differences of opinion and even within the drafting of the document itself, you see some descriptions of standard practice and other elements that sort of talk to what should happen. So, at the moment, it's sort of a hybrid of these two approaches. And as some have said, there's also some

interest among some, there should be a policy set of recommendations.

So, we have a set of charter questions for TEAC and TDRP. We have a lot of work to do on that. At this stage, it's not entirely clear what this document is trying to solve and whether there's agreement in the group that there's a path forward for this in terms of recommendations or otherwise. So, I think really what we need to do first and foremost is to get the full working group on the same page about whether it is the case that we are setting out to put policy requirements in place.

So, a couple of examples could be or a requirement for initial response on a certain timeframe with a potential consequence attached to it the way there is for the TEAC when the TEAC is first contacted. Or another possible policy requirement could be sort of a required action if no response is given, those sorts of things.

But the truth is that without agreement in the full working group of what we're trying to achieve going into a lot of the specifics as we've done in the previous GAC document. We haven't seen a lot of momentum for a number of these proposals for required actions. Ultimately, what the group determined in the GAC analysis was that there's a lot of optional things that can happen, but that no one is being forced to take specific action in terms of policy recommendations. So, unless there's a lot of momentum to change from that course, I think the core goal of this group is to get back to the charter questions and move through those.

So, it'll be helpful to hear from all of you if you have thoughts on that and hopefully then we can get a little bit of a better sense of where the group stands on this topic. Thanks.

ROGER CARNEY: Thanks, Emily. Rich, please go ahead.

RICHARD BROWN: Very good. Thank you, Roger. Just a real quick comment that I had plunked in there about item number one, which ripples through the entire document, though, from my read of this, it presupposes that the so-called old registrant and so-called new registrant are different. I'm not sure. Are effectively different or they aka not effectively equivalent. I won't use a term like legal persons or natural persons because I'm in the presence of EPDP members and that can get confusing and whatnot Yeah. Exactly. I don't want no trigger words here.

So, I think that it would probably-- And I'm certainly fine with the fact that we're considering this case where we think that the old registrant and the new registrant are not equivalent entities. But I think we should clarify that and also understand that there might be a different path if it's actually a transfer that happened where the pre-transfer registrant and the post-transfer registrant-A and thank you, Sarah, for making these not be temporal, clearing out the temporal designations there.

The pre-transfer and post-transfer registrants are actually the same because I think that might be a macro branch on this whole process whereby the vibe is very different in these steps one

through six if pre-transfer entities are equivalent and if pre- and post-transfer entities are different. And I think that right now we've written down where they're different, but I think they have pre and post are equivalent. I think it takes a different, the resolution paths and the actions are kind of different in there. I hope that made sense because I think there are a lot of difference and same, but hopefully that got across. Thank you.

ROGER CARNEY: Thanks, Rich. No. I think that makes sense. I don't know if the Small Team talked along that path or not. Rich, do you remember any discussion or want to follow-up on that?

RICHARD BROWN: I think the main point is it's not about the naming conventions or what have you between the old and the new. I think it's just that you have an old account and a new account, and so those kind of act as the new registrant or new person who owns it. So, obviously, wording on that can change. But as far as if both people are the same, like for example, if company A transfer the domain to company A, but basically, between two different departments and they didn't communicate, that would come out in the dispute. And then both the registrars would go, "We're done, let them do what they want with that." That's kind of part of the dispute process there. So, if they're the same, I don't think it really matters in that sense. But that's all I got to say there. Thank you.

ROGER CARNEY: Great. Thanks, Rich. Caitlin, please go ahead.

CAITLIN TUBERGEN: Thanks, Roger. This is Caitlyn speaking. And I think I was just going to have the same question that Zak noted in the chat, which is if indeed pre-transfer and the post-transfer registrant are the same entity, couldn't the post-transfer registrant just request to transfer back to original registrant, if there were some sort of--? There shouldn't be a dispute between the same individual, but maybe I'm not understanding the situation.

ROGER CARNEY: Thanks, Caitlin. Yeah, and I think let's be careful on what we're saying too. Is it the same registrar or the same registrant? And, again, I think that if it's the same registrant in today's world, we don't really can know that, but if it is the same registrant and actually dispute comes up, then you will know that it's the same person.

I think as Caitlin just pointed out, you could just transfer it back, but there's a 30-day lock on that transfer now and there are other issues with it. But, again, I'll let Rick go here really quick, and I see if he wants to stand. Is it, are we talking about different registrants, or different registrars? A lot in the chat there was if it's department's not communicating, then it's not a big deal. To me, that's talking about the same registrar, not the same registrant. So, I think let's be careful on what we're talking about. So, Rick, please go ahead.

