
ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 04 April 2023 at 16:00 UTC

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JULIE BISLAND:

Good morning, good afternoon, and good evening. Welcome to the Transfer Policy Review PDP Working Group Call, taking place on Tuesday, the 4th of April, 2023.

For today's call, we have apologies from Sarah Wyld (RrSG), Raoul Plommer (NPOC), Steinar Grøtterød (ALAC). They have formally assigned Rich Brown (RrSG), Juan Manuel Rojas (NCSG), as their alternates 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. Alternates not replacing a member should not engage in the chat or use any of the other Zoom room functionalities. If you

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have not already done so, please change your chat selection from host and panelists to everyone in order for all participants to see your chat and so it's captured in the recording.

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.

Please remember to state your name before speaking for the transcription. Recordings will be 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:

Thanks, Julie. Welcome, everyone. I don't have too many updates here. I don't have any updates. So I'll just call for any of the stakeholder groups that want to bring forward anything that the stakeholder groups have been talking about offline, if there's anything that they want addressed with this group or at least brought up so that we're aware. So I'll open up the floor to any of the stakeholder groups that have anything they want to bring forward.

Okay. I think we'll go ahead and jump into our project plan update here if Emily wants to bring that up and walk us through where we're sitting today. If Emily wants to do that.

EMILY BARABAS:

Hi, Roger. Hi, everyone. Happy to do so. Just a moment. I will share. This will be shared with the agenda as well as we've been doing week to week. Again, there are no dramatic updates. The only action item we had from last week was for folks to share on list if they had any updates from ICANN 76 from their groups or wanted to share the details of any relevant conversations. But I think the expectation was that that would have been done if folks needed to. So the action item is closed out.

We're continuing the gap analysis this week, and then continuing with the TEAC, TDRP, and gap analysis work towards ICANN 77. So looks like a long period of time. It's two months, but we have a lot of charter questions to answer and haven't nailed down a lot of details yet. So it's a gentle reminder that we need to start digging into some of those details and determining which specific areas we're going to focus on. I think that's it for the project plan, but I'll pause for any questions.

ROGER CARNEY:

Great. Thanks, Emily. Yeah. And as Emily just mentioned, it looks like there's a lot of time, but the two months will fly by. I didn't count. Probably only 9 or 10 sessions that we have left before ICANN 77. So hopefully we get through all those charter questions by then. But yes, we just have a few months. So, okay. Thanks, Emily. And I think, Emily, if you can walk us through the updates on the gap analysis working document as well, get us kicked off here.

EMILY BARABAS:

Sure, Roger. So let me actually just drop the link for you all first. So as you'll recall, last week, we walked through the proposal that Sarah put forward as part of this exercise around the gap analysis. So thinking about potential unmet needs and how they could be met through new mechanisms in addition to the TEAC and the TDRP. And there was some pretty rich discussion and a few different sort of sub-proposals seem to come out of that.

So what we tried to do on the staff side was to tease out some of those different pieces of potential proposals and think about some questions that the group could discuss to help better understand which of these might make sense to take forward and which might be those that would be sort of put to the side.

So we've added some new content. It's not in red line because it became a bit of a mess, but everything under here is new and incorporates some of the bullets from the ICANN 76 discussion as well. And for each of these subsections, what we've done is tried to sort of at the top put a proposal explaining what's being proposed, we tried to sort of take a stab at what problem it might be solving or trying to solve. And then where applicable, some discussion points from the previous conversation and also some potential questions for further discussion.

And I'll just go at a very high level to show what the pieces are. And if we missed any big chunks, we can certainly add those in. But hopefully this will help to structure the conversation a little bit.

So the first high level category was about sort of codifying informal resolution. And in Sarah's proposal, that was about sort of codifying the existing process, but also adding on a couple of

additional elements. So what we did here is start with this high level and under just number one, it sounded like there was some support hard to say at this point, how much, but for at a baseline adding potentially guidelines, rules or requirements to codify informal resolution between two registrars when there's some sort of problem with a transfer.

And our suggestion here is to first think about this as just the case where as it exists today, where if there's agreement between the two registrars that there is an appropriate resolution, that they can go ahead and take that action. So all we're doing is essentially adding some structure to the status quo with no automatic changes for an action or anything like that. And hopefully we can talk about that piece first and whether that's something that's needed, appropriate, the problem that might solve. And then we had some additional elements that were included in the discussion and in Sarah's proposal. So one of those was, as part of a more structured informal resolution, would temporary reversal of the DNS be appropriate?

Another one was about potentially extending the locking period for additional transfers to allow for that resolution to take place between two registrars. A third proposal was essentially the fast undo. So if the gaining registrar doesn't respond in a set period of time to a request for informal resolution, that the transfer is automatically reversed. And then the fourth one was about, if the gaining registrar does not respond in a set period of time to a request for informal resolution, a TDRP is sort of folks were using terms like default or escalation to a TDRP. So that's sort of another thing that came up in the discussion.

And then part two is about registrant-initiated disputes, but I think we're going to hold off on that for right now and focus on this because there's already quite a lot here. Does that structure make sense in terms of, is that missing anything that anyone wants to flag right now in terms of the discussion from last week and some of the elements that people were putting out there? Okay. Zak is saying that's a good starting point.

So why don't we start with this sort of baseline, which is just about creating some formality around informal resolution and not with a fast undo, not with DNS reversal, not with an automatic escalation to a TDRP. So this is just about documenting processes, maybe adding some timelines around them and so forth.

So we took a stab at what problem this solves, and it could solve the problem that there's not enough structure around existing processes for informal resolution of transfer problems where registrars are working together and agree that there's a solution that they can both accept. And it might also address the issue that resolution is not happening fast enough. For example, after first contact with a TEAC or through a non-emergency channel. And I think maybe I'll hand it over to Roger to start running through some of the discussion questions on that.

ROGER CARNEY:

Great. Thanks, Emily. Yeah, this is a great staff write-up from our great discussion that we had last week during our meeting. We had a lot of good back and forth discussion last week. And obviously, as it's new and everything, it was a bit more spread. So I think a good shout out here for staff to try to put all this together

and make it sense so that we can talk individually about things here.

