ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 09 September 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/f4jxDg

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: Good morning, good afternoon and good evening, everyone. Welcome to the Transfer Policy Review PDP Working Group Call, taking place on Tuesday, the 19th of September, 2023. For today's call, we have apologies from Prudence Malinki (RrSG), Richard Wilhelm (RySG), Jim Galvin (RySG), Jothan Frakes (RrSG). They have assigned Rich Brown (RrSG), Carolyn Mitchell (RySG) 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. Statements of interest must be kept up to date. Does anyone have any updates to share? If so, please raise your hand. All members and alternates will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. Please remember to state your name before speaking for the transcription. As a reminder, those who take part in the ICANN multistakeholder 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. I don't have a lot to open up with, but just a reminder that we've got today's meeting and next meeting to hopefully get through all of our ICANN approved bulk transfer discussions and recommendations and the partial portfolio, partial sponsorship changes. And we want to get all that wrapped up within the next two weeks, today and next week, so that we can move on to doing a recap of where we are holistically, so we can move into our change of registrant discussions right after that. So, again, it's important that we stick to this timeline so we can hit our change of registrant goals here so we can get onto that and finish those discussions, which we still have quite a bit to do. A little bit of pressure just so we can get these done. I'm not sure there's a big discrepancy within the group on these items, so I think that there's just a couple items we need to get cleaned up and marked as complete, and we should be pretty good. But it's been a couple items for the last couple sessions. So they are bigger topics, so I think we need to push through and get those done. So that'll be the focus for today and next week, and hopefully we can move past that.

Other than that, the only other thing I have really is, I guess nothing outside. ICANN's coming up here shortly. Hopefully everybody's there, but I will open the floor up to any stakeholder groups that have anything that they want to bring up, anything they've been discussing offline that they want the group to be aware of. So if there's anyone that has anything. Okay. Let's go

ahead and jump in real quick then and go through. Some of the homework that was sent, we didn't get any responses on, so we're going to have to go through those here somewhat quickly. And hopefully everybody was able to read them over the last few days so that they're not new and we can just discuss those through. But maybe I'll turn this over to Caitlin to walk us through these.

CAITLIN TUBERGEN: Thanks, Roger. This is Caitlin Tubergen from support staff speaking for the record. So at the end of last week's call, there was a suggestion for staff to come forward with some options for the group to consider, more specific options, since we were kind of talking more in the abstract.

So as you may have seen from the email that we sent out, how we decided to do this is to take the current language of the policy and show what it could look like in four iterations using different formulas. So before I get into the options, I just wanted to give an overarching reminder that what we're discussing now is what's in section 1B of the policy, which is ICANN-approved transfers or what the group has been referring to as full portfolio transfers. So when all registrars, gTLD registrations are moving or all of the registrations under specific TLDs are moving due to RAA termination, expiration, or RRA termination. So these requirements would not apply to BTAPPA or any sort of partial transfer. Just wanted to make that clear because I know there's been some confusion in the past.

So what you see at the top of this page is what the language currently looks like in the policy. In the yellow box is section 2. And

again, that's the current language in the policy. What we've been zeroing in on as a working group is the second sentence here, which is if the transfer involves registrations of more than 50,000 names, registry operator will charge the gaining registrar a one-time flat fee of $50,000.

With what the group has been discussing, we took that and updated it into four potential options for the group to consider. And of course, this isn't exhaustive, nor is it authoritative. It's really just meant as a discussion point. It might be that you think we could combine certain options or you have another creative idea that we can discuss today.

So you'll see a number two in front of each option. And that was so that this would be what the policy language could look like through kind of reverse engineering the policy recommendations.

So the first option would be to remove any reference to fees. So to just take out that sentence entirely and just note that if the two conditions are satisfied—and those two conditions are up here—the registry operator must make the necessary one-time changes in the registry database. There's no mention of fees, so that doesn't prohibit a registry from charging a fee, but it also creates perhaps a lack of transparency or predictability in terms of what a particular registry could charge. So that's maybe a pro and con of that particular option that we've discussed previously.

Option two would be to remove the price ceiling. So here we just say that the registry operator must make the one-time changes in the database and may charge the gaining registrar a reasonable fee for doing so. So that shows that the registry may charge a fee.

Again, it doesn't specify what that fee would be, and there's no ceiling or domain name amount trigger there.

Option three is a combination of some of the concepts the group has been discussing about apportionment of fees. So you'll recognize this from the discussions we've been having last week. So option three keeps the price ceiling so that there's predictability. It adds language about apportionment of fees so that the combined fee can't be more than $50,000 US or whatever the group suggests. And it also adds language requiring ICANN to be involved in the fee situation. So the first will look similar. We change it to registry operator may charge the fee, and that, again, notes that they could waive the fee for making a change. However, under no circumstance may the total fee exceed $50,000 US.

Number three should look familiar to the group. It notes that if there's a full portfolio transfer involving multiple registries, the affected registries must ensure the collective fee does not exceed the recommended ceiling of $50,000 US. And the fee must be apportioned based on the number of domain names. So you'll see in the footnote, this is identical language to what the group had been discussing.

And number four gets at the concept that the group discussed last week and the week before, that if a registry operator chooses to waive its portion of that fee, that does not entitle the other participating registries to raise their fee. They still can only choose to charge their portion of that fee. So there's a specific example in the footnote if anyone's confused about that language. Then we have the language about ICANN's involvement. So following the

completion of the transfer, the registry operators will provide notice to ICANN that the transfer is complete, and the notice would include the number of domain names ultimately transferred. And then following notice from the registry operators, ICANN will send a notice to those registry operators with the reported numbers and percentages, and then it would be up to the registry operators to choose to charge a fee, if at all. But it would be based on the percentage of those names.