RICHARD WILHELM: Sure. Thank you, Roger. Rick Wilhelm here, registries. So, the question that Zak had asked, an example involving equivalent pre- and post-transfer entities. So this is really where, let's just say that any of us decides to transfer a name from one registrar to another and then maybe we complete the transfer and then after we get there, we realize that the financial deal or the package that we thought we were getting was not the package that we actually got and or maybe at the 11th hour, the so-called losing registrar comes back, comes in with an amazing win back offer.

Or I realize that there's some reason why I actually can't or I don't want to transfer this particular name because I need to wait for six months to transfer all my names because I want to move them all at a block. And so, I don't want this transfer to go through and now the gaining registrar is being uncooperative or something like that. And so, I'm trying to get this this thing on this transfer that it did unwound. And I, as the registrant, and the same equivalent entity on both ends of the transaction.

And so that's the example that I'm talking about which is a little bit different than the other example, which is a reasonable one of the two departments in a company which is another variant of that and then, obviously, there could be other ones, but I think the simplest case is just me as a normal human being doing this. Thank you.

ROGER CARNEY: Great. Thanks, Rick. So, Volker, please go ahead.

VOLKER GREIMANN:	Yes. Thank you. Just to Caitlin's question. In many cases, the registrant, previous registrant might be the registrant, but he might not be the account holder. So, there's an additional complication that if, for example, the domain is transferred to a reseller or other service provider using the services of a registrar, they may not have that access to the domain and to transfer it back. And there also is usually a transfer lock in place after a transfer, so that might delay a transfer as well.
	But my actual point was that if we are indeed focused on or content with replying to the aggrieved party that sorry, the registrars are not willing to duke it out for you and you now have the option to go to court or resolve this better in any other way with the other party, then that may be very unsatisfactory for the registrant, especially if the new registrant is in the jurisdiction that is notoriously difficult to obtain a legal judgment. Be it Russia, be it China, be it somewhere in less developed countries where the gaining registrar could be located and referring a registrant who had just had his domain name stolen to jurisdiction in those countries will probably just be good luck with that. And I don't think that is the appropriate response.
	Therefore, at a minimum, we should probably consider whether any transfer can be contested in the common jurisdiction such as the jurisdiction of the registry or the registrar. And thereby, we would have to have that in the registration agreement, of course, in the registration policies, but ultimately that would open a door for a registrant that is aggrieved by losing his domain name to get his rights in a meaningful way through those processes and not to be forced into a path that has no ending. Thank you.

ROGER CARNEY: Great. Thanks, Volker. Sarah, please go ahead.

SARAH WYLD: Thank you. This is Sarah. So, I'm actually not sure that I agree with Rick's examples of why one might want to reverse a transfer. I think something like buyer's remorse should be outside of this process because that was a situation where a person made a decision and then they regret that decision. And that's different from a domain theft or hijack. So, I'm thinking of a specific scenario with a particular registrar. I don't know if they're still around, where they would send out notices for services that look like bills for existing services, but actually they are advertisements for new things, and customers would not understand what that solicitation they received meant, and then would send in money, and it ends up with transferring their domain to a new registrar when they didn't understand that that's what they were doing.

So, I think that this process that we're looking at should be specifically for theft or unauthorized transfers, and I don't think that that's a situation of changing one's mind should apply for that. And then just going back a step, I really do think there should be policy, I would think it's really good for us to decide as a group one way or the other before we go further because it affects what kind of input people give. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Yeah. And I think that's the key point that Sarah brought it up several times now that she's in favor of being

this, I guess, friendly process into being more policy driven. So, to me, the big question here is, great discussions on a few items here, but I think before we get into details of each item, the higher-level thing probably should be discussed and agreed upon. Otherwise, we're just working for an end cause that won't happen.

But I think the important thing is this informal process that occurs today, we all know it, disputes happen every day, and we still end up with what, 4 or 5 TDRPs in the last few years, but disputes happen every single day, and they get resolved. And that was kind of the purpose of this Small Team was to take a look at what happens today to resolve those things and should those things be policy, should they be guidelines, should they be guidance, should they be the term no one really cares a lot about, best practice.

And Sarah has indicated multiple times that she thinks this should probably move to a policy place, but I haven't heard anybody else say that this informal process, besides Rich, Rich has also been fairly clear that he likes the idea of making this informal process policy driven. And again, and there's good reasons for it. And I think that the issues for me when I look at it is, well, are we creating policy to solve a problem that really doesn't exist today? I mean, the disputes happen, they get resolved. There's no policy directing that, but the disputes do get resolved.

And again, obviously, somebody's going to say, yes, there's some problems with some jurisdictions in some places, and like that. So, I think that what I'm looking for from this group is, is there support to move this from an informal policy or informal process to actually creating policy language. And again, not necessarily dictating exactly what the informal process is today, but taking that

informal process and making policy out of it. So, I think that's the big question that we have to answer, and we need support to move down that line. Otherwise, a lot of these items that we talk about really don't have to get resolved if we're not turning them into policy.