Yeah, and I think that one of the big questions that came up last week is that once we got into talking about the dispute mechanisms, I think it was obvious to everyone that the TEAC and the TDRP were not used. But we all know that there's disputes occurring. So it's one of those where it's occurring and being handled outside of the policy, which I think is obviously a good thing as well. But is there a reason, are there reasons that we need to structure that a little more? Does it help anything? A few things that come to mind is, will it help engage other registrars knowing that, oh, this actually is something that occurs on a daily basis already? Maybe we can participate more freely with it.

And the other thing that occurred to me was, it provides a level of transparency as well to just the observers, maybe not those that are going through it, but also observers saying, oh, okay, so this is being handled and this is how it gets done. So just a couple of things I thought of when we started talking about that.

But I think the big thing is—and I think this first question really gets to it, is this informal process that occurs today is great, it's occurring, but is it enough? Is it widespread enough to make this good? And the real question is, does it need to go from informal to formal? And is there any cost associated to doing that? Is it a benefit? And I think that that's what we kind of want to tease out is, does it make sense to formalize some of these informal processes? And one of the big things here is also, should there be timelines around it?

So anyone have any comments or questions on about the idea of trying to formalize or not? Again, I think either side is valid here. So, Zak, please go ahead.

ZAK MUSCOVITCH:

Thank you, Roger. So first of all, a shout out to Sarah, who I'm sure is going to listen to the recording of this call at least, and it's too bad she's not here to participate, but I'm sure she'll catch up very quickly. Regarding your questions, Roger, my sense is that if we go forward with a codification of the informal resolution process, it could possibly provide some insight for registrants in terms of what registrars are capable of doing behind the scenes to rectify an unauthorized transfer.

And in that sense, it could ostensibly be in the form of guidance or an FAQ about what registrars do rather than being a formal policy of some kind. But the missing piece of information for me is really a question to you all who are with registrars is, do you guys see a benefit to a formalization of the informal process that you're already regularly engaged in? As Roger suggested, would this encourage more active participation from your fellow registrars? Would this provide any kind of relief of some kind? Or is this just a matter of putting it out there to the community in written form what already takes place, which, as I mentioned momentarily, a moment ago, does have its benefits in terms of education for registrants? Thank you.

ROGER CARNEY: Thanks, Zak. Yeah, and I think that's the big question to the registrar group as well. And again, to any of the groups, as you mentioned, Zak, providing a little more insight into the process, anybody that has interest in that, is there a benefit there? And again, maybe it just stays informal, which is an option as well. So Rich, please go ahead.

RICH BROWN: Hi. I have a couple things to say. First of all, I am Sarah's alt at Tucows. So Zak, if you have any questions you want to throw my way, I can probably answer them as we talk a lot.

As far as codifying a process, we need one. There is no formal process for registrars to deal with a transfer dispute. Right now, the process registrars use is informal at best. It's not a policy anybody follows. It's based loosely on the losing registrar contacts the gaining registrar in hopes to get the domain returned.

Many things have changed over the years. But the main thing is there is no process. And thus, because there's no process codified by ICANN, the answer most registrars use is, we will only return the domain if you provide indemnification for that, which many registrars are not willing to take that responsibility for many reasons. I'm not a lawyer, but I'm sure many lawyers here can describe reasons why indemnification isn't the answer.

Thus, if we have a codified way for registrars to try to resolve a transfer dispute, indemnification will no longer be needed because now it's part of a policy that everybody has agreed to, including the registrants. Okay? So that's just the number one reason, in my

opinion, that we need a process because, one, it doesn't exist. So I'm sure I'll have other things to say, but I just want to stay on this topic right here. And I'll give it back to everybody in the room. Thank you.

ROGER CARNEY:

Thanks, Rich. Yeah, and just to kind of sort of add on to what Rich was saying there, I think Tucows or whoever, I think that there's a process that each of the registrars are following. I think the issue of codifying or not comes down to is there some structure? Because 800 registrars that deal with transfers on a daily basis do it slightly different. So does it make sense to do those things? And as Rich mentioned, there's some issues about transfers or not, and it's usually a good partnership that happens to make them transfer easily. So, Zak, please go ahead.

ZAK MUSCOVITCH:

Thanks, Roger. So in terms of what Rich just said, yeah, the first part of what Rich said was pretty compelling to me in that there needs to be some policy in place, because the informal one wouldn't necessarily provoke a registrar to participate in any way, shape, or form. They could just say, I've got no obligation. One would think that there would be some self-interest in a registrar cooperating if they were on the other side down the road. But perhaps it's reason enough to codify the informal resolution so that there is at least a policy that requires a registrar to participate, even if it doesn't impose an obligation to resolve it.

The second part of what Rich mentioned I thought was very interesting. I had not considered that this kind of proposal in any shape, way, or form would alleviate the need for indemnities. I think that if the goal is to alleviate the need for indemnities, I don't think this does it at all, I'm afraid. I think that any registrar who's the gaining registrar that agrees to roll back a transfer to the losing registrar is going to be responsible for that decision to the registrant. And therefore, even if there's a policy that provides for the two registrars to agree, that doesn't preclude the insistence upon an indemnity.

So I'm not clear on how this would actually alleviate the need for an indemnity at all. I think that that would carry on unless someone was going to indemnify the reversal, such as ICANN, and we know that will never happen. So there's going to be requests for indemnity going forward, I would think. Thank you.

ROGER CARNEY:

Thanks, Zak. And I think you hit on a key there. And again, this process, and Sarah tried to stress that last week as well, this process we're talking about is when there is agreement that it's an obvious thing, or there's, again, a good partnership between the registrars that there's a trust level there. It's when both agree that this transfer was done erroneously so yeah, let's correct it. And I think that that's all this point is trying to make, is when that is a simple decision, should that be codified there?

And again, I think that codifying it makes it fairly simple and clean for most people. But I really want to understand if people are against that, just because whatever reasons—it works today, why

do we need to do this and that? Or maybe someone sees a trap in codifying it.

