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ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 06 September 2022 at 16:00 UTC

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JULIE BISLAND: Good morning, good afternoon, good evening, everyone. Welcome to the Transfer Policy Review EPDP Working Group Call taking place on Tuesday the 6th of September 2022.

For today's call, we have apologies from Keiron Tobin (RrSG). He has formally assigned Jody Kolker as his alternate for this call and for remaining days of absence. As a reminder, an alternate assignment form must be formalized by way of a Google Assignment Form. The link is available in all meeting invite e-mails.

All members and alternates will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. If you have not already done so, please change your

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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. Alternates not replacing a member should not engage in the chat or use any of the other Zoom room functionalities.

Statements of Interest must be kept up to date. Does anyone have any updates to share? If so, please raise your hand or speak up now. Seeing no hands, remember to state your name before speaking for the transcription. Recordings will be posted to the public Wiki space shortly after the end of the call.

And 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: Thanks, Julie. Welcome back, everyone. After a few weeks off, we're back at our work on the Transfer Review. Hopefully everybody's rested and ready to get started. We'll have a fairly busy next few weeks with ICANN coming up in a couple of weeks. So again, hopefully everybody is rested and we're ready to go.

So as everyone should know now, the public comment period has ended for our Phase 1A work, and all of the comments have been assembled. I think there were 34 commenters—a good number of comments, a lot of support, and some good ... Actually, probably identification of which ... Maybe we already knew some of it would

be up for question. But coalescing around a few items that can be updated through our recommendation.

So we'll work over the next few weeks on those comments, reviewing the comments, providing comments back to them. And we'll work through all of the comments that we received, and update our recommendations as appropriate.

But before we jump into that, I know Steinar had sent out an e-mail— [inaudible] first—regarding the Change of Registrant discussions we've had and a discussion at the ALAC group has had around that. And I wanted to see if Steinar wanted to come to the mic and talk to us about his e-mail and what he found. Some of those that haven't read that yet, please take a look at it. It's a quick read of what they discussed.

But Steinar, would you like to talk about that?

STEINAR GRØTTERØD: Yeah, hi. We had kind of a fruitful discussion last week at the CPWG call. In front of that, we have distributed a set of documentation also about the status of the work being done in this group and together with the present policy.

And based on that discussion, the poll question which I'd like to emphasize this is very informal but it kind of [senses the temperature] in the room for the At-Large community—at least from the CPWG point of view—is that if we're going to change anything regarding the transfer lock, the CPWG members would really like to have some sort of statistics saying that the problem with illegal Change of Registrants resulting in domain name

hijacking is so small and that we can actually remove that part of the older policy.

I don't have any statistics and I don't think this group has ever been presented with some statistics about that, but it has been a saying from the Registrars. This is an extremely low number and it creates a lot of problem with the Change of Registrant Policy as it is today. But the CPWG reported back that, well, we need to have some data.

So that was more or less the key findings and the key elements in the discussions here. And as you see on the responses on the questions, this kind of covered what I've just been saying,

Also, if we're going to have a transfer lock period, it might be reduced to less than 60 days. But I didn't create the poll in that respect, saying that a number of days to be set. It's just, like, more or equal to 60 days as it is today and less than 60 days. So that's the outcome.

So I'm happy to try to answer some questions that may be helpful maybe coming from this group. Thank you.

ROGER CARNEY: Great. Thanks, Steinar. If anybody has any questions, go ahead and raise your hand. To Steinar's question on statistics, I wonder if ICANN Compliance has some numbers on the number of complaints they get during transfers that involve ... That there's a lock on it because of the Change of Registrant prior to the transfer. I don't know if that's something they're tracking to the detail or not, but it might be something we could look at.

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Theo, please go ahead.

THEO GEURTS: Yeah, thanks. So while we don't have any statistics on it, a couple of meetings ago a few large registrars actually came out and said that they don't perceive an issue because they don't have any actual cases. There was domain name theft in combinations with the Change of Registrant. So from that perspective, we do know a little that there is not really an issue. So that's what we've got.

ROGER CARNEY: Okay. Thanks, Theo. Any other comments or questions for Steinar here?

STEINAR GRØTTERØD: Theo, thanks for this but it doesn't really help me. I was kind of hoping that we do have some sort of data indicating the volume of this. So I took the stand in this discussion saying that, from my point of view, I think we should remove it because I feel that the security mechanism that we have proposed in the inter-registrar transfer between the registrars is sufficient. So the Change of Registrant process is purely something that should be controlled by the registrar and on the responsibility of the Registrar, and there should be no transfer lock when there is a Change of Registrant data.

ROGER CARNEY: Okay, great. Emily, please go ahead.

EMILY BARABAS: Hi, everyone. This is Emily from staff. Steinar, thanks for the question about data. So in terms of what Compliance has already provided, there is some data about complaints related to the lock itself. And Compliance did also provide all of the data that it's able to provide with respect to complaints that might indicate a transit hijacking. So that was during Phase 1A, and I think the group felt that that didn't necessarily provide sufficient data regarding hijacking to really indicate a specific trend in terms of the incidents.

And then in terms of Compliance data that would prove that the lock is unnecessary or is necessary, I don't know that that's something that we can provide with Compliance data. We've certainly worked with them to dig up as much as is available to support this work. But as Owen notes there, the level of breakdown in terms of tracking just doesn't get specific enough to speak to that specific issue. So apologies for that. Thanks.

ROGER CARNEY: Thanks, Emily.

STEINAR GRØTTERØD: Just a short commentary. Something interesting from Jothan Frakes in the chat here, but he's an alternate. If the chair allows him to speak, I would like to have his saying in verbal.

ROGER CARNEY:	Sure, Steinar. Thanks. Jothan, please go ahead.