And then the last option is something that we came up with that could be fodder for additional discussion. The group has kind of danced around this, but hasn't seen it in writing. But option four is to remove the price ceiling and to add an algorithm instead. So similar to the current language, you have that the registry must make the fee, and then registry operators may charge a fee for making the changes only in transfers involving greater than 50,000 domain names. So we have a domain name amount trigger that's similar to what is currently in the policy. That is, of course, in brackets, because that's really for the group to discuss. And then for qualifying transfers, the affected registry operators fee must not exceed 0.5% of the registry's wholesale price of the domain name for up to 200,000 domain names. Again, these numbers are in brackets as a discussion point.

The thinking was that without putting a specific dollar amount into the policy, that could account for things like inflation or price changes over time, but would provide some predictability in terms of the registrar should know what the registry's wholesale price is. And then we have a cap on the amount of domain names so that it's not cost prohibitive, or doesn't serve as a reason not to move

forward with a large bulk transfer. But again, this is just for discussion. And I see Steinar has a question. Is the level minimum of 50,000 domain names removed? I'm not entirely sure what that means. I think these options are being provided just for the group to discuss so it could come up with a combination of the concepts. But again, the 50,000 total domain names is just what's currently in the policy, so we threw that out there. It's up for the group to discuss. And I thought what could be helpful is to perhaps have some reactions about the pros and cons of certain options, if there's one that seems like it makes the most sense based on discussions to date, so that we can kind of narrow in on where the group would like to go and turn this into a policy recommendation based on that. And in terms of Volker's question, can we make this fee payable to the losing registrar? The current recommendation that we discussed a couple weeks ago is that the gaining registrar would be responsible for the fee, since the losing registrar, as Carolyn noted, may no longer be in business. And I believe it was one of the working group members noted that in terms of waiving of a fee, the registry may not be incentivized to waive a fee for the losing registrar. But in terms of the deal between the losing registrar and the gaining registrar, that's really for them to work out. But I'm going to turn it over to Roger to see what the reactions are from the group on these options or how they could be improved. Thank you.

ROGER CARNEY: Great. Thanks, Caitlin. And yeah, and I think what you said, Caitlin, on the, can it be charged to the losing? And I think the last part of that is the part maybe Volker can take a look at. I think

obviously, if this is, again, we're talking about a full portfolio move, so it may be a whole TLD moving and the registrar, the losing registrar still is in business that maybe they're just getting rid of supporting one TLD or they can't do it anymore. So I mean, I think it's practical that it could be done that way. But I think that in that way, as Caitlin said, that to me would have to be between the gaining registrar and the losing registrar and not affecting the registry. The registry has a path to the gaining registrar and how they receive that money that or where that fund comes from. The registry doesn't care and the policy doesn't care. It's just going to be from the gaining registrar, even if it is via the losing. At least that's the way I saw it. So if you have any more on that Volker. Sarah, please go ahead.

SARAH WYLD: Thank you. This is Sarah. Thank you to the staff team for putting together our options in the blue boxes. That was extremely helpful. Just for me, I couldn't think through it as clearly until you did that. So I really appreciate it.

I think option three is really good. I'm into option three. I like that it has the predictability of that. If there is a fee, then there is a maximum of what that fee can be. I like that it gives the option to not charge a fee. That seems helpful. But if there would be, then it's, I think, important to understand what it might max out at. And the apportionment of fees seems really interesting to me. So that's my vote for option three. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. And again, I think when you look through these—Caitlin kind of talked a little bit pros and cons on them. Obviously, to me, option three, the biggest con that I saw in this is that it gets more complicated. And again, when you say that, I say that kind of loosely because making the changes and all the agreements. And again, we've talked about this, when this happens, it's a multi-month process to make this happen. So there's a lot of work that goes into this. And this final piece of work really is what three is dedicated to is, okay, how does it get billed out if it's going to get billed out? And it is just, again, a more complicated fee structure, even though it does provide, as Sarah just mentioned, a pretty transparent path to it. So again, just the pros and cons. Steinar, please go ahead.

STEINAR GROTTEROD: And just to clarify my question in the chat here is that my understanding so far in the present policy is that there has to be a level of 50,000 domain names to have the pay of 50,000 US dollars per TLD. So if you have like the example, 60,000 total, 40 under A, B, and C, and 20 under the other one, the fee in the present level will not be charged whatsoever. I'm just trying to understand it because I have to report back to the At-Large and give some sort of correct information or at least understanding. But I'd also like to say that if this is some sort of a doubt, we should make it clear in whatever is been chosen to make the new policy. Thank you very much.

ROGER CARNEY: Great. Thanks, Steinar. And to me, I think you're reading it right. I think the current policy is 50,000 domains per TLD. So to your example, if one was 40 and one was 20, then nothing would be charged. But if one was 57,000 and one was 63,000, then there will be two $50,000 charges in today's policy or could be that way. So I think you're reading it right. I just use both sides of the example to indicate that. And what we're talking about, especially number three here is that $50,000 is a max for all domains. And it's not a per TLD one, it's the total number that's involved. And again, that's where the apportionment comes out is based on that, how much of that 50,000 each registry would be entitled to.

Any other options? Again, staff did do this and we even talked about some of these items in here. And what we've talked about the last few weeks is obviously getting to better or more, I don't know how you say it, a more realistic number maybe in that the 50,000 ledge and the $50,000 seemed somewhat arbitrary. So this maybe is still that same thing and maybe the numbers aren't exactly right, but is the process right and then the numbers can be adjusted. So Theo, please go ahead.

