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## ICANN Transcription

### Transfer Policy Review PDP WG

**Tuesday, 15 February 2022 at 16:00 UTC**

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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 15<sup>th</sup> of February 2022.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. For today's call, we have an apology from Mike Rodenbaugh, IPC. As a reminder, an alternate assignment 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. As a reminder, when using the chat feature, please select Everyone in order for all participants to see your chat and

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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. If anyone has any updates to share, please raise your hand or speak up now. Seeing no hands, if you need assistance updating your Statements of Interest, please e-mail the GNSO secretariat.

Please 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 CARNEY:

Thanks, Julie. Welcome, everyone. I think we have a good background on today's discussion. So when we get into that I think we'll speed that along quickly today. Nothing to announce or anything for the call, but I will open it up for any of the stakeholder groups that may have had some discussions over the past week or so that they want to bring forward on any of the topics we've covered so far. That would be great. If anybody has anything, the floor is open.

Zak, please go ahead.

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ZAK MUSCOVITCH: Thank you, Roger. Arinola Akinyemi who is on this call and is an alternate from the BC, along with myself, had a brief discussion with the BC. And “brief” is under 15 minutes. So by no means was it a full discussion, and we barely covered the three main different kinds of locks. But I did want to share some feedback—by no means a position of the BC at this point—but some feedback from the brand holder perspective within the BC regarding the post-creation day lock.

And that feedback was that there was an interest in maintaining the 60-day lock for this reason: that if a cybersquatting target is identified by a brand or brand protection company, for example, the time that it takes to conduct an investigation and commence a UDRP, for example, against that registrant takes some time. And if there was too short of a post-creation date lock, then it would compel the brand enforcement person to possibly redo the UDRP because the target had changed registrants, for example.

So I did raise also with them the possibility that 60-day post-creation lock prevents transfers from a target who's willingly agreeing to transfer the domain name because we'd have to wait out the 60-day lock. But on balance from a brand perspective, some of the feedback was that the longer period would still be helpful even with that potential downside because it affords that time to enforce and prevent having to redo an enforcement procedure. Thank you.

ROGER CARNEY: Great. Thanks, Zac. And a great point of view. It's one of those we hope we can always get in our discussions, all those different

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points of view, because that really wasn't brought up in any of our discussions.

Yeah, that's an interesting view on that . And I guess when we jump into this first discussions, it's worthwhile to take a look at that and see what people think. Thanks, Zac.

Any other stakeholder groups want to bring anything forward? Okay, well let's jump into the locks then, and we'll jump into what Zac brought up as well.

The past few weeks, we've kind of settled—as Zac just talked about—on that 10 day for the post-creation lock. It seemed like everybody was kind of good with that. There was a lot more discussion in the last two weeks about that may be too short for post-transfer lock. So we probably need to hit on that a little bit more. But now that Zac brings this up about this trademark issue, not even intellectual property or anything that comes up on that, that first create. It's probably the biggest things on create. I mean, we've kind of talked through this that create doesn't have the same issues as a post- transfer does. But this is definitely one of those that does make sense on a create that would come up.

So I open it up to the floor. If anybody wants to talk about that, please come forward. It does seem to make sense from a standpoint there that a longer period does afford that time to review for more people. Does that outweigh that issue of me being transferred quicker or not? So I'll open up the floor. Anyone have thoughts on that? Please come forward. Theo, please go ahead.

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THEO GEURTS: Yeah, thanks. So I'm not complete sure if I'm following Zak completely. But if you want to investigate any IP issues on a domain name, does it really matter if it has been transferred to other registrar if you want to initiate a UDRP? That's sort of my question. Thanks.

ROGER CARNEY: So you're asking, Theo, is it a big deal? I mean, just the tracing piece becomes a little burdensome. But you're asking if it's really that big—if starting a UDRP at a different registrar is a big deal or not. Is that what you're saying?

THEO GEURTS: I'm basically saying you notice a domain name that might be infringing on your trademarks so you start doing your research. And then during your research, it transfers to registrar B. I don't think that's going to change your initial [intent] if you want to file a UDRP. The only thing that's going to change is that it's with a different registrar. And then you start just the UDRP. And then that registrar locks it. So I don't ...

ROGER CARNEY: Yep That makes sense, Theo.

THEO GEURTS: Okay.

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ROGER CARNEY: Thank you. Keiron, please go ahead.