JOTHAN FRAKES:	Hey, Roger. And hello, everybody. Thank you for the opportunity to speak. So I went looking for data on some of this. There is some data inside of ICANN's Open Data related to ... The best you can get is the NACK statistics from the Open Data Project. But they only put this together for 2019 and 2020. There is not any data for 2021 or 2022 that's collected.

And there is a very significant quantity of NACKed transfers with many of the larger registrars. It's likely that it's just due to volume and scale of the registrar, but there are significant numbers there that can be gleaned from those Open Data sources. And it does show a significant use of the NACK which may or may not match hijacked, but that could be pre-hijacked or non-hijacked names where that presence of the NACK had made that not possible.

So thank you for the opportunity to have some voice here.

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

THEO GEURTS:	Yeah. So I'm not sure if that is a real data point we can use. Sometimes a reseller transfers 10,000 domain names. And for some reason, they didn't inform their customers very well and everybody starts NACKing and then you have like 9,000 NACKs in

a day. So I'm not sure if we can have real valuable data out of that data point.

I think that there's more questions around it and we need actually more data to actually confirm what is the issue there. Why was there a NACK in the first place? And from there on, if we don't have the data we'll be second-guessing for a long time. Thanks.

ROGER CARNEY: Thanks, Theo. Any other comments? I'll just note that Zak dropped a comment in the chat. And I think that his comment is that, basically, registrars do provide different varying levels of security. And registrants have the ability to pick those registrars that fit their security level that they're looking for. And I think we kind of discussed a lot of that as well during our for Phase 1A discussions about the business models at registrars being different and providing different levels of security based on the registrar and the registrant.

It obviously has a minimum security that's set by the ICANN policies, but then on top of that the registrars have that ability to provide additional security mechanisms so that registrants can shop around and get what they're actually looking for.

Okay, any other comments on Steinar? Thanks, Steinar and in the group for doing this discussion so early on. It's very helpful to get input early like this. I'll open the floor up to any of the stakeholder groups. It's been several weeks now since we've met, so any of the stakeholder groups that want to come forward and talk about anything they've been discussing, ideas that have come up in the

last few weeks since we've been off, anything from any of the stakeholder groups that someone wants to bring forward, I'll give some time now for that. So please, come to the mic if you have anything.

Okay. Zak, please go ahead.

ZAK MUSKOVITCH: Hi, Roger. Nothing to report now from the BC, but as we did earlier on in the working group, at some point Arinola and I will consult with the BC on the Change of Registrant transfer and report back with some feedback. But given that ICANN's coming up, etc., it probably won't be for several weeks at least. Thank you.

ROGER CARNEY: Great. Thanks, Zak. And again, hopefully people can take some time and think about the Change of Registrant because we will be spending the next few weeks getting through the comments. So we do have some time. But much appreciated, Zak.

Okay, let's go ahead and jump into our agenda today then. And I'll turn this over to staff so that they can kind of give us an overview of the review tools and the topics we're going to start to delve into today. So I will turn this over.

EMILY BARABAS: Hi, Roger. Thanks. This is Emily from staff. I have just shared to hosts and panelists—and that's everyone—the Public Comment

Review Tool page on the Wiki. So this is going to be our home base for the coming period while we're reviewing public comments. And hopefully, everyone has already had a chance now to review the comments either on the public comment page or through the review tools.

But just as a reminder of what we have on this page, you've got the full data compilation which is the export of all of the responses that we've received, all 34 of them. You have the list of the attachments that were submitted. So some respondents opted to provide a PDF document, and you can find those here. There's one additional late submission that's not on the public comments page from the IPC. You can find that here as well.

And then how we've broken down the Public Comment Review Tools is as follows. There are tools for each of the recommendations, and we've included all of the relevant comments there—both those who said that they were responding to that specific question and also if there are inputs that are relevant that were not entered into the correct box for that recommendation, so to speak, but do speak to that particular item.

In addition, we have the responses to the questions for input. So there's the one on Recommendation 4 and Recommendation 13. And then there are Public Comment Review Tools that capture some of the input that isn't specific to recommendations. And again, some of this is repeated in multiple places where relevant.

So there's one that ... I think there's just a single item here about responses to Charter questions and report text itself. There are a series of comments where people are either suggesting an

additional topic for the working group to consider or putting forward a proposal on one of the topics that's already on it within scope of the Charter. So those are consolidated here.

There were a number of comments that were about either process or working group modalities. So those were, for example, requests for extension of the public comment period, comments requesting additional public comment periods in the process, those concerns about the working group model and representation, aware there are opportunities for input, the balance of deliberations on working group meetings versus on the mailing list, and so forth.

And then finally, there's a Public Comment Review Tool that basically has everything else. Most of these are general comments that submitters put in the final box of their submission which summarizes their overall comment. So it's often sort of a brief repeat of the things that are included elsewhere. But we have all of that together as well.

Oh, and then also under Additional Input there is a series of topics that express general concern about the security implications of the recommendations in Phase 1A as a whole. And those are consolidated in a single section of this final Public Comment Review Tool.

In terms of organization for these tools, we've done a few things. So what you'll see as you go through them, you'll see that ... And actually what I'll do is pull up the one for Recommendation 19 just to give you an example.

So for each recommendation, you'll see that it's broken down into those who support the recommendation as written, those who support the intent with wording change, those who want the significant change to the intent and wording, and those who do not support, as well as those who don't have any additional perspective on that issue.

And this is staff's bold text for most of the submissions. So we've just highlighted areas where we think key points are important to consider or at least to focus on. We've clustered comments that are similar where that's possible. And you'll see, in the right-hand box, this is sort of the standard format of the document that we use. But where there were comments that couldn't be clustered in space but did have a similar theme, we sort of put a tag just to make it easier to find them when you're looking at a particular topic.