THEO GUERTS: Yeah, thanks. And this is Theo for the record. So I'm not sure about an option three. If I'm looking ahead down the road, I mean, we don't really know how large these portfolios are going to be in the sense how many TLDs are going to be involved in such a full portfolio transfer. I mean, they could include like God knows how many TLDs. And then that price of 50K has to be divided by how many TLDs are going to be moved. So as a registry operator, you could end up like doing the work below what it costs to do the

ENTransfer Policy Review PDP WG-Sep19

actual work there. I mean, that could actually happen. I mean, if it's many, many TLDs, that's going to split up. And I'm not saying that's going to happen every day, but maybe 10 years from now, that could be a real burden there. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Just a quick question back to Theo then is, do one of these other options fit or not?

THEO GUERTS: I'm still noodling over the last one. Thanks.

ROGER CARNEY: Yep. Thanks, Theo. Volker, please go ahead.

VOLKER GREIMANN: Yes. Thank you. I would like to maybe just add some color to my comment in the chat that I feel that this should be a losing register obligation only. First and foremost, the losing registrar has already made their money off those domain names that are going to be transferred. So just like decommissioning a nuclear waste, nuclear reactor, which has to be paid by the companies that operate it. It's not like the new registrar has already made some money off of that. They are basically asked to be paying in advance to potential future earnings to quite a substantial amount of money that may never be recovered. Therefore, the obligation should remain with the losing registrar. This is also mirrored in the situation where registry changes their backend. It's the registrar that has to put the

bill. Why shouldn't it be the registry that has the business risk instead of the new registrar when they accept new domain names? We've had the situation quite often where certain registrars of ill repute went down and every registrar has to think twice whether they want to accept those domain names simply because of the fact that some registries may charge and some registries will charge because they feel that maybe they're still owed money by the losing registrar and this is the way to recover that from the gaining registrar, even though the gaining registrar will only have a 0.0001 renewal rate off of these domain names.

We as ICANN should be mainly focused on making sure that every single domain name can be transferred to a new registrar. And if we create a situation where it costs a new registrar money to transfer the domain names in and help the community by basically helping the registrants taking on those domain names, then you might not find a registrar and you might be in a RegisterFly situation all over again because nobody wants to take those domain names and the registrants end up stranded again. We do not want that. Make the losing registrar pay and the risk resides with the registry. That's fair attributed because they already made the money of the domain names. The losing registrar did already make the money and the gaining registrar has nothing but risk. Thank you.

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

JODY KOLKER: Thanks. Thanks, Roger. This is Jody. I agree with Volker on a few points and disagree on some other points. First of all, as being part of the RegisterFly transfer, I mean, there is no way that RegisterFly even existed anymore, so they wouldn't be able to pay for it when a registrar goes out of business like that. I mean, basically, the two owners were, we couldn't even get a hold of them and there was no way they were going to pay anything. S o I don't know if we can force the losing registrar to pay for it. It would be nice, but I think there's going to be situations where they're just not there. They don't exist.

And secondly, I kind of agree with Volker on the points of the registry of there being no fee for this. In order to get enough registrars to be interested in these customers, it might take a few registrars. We may get more registrars more interested in taking them over or adding them to their portfolio if there isn't a cost. Because most of the time, these registrants are very upset that the registrar went out of business. They don't understand what a registrar is and now they've got to transfer to another company. And the first thing they might do is not even look at that company as soon as it comes up and running in the registrar's business or in their portfolio or in their, what I want to say, on their website, they'll transfer them away. So the risk of the gaining registrar, although there could be great gains to it, there's also a great risk that all those customers will just be gone as soon as the domains come up for renewal. I agree with Volker. This is a risk of the registries. You know, registrars might go out of business. That's a risk. Registrars themselves take on fraud risk and all kinds of business risks that are covered by the registrar. This is a risk of the registry. And it's just a normal operation of business. Some of

the people you do business will go out of business, will no longer be viable. So those domains will have to be transferred somewhere else. You know, I think it'd be well if we did not charge for these. Thanks.

ROGER CARNEY: Great. Thanks, Jody. And again, I think that we've talked about the gaining and losing and a lot of the pros and cons. And Volker and Jody hit on these, several of them, obviously. And in today's policy, shown here on the screen here in the yellow box, obviously the gaining registrar today and for the past many years has been the one responsible for this. And again, I think the policy states this and how many times it actually gets charged. I don't know. It's an interesting thing. I just don't know what that number is. So I'm not sure how big of a deal that is.

To your point, though, I think that changing this from gaining to losing registrar, yes, and Volker pointed out completely clear that this becomes a registry risk. And again, risk in the fact that it's, maybe we put that in some air quotes because the risk there isn't real high. As we've talked about over the past few weeks, many commenters have suggested moving from the current losing registrar to a new gaining registrar is probably also a business benefit to the registry. So yes, it's still a risk that the registries take, but they're hopefully getting a better partner out of the deal to begin with the comments being said.

So I think that that's an interesting point on who pays. But the big thing to me is more of trying to figure out which one of these scenarios makes sense. And I think Volker raises a point that we

need to still get clarified on losing or gaining. But I think that to me, who ends up paying that fine, that's great. But we need a path to get there before we can even get to that spot. So just my thoughts. But Sarah, please go ahead.

SARAH WYLD: Thank you. This is Sarah. So mostly my hand is up because I spoke earlier saying I like option three. I still don't mind it, but I'm not married to that. It seems like there are some concerns around the dividing up of fees that might make it not the best plan. So perhaps instead, as I said in the chat, another option to consider is to keep the language very similar to what it is, but make it a may charge instead of will charge, which I recall hearing suggested by a registry person recently, and change the dollar amount. So to lower that potential price. So that's another option we should consider. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Yeah. And I think that that gets us back to close to option two, except that option two has a reasonable fee language. And as Holida mentioned and as Theo mentioned last week, that's obviously squishy language there. And the transparency definitely goes down with that. Just because it's still basically unknown. But to your point, Sarah, maybe the dollar amount can just change or the domains under management changes, one of those two numbers changes or both of them change. So I think Sarah is maybe saying no change specifically to language, but the will goes to a may or must goes to may whatever it is, may charge a fee and maybe the just the numbers

are looked at. So that is maybe option zero here with that. Theo, please go ahead.