So, again, bigger picture, do people support turning this informal process into policy? And if we do have general support for that, then we can look at these items in more detail. So just trying to elaborate. Sarah, your hand is still up. I don't know if that's new or old because I was just talking too much. Okay. Thanks, Sarah. Rick, please go ahead.

RICHARD WELHELM: I'll be very quick and just to respond to Sarah's point about the scope of this thing about should it be same entity or different entity. I don't think the registries particularly care. It should just to be clear as to what its target is. And right now, it looks like a little bit ambiguous. Thank you very much.

ROGER CARNEY: Thanks, Rick. Zak, please go ahead.

ZAK MUSCOVITCH: Thanks, Roger. Zak Muscovitch. So, I just want to dare my thoughts in terms of disputing policy or no policy?

ROGER CARNEY: Great. Thank you.

ZAK MUSCOVITCH: Yeah.   So, I think that this codification of the current informal process is what it is, and this is not policy. And there could be a policy created that harness this or part of this but really, I don't think we can talk about it generally, like should we transform this into policy? Because the devil is really in the detail. What aspects of this become mandatory? What triggers would be imposed that result in a reversal? These kinds of things. Because what my concern is that we have this informal process that seems to be working by and large most of the time with very few transfers, formal transfer disputes.   But if registrars, notwithstanding that, believe that there should be some interim kind of a procedure that's in between the informal and the formal legal procedure.

I understand that, but what we're creating is still a kind of a quasi-legal procedure at that stage, in the sense that if there's going to be a formal procedure that results in the reversal of the transfer, be where the two registers do not mutually agree, then there has to be built in safeguards. There has to be potentially notice to the registrant in the event that their registrar doesn't respond. There needs to be time periods in place and explanations about what evidence is required before a registrar can say, "I'm satisfied that this should be turned back", notwithstanding that the other registrar doesn't agree.

So, I I'm not necessarily opposed to an interim, not an interim, but a middle of the road between informal and formal policy, but really, I don't see me being able to meaningfully discuss it until I see what that truly means in terms of what this policy looks like. Thank you.

ROGER CARNEY: Great. Thanks, Zak. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger, and thanks, Zak, for that. So, I did want to recall again just that we have had a number of conversations about specific requirements that some of our working group members did think should be policy requirements. So, for example, fast undo in the case of an unresponsive registrar, DNS reversal by default. And I think in those previous conversations where folks raised sort of required actions in the existing process that would become requirements to be mandated in policy with consequences attached to them for non-compliance. I think what we were hearing was that there was pushback for those specific elements, and the only piece of those elements that folks did seem to be happy to explore was simply documenting what exists already.

So, it's a general question for the group about whether there should be additional requirements here, but I think in revisiting that, it's also important to recall the specific proposals that people did put forward so far, at least from what I can recall and what I can see, haven't gotten overwhelming support from the group to the level that it seems like recommendations were appropriate. So, I think it would still be helpful here to hear more voices because we've only heard from a few people here.

And I think if there's not a compelling sense one way or another from the group, then this group does have a mandate, it does

have specific charter questions and specific areas where it's expected to put in recommendations and maybe focusing there is more fruitful if there isn't, again, overwhelming agreement that there's one, a problem to solve and two, a solution that's an appropriate path forward. So, we could potentially use hands to get that temperature taking or folks could pop into chat, Roger, whatever you prefer, but I think we do really need to hear from more people because so far, the group has been rather silent. Thanks.

ROGER CARNEY: Yeah. Thanks, Emily. Yeah. And I'll say, obviously, Sarah and Rich are suggesting that it'd be a good idea to put this in policy language and intact [inaudible 00:43:24]. So, I think you're right, Emily, I think we're in that spot where we don't see enough drive from either side to do anything. So, I think as it stands today, we would just move on from this and leave this as it is, as an informal process, and not turn any of it into policy or anything. And I think you're right, and I think, Emily, I think it's a good idea to do hand or whatever we can. But I want to give Steiner a chance here real quick. Steiner, please go ahead.

STEINER GROTTEROD: Yeah. Hi, this is Steiner for the record. First of all, I'm not sure whether I have consensus from At-Large for what I'm saying, no, but first of all, I think that we should still have a policy that makes it possible for the registrars to actually solve this in a friendly way without any direction or policy whatsoever, as it has been done the majority of all situation today. Secondly, I think that my

reading or my understanding here is that what Small Team has come up to is some sort of what I will call a TDRP light. That means that it is something that we really tried to do to follow some steps and make agreement between the gaining and losing registrar on behalf of the registrants, and so on. If that is not feasible, if that is ending not good, then they have to go into the more strict TDR process where we have a panel, etc.