So that is a general overview of the Public Comment Review Tools as they are now. I'll pause for just a moment to see if anyone has general questions before we dive into any specific subject matter. Thanks.

Okay, I'm not seeing any comments as of yet. Roger, would you like me to go ahead and start to dive into our first subject area for this discussion?

ROGER CARNEY: Thanks, Emily. Yeah, that would be great.

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EMILY BARABAS: Okay. So there's obviously a bunch of clusters of topics where comments are related to one another and where we start to see themes. Because there are a lot of interdependencies between those, we thought it might be helpful to just start with something that's bite-sized, let's say, or at least a bit of a standalone just to get everyone used to looking at the tool if you're not already familiar.

Probably many of you have seen these tools before for other working groups, but hopefully this gives you a little bit of a preview and also allows us to start with something that feels somewhat manageable in size before we dive into the biggest and most challenging issues. So hopefully that works for everyone.

So what I'll do is start with the report text just to remind everyone. And for those who do want to follow along, if you go onto that Wiki page, we're going to start with the public comments for Recommendation 19. So I'll just pause for a moment and bring up the report.

Okay, so this is Recommendation 19. And for today, at least initially, we're just going to zero in the preliminary recommendation ... Sorry, Mike. Let me grab that link for you. I'm having trouble copying and pasting from the chat. Just a moment here.

BERRY COBB: I got it for you, Emily.

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EMILY BARABAS:	Thanks, Berry. Okay, there we go. Okay, so preliminary Recommendation 19. "The working group recommends revising the following reasons that the Registrar of Record may deny a transfer request as follows ..."
	And for I.A.3.7.1, the current text is "Evidence of fraud" and the revision recommends that it's added "Evidence of fraud or violation of the registrar's domain use or anti-abuse policies." And that was in response to ICANN Contractual Compliance department's observation that it was having difficulties tying transfer denials for those domain names suspended of abusive activities to specific reasons in the policy.
	So going to the comments themselves. Hopefully that refreshes everyone's memory in this. This language came out of the small group, and there was some pretty robust discussion around the language in the course of deliberations.
	Looking at the Comment Review Tool itself, we have ... And I'm not going to read and I'm not going to summarize every word because the expectation here is, of course, that everyone has read these and done some thinking about them already. But I will touch on the ones that are relevant here.
	So Tucows supported the intent of the wording but did suggest that there should be a minor editorial edit to make it clear that the word "evidence" applied just to fraud and that "violation of the registrar's domain use or anti-abuse policies" was a separate element of that. So again, this is primarily editorial in nature.

And rather than pausing after each of these to see if people have comments or questions, I'm just going to run through these quickly and then Roger will facilitate the conversation.

We have a comment from GoDaddy that it feels that the revised language is overly broad and suggests making a more narrowly-tailored list of abusive practices including illegal activity, phishing, distribution of malware, or to comply with the law. That's on Row 3. And then several comments propose significant change required.

So Com Laude recommended actually keeping the new proposed language about the anti-abuse policies but taking evidence of fraud and moving that over to the "must" section. So that's under Recommendation 20. We can look at that later if it's helpful.

And then Internet Commerce Association expressed significant concerns with, again, the broad nature of this revision and the potential for registrars essentially serving in a censorship role. And so they do not believe that this language should be included.

And similarly, Leap of Faith Financial Services feels that this language is inappropriate because there's a potential for censorship and being used too broadly to prevent transfer of domains.

So those are the comments under Recommendation 19 that are primarily focused here on this specific issue.

And then under Recommendation 20, Com Laude provides a little bit of additional context for why they feel that "fraud" should be a "must" rather than a "may." So let me just pull that up very briefly.

Under Recommendation 20, you can see Row 3 is the Com Laude comment in which they say that fraud is an example of abusive activity that must be prevented in the Registration Agreement with registrants. And so they would like to see registrars further empowered by making it a "must."

So I think that that's the very brief summary, and I'm happy to answer any questions. I'll bring back up Recommendation 19. And if there are no clarifying questions, Roger, I will turn it over to you to facilitate. Thanks.

ROGER CARNEY: Great. Thanks, Emily. Anyone have any questions for Emily and, basically, how this was working? We'll get into the specific details after any questions here, but I just wanted to see if anybody had any questions on the overall process here.

And just speaking about the process, we did have a discussion last week—actually, leadership of the Transfer group—talking about how to approach should we just start with #1 and go through it? Start with ones with the most comments? Or how to do that, really. The least comments first maybe, to try to knock out as many as you can?

And we kind of decided to try to take maybe the ones with probably more work to them so we can get that thought process. And if we need to have time in between to actually work on it [inaudible] let's work on maybe the more, I guess, the ones with the most comments. Not necessarily the most comments, but maybe the recommendations that may need the most work, we

thought bubble those up first just in case we need more time on them. And that way, everybody can have a little more time to think about them. So that's why you're seeing us kind of working them out of order here. So that's just the thought process behind that.

Okay, any questions before we actually jump in to the meat of these three? These three recommendations kind of go together—18, 19, and 20—so we thought it would make sense to work them that way. Well, let's go ahead and jump into the specifics on 18, 19, and 20.

Let's go ahead and talk about 18 real quick if we can pull that up. There's not a ton to talk about here, but it does lead us into these discussions. So let's pull up 18 first, and we can bump on that. And then we'll jump into 19 with that. Okay, thank you.

Recommendation 18. Again, just being the simple fact of kind of splitting these out into two different concepts. I think we had talked about it and [they were] kind of tripping on that as one big sentence in the current policy. So I think it would seem like we got pretty good support throughout. Scroll down here. Again, we don't have to go through the details. I think everybody can read that. But let's stop here.