KEIRON TOBIN: Thank you. Yeah, so when a registrar is informed of a UDRP process by the DRP which is the Dispute Resolution Provider, usually we collate the information and then it's sent back to, let's say, one of the DRPs. I don't want to mention any names. But once that's confirmed, the registry is then advised to put a lock on the domain. So the domain can't be transferred away at all until we have received something in regard to either a decision or a settlement. And then once paragraph 4(k) of the UDRP is released, that's when we would make the decision in terms of working with the DRP to ensure that it's followed through correctly.

So I get that the shorter time frame does mean that there is a discrepancy in terms of how you would obtain the information, but the UDRP reaches out to us in terms of to get that information in its first instance. And then once that is obtained, that's when we contact the DRP back to inform them of that information. And the lock is also implemented at that same time.

URS works a little differently, which is the Uniform Rapid Suspension. That's kind of the more registry level [it's done at], obviously, which means it's prevented from being transferred from a registrar as well. But let's not get confused in regard to UDRPs and URSes. They are two very separate things. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. Any other comments on this? Greg, please go ahead.

GREG DIBIASE: Yeah. I just wanted to add. And Zak, I think this might be related. If there is an allegation of fraudulent transfer, for example, or of a domain hijack, I just want to also add that the registrar can always lock in their discretion, too. So that potential 10-day mandatory doesn't mean that after the 10 days you can't do anything. If there is evidence, a registrar can always lock again at their discretion. Just adding as a potential data point.

ROGER CARNEY: Great. Thanks, Greg. And that's a good lead-in to hopefully what we get into later today as our NACKing discussion.

Any other comments? And I don't know, Zak, maybe this was even a discussion that was help. That 15 minutes was quick, but maybe some of these points came up in that discussion as being ... How big of a stretch is it? If it does move, it really doesn't change the ability to do a UDRP or anything. It just may add that extra step. But any comments, Zak, on comments made so far?

ZAK MUSCOVITCH: Yes. Thank you, Roger. So, yeah, I think that Theo identified the issue, and you just reiterated, that it doesn't prevent a brand owner from bringing a UDRP. It's a practical issue in the sense that you do the research, you prepare the UDRP, for example. Or you prepare the domain letter, for example. You serve it. And in the meantime, the registrar is changed. So then you have to redo it. It's not the end of the world, but that's the concern. Because

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you can redo it, but that's the concern that it puts a little bit of a temporary roadblock or obstacle in one's path. Thanks.

ROGER CARNEY: Okay, great. Thanks, Zak. Berry, please go ahead.

BERRY COBB: Thank you, Roger. And just in this specific use case that Zac and a few others are talking about. And we'll cover this in more detail on the next topic of NACKing transfers. I guess the flip side of the coin to the use case that Zac just brought up was input from WIPO.

And they note, quoting—or this may be a summary of a quote—in some instances, intra-registrar transfers are rejected due to those transfers beginning requested within 60 days of the creation date and/or the last transfer date. And maybe when we get further down the road, we can ask for more input from WIPO, but I'm taking that as a separate kind of use case where a potential cybersquatted domain is immediately registered.

There are brands that are using brand-monitoring types of solutions out there. They're immediately notified of a potential threat. Instead of doing C&D, they will immediately file the case at a Dispute Resolution Provider approximately 21 days or so. The complainant will prevail, but then there are issues about claiming that domain as part of a resolution to that UDRP. And I guess they're suggesting that ... Let's pretend that happens 35 days straight. They have to wait another 25 days for that domain to be transferred to the complainant or before the registrar would take



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action. So just something to plant a seed on when the group is [conforming] down to the duration of any creation [model]. Thanks.

ROGER CARNEY: [inaudible] charter on NACKing. Is that right, Berry?

BERRY COBB: Yeah, that's correct.

ROGER CARNEY: Okay, great. Thank you. Okay, any other comments/questions on that? And I think that's definitely something to note as we progress forward. Even if the group stays with the 10 days, I think documenting this discussion and bringing that forward, especially for public comment to see is important to do. So that's great.

Okay, if there are no other comments on, I guess, the create date lock, let's move into the transfer lock where we had quite a bit more discussion in the last couple of weeks on a time that actually feels right for that lock on that. Just touching on a few of the items. People thought maybe the 10 days wasn't enough.