But I think the key to this point here is, yes, that both losing and gaining registrars agree that the transfer should be reversed. I think that it's fairly simple. And again, I think it starts leading down the path. Okay, then when it doesn't, then what happens next? So I think stating this from the beginning seems to make, to me, a lot of sense if we put this down and saying, okay, if both agree, and then you do this, and maybe there's a few weeks that you get to do this and pass back information. But maybe there's a timeline that says, okay, if two registrars can agree on it in X amount of time, then it should go to a different step or whatever.

So I guess what I'm asking is, are there people against codifying this informal process that occurs today when registrars agree? And again, originally, as Rich ad mentioned, it's a phone call or whatever it is to contact at a different registrar and you say, hey, and that's the process that starts. That doesn't mean they're going to, as Zak said, resolve it. But that's the process where it starts. And maybe they do agree to it, and it happens. And then maybe there's not an agreement, so it goes to a different step. But I'm curious, is there anybody against codifying that informal process that happens today? Emily, please go ahead.

EMILY BARABAS:

Thanks, Roger. I don't see any hands up, and I'm not against it, but I thought it might be helpful to maybe just reference some of the previous conversations to kind of jog people's memory. So one of the things that we have heard in some previous conversations

is from some of our registrar representatives in this group that informal resolution is happening all the time in the background. There isn't necessarily a record of it to reference, but that it's working relatively well for some parties, and that it's fairly successful in solving the problems that come up.

So, I don't know if anyone on the call feels like it was them who said that and would like to elaborate, but I did want to reference those previous conversations. And I think that's how we came up with some of these questions here around examples and so forth, just to create some visibility and some structure around the proposal. Because, of course, there are upsides to structure, but of course there's also downsides to structure, right? There's overhead, there's additional obligations, you have to actually build the policy and make sure it does what you expected it to do and so forth. So it would be helpful to hear from those who have said in the past, informal resolution is already working for us and additional structure isn't needed to sort of understand the counter argument. And anywhere that people can use specific examples or even anonymized case studies or types of issues, that also helps, I think, to make this a bit more concrete and gives us some fodder for whatever recommendations we ultimately come up with. Thanks.

ROGER CARNEY:

Thanks, Emily. Anyone on that? Any comments? Okay. I think what we can do then is maybe jump down to that next bullet that's not highlighted right below the highlight and go through these few questions here and think about them. You know, is this just guidance or should it be in policy? And again, as Rich mentioned,

the first part of the policy actually calls out and says, hey, registrars, you try to resolve this before coming here. And maybe that was the simple solution when that was written, knowing that the TDRP process is a heavier hammer to wield and involves cost to it.

But does it have to come up to a policy language? You know, does this policy, the transfer and dispute policy start with a formal section of, hey, registrar call or whatever and do these things? And if you can't agree, then go to the next section or whatever it is. Or is it just guidance that's provided from ICANN to registrars? Thoughts on that?

Okay. And again, I'm going to just throw it out for Rich. I think Rich is looking more for something formal. There's his hand. Thanks, Rich. Please go ahead.

RICH BROWN:

Yeah, sorry. I'm getting pinged all over the place, as normally happens. But is more structure, I guess the question is required? I believe yes. I think that's quite obvious in my responses. I am not a fan of the term informal resolution, because I believe it should be codified and thus made formal. So, yeah, that's my point there.

But I also want to point out that I think it's important to point out that this process would have three different resolutions, basically. One, where the registrars find agreement and reverse the transfer. Two, they don't come to agreement for whatever reason. And that's the end of that dispute. And the third option kind of can

come off of that second option where nothing occurs, basically both sides believe that this isn't really a dispute.

The third option is, I guess, an escalation, either a TDRP is filed, or the registrant disputing the transfer would be told to go file their dispute via court. And the reason for that is the TDRP only covers violations of transfer policy. There are many transfers that are unauthorized that take place, where they are well within the policy, meaning all the steps were followed. But it was still stolen due to a bad actor having access to the all the information needed to transfer, which hopefully will even go down further with previous work we've done on this. But that would be the reason to escalate to a court.

But the main thing is that having a process codified that the registrars can follow, just creates a clear path to everybody as to what happens when there's a dispute on transfer, what is the process to figure out whether a domain should be returned or not. Everybody in the chain has it in writing and what they can do. Obviously, registrars have been doing things informally for what, TDRP is over 10 years old now, maybe. So they've been doing it informally for 10 years, and I'm sure they can continue doing it informally. But it's my experience, and I've been doing this for well over 10 years now, that that informal process is not really effective, and changes depending on who you're disputing a transfer with, meaning what registrars you're dealing with with your registrar. Anyway, that's all I'd like to say there.

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

ZAK MUSCOVITCH: Thanks, Roger. So just in response to Rich's comments, if there's those that have found the informal process ineffective, I don't think that the codification of it or formalization of it would change that. At least I'm not aware of how it could, but I'm interested in hearing more about what would be the benefit of doing it this way rather than posting a best practices FAQ for registrars or explaining the informal process to the public. What would be the incremental benefit of codifying the existing informal resolution process?

And the second remark I want to make is that if the transfer policy, as Rich correctly points out, doesn't address any kind of transfer disputes other than those that are in breach of the transfer policy, for example, all procedures perfectly followed except the thief was the one that followed them perfectly, would that mean by implication that the codification of the informal resolution process wouldn't address those kinds of incidents because the informal resolution is for transfer policy disputes only rather than those that fall outside of it? And so I'm wondering if we might inadvertently be limiting the informal resolution to those instances that are caught by the actual policy. Or alternatively, it may very well mean that the informal resolution for those non-transfer policies will continue on in any case and not be codified. Thank you.

ROGER CARNEY: Thanks, Zak. Yeah, and I think that's one of the big things that I thought about as well as the TDRP, the comments received on it doesn't get used because the thief followed all the rules, so you can't stop them with it. And to me, the idea of bringing this informal

process in was to maybe sort of address that. Obviously, you're not going to get it completely. But as Rich mentioned, some of the other things we're doing hopefully help that. But also, if you formalize this process, does that provide another feature of the process?