Okay, so let's look at Line 3. It looks like, there, it likes it to be more precise. I didn't see anything ... And please take a look at the Leap of Faith document. It is a lengthy document, but it does read pretty quickly. And again, it does break it out. So I think that [inaudible] do that so that ... but I think, again, the support from Leap of Faith ... It agrees that breaking out and being more precise ...

So #4, a separate document so it's more readable. We can get into that, if there is clarity. From the ICA here, I think maybe there's two expectations there. Obviously, the registrants having that immediate access to that information should be at the registrar level as well. So I think that we can circle back to this once we finalize on where we're going to put these through our 19 Recommendation. But let's go ahead and scroll down to any other changes.

Okay, the Registries Stakeholder Group suggested a change. The communication between Losing and Gaining Registrars is the focus here. And again, something to think about, as the Registry Group points out, there's no direct connection between those, typically. So that communication would be difficult at best. So, is there a mechanism to look at?

And again, I don't want to solve that now. I just want to raise that and talk about it as we go on. But just to point out that they did raise a concern that there's no direct communication path between the two registrars and if that's going to be a requirement to come up with some kind of solution there.

So let's go down to #6. And John made this comment throughout many of the recommendations, so we'll see that. Replacing "Registered Name Holder" or "RNH" with "registrant." And he's linking this back to the terminology used in RFC—I'm trying to remember what that—RFC 9154 which was an RFC published around the security mechanisms here. I think that's something for the whole group to think about. And maybe staff can even provide some background—and I know it's been years—on how we think the community kind of settled on Registered Name Holder. So I

don't think just because the RFC says "registrant," we need to do that. But just a thought that the RFC is being specific there.

Yeah. Thanks, Owen. And I think most people see it that way, that "registrant" and "Registered Name Holder" are basically the same. But I think—through the last few years, anyway, and policy development—it's been updated to Registered Name Holder just for clarity. And again, just thoughts and something to think about if there is a definite need there. To me, obviously, it needs to be consistent throughout the policy. Whatever we're using, let's be consistent in that. But to me, as Owen mentions, it's one and the same. But the Registered Name Holder has been what's been used in the last few years.

Okay, let's go down to #7 real quick. And I think that was just the end of them. Okay. And that's the only reason I wanted to do 18 real quick. I wanted people to start thinking about those things.

Thanks, Owen. Thanks for doing the count, too. Theo, please go ahead.

THEO GEURTS: So I'm trying to wrap my head around the concept of where a domain name is engaged in phishing and you take it down and you lock the domain name. I can't say that I had, in the last decade, any requests from criminals telling me that the suspension was unlawful or unwarranted and that they wanted to move the domain. So I think the problem is small. So I think that's a good thing.

But if it's a clear case of phishing or a botnet or whatever the hell it is, we don't suspend domain name because we are having a bad day or we didn't get our coffee on time, or God knows what. There is a complete due process behind it to make sure that if we take down a domain name and market it as malicious, that we have a process so we won't be liable, or at the very least we can explain our actions to whoever it is—the registrant, the judge. It doesn't really matter.

So I'm not in favor of making a list of what it all is, of DNS abuse, because that is mapping out the brains of criminals. And if you go down that road, it will be an extensive, long list. So I think the language as we have it now is good enough. I mean, there are enough safeguards around it because we're not in the business of shutting domain names down because we like it. We want to keep our customers. So I think we're pretty much all right there. And I don't see it as an approach to be able to come to a censorship issue.

So those are my takes. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Okay, any other comments on this? Again, I just wanted to cover this one real quick because there was only a few comments here and it's falling in this group. But I wanted to give people just thoughts on those couple of things and something just to think about as we go through. Because, really, Recommendation 19 is probably where we knew we were going to have some comments in on it.

I think coming out of the small group that we had put together to review this, we knew that there was going to be some comments coming back. So I think it's fitting that we did receive quite a few comments there.

Okay, I think we can move on from Recommendation 18 and jump into Recommendation 19 real quick. Well, not quick because this will take a while. Okay, so we did receive good support from many members here, but we did ...

Yes, exactly. Thanks, Sarah.

Good support from some of them, but we did get a good number of comments. And again, I wasn't in on all of those small team discussions that talked about this list, but I think that we knew ... Especially on the fraud one that was changed or amended, we knew there would be comments coming back on that because we had the same comments in discussion. So I think it works out well. And hopefully some of the comments can help provide us a direction to some of those questions that we had back when we discussed it.

Okay, let's go ahead and jump to #2 here. From Tucows, "supports the intent of the change," but recommends some changes to the wording. And this is specific to fraud. Or is it not? Is this one fraud? Yeah. "Evidence of fraud or violation ..." Thanks.

"Violation of the registrar's domain use or anti-abuse policies or evidence of fraud." Or alternately, support addition of a comma after "fraud" in the current wording. So that would be, "Evidence of fraud, or violation of the registrar's policies."

Again, leading us down a direction here that hopefully we can get to. And there's several comments here. So let's not try to solve that yet, but think about what Tucows is asking there. And we'll get through a couple more. And after a few of these, I think we can probably get to something that works or at least supports this.

So let's go to #3. GoDaddy saying that it's evidence of fraud. That's good? Okay. Let's skip to their suggestion. Suggesting defining an enumerated list of abuse practices. So instead of broad abuse, maybe list out ... And I think we had this discussion as well. I don't know that we ever got to a list, but we talked about if a list should be done or not.

GoDaddy is suggesting a list of "evidence of fraud, illegal activity, phishing, distribution of malware, or to comply with the law." Remove [inaudible] the broader term of "registrar policy," basically.