THEO GUERTS: Yeah. Can we scroll to the last option real quick? It actually doesn't look bad at all. I'm pretty pleased with it. The only question is that I have, why the bottom limit is 50,000? Why is not 10 or 20? Thanks.

ROGER CARNEY: Yeah. And thanks, Theo. And I think because it's in brackets is exactly that is if this is a good option, all those bracketed numbers would probably have to be looked at and tweaked pretty well. Is half a percent even right? Is the top number right? And I think you have to hit those and start feeling those if you're picking number four. And actually, to Sarah's point earlier, it's like even the current language. I mean, if you left it at the current language and changed it to May charge. So I think everybody kind of agrees with that. But changes that to a May charge. Does that 50,000 domains or that $50,000, does that need to change one of them or both of them? Theo, please go ahead.

THEO GUERTS: Yeah. So I like actually the percentage being thrown in there. And if I look at the language and think about the 50,000 a little bit more, I would be looking more at 5,000. Something below a 5,000 portfolio, be that partial or bulk, you come at a point like is it still profitable to go this route or is a regular transfer going to make life much more easier? I mean, that portfolio will be sort of divvied up

by a whole bunch of TLDs. It could be one TLD, but assuming if you're doing a partial one, it's usually 10, 20 involved. That's your point. If you look at the 5,000 domain names, you break that down into TLDs. You come to a point and you go like, okay, this TLD will go to regular transfer process. And then you maybe do two, three large ones where you do a change of sponsorship process. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Yeah. And we've kind of talked through the notifications and all that. And if someone's getting out of a TLD or out of business completely, obviously some of those if they started out with 200,000 names, some of those are probably going to move independent of a portfolio move or bulk move here like this. So, obviously, you have to account for that as you go through it. But any other comments? I mean, again, I think Sarah liked three. And again, I think that this is the reason we're having this discussion. Is that right? You know, is it as simple as changing today's language to May and adjusting those two 50,000 numbers? Is it doing something like four, which is quite a bit different, but maybe more future proof? It doesn't dictate a dollar obviously. And to me, it's really transparent to me. So the cost is well known ahead of time. But any other comments? Right now, Theo likes four. Sarah I think is saying maybe a smaller adjustment to the current language. And three makes a little sense. Yeah, and that's the thing, Sarah. I'll note that that Jim and Rick are both gone today as well. And again, I think when we get back to Volker's intervention on who's paying the registries at this point in time, they haven't commented deeply on the numbers.

When we get to a number, I'm sure they will have a better discussion on it, or better process, I don't know.

Okay, what if I do this and say, okay, Theo suggested number four, who's against it? No one's against it. I like it. What Theo says is golden. Go ahead, Theo.

THEO GUERTS: Yeah, not to bring myself down here. I still need to process this a little bit more. I mean, the language it says like must not exceed 0.5% bracketed of the registry's wholesale price. But I still need to run those numbers to see like, what is that actually in the real world? How would that look like? We could totally swing the other way if we really calculate. I haven't done any calculation. I mean, I'm just taking a 50% or 5% and I'm going like, oh, it's this and this and this, but then I need to do sort of a wholesale price, which can vary over all these TLDs. So there's still a lot of thinking there. Thanks.

ROGER CARNEY: Thanks, Theo, for sure. Berry, please go ahead.

BERRY COBB: Thank you, Roger, Berry Cobb, for the record. To Theo's point, I would definitely encourage the working group to do that, to kind of come up through a couple of various scenarios that you see out there in the real world and how this would look like. A previous iteration of this option kind of tried to fold in the tiered model. But then I started looking at some back of the napkin calculations

framed in that context and immediately, numbers started getting out of whack. So the tiered option didn't seem like that was workable. And that's kind of how this 50,000 number kind of came back in because it's part of the original policy. But when you start running numbers based on the total domains and then you start thinking about it being spread across several registries, those use cases start to get complicated. And thus, the final thing I'll say here is kind of why the up to 200,000 names as a curbing mechanism came into play, because if you didn't have the ceiling on the number of domains, then this percentage based off of the wholesale price, well, that could go to not to infinity, but then you could be talking very big numbers when you're talking about larger acquisitions or larger companies maybe deciding to shut down operations and those kinds of things. So I do encourage the group to dive deeper into this particular option. To Theo's question in the chat, that comment came up, but I don't know that we thought about it enough about how premium domains could be factored into this. But I think generally speaking that the flexibility of option four probably allows that to be considered. Thanks.

ROGER CARNEY: Great. Thanks, Berry. Yeah. And something else that we've talked about, speaking on the numbers, is the, whose number is it? And it goes back to maybe something Steinar started with early is the 50,000 or the registry side of it, or should it be looked at from the registrar side and saying, hey, the registrar's full portfolio is 1.2 million names. And things are based off that. And then that goes down to the registries. Or as it's written here, it's the opposite view

of that. And then the registry is looking at how much they're getting and doing. So it's something else to consider and look at.

One of the big things out of this is, I mean, we've talked several weeks now and have come to several of these options here. And one of the things we've talked about is if we can't get to a solution, but we're close to solution or two, it may be if the working group can't nail down exactly something that works, we take a couple of proposals and maybe make a question in our report out to the community. You know, I would prefer not to do that, but the fewer questions, the better to me. And if the working group comes to agreement on something, I'd rather it be one thing than posting two. But it's definitely an option. And as Theo talks about these numbers here, number four, I think when we're looking at the numbers, I think you always have to look not at just the wording and the process, but like Sarah suggested, is changing what the current language numbers are. And I think that's valid as well. So I don't think just because four has these things in brackets, I think every one of these, we're looking for that right number for all of them. So any of the options where again, we're looking at what the process should be. So is it option four? Great. Then we go through those numbers or we say, no, three is the best. It's got a little work to it. But then we go in and say, are the numbers right? And we'll go down that path. But I think an important part here is picking one of these paths and even being Sarah's zero path, maybe of maybe keeping the current language and tweaking those numbers as well.