And to me, I wasn't expecting this process to say, okay, if you didn't follow the transfer policy, then you start here. To me, it was any dispute starts here. And then, obviously, if it's a policy issue, it could take a path. Or if it's a different issue than a policy issue, it takes a different path. But to me, it was any dispute, not necessarily any transfer dispute, not necessarily a transfer dispute as per policy of the transfer policy, if that makes sense. Rich.

RICH BROWN:

Well, first to answer Zak, let's see. There is no, as I've said, there is no process for registrars to follow. So when a losing registrar reaches out to a gaining registrar to try to resolve some sort of transfer dispute, one, that losing registrar does not know what policies or what requirements that gaining registrar is going to want to go forward in a dispute, okay? And it changes from registrar to registrar. So for example, working at my registrar, if I had to contact another registrar in regards to a transfer dispute filed by one of my clients, I don't really know what I need to provide to the new registrar.

So I don't know what the other registrar is going to require. Two, what often happens is they either have extra requirements that the losing registrar can't abide by. Most of the time, that's the big step of indemnification. The number one wall nowadays, when you

reach out to say, hey, our registrant is disputing this transfer, we need to have it returned, the go-to is, well, sign an indemnification. Because nobody, one, it's hard to trade customer information due to GDPR. We all understand that. It's not that hard, actually, in reality, because if a registrant files that their domain was stolen, it's real simple for the losing registrar to say, okay, yeah, we'd like to investigate that. We'll contact the gaining registrar. Do we have permission to share your ownership details with them to prove you as the owner? That can be written into this, but there are no guidelines to go with. And thus, it makes every dispute interaction, starting from ground one, and in my opinion, practically trying to create a process fresh every time. And that's why we need something.

I'm not saying this has to be the end-all, be-all, but this should be the first step. Registrant, unauthorized transfer contacts their losing registrar. Losing registrar can then reach out to the gaining registrar, and then we can follow whatever steps we want to put into this in order for those registrars to come to one of the three conclusions I've already mentioned. So, yes, that's a major reason why I believe this is well needed. And back to y'all.

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

ZAK MUSCOVITCH: Thanks, Roger. So, it sounds like from what I'm hearing from Rich that really what he would like to see is a much better transfer dispute resolution policy. Low fees, clear evidence requirements,

clear process, an outcome that doesn't impose an indemnity upon the registrar that returns a domain name. Those are all valid points, but those are points that I think are raised within the context of the existing transfer dispute policy and procedure, whereas what I understand that we're talking about here is not something that is going to be a better solution than that. It wouldn't have detailed requirements for evidence. It wouldn't have detailed timelines. It wouldn't have automatic recourses. Those are all things that happen under the real transfer policy. If we were to add all those things in, what we'd essentially be doing is building another formal transfer dispute resolution policy, which I'm not saying is out of the question either, but the more you build into this, the more you're trying to create such a thing.

And as I mentioned before, I think that the two main problems that I hear Rich referencing in relation to the status quo are ones that don't appear to be solved with this proposal. The indemnification wouldn't go away if one registrar wants it in order to roll back a transfer, and having to determine what evidence a registrar wants in order to roll back a transfer is going to change from registrar to registrar, and building that relationship and initiating that process is going to continue to depend on who's on the other side of the phone or the internet from the other registrar. So, although I appreciate and recognize that the issues that Rich outlined are genuine issues, I think that those are not solved by this, and so the way I'm seeing it is that we either resolve to create that robust policy that Rich is contemplating, or we proceed with what's merely a codification of informal resolution, which will serve as a guide and at most put into writing what already takes place, and at least give someone like Rich a web page at ICANN to point the

other registrar to just to say this is the procedure that I'm following. Doesn't require you to do anything, doesn't require you to resolve, but I'm contacting you to try this informal resolution process before bringing the TDRP. Thank you.

ROGER CARNEY:

Great, thanks, Zak. Yeah, and I think you're right. I think the key to this specific—we're talking about is that complete lightweight, nothing—I can't say no evidence. Maybe even today the informal process, there's some evidence that gets shared back and forth, and maybe that's why it takes a couple of days to do a reversal, but this is that easy slam dunk, and I think as Rich described it, that basic first step of a dispute. It seems like in any dispute anywhere, that first step is, okay, talk about it, and okay, if you don't agree, then you move somewhere else, and really what we're talking about is that trying to codify that very first step of, okay, does it make sense that that we tell registrars that okay, here's a path that you start on?

And maybe to what you were saying, Zak, I wouldn't say that there's nothing that we can add in here. Maybe we do say, and if the registrars aren't making progress after X amount of time, then it follows a different path after that, maybe it takes the second step or whatever it is along those lines. So to me, this is very lightweight, and it is just that normal, hey, there's an issue here, can we resolve it? If not, let's move to the next step then. But to Zak's point, that is exactly what this whole section is about, is that very fine line of, do we codify that, yes call before this process starts, and again, maybe we do put timelines on it, so that a losing registrar knows, or even the gaining registrar knows that there's a

clock running, and if it's not resolved, it moves to another option or step in the process.

And again, I think that the thing, when we're talking about it is, it's always an option to go to that next step it's one of those, and maybe it's one of those where, can they just jump the step and initiate a full-fledged TDRP and move on that way? It's something to think about as well, but I think that, again, in most disputes, it's like, okay, talk about it and see if there's an easy resolution, and if not, then you move forward, but I think that that's the question, is do we codify that, saying, hey, reach out and see if this can be resolved, and is that, does it actually have to happen as well, so that you can't go to step two if you didn't do step one, or can you skip forward and just do something? It's another valid question as well. Zak, please go ahead.

ZAK MUSCOVITCH:

Thank you, Roger. I think that that's a good description of the landscape. I would just add one point, is that, what is the reason that, since the creation of the transfer dispute resolution policy, it's only been formally initiated, I believe, eight times—I'm sure Emily will correct me on that—eight times between two different dispute resolution providers, and what is the reason that registrars, all of a sudden, are so collegially cooperating to effect informal resolutions of transfers?