And again, I wanted to get through these because I think some of these ideas will coalesce. Sarah, please go ahead.

SARAH WYLD: Thank you. This was just a clarifying question about the suggestion. I'm not sure if somebody on the call could speak to it. So, is this suggestion to remove the phrase "violation of the registrar's domain use and anti-abuse policies" and replace ... That's the phrase that I don't see. And so it would just take that out and say, "evidence of fraud or ..." the other things that are in the highlighted sentence right now? That's what we're talking about?

ROGER CARNEY: Thanks, Sarah. I think that is. I don't know if Jody has anything he wants to do. I think that was the intent, Sarah, was that ... Removing the domain use or abuse and replacing that with this "or" list, as you said.

Okay, #4. John again. Registrant and Registered Name Holder. Again, I think, as Sarah mentioned in chat, let's just be consistent. If we're using "Registered Name Holder," let's just make sure we are using that throughout. Okay.

#5, significant change. Com Laude was suggesting to strike "evidence of fraud." I think Emily mentioned this issue as she went through this earlier. Proposed moving evidence of fraud into a "must deny" transfer. Which I don't know if that was discussed or not in a small group, but something to think about is maybe that one piece can get moved out.

And if there's anything left, again—the anti-abuse or a list or whatever it is that would be left—could stay in the "may." But the suggestion is to move the evidence of fraud to a "must." So again, get through these and then we can go back and see if any of them make sense.

#6, the ICA. concerns about any other use policies. So I think that's consistent ...

Sarah, please go ahead.

SARAH WYLD: Thank you. Sorry to have interrupted your train of thought there, but I think the ICA might have misunderstood the recommendation because it's talking about preventing a transfer away. But we're in the Gaining Reg— Shoot. I'm wrong. I'm sorry.

ROGER CARNEY: Okay. Thanks, Sarah. And I think that this is, again, what we've heard several people say already, and it's only Bullet 6, is it may be too broad. And I think the ICA is agreeing that that's too broad. And, obviously, they're listing their reasons—censorship and all of that. But, yeah, I think the key is just saying their use policy seems to encompass too many possible bad outcomes there.

And I don't know ... Okay, I think #6 is good and I think they're just stating, yeah, it just needs to be a tighter description there. [Okay, let's] go ahead and move on.

#7, Leap of Faith. Yeah, so again, they're calling out the terms of use or anti-abuse, maybe not [being clearly] defined and, again, it's an over-exaggerated or over-broad, maybe, definition there. And they do [inaudible] an enumerated list or at least the enumerate list that GoDaddy provided. I don't know if they're against a list at all but just not that one.

And they think that this should probably be put into a different working group [inaudible] focused on abuse issues. To me that's an interesting idea, I think, that the whole DNS abuse discussion going on through ICANN, as a company seeing a lot of that. But I think we can be actionable here on the pieces that we see affecting it. But I think that Leap of Faith here is saying, yes, the

terms of use and abuse policy is maybe too big. And they're saying that the GoDaddy list is not appropriate.

Again, I'm not trying to read it. I know everyone here can read. I'm just trying to pull out for discussion. Okay, I think we can scroll down. All right, let's see here.

Okay, let's go to #8. I'll just hit on Leap of Faith saying, maybe, that this is actually suggesting that the use and abuse policies may be going against ICANN Policy. Something we can look at, I think, but I don't know that it does.

But #8, let's jump to that from the NCSG. They don't believe that recommending reasons why registrars may deny a transfer is within the scope. "However, we agree with some of the changes, especially crossing out 'reasonable dispute over the identity of domain name registrant...'"

Okay. So two pieces, I think, there. "Don't believe that recommending reasons that registrars may deny a transfer request is within the scope of this group." It's already part of the policy, so it's definitely within the scope of this group. I don't know if the NCSG is suggesting to have subject matter experts maybe come in and talk about this, but it is within our scope and we do have to actually go through that.

Theo, please go ahead.

THEO GEURTS: Yeah, so I can definitely not speak for the non-Commercial Stakeholder Group, but if I read the last two sentences regarding

identity, I think that the NCSG is coming out of the corner regarding sanctioned countries. And that is an issue that is not up to us to solve. I mean, when it comes to sanctioned countries, by whatever regime that is, it's up to ICANN to make sure that they've got the required licenses to operate and make sure that they are complying with the law. So that is not up to us, but a register or registry.

If such sanctions are applicable, then they have to comply with the law. It's as simple as that. So I think we don't have much leeway here. We can't change that in any shape or form. That is a different discussion on a higher level, especially a governmental level. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Yeah. And to Sarah's point, I think that us looking at ... And if someone from NCSG wants to come on and talk to it, that's great. I think that we do have an obligation to look at the current policy which does list the "may deny a transfer" reasons. And it does look like they support some of the other changes.

Is someone on? Wisdom?

WISDOM DONKOR: Yes. Thank you very much. I think I've been off for some while, for some time. And I've seen the discussion going. So what I could do is to have that discussion with Farzana. Then I will come back to the group with an e-mail with that regard.

ROGER CARNEY: That would be great. Thanks, wisdom.

WISDOM DONKOR: Thank you very much.

ROGER CARNEY: Okay. And I think that #9 ends this section here. So we've got all of the ideas thrown out. And again, I think that when we go back to Phase 1 and we talked about this, the small group was put together purposely because there needed to be discussions on the different sections here and what fit. And I think that the evidence of fraud was one that was talked about in the full group. And then the small group talked about it quite a bit and brought it back. And we talked about it some more.

So to me at least, I did expect comments from the public on this just because, even within the group, we had a good discussion on it. But now that we see some of these comments toward these recommendations, do we have a path forward to update? And again, I think that besides this one comment from the NCSG on something that we took out later on, everyone here is focused on that first one of, you know, a registrar may deny based on evidence of fraud or violation of registration agreement.