But honestly, again, we only have a couple of weeks here. So I think we need to narrow this down as quickly as we can and pick

one of these paths and move forward with what everybody feels comfortable with. So Steinar, please go ahead.

STEINAR GROTTEROD: Again, it's just for my understanding and reporting back to my community. I need some argument for why the registry fee, if set, has to be equal for all the registries. I have problems understanding that. So I will kind of make it more sense in my view that the registry may charge a fee, whether it's to the losing or gaining registrar, but the fee may differ based on the TLD and it's publicly known between the registry and the registrar, accredited registrar for that TLD. So the registrar can make the math and decide upon whatever they have to pay and the value of that. Sorry, that transaction. Thank you.

ROGER CARNEY: Great. Thanks. Okay. Any other comments? I haven't heard anyone talk to options one or two. And again, maybe Sarah [inaudible] to maybe an option zero of using the current language with a may charge a fee. And again, the next step in that is looking at the number. So again, I think no matter which option we pick, again, no one's hedging one or two here, but maybe three or four. I don't think that's the last discussion. If it is three, what are those numbers? So I think if we have support for what are those numbers. And if we're going to leave language, as Sarah suggested, are we going to tweak those numbers? So Caitlin, please go ahead.

CAITLIN TUBERGEN: Thanks, Roger. I just wanted to note something that I saw go through in the chat, which was a comment in response to Holida's concern about the current proposal and option two, which just notes a reasonable fee may be charged. And that is to add something to that, like may charge the gaining registrar a reasonable fee not to exceed X. So $5,000, $50,000, insert number that the group can agree on, but that could be an option for removing the price ceiling or giving a little bit more information about what a reasonable fee could look like.

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

THEO GUERTS: Yeah, just to recapture my previous comments over the last few weeks, I'm still a strong supporter of option two and having a cap in there doesn't make any sense to me. I know this is the hardest one, because if you are dealing with a registry who doesn't want to support this, they can charge you whatever fee they want. And it's up to you to sort of figure out what a reasonable fee is going to be. And a registry has to sort of provide you that information like, okay, we have these and these costs, which are going to be different among every registry operator. But still, a reasonable fee is a reasonable fee. You know, and if you don't agree with those fees, yeah, then you will take it up with compliance and you have to figure it out there. And I agree that is all the hard path. But I think in the long run, option two will move ahead from a lot of obstacles and barriers within the other options. So that's my take still on it. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Any other comments on these? Jody, please go ahead.

JODY KOLKER: Thanks, Roger. It's Jody again. I think option two is reasonable, but I'm going to say reasonable, but I think that there needs to be some kind of cap on it. I just think reasonable is on the eye of the beholder at the time. I think there has to be something in there, and I'm just not sure how to do that. Thanks.

ROGER CARNEY: Great. Thanks, Jody. Carolyn, please go ahead.

CAROLYN MITCHELL: Hi, Carolyn Mitchell from Amazon Registry for the record. I just want to say that it is in the registry's best interest to work with the registrar and come to a reasonable fee and coordinate with you all on doing this, because in the case of an involuntary transfer, we do want those domains to go to a legitimate registrar. And in the case of a voluntary transfer, we still want to work with everyone and make sure that things are going smoothly. So thanks.

ROGER CARNEY: Great. Thanks, Carolyn. Any other comments? Anyone want to add anything? Anyone else want to throw out one that they support big or don't support? I mean, that's big as well. If you're

not supporting those that are talking, then we'd want to know that as well.

Okay. All right. I think that we've made some progress here, but I think that, again, what we didn't get from last week was any comments. And we're going through those now, which is great. But we only have another meeting to go over this, and we need to pick this and at least get a good idea of what our variables could be. So if people are comfortable with two, and as Holida said and others have said, if there's a cap to it, what is that cap and does it make sense? Or if number four, start drilling into those numbers and hitting, again, those numbers are placeholders, and we need some real life numbers in there. So, but Berry, please go ahead.

BERRY COBB: Thank you, Roger. Berry Cobb for the record. Just one other thing for the group to consider here. And Caitlin, can you scroll to the top to the current language? So what I find interesting about the current language is the last part of the sentence that if it's more than 50,000 names, the registry operator will charge the gaining registrar and not to exceed the 50,000. And of course, we all understand this provision is near as old as ICANN, not as old, but close to it. And I think everybody else acknowledges that it is kind of a relic. And certainly, I think that my impression is that there are concerns that even if it exists as the status quo, that it's really not necessarily fit for purpose in today's environment of 1500 plus gTLDs, so on and so forth.

So in respect to option four, and one of the things that I know that the group has mentioned, but I don't know that we've placed

EN

enough emphasis on this is, what do we experience in reality out in the marketplace? And I'm willing to be stood corrected. But some of the anecdotal things that I've heard about this as a policy is that in most cases when this type of transaction occurs, that there's actually not charges from registries or put differently, it's a very rare occurrence from what I understand, that the current policy is actually invoked and that there are charges for these transfers. And so if there is any close truthfulness to that anecdotal data are we spending a lot of time trying to craft a more fit for purpose or precise policy here that hardly will never be applicable into the future? So I do want the group to consider that when you're analyzing these options. Do the changes justify what is seen out in the marketplace today? And the other side of that coin is, do any of these options make a dramatic change to the marketplace tomorrow if we were going to be making these changes? Thank you. >>

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

VOLKER GREIMANN: Thank you. I agree with Berry that this seems like a relic and so far no one has really been able to explain why this fee is really needed, what purpose it serves and why it originally was a must there. So I'm all for removing that. As to marketplace impact, we have seen this fee being charged, or at least we've seen registries trying to charge that, thereby delaying the inevitable outcome to the detriment of the registrants. We would like to see a solution that is good, fair for the registrant and enables the registrar that is

taking over those domain names to do that quickly and therefore anything that could pose a roadblock, such an involuntary transfer at least, should be removed. Thank you.