So that's my understanding, that's my reading. And I would like to add into that, at some point here, and as also At-Large addressed at the shorter question for Phase 2, we would like to have some sort of path for the registrant if there is no cooperation between the present or the losing registrar or the gaining registrar and there is a dispute actually between the registrant and the registrar in question. So, that's my point taken here. So, an interesting discussion. Thank you.

ROGER CARNEY: Great. Thanks, Steiner. Okay. Maybe I'll do this in two ways. Just get a quick flavor of this, and then we can get into our next topic. Let's use the hands, the raise hand option in Zoom. For those that think that at least some of this should be turned into policy, some of this informal should be turned into policy and are looking to help direct that and come up with language to move it forward in that direction. So, if you are looking for this to become policy and are willing to work on it to going policy, please raise your hand in Zoom. Sarah, thank you. Essie, thank you. Steiner, thank you. Jody, Owen, John. Okay.

So, there's a lot of people raising their hands that say at least some of this should make it into policy, some of this informal process. We haven't heard from a lot of the people that raised their hands, so I'm a little concerned on that, and maybe you're just agreeing with those that have been said. And you can lower your hands now.

The second part of my ask is, between now and, I'll say, within two weeks, we're not going to talk about this again for a while, but over the next two weeks, please go back to your stakeholder groups, have that discussion with them, see-- And maybe hopefully, Rich is okay sharing what came out of the Small Team here with his document here. Take that to your stakeholder groups, have that discussion with your stakeholder groups, and come back with the stakeholder group's stance saying, okay, yes, we understand we can make some policy recommendations here and here.

And again, I don't want anything specific from the stakeholder groups, just that they understand and support our move to policy on these informal things. And, again, I think that it's great that we discuss these things as a working group here, but we do represent those stakeholder groups, and I think that those stakeholder groups need to be involved here that says, yes, we need to move this informal process or at least pieces of it forward into policy so that it's more structured and provides consistent outcomes and things like that.

There was a lot of hands raise there, so it seemed like there was a lot of support to move this to policy or at least pieces of it. But again, I think that we need to see from the stakeholder groups, if we get support from the individual stakeholder groups as a whole

on this idea of moving from an informal process that, again, currently today seems to work and functions adequately again and obviously works to a point that the other dispute mechanisms don't get used often. So, take the next two weeks and come back to the group with your stakeholder stances on that, please. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger. So, a couple of things. I think it might also be helpful to find out if there are folks who feel like policy is not required in the resolution of informal process, so maybe we can do raise of hands on that. And for those who are raising their hands that they think there needs to be policy but aren't speaking up, it would be really helpful to understand what problems are folks trying to solve here and what elements do they think need to be codified into policy to solve those problems. Are we specifically talking about the fast undo proposal? Are we talking about DNS reversal? Because I think I'm just a little bit concerned that if we go too far down this path without a clear agreement on what we're trying to achieve here and why, we may just sort of end up in a loop.

So, two concrete suggestions, one is hands up for folks who don't think policy is required just so we can get a balance on that and two, really digging in a little bit more before we go down the path of putting some more weeks of work into this to really understand specific and concrete problems that folks think that policy requirements will solve, and also the elements that they think need to be codified into policy that we can further document. Thanks.

ROGER CARNEY: Thanks, Emily. Yeah. And sorry about that. I should've done that as well, but let me go to Theo here first before we do that. Theo, please go ahead.

THEO GEURTS: Yeah. I'm just sort of going to echo what Emily just said. I mean, during this whole discussion, I'm like, okay, as a registered stakeholder group, we should go back to the stakeholder group, see if there's an actual issue. Speaking as an individual registrar, I can actually comment on this because I don't use the informal process because we don't encounter those issues. I mean, the issues that we have is usually a misunderstanding between resellers or resellers and the registrants.

So going into the substance of what we are discussing here today or what we have discussed, I don't really know which way to go about this, because we don't have the issue, so I need to rely on the bigger registrar to tell me, yes, there is a massive issue here and we need to do something about it. If you're all in favor of this, to turn this into policy, yeah, then maybe we should get more information on why this is such an issue. Until then, we can't make really a decision here. And I'm really wondering how this would actually play out in the stakeholder group. I mean, there are more registrars like us that don't have these issues. So, yeah, it's going to be interesting. Thanks.

ROGER CARNEY:	Great. Thanks, Theo. Yeah. And that's something to think about when you go back to your stakeholder groups as Emily stated and Theo just stated, what is the issue we're solving here and does that require policy to solve those things. Again, today, the dispute mechanism, it's not an official dispute mechanism, but it is a dispute mechanism, this informal process. And it does seem to work. So, what problem are we solving? And I think that's a big thing to identify. Emily, please go ahead.
EMILY BARABAS:	Thanks, Roger. I know I'm talking a lot here, but I did want to raise just one additional point. I know that Sarah has previously put forward a proposal as part of the gap analysis that had a bunch of elements. And I'm curious if those who are interested in putting in place policy requirements are interested in putting in place the policy requirements from Sarah's proposal or if there's some different set of requirements that they think are necessary here, because if it's the same set of requirements, we did work through all of those and debate them, and I think exhausted those. And so, I'm a little bit concerned about us relitigating that if what folks are advocating for in creating new policy requirements is essentially that proposal or a subset of that proposal.