And the bigger difference here is that the domain may be actually being used versus on a create. It's just coming into existence, but there's a good possibility that this domain is being used for someone's business or personal life. So an interruption is a little more impacting than on a create. And I think that's kind of where we left it last week is, does that 10 days afford enough time on a post-transfer?

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And I think that someone—and maybe it was Zak or Mike—brought up last week that today in the transfer policy, there is no specific mandatory lock on a post-transfer. There is a clause that allows registrars to take up to 60 days lock if they choose to. But today in the policy, a lock of no length is required.

So let's get into that. I guess staff went through and updated our transfer lock document pretty heavily, so if we want to take a look here. Again, they've documented some of the things we've come up with. I've been trying to, hopefully, steer to consistency between the domain create and the post-transfer. But if there are reasons, there's rationale or logic behind a different timeline, I think as long as we document it, we can make sense out of that.

And if it's only a few days, the discussion goes back to, do you still try to sync them or not? But if it's a wider gap where we're talking about 10 versus 30 or whatever it ends up, being maybe we just put that rationale in and that's what it is. But again, I'm definitely the one that's tried to push for consistency between the two just to make it easier for registrants to understand it, mostly.

But I'll open it up. Any discussions on if 10 days is right/wrong for a post-transfer? Again, last week we had some that thought 10 days may have been a little short.

Theo, please go ahead.

THEO GEURTS:

Yeah. I'm going to echo myself from last week, but I think we still should do the claw back discussion first. Depending how well that piece of policy is going to work, that will make it easier for us to

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have a discussion if it should be 10, 60, or 30 days because that is the entire issue, that people are still going with the 60 day because there are issues that if a domain name is illegally transferred, that there is a security issue there.

And I think if we have a good claw back procedure, then we can ease the discussion and we can come up with a more rational discussion and go like, "Okay, we now have this great procedure here. If this and this and this happens, we can revert it within X time." And then it makes it much easier to have a discussion if it should be 10 days or 30 days or 60 days. Thanks.

ROGER CARNEY:

Thanks, Theo. That is a good point. I don't know that it makes sense to pull that forward or if we just put in that discussion, actually, into our initial report that, obviously, we're going to revisit this when we talk about transfer disputes and claw backs. It's open to the group if we try to pull that forward or not. It's probably quite a bit of work because it starts pulling in other things. So I would prefer to leave it where it's at because it's probably still quite a ways out for us to look at.

But I think we can obviously put an asterisk/double asterisk/triple asterisk on what we're saying here. "We're recommending 10 days, but this is really depending on our future discussion of transfer disputes and, specifically, any mention of claw back."

Okay, we'll go to the queue. Keiron, please go ahead.

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KEIRON TOBIN: Thank you. Yeah, I'm in agreeance with Theo here. I think before we can start even putting an amount of days to it, we need to obviously speak ... Because this would be a registry point as well in terms of the claw back situation. So before we would even contemplate looking at reducing or extending the number of days, we need to ensure that we have that in place first in order to proceed. Because otherwise, we'd just be picking a number and then if that claw back procedure doesn't come through, that will be changed again. And I feel like we may just be going around in circles. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. Kristian, please go ahead.

KRISTIAN ØRMEN: Thank you. I just wanted to say that I think that 10 days should be sufficient to flag any dispute on a transfer so the domain could be locked for longer time, if needed, which would normally happen if a registrar contacts and another registrar about a fraudulent transfer anyway. So I don't think we would need more time for that.

ROGER CARNEY: Right. Thanks, Kristian. Greg, please go ahead.

GREG DIBIASE: Yeah. I think I would vote against changing the schedule. Let me rephrase that. I'm not going to state an opinion on whether we

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should change it, but I would just note that I agree we can put guidelines around a transfer claw back. But I am slightly skeptical that we can be sure that we figure it out just because there are so many ambiguous facts involved. Right?

If someone's claiming, "My domain was hijacked," I'm not sure we're going to be able to come up with a mechanism that can solve all cases. So we can certainly try. But I guess I just note there's going to be ambiguity even if we tackle that first. That's my opinion.

ROGER CARNEY:

Great. Thanks, Greg. Okay, any other comments? Sarah, please go ahead.

SARAH WYLD:

Thank you. Hi. I just wanted to verbalize something that I've been thinking about it in the chat right now. But I think we're talking about the fast undo period. I think we should decide as a group if those two periods—the fast undo and the transfer lock—need to be the same thing or they can be separate. Right?