ROGER CARNEY: Great. Thanks, Volker. Yeah, good point, Theo. Before everything was, I won't say automated, but system-driven electronically and there was a little more work to it. Yeah, it may be that number did make a little more sense in that maybe there was special coding that had to be done versus today that coding is fairly straightforward, even if it is some special coding to finalize it, it is still more adaptable now that EPP is required. Okay. Any other comments? Again, I want to get this wrapped up, so those that are looking at this and specifically looking at the numbers and trying to make them work, I think that is important. Sarah started out and I appreciate her jumping on and getting our discussion going, but it sounds like maybe we are closer to option two and option four as being the stronger candidates after our discussions today. Okay. Again, we need to move this forward, so our last discussion on this will be next week, so hopefully people will take a look at these between now and then and put in comments and suggestions on these variables as well, so we can make that decision by the end of the meeting next week. Okay. Let's go ahead, Caitlin, and move on to our next topic.

CAITLIN TUBERGEN: Thanks, Roger. So, switching gears entirely now that we have discussed about the fee options for full portfolio transfers or what we now refer to as ICANN approved transfers and the transfer

policy, the group has been discussing some draft policy recommendations around BTAPPA or the partial portfolio transfers, so as we have discussed, BTAPPA is currently a registry service that a registry can choose to offer, and they do that through filing an RSEP with ICANN, and the BTAPPA occurs entirely between the registry and the registrar. ICANN has no involvement other than approving a registry to offer the service, so one of the questions that the group has been discussing is for the draft recommendations the group has been working on, which we can remind everyone what those are so that you can better answer this question, but the question is, should those recommendations be incorporated into the transfer policy, which would apply to all registry operators, or alternatively, should the recommendations be for registry operators who choose to offer the BTAPPA via recommended updates to the boilerplate BTAPPA, or I guess the third option is, is this best practices that wouldn't be enforceable, but rather just information from the working group.

So we've been discussing the draft recommendations for a while, but we still don't have a clear picture on where the working group is landing in terms of how they should be enforced, so we'll quickly remind the group where they are in terms of the recommendations, and in order to do that, we're just going to go to the trusty working doc.

So there's a lot of highlights in here, but essentially the preliminary recommendations – oh, I see Volker has his hand raised. Go ahead, Volker.

EN

VOLKER GREIMANN: Yes, and I'm sorry I didn't want to interrupt you there, I was perfectly willing to wait until you were finished, but one question that arose in my mind was that something that I've always asked myself when I'm looking at the BTAPPA, which is, why is there this prerequisite of a portfolio acquisition by the gaining registrar? Isn't it rather pointless? Is there any good reason to require such a precondition, or shouldn't it be possible to have other reasons as well? Why is the BTAPPA so limited in its scope? That's basically my question, and if somebody has some background on that, that would be very enlightening and might also be helpful for our discussions. Thank you.

ROGER CARNEY: Great, thanks, Volker. I'll let Caitlin talk real quick, but I was just going to jump in. And I think that it's been many weeks now, but I think when we did talk about that, there was that discussion of, should that be opened up more broadly? And I think that when we hit on it maybe even a month ago now, it seemed like that, Volker, exactly what you were thinking, is maybe it should be a little broader in scope and maybe there's if there's any bounds at all, it definitely has to be broader than what it is today. So, but I'll turn it back to Caitlin.

CAITLIN TUBERGEN: Thank you, Roger. Yes, that is part of the charter question the group is charged with answering. And just for sake of comprehensiveness, I did want to note that we have some draft language to be added to the transfer policy if the group agrees in terms of when this could happen at BTAPPA. And this, part three

is, I believe, something that was requested by Theo, perhaps somebody else where an agent of the registrar, such as a reseller or service provider, elects to transfer its names to a new gaining registrar and the registration agreement explicitly permits the transfer. So that would be something if the group were amenable to that, that could be added.

But again, just to go over some of the recommendations, recommendation one is very similar to what's currently in the boilerplate BTAPPA, but the notice period recommended by the group is that in the event something like this is approved or allowable, that registrars need to notify the affected registrants no less than 30 days before the change of sponsorship is expected to occur. And you'll remember that last week we changed the word "will" to "is expected to" to account for situations where there might be a last-minute delay. And so the working group noted it didn't want to have to have the registrar send another round of notices if that date were to change. So we also added to point three that the notice needs to include how to opt out if applicable, how to transfer the name to a different registrar if desired, the expected date of the change, the name of the gaining registrar, and a link to the terms of service.

The second agreement, and again, this particular language is pulled right from the standard BTAPPA boilerplate, but this was considered in terms of if the group wants to move this to the transfer policy, that the expiration dates of the transfer registrations are not affected in these types of transfers, and therefore there are no ICANN fees. There's also no grace period

to reverse the transfer. Again that's verbatim what's currently in the BTAPPA.

Similarly, preliminary recommendation three is also identical to what's currently in the BTAPPA, and that's that the registry does have the discretion to reject a change if there's some sort of reasonable evidence that the change of sponsorship is being requested to avoid fees that are due to the registry operator or ICANN.

Preliminary recommendation four is that in order for this type of transfer to occur, the losing registrar's existing agreement must permit this type of transfer. Also the losing registrar must inform registrants that in the event of a change, the affected registrants will be deemed to have accepted the new registrar's terms unless they choose to move to a different registrar prior to the change.