So, is it possible for folks to speak to whether the requirements they have in mind are indeed consistent with the proposal that Sarah had previously put in place or whether there's a different set of requirements that people had in mind that they think are necessary here? I hope that question makes sense. I'm trying to make this a bit more concrete because it feels at the moment quite nebulous. Sarah is saying that she thought this was the

same thing, so essentially bringing forward the proposal that she previously raised. And I think we need to get on the same page here because we did spend quite an extensive period of time discussing all of the elements of that proposal and I think where the group landed was that there was only support for voluntary use of those elements. So, I just don't want to retread on ground that we've already covered pretty extensively in the last couple of months. Thanks.

ROGER CARNEY: Great. Thank you, Emily. And it's good to clarify, because I think a lot of what Sarah laid out and some of the things that this Small Team talked to were new ideas. It's not codifying of the current informal process. The current informal process has no requirements, so there is no such thing as codifying a DNS reversal that may occur in the informal process but that's not part of the informal process as it is. Setting a timeline of two weeks or whatever it is, that's not part of the informal process either.

So, I think that that's a good clarification, Emily, of the informal process that occurs today doesn't require anything to happen. And if we're talking about, as Emily just kind of hit on a few of the items, a DNS reversal or a timeline or something like that that we're talking about making it into policy. And, again, that's great that we've talked about those, but I think those are the things that we need to address with our stakeholder groups and see if they agree to those things, and that, again, that those things are coming from solving a problem and what that problem is. So, I think that's important, is to take a look at those things, and in a sense highlighting. We did discuss a quick reversal, everybody

talked out of a DNS reversal idea, timelines around certain things, changing timeline.

And I think that those are the things, if that's what people are talking about, is, to me, something new and different from the informal process that occurs today. And again, something Emily just hit on that is important is, we talked through all those items and said, yeah, the flexibility needs to be there to not make them mandatory, but make them optional. And I think that once you get into policy that becomes optional, I'm not sure how you hold weight with that.

But again, I think the important part is take this back to your stakeholder groups and talk to them, and come back with, okay, what problem are we solving as a stakeholder group? And as Zak pointed out in chat, what problem are we solving and these things can solve those things, or solve those problems, and then others can make an opinion of, oh, okay, then maybe that makes sense, or maybe it doesn't make sense. So, I think that that's the important part. Zak, I'm not sure what your chat was about there.

ZAK MUSCOVITCH: Thanks, Roger. It's Zak. So, just I'm telling on Emily's previous comments. What I'm not clear on, and maybe it's just me, maybe there's others, but what I'm not clear on is that there was that gap analysis that Sarah kindly provided to the working group. And so was the resolution of that, that there wasn't agreement for creating new policies such as the fast undo and those kinds of things, and that's why we reverted to a codification of the informal current resolution process or did we not, the working group, not come to

any consensus or decision or resolution on the gap analysis document.

That's why I'm having difficulty going back to the BC because I don't know what's before the BC. I don't know what the policy proposal is. If it is that previous one, then my question is, did we not resolve that? Genuine question. I don't personally recall, but I seem to think that the reason we ended up with the codification of the current thing was because there wasn't agreement on the policy aspects of the previous document. Thank you.

ROGER CARNEY: Thanks, Zak. And I'm going to rely just as much on my memory as you did there. My understanding is when we came out of that discussion on those items that Sarah presented, that we agreed that there wasn't enough support to make a policy. What we're hearing today is there is support, people believe there is enough support to make policy. So that's why I'm asking for the stakeholder groups to come back. But what we're talking about and what everybody's leading to, and correct me if I'm wrong here, is trying to implement policy around those ideas of a DNS reversal or timelines that when you're asked to do this, you only have x amount of days or weeks to do this.

And I think that that's where this group, again, all the hands that were raised, is saying that those things are important. But as you said, Zak, when we left that discussion of Sarah's point, I thought we were at the point that we did not have support for taking those items to policy. So this is why I'm asking for this to be taken back to the stakeholder groups, and these items to be discussed with

the stakeholder groups, what problems they're solving, and obviously, do they solve those problems? And bring that back to the group so everybody gets a clear understanding of where the stakeholder groups exist and stand behind. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger. Emily, again, from staff. So it sounds like there may be a bit of confusion about what the ask is from stakeholder groups and I'm aware that it's more helpful for people to see something concrete. I wonder if it would be helpful rather than taking this question to groups in the abstract, would it be helpful for staff to show what this document could look like if it included policy requirements as opposed to just documenting what exists so it could look something like, in step two, it says the gaining registrar will often lock the domain to prevent further transfers until the matter is resolved.