And I think the answer to that is twofold. One is that the existing transfer dispute resolution policy is a legal procedure that registrars, quite sensibly, don't want to have to wade into, unless they absolutely have to, and so informal resolution is an incentive

in and of itself to not have to seek recourse to the transfer dispute resolution policy, and secondarily, the entrance fee of ten thousand dollars plus, I believe, cost consequences for the losing party, if I recall correctly, that basically takes TDRP off the table for many registrars. And I understand that this informal resolution process was generally highly effective, but if there is dissatisfaction with its effectiveness from Rich and other registrars, then I think that the solution to that isn't to try to rectify it within a codification of the informal resolution policy, but is to make the actual transfer dispute resolution policy much more accessible, both for registrars and directly for registrants, with a low entry fee, because that \$10,000 is totally unrelated to the work and the costs involved, if you compare it to the UDRP. And in terms of quick timelines as well, and inclusion of specific forms of evidence that are permissible. Thank you.

ROGER CARNEY:

All right, thanks, Zak. Okay, Rich, please go ahead.

RICH BROWN:

Yeah, I just want to say I would agree with Zak in that expansions to the actual TDRP and improving on that is not off the table. One of the major reasons, and I believe he's right, I believe he's right, that I'm even doing a lot of this is because the TDRP doesn't really work, practically speaking. For the obvious two points we've all thrown out there, one, it only covers actual policy breaks. Like if a registrar didn't send an EPP code in a proper time, you can file a TDRP and things like that, because policies were not followed in the transfer process. And the second being the registrar has to

pay these exorbitant fees, even in cases where it was the other registrar who might have violated the policy.

So, of course, you don't want to pay for other people's mistakes. Nobody does. It's the same on a corporate level. So, yes, I would agree that the TDRP should be open to the registrant. It also should cover more things that would allow it to cover hijackings and what have you, but without that, we still need something to deal with that, and right now, in all of these deliberations and discussions and presentations, this has been the only avenue to do so. So, once again, I still believe we should codify this registrar process, if you will, as well as update the TDRP and expand its reach, in my opinion. Thank you.

ROGER CARNEY:

Thanks. And I'll just throw out a reminder here we're having a good discussion here. It's been isolated to just Rich and Zak, so if anyone else has any comments, please do, and I'll encourage both Zak and Rich to go back to their stakeholder groups and talk about this. As it stands today, obviously, this isn't part of it. You know, the only thing that the policy states today is, yes you should do this, and then it gets into the policy. So, if we're going to change those things, we need a good groundswell of support to change it. Otherwise, it stays the same. So, and again, encourage the members here to reach back to their stakeholder groups and get the feedback from their groups to make sure that they bring that forward so we can proceed on a line of staying with the status quo or actually making a change here that makes sense. So, Zak, please go ahead.

ZAK MUSCOVITCH: Thank you, Roger. That's a good reminder of reality that, yeah, there must be consensus and substantial support for something to even change at all. So, yeah. Well, thank you for the reminder as much as Rich and I could go on about this.

I think that Rich has kind of hit on a possible path forward for the working group in terms of this informal resolution and related recommendations. So, if the working group resolved to say that it sees merit in codifying the informal resolution process for the purposes of transparency and for the purposes of providing some limited structure for registrars to follow to informally resolve before initiating a TDRP, that works.

But then the working group could also take it a step further and say that we recognize the limitations of this informal resolution procedure, but our current alternative of the TDRP is not an effective alternative because of the cost, because of who can initiate it, because it doesn't address all kinds of wrongful transfers. And therefore, we recommend that a transfer policy be revised pursuant to the following principles. Covers more than existing kinds of unauthorized transfers, can be registrar initiated, must be low cost, time effective, these kinds of things. And then I'm not sure if people would expect more from the working group than that, but at that point, it could, in theory, go to an IRT. Thank you.

ROGER CARNEY: Thanks, Zak. And just looking through chat there, thanks, Caitlin, for posting the cost. And Mike, yeah, I think that that's right, how that happens. And once you start thinking about, yes, it only occurred so many times, and we know disputes occur every day. So obviously, they're being handled some other way. It kind of leads me back into something that Zak mentioned, I think, in his early comments of today. And it's like, okay, if we codify this, which seems like Rich and Zak both kind of say similar things. And that, yes, it seems to make sense. Again, I want additional participation, because this is a change to policy. But I think Zak didn't say it, but kind of touched on it that one of the things about this is if this lightweight mechanism occurs, is there any reporting or metrics that have to be recorded along with this so that there is knowledge of disputes occurring or not? And it's just that next, I think, logical question of, okay, if we codify this, and we're trying to be transparent, does that lead to additional requirements that someone has to fulfill? And again, trying to keep it light and everything, but to add it doesn't—we're still not going to know that hey, yes, somehow we still got eight TDRPs, but we don't know how many actually got into the funnel to begin with. So, Emily, please go ahead.

EMILY BARABAS: Thanks, Roger. I guess just to add one more question to your question. I think the issue of reporting and having additional data points on informal resolution could be a supplement to creating more structure and process around informal resolution, but could also stand on its own, right? So by having more structure, maybe you have a more structured way also to record data and could

create requirements around that, which you could also just create requirements about documenting informal resolution as it's happening without these formal processes in order to have more data points about what's happening. So those two things could complement, but also could be standalones. Thanks.

ROGER CARNEY:

Thanks for the call out, Emily. Okay. Let's jump to the next question that it deals with are there paths for TEAC and non-emergency solutions here? And I think this is a valid question. I think it gets back to the purpose of the TEAC and everything. And to me, the TEAC is just a different contact. If you think it's a major problem, you may contact the TEAC, but in the informal setting of today if it's not a major problem, you just get a hold of your known contact at that registrar, or if you don't have one, then you're kind of stuck in a spot there. But is it a different path? To me, it gets back to the fundamental question of how are we treating TEAC?

Again, what Sarah has said multiple times is TEAC is really just a contact. It's not a process. So, it's not necessarily a separate process, but maybe just a separate entry into the process. So, thoughts on that? And again, I think maybe the second part of this question here is the bigger part: are there different timelines that should be followed based on a TEAC? And obviously, TEAC has a four-hour window today, which, again, the group has identified as being an issue and sees that being a longer process or longer timeline. But is there distinct timelines? Hey, if the TEAC is called, you have to hit this target and this target, and if the TEAC is not called, it's the same process, it's just a longer timeline, or maybe there is a different process, and that's what this question is trying

to get at is should there be a difference, and not just in the process, but also in the timeline?