If, for example, we have a 10-day lock and then the domain gets transferred and it moves to three different registrars over the course of a month. And then after a second month has passed, then the domain owner notices and now their domain is with ... Does it matter that it's gone from a few different registrars or can they still, like, we have this chain of history that could undo it?

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So I kind of lean towards that they need to be the same period of time, but I'm not sure if, practically, that's actually the case. So I guess I kind of agree with Theo thinking that we need to think through the undo process a bit more before we decide on the time frame here. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Yeah, and I always thought ... And not digging into it deeply, I always thought that those two time periods would be separate. But, yeah, that's a good question. If they can be or should be separate is a good question. Again, just in my head, I always had pictured them being separate. But that's a good question.

Sarah, your hand's back up.

SARAH WYLD: Yeah, thank you.

ROGER CARNEY: Okay.

SARAH WYLD: My wonderful Rich, who is an alternate, is typing at me and remind me that the Transfer Dispute, as it works now, the Losing Registrar can dispute it with the Gaining Registrar. So if we have a chain of several registrars in place there, it might be problematic for, like ... It's like playing leapfrog. They each have to dispute it

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with the previous one. So that's why I think we do need to work on that dispute process. Thank you.

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

THEO GEURTS: Actually, I'm going to hold. Thanks.

ROGER CARNEY: Okay, great, Thanks, Theo. Okay, so it sounds like ... And again, I think this is consistent over our discussion on this the past couple of times, the past couple of weeks. We're not real sure on what this date should be. Again, I think 10 days seems good and it matches the create, but there's a big dependency on later.

So thinking that the actual claw back is not going to happen until Phase 2 of our discussions which is still a ways away, we'll finish Phase 1 A and then finish the Change of Registrant before tackling disputes and claw backs.

Should we look at wording here that allows us to tie those together at a later time? Just thoughts on that.

Keiron, please go ahead.

KEIRON TOBIN: Thank you. Yeah, just in regard to the claw back situation, I don't know if someone from the RySG wants to essentially start feeding

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that back in terms of the discussion that we're having just because, obviously, that will create a lot of internal work for registries. And I'd just like to get more consensus from them first, as it may not be something that they back. Just as a precaution. Thank you

ROGER CARNEY: Great. Thanks, Keiron. Good, Berry. I was just going to ask you a question. Berry, please go ahead.

BERRY COBB: Thanks, Roger. Just to put an extra dose of clarity about your comment with respect to the dispute part of this. Yes, it's true that it's part of Phase 2, but in the PCR we did recognize how closely related to the denial of transfers, the relationship between the two. So there's nothing that will prevent this group from asking some of the hard questions as it relates to claw backs and the dispute process.

We can have those deliberations. Just note that we're not going to make any formal recommendations as part of delivering the Phase 1 report. So we're not isolated from having some of those discussions. I just think we need to think about some guard rails that don't prevent this from going down a very long path because it is going to be quite a substantial topic to work through.

ROGER CARNEY: Okay, great. Thanks, Berry. And I think that's a good point. We can probably come up, even talking about claw back over a



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couple sessions. Maybe we spend that time prior to releasing Phase 1A. And we can maybe come to a general—as Berry says, not concrete recommendations or anything—but a general understanding within this group of what that kind of looks like at a high level. Again, not being specific about it, but being able to get far enough to help us answer any questions on this lock here, specifically.

Theo, please go ahead.

THEO GEURTS:

Yeah, thank you. So I'm not 100% if it's sort of out of scope. Yes, we can discuss it. But I also think we can come up with a recommendation in case we actually were able to solve it and come with a claw back [first]. I don't see that happening because we've been breaking our heads for the last decade on this. So I don't think we're going to get something really productive.

But I think if that would happen and there would be a genius idea out there that we haven't thought of, then it could be a recommendation, in my opinion, because it's still part of the transfer process. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Yeah, and I don't think that ... Obviously, if we spend some time—which it sounds like we probably will, it sounds like the group wants to do that—so if we spend a couple of weeks talking about that process and, like you said, if we come up with the solution, there's nothing wrong with getting that documented as that's what the group agreed to.

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If we only spend even two or three weeks talking about it, I don't think we'll come up with the solution for it. But we can get a good understanding. The whole group can get a good understanding of what that looks like and what the challenge is, and actually what the ideas are around maybe what a successful claw back procedure may look like.