So a policy requirement could be the gaining registrar must lock the domain to prevent further transfers until the matter is resolved. You know, sort of taking this. Again, it would just be to demonstrate because we wouldn't be able tell you exactly which elements of this would be requirements, but we're just trying to figure out a way to make this more concrete so that the discussion can be constructive. Because I think the question and the abstract of whether there should be policy requirements around this might be too hard for some of the stakeholder groups to answer.

If folks have other ideas for ways to make this discussion more concrete, I mean, another way to do it is for a group of volunteers who are on the same page about what they think the policy requirements should be, could make a copy of this document and suggest redlines. But I'm honestly not sure if the things that folks think should be policy requirements are the same within those who think that policy requirements should exist.

So again, one possibility is that stuff sort of marks up this version of this document to show what policy requirements could look like. But again, it's really only for demonstration purposes. And the other possibility is that if there is, for example, if all of the registrars agree that there are specific requirements that should exist coming together offline, I'm making a version of this document that documents what those requirements would be would be another concrete alternative for next steps. Thanks.

ROGER CARNEY: Great. Thanks, Emily. Zak, please go ahead.

ZAK MUSCOVITCH: Thanks, Roger. Zak Muscovitch. Yeah, I agree that those are both viable avenues as suggested by Emily. And there's a third one perhaps as well that I'd like to suggest to the group for its consideration, and that's that it would be helpful to me at least if those people that are in favor of expressing their favor of taking parts to all of this and converting it to policy, we give us some indication of examples of what in the current informal process should be converted into policy and how.

What I'm unclear on about right now is whether we're just trying to take things like the gaining registrar must respond within seven days or the transfer is automatically reversed. Is that what we're talking about? Or are we talking about other suggestions that we're previously in the gap analysis. That's what I'm not clear on. So it would be helpful if those people could point out a few things in this document to give us an idea of what kind of policy recognitions they're making. That's just the third possible avenue in addition to the two that Emily mentioned, which I also believe reliable. Thank you.

ROGER CARNEY: Great. Thanks, Zak. Yeah, and I would say that thanks to Emily for offering staff, but I'm a little reluctant to have staff do that just because, as she said, it would be examples and not actual working ideas. It's more of this is what it could look like, but it's not the actual language. And it takes me back to when we did wrap up our discussion on the gap analysis, and we presented it as not a good enough support to move forward. There was a specific request, and maybe it was too narrow, specific request for input from this working group on providing something similar to this. But I think it maybe it was focused just on a quick reversal and a quote to undo whatever it is, and not more open to these other ideas. And after a week, we received no comments on list or no comments in the next meeting. So that's where I thought we had decided that it was done.

And, again, maybe that was just too narrow and maybe it was just focused on one of the items and not broadly across the board. But to Emily's point, I think it would be useful for those that agree

that some of this should be put in policy to come up with. Again the same aspect of, okay, what are you saying is policy? You know, is it, it must lock this or must respond in seven days, whatever it is.

And again, what problem is that solving? And, again, maybe that is the best way, and thanks Emily for suggesting that. That the members that raise their hand saying, yes, we should do that, should be able to come up with those things, I think, as they think that some of it should turn that way. So maybe that's the better ask instead of, and again, I suspect.

And then I hope that those individuals still recognize that they're representing their stakeholder groups, and it's the same to me, the same outcome, but with those more deeply involved. Again, it really hasn't been to have staff do that because it's not going to be something that anyone can look at and say, oh, okay, that makes sense. It'll only be, okay, this is what the next step should provide. So I think, really, those that raise their hands should take a look at this, and do that, and put those recommendations in. That's my thought. Zak, please go ahead. Or is that an old name, Zak? Okay.

ZAK MUSCOVITCH: Old hand. Very sorry.

ROGER CARNEY: Nope. No problem. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger. Emily again from staff. So I'm wondering if we can make this a concrete action item for folks with a deadline so we can hopefully get where we need to go in the near future. So could we say that by end of day Monday next week if there are any specific proposals for policy items, so these would be requirements that would be sort of built on top of the existing process that folks add those as comments and also indicate the extent to which there's a level of support from their stakeholder group. So if you're a registrar, for example, if you can indicate if this is just you talking in your individual capacity, like we ideally want to see people really representing their groups and see some momentum around this.

So, I think what we'd like to do and Roger, shoot me down if this is not right, by the end of Monday if there's specific policy requirements that you want to suggest being built on top of the existing process, that you put those as comments into this small teams working document. And to the extent that there are specific suggestions, the group can look at that and understand better if there's something new there, if there's something concrete that needs to be discussed further. But otherwise we just assume that the policy requirements that people are advocating for are those that have already been discussed. Is that an acceptable path forward for the group?