And I think what we've said so far is the timeline could be different, it should be different, but I'll open it up to the floor for any discussion on timelines and the TEAC interaction with that. Rich, please go ahead.

RICH BROWN:

Yeah, this is a heavy debate. I agree with you there, Roger. So, just to put in my two cents on it, what we're really thinking, in my opinion, is how does the TEAC fit into all of this? I would say the TEAC is used to initiate the process. Simply, the losing registrar gets word of a unauthorized transfer, and I always put it that way, because most of the time, registrars only hear about an unauthorized transfer from the registrant.

So, at that point, it's—and I'm just speaking from experience here, it's always an emergency for the registrant. I just want to state that up front. It's my experience. Well, maybe not always, but 99.9%, it's an emergency for them.

So, the losing registrar sends a notice of dispute, in my opinion, using the TEAC to that gaining registrar. The gaining registrar then responds saying, yeah, let's deal with this, let's dispute it, and then you go into whatever we decide to codify or upgrade with the TDRP. Obviously, other discussions are made that have to be made on how the process continues.

But the TEAC is a real simple of, when a transfer dispute begins, time is of the essence, always. So, the TEAC, in my opinion,

should be used to initiate, okay? If they respond, great, then you follow the process. If no response is gained, then obviously, there's an issue.

Now, as far as the timeframe on the TEAC, yes, that is terrible. That four-hour window is all my, it's god-awful, in my opinion. I believe it should be two business days, and the reason I say that is that is the same period that we use in the UDRP process for verification of domain information that the panel requests from the registrar before they start a procedure.

And if those unfamiliar with that, basically, once a UDRP is filed with the panel, the panel sends notice to the registrar asking for all of the registrant information along with locking down the domain to prevent unwanted transfer. It's two business days. It's already well-known. It actually matches other similar policy because the TDRP is already a panel dispute process.

So, I believe the TEAC can be purposed into this to be used as the initial point of contact, and if nothing happens, then, of course, the TEAC rules apply to it, reversal of transfer can be followed up on. Otherwise, hey, that registrar responded, time to follow whatever the process we decide upon is. Thank you.

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

RICK WILHELM: Thanks, Roger. So, I'm going to reiterate some points that the registries have made before, just to kind of refresh everyone's

memory. One is that we've observed that it appears that at times the TEAC is susceptible, the TEAC process is susceptible to abuse where actors can notice and be aware of shutdown times at different registrars related to holidays and other situations where operations at businesses can go on a slower pace. And so, they'll take advantage of those things to exercise a TEAC situation about an allegedly, to either initiate transfers that then would cause a fraudulent transfer to be then susceptible to like gaming the TEAC and things like that.

And then the other thing is that the registries have previously stated that TEAC contacts can get stale and or be inconsistently updated. And so, the situation where the registries are reaching out and they can't find people, it might just be a stale contact. It's not that the registrar—it doesn't have a TEAC contact. We've previously requested that ICANN be broadcasting, change it to be broadcasting updates to the TEAC contact.

And then I believe that the third thing is that the TEAC happening by phone is one of the things that we've discussed within here, within the group, that that conversation happening by phone leads to a lack of traceability. And so, we had talked about, kicked around the idea of having these kind of transfer issues being handled via the NSp and enhancement to the NSp. So, I'm pretty sure that all that stuff is already on the record, but just kind of refreshing everyone's memory or in case we've got different folks listening today than previously. Thank you.

ROGER CARNEY: Thanks, Rick. Yeah, and always good to cover those grounds in discussions that we've already had. Any other comments on the TEAC integration and timelines associated with the process as a whole, TEAC or separately or not? So, any other comments?

Okay. Yeah, and again, Rick brought up, obviously the TEAC has the one big process element in it that initiates a reversal, it could initiate a reversal in the policy. If a response is not made by within that time period today, four hours, a reversal can happen upon notification to the registry and ICANN. So, I don't know if Rich wants to talk about, is he suggesting that that stay, if it's a two business day, is it still an automatic process that occurs if that timeline is just extended? It has to be the losing registrar making that reach out and compliance in the registry actually doing that process. So, Rich, please go ahead.

RICH BROWN: Yeah, I can answer some of those things. One, the two business days, just adjusting the timeline for the TEAC. All other, quote, penalties would still apply. Meaning if there's no response, then yeah, file for a reversal. Because honestly, in my opinion, if a registrar can't respond within two business days, something's happened. Just my opinion.

And as far as gaming the system, I mean, first of all, the biggest way TEAC is abused is due to the four-hour time window. It's almost impossible for people to respond in an appropriate time. Because of that—and I think that's why there's such an agreement that everybody discusses that time window.

Furthermore, to just add a point, I would say 90% of the TEAC contact initiations are going to be from a losing registrar. Because I have rarely seen a gaining registrar want to initiate a transfer dispute so they can give the domain away to somebody, back to somebody else. I mean, it's kind of the nature of the business. Most companies want domains to stay with them.

So yeah, that's why I believe it fits in with the whole, that's where I believe it fits into the initiation of the whole dispute process that we're kind of laying out here. And I think that's where it fits. It still maintains its use as a—it's a point of contact, but the reversal now has a reason why you would reverse it.

Also, I'd like to add that another thing we, in my opinion, we should add to the TEAC is an ability for a registrar to validate the request to reverse. Meaning, say I'm a losing registrar and I send a TEAC to the gaining registrar and they don't respond. So I go to the registry and say, hey, reverse the transfer. The registry should be able to say, hey, yeah, we reached out to that registrar. If we hear nothing back within 24 hours or two hours or whatever window or whatnot we wish to decide upon there, then they can go ahead and freely reverse it. And now at that point, we have two documented paper trails from a losing registrar and the registry themselves, showing that they were unresponsive at that point.

So that's kind of where I feel about the TEAC as far as a lot of the gaming and fixing that goes on. A lot of that happens between the, around the four hour window. The other quote gaming that goes on, many registrars have their TEAC going to like support or a department that is 24 hours because of that four-hour window. Because technically it has to be responded to by an actual person,

not an auto responder and support agents can do that too. There was a third reason I'm forgetting on how the TEAC is gamed, but honestly, I can't remember it at the moment. So I give it back to all of you. Thank you.