Okay, any other comments? I think it's great and I think that unless the group doesn't want to ... Maybe we'll update our schedule a bit and have just a couple of ad hoc sessions on the claw back process. I don't think we have to do it now. Again, let's do it before we publish our initial report so that we're comfortable with what we're putting out there. But let's schedule that after we complete our discussions on the Phase 1A topic.

Okay, so with that in mind, unless someone wants to bring up any issues with bringing that discussion up, let's go ahead and leave this post-transfer lock at 10 days. And staff will put a bit asterisk on that saying, "We're going to follow this up in a few weeks with our discussion of the high-level discussion of the claw back process."

But let's go ahead and just leave it as the 10 days and move on. And again, we'll revisit this at that time when that comes up. Any concerns with that? Okay, so I think we've got our post-create and post-transfer to a spot where we're comfortable and we know what the next step is on them. So let's go ahead and we can table this discussion on locks. And we'll bring it back to the front as we finish up our discussions with the Phase 1A stuff when we talk about the claw back process at the end.

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Okay, so let's go ahead and move into our next discussion of NACKing. I'll turn this over to staff just to introduce the document again. I think everybody will be familiar with this, staff put together a similar document, but I'll have staff run through it to make sure everybody can see what's going on and how we've got it organized.

Caitlin, if you want to take it over. Thank you.

CAITLIN TUBERGEN: Thank you, Roger. This is Caitlin Tubergen speaking from support staff. And you'll notice that some of the material in this document are conversations we've been touching on throughout the deliberations of other topics, which is one of the reasons that this was moved from Phase 2 to Phase 1A.

So just like with all of our other working documents, we start with the introduction of the current applicable policy language. So in this case, we've broken it up a little bit. And just to clarify for people who may be unfamiliar with this part of the policy, but NACKing is what a registrar can do to deny a registrant's request for a transfer. And I think the term "NACK" is an abbreviation for "negative acknowledgement." So rather than acknowledge the registrant's request for the transfer, the registrar saying, "No. At this time, you can't transfer the domain name." And there are reasons under the policy that that is allowable.

So first, in Section 3.7 we've broken out the reasons why the Registrar of Record may deny a transfer request. So that would be within the registrar's discretion whether or not to deny the transfer.

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And you'll note that the language here has been bolded and an underlined just to make it clear when it's a “may” versus a “must” versus a “must not.”

So here are the reasons for why a registrar may deny a transfer. And again, here are two of the things we've been discussing in the last document about post-creation and post-transfer. So those are “may” reasons versus “must,” which is why there's been a little bit of confusion because some registrars—via their RRA or maybe another agreement or their registration agreement with their customer—require a lock after a creation or transfer and others don't which may create some confusion for customers that have domain names registered at multiple companies.

So Section 3.8 details the reasons why a Registrar of Record must deny a transfer request. And there are five reasons when a registrar must deny: UDRP, a court order, an active or pending TDRP (Transfer Dispute Resolution Policy), a URS, or another topic that we touched on in other discussions which is the 60-day inter-registrar transfer lock following a Change of Registrant which is when the Registered Name Holder updates specific contact information in its account. There are certain circumstances where the name would need to be locked. And that's specifically when the customer doesn't opt out of that 60-day post-Change of Registrant lock.

Section 3.9 of the policy specifically enumerates the instances where registrars may not deny a transfer. So for example, non-payment for a pending or future registration period, if there's no response from the Registered Name Holder, etc. I won't go through all of them, but please familiarize yourself with Section 3.7

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through Section 3.9 of the policy because that's directly relevant to answering the [attendant] charter questions for this topic.

So the next section is the working definition of NACK which is currently defined as "A denial of a request for transfer by the Losing Registrar." That is detailed in Paragraph 1.9 of the TDRP, or the Transfer Dispute Resolution Policy. If any of the working group members think it needs to be clarified, adjusted, etc., we can certainly discuss that. But that definition has been placed in the document for now just so that we have a common understanding of what we're talking about when we refer to NACK.

There are two charter questions for NACKing or denying transfers. The first is kind of the holistic view of, "Are the previous reasons and the policy sufficiently clear? Should there be additional reasons considered?" And we also note that ICANN's Contractual Compliance Team has observed some difficulties from registrars trying transport denials involving suspension for abusive activities to denial instances contemplated by the Transfer Policy.