So obviously I think that's something we can talk about, and it's very focused on that one item. And we've got some suggestions here. Should fraud go to a "must"? Should other items become a "may"? Is there really a list of other items? The current policy is

fraud and doesn't talk about anything else? There was a great discussion around, it seemed like, especially the abuse kind of stuff being added in here as a "may."

But to the point of the comments, is there a possibility that fraud goes to a "must" and there's something that stays is a "may" or does it make sense to leave fraud as a "may"? And again, I think that's all up for good discussion.

Sarah, please go ahead.

SARAH WYLD: Thank you, hi. I'm going to try again. Okay. So I think there could be good reasons to leave evidence of fraud as a "may" rather than a "must." I can imagine a circumstance where a Registrar of Record would want to deny a transfer away because some fraud has occurred. But I can also imagine, perhaps, that a registrar has determined that they no longer want to do business with a particular Registered Name Holder, and so they are allowing them to transfer away even though perhaps, in some other aspects of their service, some kind of fraudulent activity occurred, perhaps. Or abusive activity. So I think the flexibility would be helpful. Thank you.

ROGER CARNEY: Okay. Thanks, Sarah. And honestly I think, Sarah, during Phase 1A we talked about that and I think that's kind of how the anti-abuse got in there, too, because some registrars thought, "Well, yeah, you may deny a transfer because you don't want this criminality to continue," or whatever it is. I can't say for sure, but

it's, okay, the site's been set up for phishing or whatever, and the whole community is discussing DNS abuse on phishing. So do you want them to take it to another registrar and just continue to do the same thing? And I think that ...

But to your point, maybe the Losing Registrar does want to not have to deal with this registrant anymore, or this domain name, and let it go. So I think that's the discussion that happened months ago.

Mike, please go ahead.

MIKE RODENBAUGH: I agree with where you were just going there, Roger. This is Mike Rodenbaugh from IPC. If you as a registrar have evidence of fraud, now you just want to kick that over to some other registrar and not ... I mean, you wouldn't even be telling them about it, presumably, because you'd just be letting this fraudulent actor move his domain name and continue the fraud at another registrar? That seems like a bad thing to me.

So I would support ... I'm pretty sure the IPC would support moving evidence of fraud or other illegal criminal activity into a "must" category. Of course, that still leaves a "may" category that we need to discuss.

ROGER CARNEY: Great. Thanks, Mike. Owen, please go ahead.

OWEN SMIGELSKI: Thanks, Roger. So part of me is torn by this. While I agree with Mike that we don't want domains doing illegal stuff to be able to be transferred out and allow bad guys to continue to do stuff, I think the concern you run into is, first of all, how do you know if there's ever evidence of fraud? Quite often a registrar may not know that something is being done in there.

And so there's a concern that, I don't know, they've got an abuse complaint but they let a domain name transfer out even though they hadn't processed the abuse complaint yet. There could be a concern that if you put such a strict requirement on a registrar, then they could be in breach for something that they really didn't even know about.

Another concern is that a definition of, say, fraud or illegal activity can vary by location and jurisdiction. So in some countries, being LGBTQ is illegal. So a website registered in, say, pick a country where that's illegal, and a register or wanting to be able to allow that to transfer outside the country to allow some type of free speech, if you require them to block this type of "illegal activity," then there would be concern that that could stifle free speech or other stuff like that.

So I'm not saying that I want to just allow all domain names to be able to transfer out. But certain ones, there may be some scenarios [inaudible] patterns will pop up where you would still want to allow a transfer. Thanks.

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

EMILY BARABAS:

Thanks, Roger. Emily from staff. I just wanted to touch on a procedural element of the discussion as we go through these comments. So the current language is just limited to evidence of fraud in the "may" category. And any proposed changes coming out of the working group in the form of recommendations, what we're looking for is consensus support from working group members. And anything less than consensus support is not really the thresholds we need to meet in order to put the recommendations forward to Council.

So put another way, I think as we go through these comments and think about revisions and levels of support for different proposed recommendations, creating a common understanding of what that means for the recommendations is useful. And so maybe put it another way, if there isn't consensus support to change the recommendations, does that mean and should that mean for this working group, essentially, that a recommendation should not be put forward and the policy language should remain as it is?

So I did want to touch on that and just make sure that everyone is on the same page, that consensus is what we're looking for in any proposed changes from the group. Thanks.

ROGER CARNEY:

Great. Thanks, Emily. Yeah, and that's a good reminder that today's policy is evidence of fraud and we do need support to move that to anything different. It is a "may" today.

And in speaking specifically to the Com Laude one that suggests maybe moving into a "must," I think we've heard several suggestions here of the possibilities where that does not work as a "must" across the board. It's one of those that [inaudible] is fairly well given now. Okay, if there's fraud, then stop it. But as Owen mentioned, jurisdictional fraud is jurisdictional. So, okay, does that kind of break the logic of, yes, it's a "must."

So I think that it was a "may." We suggested it as it "may" from this working group. So I think from the Com Laude suggestion there, to me the discussion here is let's leave it as a "may." But I still think that, obviously, the wording here is not completely satisfactory to everyone. So I think we need to look at the wording. Not just evidence of fraud but, in particular, the issues around the registrar Terms of Service or whatever it is that can be more ...

Again, it's suggested by several that it's more specific, but can we get to a specific level that's acceptable across the board so that we can change this. As Emily said, we need agreement on this to make this change. And I would say today's wording is not acceptable as far as a consensus call on that.