This language looks very similar to a recommendation around full portfolio transfers, and that's that the registry operator may charge a fee for this type of transfer, but they must provide advance notice to registrars of any fees prior to the initiation of a transfer. How they choose to provide notice is ultimately up to the registry. It could be in the portal, it could be through the website, it could be through written notice. We added that language to account for registry flexibility, but make sure that registrars are informed about what that fee would be.

And then lastly, this was a recommendation that was suggested, I think, by a couple of folks in the group, noting that there may be situations where the losing registrar has to prevent certain locked domains from proceeding, and that could be in pending UDRP

proceeding, pending URS proceeding, or a court order, so that there may be some names that stay behind as a result of those.

But those are ultimately the six recommendations that the group has been discussing. The highlighted text is denoting what changed from last week to this week, and again, the language up here, or above, is draft language that could be applied to the transfer policy if the group is amenable to that. That language has been in this document for, I think, at least six weeks now, and we haven't had any comments, but just wanted to highlight that to the group.

And then lastly, and then I'll turn it over to Roger, I did want to note there is a new footnote here, and that was in recognition that the group said if a registrar has multiple TLDs that they're transferring, do they need to send a notice for each TLD? And the footnote notes that yes, registrars may combine notices, provided that all of the parameters apply. So if that transfer is all occurring on this relatively or planned same date, it has the same instructions applied to it, they can be combined. There's no restriction from doing that.

So again, what we're looking for from the group is further feedback on what these recommendations should apply to. Should they be part of the transfer policy, or should they just be recommended updates to the BTAPPA? And I'm going to now turn it back to Roger to moderate the discussion on this. Thanks, Roger.

ROGER CARNEY: All right, thanks, Caitlin. Thanks for running through that. I think it helps set all those recommendations help set this up pretty well for discussion. I think the big thing between the two of these is flexibility. And the one thing I've heard from registry stakeholders is that they like the flexibility, they like the option of the BTAPPA being in place. It gives them a business advantage maybe. I don't know if it's an advantage or not. The business path to take, where some today obviously don't do this.

And again, I think that's probably the big thing to discuss. And the one thing I've heard over the past weeks is, and I think most of us love the flexibility as much as we can get. But the one thing I heard is the impact of registrants here, and not necessarily the businesses that are doing business, not the registrars or registries, but the impact on registrants and not being able to be able to freely move. And again, maybe it's not their decision ultimately but it is—they're picking a company to represent them. And I think that to me, it got down to that. So when someone mentioned that, that this is impactful to the registrar, and then which makes me think more of, okay, that seems like more of a policy thing to protect them. But again, maybe it's not, and we still want that flexibility that occurs today. So just my thoughts before we turn it over. So Theo, please go ahead.

THEO GUERTS: Yeah, so I understand that some registry operators want to have the flexibility as part of their business operations, or whatever other decision they have to do that. On the other hand, if a registry operator doesn't have it, it can be somewhat blocking also for

registrar operators. So that is a split there. Not saying that's an equal split, but there is definitely a split.

The other thing that crosses my mind, if we sort of make this part of the transfer policy, how does that equate to the fees that we've just been discussing? Because in the current recommendation, we have no mention of fees, if I'm correct. Thanks.

ROGER CARNEY: Thanks, Theo. Yeah, and just one other thing I'll add is how we ended the last discussion, and I think Berry and several others kind of touched on it. The landscape has changed since this policy was created, and since all these things have been in effect. And we're even proposing more things, and I think Jothan always brings this up, we're proposing even more things that are going to make the processes that occur today more painful when we're talking about these partial moves with our new security mechanisms that we recommended in phase one.

So I think that's one of the big things I could keep going back to, too, is and several people have mentioned it, this will probably be getting used more and more, and especially when our recommendations go into implementation, because it will be more difficult to do the things that are occurring today. So I think that when we look at this, we talk about small numbers that go through all these things, but I think the landscape's changed dramatically, and then the number of parties involved has increased dramatically that we're going to see a bigger use out of these things. So I think it's important to get them right. So just some more comments. Anyone else on this?

And as I suggested in the last discussion, I think that if we picked number two and four and tried to work those through it, and maybe that's the direction everyone's heading, to me, the way everyone's heading here is number one. But again, I think that the registries made it clear, especially in early input that the BTAPPA was an important flexible option that they provided, a service that they provided. So I mean, I can't discount that comment from the registry. So I think it's important to look at those and see, again, okay, the landscape has changed dramatically, and it's going to be changing even more when we implement all of our recommendations. And to me, those concepts and the fact that registrants are still involved here. So I think we have to pay attention to serving the registrants correctly, which takes me to it seems like this should be a more universal pattern versus an optional feature. So again, just going through our discussions and our checkpoints here that it seems like one is the more fitting option, but again, I think that we as a group need to make that decision and say if that's true or not. So Sarah, please go ahead.

SARAH WYLD: Thank you. This is Sarah. I lean towards option one for basically all the reasons that you just so clearly outlined. Thank you.

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

THEO GUERTS: Yeah, thanks. So playing the devil's advocate here a little bit, but if registry operators now have flexibility with the BTAPPA and we

move to option one, then the flexibility is not going away, is it, or am I missing a very critical point here? Because I don't see that disappearing. I mean, if it's there now and we move for option one, then it will still be there.

ROGER CARNEY: Thanks, Theo. And I think the issue is that if it's in policy, which is number one here, all registries have to do it. And today it's a choice that they make to support it or not. So to Steinar's question, correct, right. And if we put it in policy, then we have to work through the fee part of it as well. So Theo, please go ahead.