ROGER CARNEY:

Thanks Rich. And just a couple of comments there to think about is, is the TEAC the entry point for a dispute? And it's not necessarily an emergency contact, but just the transfer dispute contact. And again, the emergency part I think is probably why the four-hour came in. But if we're saying that's not reasonable or not practical and it needs to be extended. Is it just that that's just the normal process to start a dispute? Just something to think about. Is that that one contact or multiples?

And again, as Rich just mentioned, when you use a TEAC versus the current informal process, the TEAC does today require that it's not automated response and it's actually a person. And it's only a response so that yes, okay, we did receive this and we can take a look at it. So just a few things to look at, or think about, is—and again, maybe the terminology changes or whatever. Are we looking for one entry point in the dispute mechanism? And again, the TEAC has a couple qualifiers to it, and that is obviously a response by a person, not an auto responder. And if there's no response, it can automatically roll back. And I think that those are probably the big questions on the TEAC, is, do those things still occur and is it the same way? And again, is that the only entry or should that be the entry? As Rich mentioned, it's an easy documentation path. So just something to think about. Rick, please go ahead.

RICK WILHELM: Thanks, Roger. So I'm only going to address the one point of Rich's statement about where he was suggesting that if the registrar, if the gaining registrar doesn't respond, that the registries would be, prior to reversal, reaching out and attempting to contact, that would be a fundamental change to the way that this process works and actually getting the registry in the middle of deciding whether or not the transfer, of deciding whether or not the transfer should happen. And we would not be supportive of that kind of a change. So we would rather see the TEAC process, quote unquote, reformed more fundamentally, rather than seeing some sort of a tweak made that actually puts the registries in the middle of it, in the middle of that process further. Thanks.

ROGER CARNEY: Thanks, Rick. Yeah. And in today's policy when the TEAC is not responding to, the losing registrar is obligated to contact the registry, can contact the registry and compliance if they're looking for a reversal, but they have to contact both if they are looking for a reversal. That's, again, today's policy. So just something to keep in mind. So Caitlin, please go ahead.

CAITLIN TUBERGEN: Thanks, Roger. I just wanted to respond to some of the ideas that have been floating around and maybe not propose a new idea, but note some of the concerns about why the TEAC came into play to begin with, which many of you are probably already familiar with, but essentially why the TEAC was adopted as part of the transfer

policy was in response to SSAC concerns about true emergencies. And I know some of you have said that all registrants think they have a true emergency at their fingertips and need the transfer reversed immediately.

But I think there might be members of the community that have concerns with extending the TEAC response to two business days. For those of you who have been in conversations about any sort of SLAs in response to urgent needs or urgent concerns, two business days could effectively mean over a week if there's an office closure in a certain jurisdiction. So I just wanted to note that that might cause concerns for certain members of the community. I also wanted to note just for reference that in the current registrar accreditation agreement, there is another SLA about responding to urgent requests, and that's a 24-hour period, which would obviously be longer than the current four-hour, but that's something that's used for registrars to respond to reports of illegal activity. For reference, that's, I believe, 3.18.2 of the RAA. And similar to the TEAC, the issue doesn't need to be resolved within 24 hours, but there does need to be a non-automated response to the urgent request.

So that's something to think about that is longer than four hours, but not as long as two business days, which might cause concerns. And another thing to potentially think about is—not to overcomplicate it, but maybe something to think about is if you want to have some sort of tiering system where a true urgent request, as Owen notes, illegal activity, some sort of issue with law enforcement, some sort of shutdown or a true emergency could have to be dealt with sooner than a normal request, and the

TEAC could downgrade those requests just to kind of have, I guess, not a happy medium, but if there is a true urgency, there might be a situation where two business days is too long to address that emergency. So those are just some thoughts for the working group to consider. Thanks.

ROGER CARNEY:

Thanks, Caitlin. And thanks for the references too, because that helps to align certain events. So, and I think talking about Caitlin's tiering and something that Sarah suggested last week, actually, I think one of the hard problems of the current TEAC, and actually anything like that even if it was extended out, is that that non-response, and I think Zak talked about this a little bit last week as well, but that non-response being an automatic reversal, that action seems big, and is it a correct action for a non-response?

One of the suggestions Sarah had last week, and I think we've talked about the next section actually here, is about DNS reversal, and getting to Caitlin's idea about tiers. To me, it seems like if there's a non-response, and it's set for whatever time frame we come up with, and it doesn't happen, is that first tier really just a reversal of the DNS so that things function correctly, the domain stays where it's at, and again, we sort of talked about it last week is there locks on or whatever, we can get into that as well, but is that first step if there's no response, is that first step a DNS reversal versus a transfer back? And I think that even the DNS reversal fits in, questionably could fit in, somewhere else as they don't agree on something, so that the process is moving forward, but the registrars don't agree, does that DNS reversal happen at that point?

And again, I think the big question on the TEAC is that the action is huge on a non-response, and it could be [inaudible] for multiple reasons. You know, as for today, the timeline is very restrictive and can be not just gamed, but I mean, can be missed fairly easily. Extending it out to a 24-hour period obviously covers the issues of time zones and things like that, but still presents some issues around support and things like that that were brought up.

So, I think the TEAC allowing for—and again, it's an allowance, a non-response to a TEAC doesn't have to result in a transfer undo, but it can, and the question that I'm posing is, should that action be minimized a bit so that it's just a DNS reversal? The prior registrant still functions as it did, and the current registrant still technically owns it, but it can be resolved after that, and maybe that window can stay fairly small, but the action changes on that, just a comment. So, Rich, please go ahead.

RICH BROWN:

I'll get to Caitlin's in a moment, that's a lot of text. In answer to this, to help you out, as far as TEAC is concerned, it would happen basically prior to the initiation of whatever dispute process we put together for the registrars.