Okay, any thoughts on how we can update the recommendation? Again, the evidence of fraud, I think, the group is coalescing around, yes, that's a "may." There's reasons why it should be a "may." And we can document those, obviously. And so I think we need to focus on the second part of that.

And again, I know the small team had worked on that and had discussions on it—the violation of the registrar's domain use or anti-abuse policies. And as Mike said when he came on just

recently, the one reason of the anti-abuses be a "may" is that idea of, yeah, if it's a known bot or [if it's] a phishing site, why would you want it to go? Again, it just seems like it's going against where the community is going on DNS abuse. So it seems like something in there could be [inaudible] to "may," but does it need to be? Do we just fall back to "evidence of fraud" and then it will get transferred, no matter what, if it's not fraud?

Thoughts? A small team put that language in there for a reason, added it. The group agreed to it. But does it cause problems? As several people here are suggesting that it causes problems. No one? Thoughts on how we can update it or if it needs to be updated?

Mike, please go ahead.

MIKE RODENBAUGH: Yeah. I'm certainly not convinced ... I hear you, though. But I'm not convinced that fraud and free speech are really equated at all. Fraud is fraud, and it's illegal everywhere. And it's pretty consistent what fraud is anywhere. So I don't know. I do hear the ICA's comment, though, about use policies. And I think that's where Owen's at, also. And I'm wondering if we just remove the words "use or" in front of "anti-abuse." It says that you may deny if there's a violation of the "anti-abuse policies or evidence of fraud." Does that get us there?

ROGER CARNEY:	Great. Thanks, Mike. Thanks for the suggestion. I think that suggestion does help some of the comments here. Owen, please go ahead.
OWEN SMIGELSKI:	Thanks, Roger. So I think part of the concern that I have here is what the definition of fraud is. And this is just the first one that popped up, according to the oracle of Google. Fraud is "wrongful or criminal deception intended to result in financial or personal gain." You know, that's kind of broad, so it's generally illegal activity and it's what ICANN has long used. And so some of the things that I've mentioned in there—promotion of LGBTQ lifestyles—could be seen as wrongful criminal conduct for personal gain, meeting that definition.

So I'm really concerned that some types of activities that might be criminal in one area are not criminal in all areas. So I'm really concerned about doing that just because what is considered fraud is much more than just something "illegal" or against the law in there.

And then also setting the example that Namecheap had ... Earlier this year, we had somebody who was on our platform who was promoting vile and awful propaganda against Ukraine. And as many know, Namecheap has a large amount of staff in Ukraine, so the staff was getting bullied by this guy and the websites he was doing was just promoting such heinous, awful material.

And while not fraudulent, we did not want to have this guy a) on our platform or b) given the opportunity to take his soapbox and

lies elsewhere. And so, yes, we did block that guy's account. Technically it was a violation, but we did coordinate with ICANN, etc., disclaimers. That's a very extreme example, but we need to be able to build these extreme examples in there because they can and they do arise. And having such a limited and strict thing there would mean that we wouldn't be able to keep that type of hateful conduct and speech off of the Internet. Thanks.

ROGER CARNEY: Owen, to Mike's suggestion of just removing the specific reference to ... I'm trying to pull it back up here. He was suggesting remove, basically "domain use" but still leave in "anti-abuse policies." Do you have any thoughts specific to that?

OWEN SMIGELSKI: Thanks, Roger. Yeah, I'd have to go back and look and see what the current wording is in there. But if you're doing "anti-abuse," then that may not necessarily allow for some things in there. I think what we had in there was giving a bit more latitude towards registrars for cases that might be a little bit more on the edge where they might want to deny a transfer for things other than just fraud or abuse. Again, the things I was stating there was, while abusive that the guy was doing against our team or the content online, it was not necessarily what you would define as DNS abuse otherwise. Thanks.

ROGER CARNEY: Great. Thanks, Owen. Any other comments? Thoughts from anyone else on language? Okay.

So where we stand is, obviously, today's policies as evidence of abuse ... And we have comments here that using of the registrar's domain use policy is ... Several comments here are thinking that it's not defined well enough and can stop transfers for basically any reason if they wanted to. How do you ... Is there any way to put guardrails on ...

As Owen suggested the scenario they ran into earlier this year, is that something that we can account for or is that always going to be a one-off where it's going to have to be worked in and logical sides get together and say, "Yes, that does make sense?" Or is there a way we can word this in here to allow for something like that without allowing, as many of the comments here suggested, open-ended denial reasons, basically?

And again, going back to Emily's suggestion, if we don't agree on something it will go back to "evidence of fraud." And so I would say what we're looking at is, it goes back to evidence of fraud or we get into some agreement between what I think is evidence of fraud or anti-abuse. And then on to use scenario as Owen has suggested.

Zak.

ZAK MUSKOVITCH: This is just a question for clarification, really to Owen. It rises from the point he made that fraud can be interpreted very broadly and therefore could impact LGBTQ communities, etc. But I'm just curious. Couldn't that same point be made for a use policy if a

particular register implemented a prohibition on LGTBQ use of a domain name within its use policy? Thanks.

ROGER CARNEY: Thanks, Zak. You're kind of spinning the concept of the law versus actually written into someone's policy stating that they won't support this.

ZAK MUSKOVITCH: I guess I'm just wondering if a particular registrar has a political bent or is under the thumb of a national government that has less than ideal laws about freedom of expression or has their own political agenda, if there is a very broad latitude afforded to a registrar to not only disable use of a domain name—which I don't think any of us object to—but to prevent the transfer to a registrar that does permit this use of a domain name within its own national jurisdiction because it's perfectly legal there.

I'm just having real difficulty understanding why it would be okay for one registrar to decide to prevent the transfer based upon what behavior that it believes is loathsome and not another registrar to prevent the transfer of a domain name that it believes is loathsome aside and beyond from your disabling of the domain name.