ROGER CARNEY: Great. Thanks, Emily. I love that idea. And again, to Emily's point on the timeline, I think obviously, we need a timeline so that we can drive this to closure. And Monday is good to me. Because I know Sarah. I don't want to get everybody stressed

EN

about it. I don't think we're looking for a fully baked. We're looking for the direction that this needs to go. And, again, that may be that the best way is to display yes here is recommendation xx. There has to be gaining [01:11:16 – inaudible] upon giving notice. But I don't think that we're looking for, and I don't expect to get something that's not going to change. Obviously, we're going to discuss it and make changes and updates to it.

But without some clear indications of where this is going, as Zak mentioned, it's hard to put your arms around it and say you support it or don't. Hopefully, that came out as me supporting what Emily was saying in that by next Monday to provide this back to the list on the direction on these items that people see could be policy driven. Any questions from that group that we're going to put that together? Thanks, Emily. Monday, May 8th. Okay. We'll look forward to that, and we'll allocate time to discuss that in upcoming meetings. Okay, let's go ahead and move on to the next topic then. Okay, our Wave 1 Recommendations. Caitlin, did you want to walk us through this?

CAITLIN TUBERGEN: Yes, please. Thanks, Roger. This is Caitlin Tubergen, from staff, speaking. And as you can see, what Emily is displaying is the document that we worked through during our last meeting. But this version has some bracketed text that shows what the working group tentatively agreed to or expressed upon its first visit of this information. So I just wanted to quickly make sure that we've documented this correctly and show you where appropriate or where applicable, what some of the draft updates we've made to

the TDRP so that the group can kind of see what that would look like.

So for the first note for the transfer policy item. This is about how the registrar may be required to retain its correspondence with TEAC Communications and the ICANN org group that reviewed these requirements noted that the new registration, or the new draft registration data policy is unlikely to affect this, since there's no noted retention period here.

One thing that Rick did note during the last call is that in the event the group does make policy recommendations about how those communications need to be stored, for example, through the naming services portal or elsewhere, we would just need to keep an eye on that. We may need to revisit this item to ensure that there is no conflict. But for now, there's no recommended change.

So moving on. The next items deal with the transfer dispute resolution policy. Again, the first item number one is about the statute of limitations. The statute of limitations under the TDRP is 12 months, so filing registrars 12 months from the date of the alleged violation of the transfer policy to file a dispute. And accordingly, EPDP team that dealt with the retention periods noted that in recognition of this, the retention period would be 18 months. So, that is the recommended retention period under the draft registration data policy and would not affect the current 12-month statute of limitations. Now, again, if the group ultimately makes a recommendation that registrars would have longer to file, we would need to revisit this, but for now it can remain as is.

The next item was the item about data protection agreements or of protection arrangements between ICANN org and third parties, namely data escrow providers and dispute resolution providers. Noting that the transfer dispute resolution policy does require registrars to process data that is not just registration data that's defined in the draft registration data policy, but also some information about complainant data that is not necessarily the registered name holder. So, just here we note, as we mentioned during the last meeting, that the data protection agreements and arrangements between ICANN org and these third parties, the discussion is currently ongoing. And so the working group just notes that the appropriate parties such as those implementing these recommendations should be duly informed of any updates to the DPA between third parties when those are resolved.

So the next section Item three, this was similar to an exercise that the group underwent for phase 1A of the transfer policy, noting that there's some outdated terminology that would need to be updated. So, what I did here is, this was the language from preliminary recommendation 14 in the group's initial report, which defines what WHOIS data should be, switched to, what WHOIS details means, what publicly accessible WHOIS means, etc. And so what we did -Emily, if you don't mind going to the next tab- in the draft TDRP, staff went ahead and made those terminology changes so you can see what they would look like just in case you disagree with any of them and we would need to flag them.

So if you can scroll down a little bit, Emily, please. We'll just show you an example of what that would look like. So here we go. So you'll see that here there's a mention of copy of the WHOIS

output. Similar to the recommendation from Phase 1A, WHOIS is changed across the board to RDDS. And we went ahead and highlighted these in light blue so that you can have a look at these and see if there's anything that might need to be changed. But that was ultimately what it would look like per that policy recommendation. So if we can go back. So item three, generally speaking, is pretty noncontroversial since this is essentially the same as what happened in Phase 1A. But if you would like to check our work or just make sure that there isn't a problem with those terminology changes, we'll provide you that. Emily provided the doc in the chat, but we will have that attack the notes. You can have a closer look at that.

So item number four moving on. So item number four is about documentary evidence, which may include modifications to WHOIS. We talked a little bit about this in terms of the terminology changes. And the notes that we took from the last meeting is that the working group noted that this provision may implicate public, redacted, and or privacy proxy customer data. And that the relevant who has modifications may also include name server data, not just registrant contact data.