The TEAC should not be a continuous used as part of the back and forth. It should be used once to initiate the dispute and the conversation, and after which, once that gaining registrar responds stating, yeah, let's discuss this, or we don't want to discuss this, or whatever the resolution they feel, or what have you, at that point, we're now in that informal process, and we've already discussed that that informal process, as we're calling it,

has three resolutions. Either they agree, both parties decide that this shouldn't even be a dispute, or third, they can't come to an agreement and it's escalated.

In none of those steps does the registry have to be involved, because one, if both registrars agree to return the domain, the gaining registrar can return the domain. No need to contact the registry and say return the domain.

Now, there was one other thing, it might have walked out of my head. So, yes, as far as the actual dispute process goes, the registry should not have part of it, nor should they have to deal with a TEAC request, because another registrar is, quote, not responding to their needs to reverse a transfer, because really, at that point, then they are gaming it just to get their way in the dispute.

As far as, in my opinion, the registry should be concerned with the TEAC is what it's dated for. I think we just need to give purpose to the TEAC, which I believe should be the initiation of this dispute process that happens when it's reported in dispute. And Zak can obviously correct me if I'm wrong, but I agree with Zak that as far as that registrar process, one, the TEAC should not be part of that as the back and forth, and two, the registry shouldn't have to interject in that process. They should be there only if the TEAC is not respected to begin with, or further things like TDRPs, court orders, or what have you, where they're told to do that. Anyway, that's my answer on that one. Thank you.

ROGER CARNEY:

Thanks, Rich. Okay. Yeah, and I think that, again, I think going back to what I commented on before, I think before we close this off here—and I'll actually hit this last question to make everybody think over the next week so we can make sure that we have some good comments coming in, but a great discussion today, and there's been some chat going on, which helps facilitate it as well.

We really do need to hear if there's support for making these changes. And again, in prior discussions, we've said that the TEAC timeline should probably be updated. I think that 24 hours are suggested, Rich is suggesting two business days. But I think that we can get away from the four hours, which I think everybody kind of agrees on, as we just said, to find that point in time.

And again, I think the action of a no response needs to be looked at, and how that gets handled. So I think that's important as well. So I think that prior to walking this line too much more, I think we need to hear some good support that it's a good idea that we look to codify this process, and make these few changes. And again, I think we've got pretty good support on talking about changing the TEAC timeframe. But I think what we really need to look at is, okay, how does that TEAC get used? You know, Rich is thinking, maybe that's the initial contact for any dispute. And it comes back that way. And again, someone's suggesting maybe there's two entry points. And I think that's what we need to look at, is, what's valid there.

And I just want to touch on this last one. I'll give Rich the mic after I do. But I just want everybody to look at this last question about should the new registrant have the opportunity to challenge or

interact with this registrar before a potential transfer is agreed to by the registrars.

So I think Rich had mentioned it earlier, as well as if a registrar is not responding in a couple days, then what's the problem? And I think that obviously there could be issues there. But before making an undo transfer occur, should there be another step? And again, to me, it gets to the question that I was posing, is, should that action of a no response be something lighter than an undo? And then a process follows that to finalize an undo or to let that go back. As Rich mentioned there's really three kind of paths to take when a dispute arises. Yes, people agree and it's undone. There's no response. So something has to occur. So maybe there's three or four, I guess, paths, now that I think about it, there's four paths. There's no response. So something has to occur to move forward.

Both parties, registrar and registry, or losing and gaining registrar may agree, oh, sorry, there is no dispute and we don't need to do anything. Again, probably not as likely as the other options, but it's obviously an option that has to occur. And then finally, they disagree and they need to move somewhere with it. So it's kind of that path of what's the next thing. And I think Rich has laid those out. And so I think that if anybody comes up with other ones, it'd be good to hear.

But again, for the group, I think we need to think about, okay, is this something we do support? Because Rich and Zak have laid out really good reasons for this, but we're not hearing a whole lot of support. I did see a few chats that did support it as well, but we need to see that so we can move forward and not spend any more

time worrying about it. But Rich, is there anything else you wanted to end with before we go? We've got a couple minutes.

RICH BROWN:

Those are some good thoughts. I would also like to say, I haven't seen much against wanting to put this together. And to answer just some outlying things, if we do decide to codify a process, I believe that process one should have a timeframe applied to it. That way all parties know if it's not resolved, we go to what I said would be option three, where it's escalated or thrown to the courts or what have you. Because I think if you set a timeframe for that dispute period, obviously if that timeframe goes by, that would imply both registrars kind of come to a standstill. So it would break a standstill in that sense. And there was one more thing I'm trying to remember, but I'm forgetting, but it's been a long call. So I'll leave it at that and let's think about it. Yeah, that's all I have. Thank you.

ROGER CARNEY:

Thanks, Rich. Okay. Anyone else have anything they want to bring up? We've got one minute. But we'll take off from here next week as well. But if we don't hear a bunch of support—and as Rich mentioned, I haven't heard anything against it. So anyone that's against it, please speak up as well. But if we don't have a lot of support for this, again, status quo usually wins out. So please take this to your stakeholder groups, bring it back. We'll spend a few minutes on it. If we don't have a sense of some support on it, then we'll probably move on and just leave it as is and get to the next discussion. But we'll bring this back up. This will be our first

topic next week as well. So thank you, everyone. Rich, you have your hand up. Please go ahead.

RICH BROWN:

Yeah, just one last point. You had mentioned about reversing the DNS. That should be step one of the dispute process between registrars. Basically, you send a notice via the TEAC. The gaining registrar then sets the DNS back to the original DNS prior to transfer. And then they have their debate, or their dispute debate.

At the end of that, if it's reversed, well, then no harm, no foul, the DNS is set right. If it's escalated to TDRP or courts, then obviously those people will take care of things at that point. But in the eyes, as far as the registrars go, if it's gone through that dispute process, I believe at that point, if both registrars have already done it, if the domain goes back to the new registrant, then they are free to do what they want with the DNS. But the changing of DNS, I think the crucial point to that is it has to be done when the dispute begins. Because that, not having a website resolved properly is terrible for a lot of people involved. And I'll leave you with that. Thank you. Thank you, everyone.

ROGER CARNEY:

Thanks, everyone. And sorry we ran over, but we'll talk to everyone in a week. Think about it. Bye.

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