ROGER CARNEY: Thanks. Great, Zak. Okay, so I think Sarah in chat likes the proposed wording which is "evidence of fraud or violation of registrar's domain use or anti-abuse policies" which I think Owen

is supporting as well. Yeah, the pre-comment version. Thanks, Sarah.

And I think Mike has suggested a version that he thinks is trying to at least resolve some of the comments here around it and saying something along the lines—I think maybe he has it worded the opposite way—of "evidence of fraud or violation of the registrar's anti-abuse policies." I think is what he's saying. Or I think he wrote it the opposite way, "registrar's anti-abuse policies or evidence of fraud." Thanks, Mike.

The comma. Thanks, Sarah. Yes. Separate those ideas. Thank you.

I think that's where we're setting. We've got three scenarios ... And again, we knew this was a big concept. We've talked about it before. We've talked quite a bit about it when this topic came up originally. So I think, obviously, the scenario is if we don't agree on something, if the group can't get to an agreement, we'll stay with "evidence of fraud." And I think Mike is suggesting maybe an alternative to what's written now in the recommendation. And then, obviously, the third option is the recommendation that we have now.

So if we can get a conversation around those two ideas ... Otherwise, the default is obviously just to fall back to the way it is. But if we can get agreement somewhere in between the current writing and somewhere in between what ... I think Mike's solution solves the comments brought up here during public comments. I think that either someone can convince the other one of going the other way or there's actually, truly a middle ground there that if

"domain use policies" still remains, is there a way to put guardrails on that? Again, just as Zak just mentioned. Why can't a registrar just say, "Hey, you're breaking my policy so I can't transfer it away."

Sarah, yes. I think that's the middle line. Thanks, Mike, for responding. So Sarah's wording in chat is, I think, the solution to the comments that have been raised on our recommendation. And again, yes. Absolutely, Sarah. And I think, again, this is a big discussion and we knew we would get comments on it. So I think it's something ... And that's exactly why we pushed this forward. We knew that there would be time needed to think about that and how it works.

And again, I don't even think it's one or the other. Maybe there's an in-between what Mike's suggesting and what Sarah wrote in chat there to what we have in the recommendation now. So maybe there's something that gets in between those and provides some security that does solve these questions or these comments. And I think that's important.

So I think that we will end the discussion today on this. And people, think about this and think about this wording suggestion. And is there a way in between those two—our recommendation from the initial report to this idea that I think solves these comments? And maybe there's something in between. And again, think about it and we'll talk about it again.

Steinar, please go ahead.

STEINAR GRØTTERØD: Yeah, hi. I just have a question. Do I have to go back to At-Large and ask for approval for an updated wording of the recommendation into this question? Or will that be handled differently later on?

ROGER CARNEY: Great. Thank you, Steinar. We'll talk about that because, obviously, any changes we make to any of the recommendations will get published with a final report that goes out for public comment as well. But will get published once again. But, yes, any changes here will need to go back to the groups to make sure that they're comfortable with those changes. So to your point, Steinar, yeah. Once we get to something here, I think, take that back to the groups. And even now, maybe you can bounce it off. And maybe someone has an idea of how to get in between these that works for everyone. But, yeah, a change should go back to all of the groups and get approved so that we have approval going forward.

Okay, I think I will conclude here on this and turn this back over to staff. Again, think about those things. We're going to talk about this again. It's not going away. We will get to solution and, obviously, the solution may be that we go back to the default which is what's written today. So just think about those things and we'll discuss it again.

But I want to turn this back over to staff to prompt us on our next set of discussions. Emily, please go ahead.

EMILY BARABAS: Thanks, Roger. This is Emily from staff. So this has been our sort of test run, as Roger had said, on a fairly-focused topic to give folks an opportunity to see how the Public Comment Review Tools work and kind of get a sense of how they're organized and how they can support the discussion.

I think the direction, as our next topic will be something much more substantial, which is comments on elimination of the Losing FOA and TAC security as a justification for the elimination of the Losing FOA. There's quite a few comments on that. And it's obviously a topic that has a lot of dependencies downstream if there were to be any changes in the recommendations in that regard.

So the current plan is to start on that topic next Tuesday, our coming meeting, and to start to work through some of the comments, think about some of the proposals that have been put forward as alternatives, and formulate any potential clarification questions on those on those feedback items, and then continue on that topic at ICANN75 as the main event. That will allow both those who can attend the upcoming working group call but not ICANN75 as well as potentially community members who will be at ICANN75 but not on the working group call to weigh in because this is a pretty substantial topic, as I said.

So we will be circulating an agenda. We're going to think about how we can prepare other materials potentially to help support and digest some of the comments to help that conversation along. And we'll be in touch about that.

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And in the meantime, Recommendation 2 is the primary recommendation that's relevant there. And I think the important thing is for everyone to really get familiar with those comments and not only read through them, but really also think about constructive solutions, taking into account those comments that may be palatable as consensus recommendation.

So it's really a two-part exercise in preparing for these calls. It's both reading and understanding the comments, but also really thinking constructively about how to come to the conversations in a solutions-oriented way so that we can find mutually agreeable outcomes and updates to the recommendations.

So I think that's what we have, and the leadership team will be in touch with additional information as we get closer. Roger, anything I missed? Or Berry and Julie, please feel free to hop on as well. Thanks.

ROGER CARNEY: That was great, Emily. Thank you. Okay, I think we are concluded for the day and we'll give everyone six minutes back of their day. And we'll talk to everyone next week. Thanks, everyone.

JULIE BISLAND: Thank you, Roger. Thanks, everyone, for joining. This meeting is adjourned.

[END OF TRANSCRIPTION]