THEO GUERTS: Yeah. And you mentioned it already. I mean, we made changes to the transfer policy, which is going to affect wholesale registrars big time. Jothan mentioned also a whole set of reasons. So if we don't go for option one, then we're going to have a problem in the future, as we discussed several times over and over. So this is, yeah, I understand the reasoning from some operators that might go like, yeah, I don't want this, which is understandable. But the alternative that we have a transfer system that's going to be excluding a certain type of business model even harder than before. I mean, it's not great now. It's already dramatic, which is going to be even more dramatic. So yeah, that's a tough decision. But I think on the other hand, we don't have much options unless all the other wholesale registrars say, well, I don't really care about it. Then I'm alone. And then the group has made this decision. And that's consensus policy. Thanks.

ROGER CARNEY: Great. Thanks, Theo. And I don't think you're alone. Again, I think when you walk down the discussions we've had, it leads us to number one. And again, it's one of those where the landscapes change dramatically. And again, we're proposing some pretty dramatic changes again to add on to that. So I think, again, those steps take us to one. I think that as long as the group understands and we can present that correctly, I think that's fair to do that. But if we can't, or if we have opposition to that, that's what we want to discuss and walk through. So Steinar, please go ahead.

STEINAR GROTTEROD: I think the likelihood that At-Large kind of say that they want a system policy that is equal for all TLDs. Because the option one fitted into the transfer policy will most likely be more supported by At-Large. That's my guess. But also having to say that with the present BTAPPA, the registry operator has to submit an SCEP where they also set their fees for this service. If the registry operator may in this process set a certain fee and calculate that and communicate that to the registrar, why can't we use the same mechanism, kind of individual fees per TLD in the regular ICANN bulk transfer discussion we have? Thank you.

ROGER CARNEY: Great. Thanks, Steinar. I think that's one of the things we kind of wanted to, as we talked through a full portfolio, we mentioned many times that there's going to be some similarities going through. And I think fees is one of those. Maybe it's the same,

maybe it's different, but it's one of those discussions that seems to flow across the two. Obviously, we want to keep them separate, just be separate. So we understand which one we're talking about. But yes, I think you're right, Steinar. I think that fee discussion definitely leads into this as well. Okay. Any other comments on this?

Okay. Again, I think that we have a strong leaning. And again, I think there's a lot of good support for it to go with number one. And we don't have our full registry contingency here today. I appreciate Carolyn and those being on. But I don't want to exclude the registries I had a discussion. I think it's easy to say, what I did say was, okay, everything's pointing to number one. Let's see why that shouldn't be. And if the registries or some or even whoever it is, as opposed to that, let's hear it out and get it worked out here. But it seems like the group is definitely leaning toward this. And again, for documented reasons why as well. So Theo, please go ahead.

THEO GUERTS: Yeah, I don't want to sort of force the registries to sort of make or break this. But it would be good to know what their stakeholder group is thinking here. I mean, if option one is completely out of scope for them, for whatever reason they have, that would be good information to have while we move along here. Because at the end of the day, this could be a big deal breaker for other registrars who are operating in the same field as us. So you know, you don't want to end up at some point with when there is heavy divergence on multiple sides of this policy. You don't want to have the part of the registrars going like, okay, if that is not going to

EN

happen, then the other thing is not going to happen. That would be a problem. So having the information somehow, in some way that I think that's key critical to moving on further down the discussions here when it comes to the recommendations. Thanks.

ROGER CARNEY: Great, thanks, Theo. Carolyn, please go ahead.

CAROLYN MITCHELL: Hi, Carolyn Mitchell again. So I think the registry operators, the registry stakeholder group is in favor of keeping it at number two, purely to keep the flexibility of whether or not to offer that, giving registries the choice. So that I would say is where we are leaning right now. If there's a way to possibly put it into the transfer policy, but allow it to be more flexible as the registry operator may offer the, yeah, offer the BTAPPA or the voluntary bulk transfer option that if we can work that out, maybe we could agree to that. But I think that might go against what everyone's trying to achieve here. So thanks.

ROGER CARNEY: Thanks, Carolyn. Okay, I think that that's a good point. And maybe I'll put Carolyn on the spot here and maybe make that back channel discussion with the stakeholder group or a good number of registries anyway. And just indicate the reasons why the group feels one is good. And again, I think that that's the important thing is to get the registries' comment and saying, okay, yes, let's, we can't bend here. Or okay, maybe if it's this way, then it works well.

So I think that's important. So I'll assign a little bit of homework for Carolyn on that. So. Okay, sorry about that. Any other comments?

Okay. I think we're about as far as we can get here. I think, again, we need some offline discussions to occur on this and get back to us either on list or next week at the meeting, preferably on list if it's earlier so everybody can prepare. But okay, Caitlin, what is next for us? Is that it?

CAITLIN TUBERGEN: That is actually the end of our agenda for today.

ROGER CARNEY: Great. And I'll just say Caitlin mentioned it as she went through it. The recommendations that she went through. There's been some small tweaks over the last couple weeks, but I think for the most part, those recommendations have been out there for quite a while now. So between now and next week, it would be good just to take a read of them again. Again, they've been out there, so I don't think there's any surprises there, but take a read of them again and make sure that your stakeholder groups are comfortable with those. And again, next week we need to nail down our options on the ICANN-approved bulk transfers. And again, it sounded like to me two or four somewhere in between those seem like the right balance. And maybe those numbers need to be tweaked. And I think I heard from several people saying maybe number two needs a cap on it. Again, I think take a look at those comments into the working document as to where we need to go so we can decide that by the end of the call next

week so we can move forward. So other than that, any other comments?

Okay, well, great. And since I usually take us a couple minutes over, I'm going to give everyone a few minutes back today. So thanks, everyone. Good discussion today. And again, take a look at those two big things so we can get them nailed down next week. And by the end of the call, we'll have a path forward. Thanks, everybody.

[END OF TRANSCRIPTION]