So, we propose some updated language for the group to review here in this section if we can scroll down there. So Emily, you can just scroll back up briefly. Yes, right here. So for item C, it says relevant history of registration data modifications made to the applicable registration. So we added a footnote here, which just notes that for clarity relevant registration data modifications may include relevant modifications to public RDDS, redacted

registration data, and or privacy proxy customer data from an affiliated privacy or proxy service provider.

Here we're just noting that the registrar that is being named in this TDRP, if they want to show evidence of who the registrant is, that may involve not just showing public RDDS. It may involve presenting redacted registration data, as well as perhaps privacy proxy customer data. So that just gives the register the option of providing additional data as documentary evidence. They're not required to, but they may, as part of making their case under the TDRP key.

And lastly, we had one more item here. And that was the one where we had some different ideas of how TDRP section 3.2.4 could be handled. So, as you may remember, the TDRP as drafted notes that the panel will refer to the authoritative WHOIS database. And since the authoritative WHOIS database on the context of this policy is a bit outdated because as we know a lot of data is redacted. And so if the panel goes to look at the RDDS they may not be provided with the information they need to render their decision. So the ICANN org folks that reviewed this noted that there could be a couple ways that this working group handles the issue. Number one, the panel could request the non-public data from the sponsoring registrar in a manner similar to a UDRP provider. It may result in duplicative data if that registrar already provided a copy of that data as part of its response to the complaint or submission of the complaint.

You'll note in the last paragraph here, the ICANN org staff that prepared the Wave 1 report also noted that, alternatively, the language could be restated at a higher level to define what the

panel is being asked to do. So, some folks on the call last week noted that, yeah, let's make it similar to the UDRP and see what that could look like. And others noted, well, let's see what it could look like at a higher level.

So Emily, if you could go back to the document, we have both options bracketed here. In the pink text on the screen, you'll note that this is option one, which is that the provider will request the data from the sponsoring registrar. And then we had a draft added step here that mirrors what currently in the UDRP, that once the relevant registrar receives the request from the provider that they will provide that requested information within two days of receiving the provider's verification request. And the time requirement is obviously so that the proceeding can move along. And again, that just mirrors what is currently in the policy.

So that's one option. If we scroll down a little bit further. Oops, just up a little bit. That we in 3.2.4, provided some draft text for what it could look like if we just take it up a higher level. And it just notes that the dispute resolution panel appointed by the dispute resolution provider must review all applicable documentation and where applicable compare data with what's contained in RDDS. There may be a situation where they can do that when the data is published.

However, we have a footnote noting that there may be instances where the panel is unable to do that, because data is redacted, or their privacy proxy details are displayed. And in those instances, the dispute resolution panel must not use public RDDS as the basis for its determination. And instead, we scroll down to little I where it says, if a dispute resolution panel is unable to determine

whether a violation of the transfer policy occurred using the documentation provided, it may request or it may contact the registrars and require additional documentation. And in item little three, we've noted that if the losing registrar cannot provide evidence that demonstrates any of the factors, and the gaining registrar is unable to demonstrate compliance with the transfer policy, then the transfer should be approved. And you'll note that's just because the gaining registrar may no longer have a complete FOA.

Can you just scroll down, Emily? I just want to make sure I covered all the draft I think we did. Yes. So I know I was speaking very quickly there, but I just wanted to show you what staff came up with based on the discussion, what this could look like, and give everybody an opportunity to review this and see if you're in agreement with what the Wave 1 preliminary agreements could look like, and if we need to make any updates to them.

Does anyone have any questions on that very quick tour of where we are on Wave 1, rec 27? I guess it goes without saying that we're just putting these as placeholders for now because the group has still not drafted its policy recommendations with respect to the TEAC and TDRP. And this very well could change. But this is what it could look like at this moment. So we have it as a placeholder since we had some extra time to go over these while the group was still discussing potential informal resolution of transfer issues. Roger, I see we have two minutes left. I don't see any hands raised at the moment, but I have been monologuing for quite some time and I will pass it back over to you.

ROGER CARNEY: Great. Thanks, Caitlin. And thanks for walking us through this. I assume there's not a lot of questions because it was well done. But, yeah, I think it's important, as Caitlin noted, that obviously some of this can change depending on the recommendations that come out of the TEAC and TDRP. I think take a look at this and make sure you're keeping up on this. But with one minute to go, I'm going to say, I look forward to any write ups from the group that wants to introduce some policy on the informal process. And I appreciate the discussion today, and all the work that the small team has done in the last couple weeks as well. But I think we'll go ahead and conclude the call today. And we'll talk to everybody on Tuesday. Thanks, everybody.

[END OF TRANSCRIPTION]