And then lastly, "Are there any reasons that should be removed?"

So in considering this question, support staff has added a few additional questions to consider. For instance, "Should any or all of the reasons that registrars currently may NACK a transfer be changed to 'must NACK' to promote consistency and reduce potential confusion?"

And then we've also included a bullet from Contractual Compliance. And this is feedback that we've received from our colleagues about Paragraph 3.9.1 of the policy, non-payment for a

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pending or future registration period. Apparently that terminology is confusing and there are complaints received or confusion noted when Compliance is working with registrars who may not understand that provision in the policy. So perhaps updated language or clarified language should be considered by the group.

And then the next charter question, charter question h2). This may sound familiar because we've kind of touched on this topic in relation to the locking of domain names in the previous document. But this charter question is, "Should additional guidance around cases subject to a UDRP decision be provided to ensure consistent treatment by all registrars? If so, is this something that should be considered by perhaps the RPMs PDP Working group's review of the UDRP? Or should this review be conducted within this PDP?"

And underneath this charter question, there is some feedback that we received in response to the Policy Status Report. This feedback was received from the World Intellectual Property Organization, which is one of the main UDRP providers. Many of you are familiar with WIPO. They provided some extensive feedback about some of the issues they encounter vis-à-vis the Transfer Policy or where the Transfer Policy and that UDRP are simultaneously implicated, for lack of a better term.

So I encourage everyone to read this. I'll note that these bullet points are some of the main issues that WIPO has pinpointed. So, for example, with respect to the Transfer Policy, "A gaining registrar may not be on notice that a domain is subject to a UDRP proceeding," which results in that registrar allowing a transfer to proceed. And that could be in violation of the Transfer Policy.

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There's some confusion, also, about what does “locking” mean. Could there be additional guidance provided to registrars about how to lock a name during the pendency of a proceeding and also unlock and transfer a name to a successful complainant? So there seems to be some confusion there. So I encourage everyone to read through this, and if there's any confusion we can ask WIPO to provide further context.

Some of the issues, as we noted in the charter question, might be more appropriate for UDRP-related guidance rather than Transfer Policy-related guidance. But because WIPO did provide this feedback in relation to issues they experienced with the Transfer Policy specifically, we wanted to include this in the interest of comprehensiveness. So I encourage everybody to read all of this material to understand what the issues are.

So with that, that's a general overview of NACKing where it shows up in the policy, what it means, and what the group is being asked to consider in response to the charter questions. So I'll hand it back over to Roger at this time, but if you have any additional questions feel free to let us know. Thank you.

ROGER CARNEY:

Great. Thanks, Caitlin. Yeah, and I think that—and maybe staff can correct me—I think that the RPM group—or maybe Greg can even do it—has been given the go-ahead to do their Phase 2 UDRP work. I don't know it's been scheduled or anything, but I think Council agreed to move forward with that. So I think we're in a good spot that if we come up with anything that we think should

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be addressed in the UDRP, we can forward that on to the RPM Working Group, which would be great.

Kristian, please go ahead.

KRISTIAN ØRMEN:

Thank you. Thanks for the overview. I lost connection a bit, so I lost some of it. But I think I got the most important.

When we did the walkthrough that Berry made with all the different steps in the process, we got to where the Auth-ID was sent to the registry and we talked about how, since there's no Gaining FOA and Losing FOA, that when the registry gets the Auth-ID they would check if it's all good. And then if it is, they would just proceed with the transfer. So if we follow that thought, since it would never be send to the Losing Registrar, they wouldn't really have possibility of NACKing it. It would just go through.

And I personally think we should follow that track. And then this NACKing doesn't really exist anymore. So if we want to keep this possibility of stopping a transfer, I think we should need to rephrase the whole thing. And instead of NACKing a transfer, it's more around when would a registrar be allowed to put on a lock or deny taking off a lock from a registrant based on different reasons. And then these reasons would be the same. That is, in this document. But the whole concept of NACKing would go away if the transfer just goes through directly. Thank you.



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ROGER CARNEY: Great. Thanks, Kristian. Yeah, and maybe the terminology should be updated some. I kind of pictured the NACKing—and again, maybe it's the wrong terminology—occurring at the request and before the TAC is provided. That 5-day day window that we had discussed that the registrar may take. And they would be able to use these reasons here as logic to deny a transfer request. And to your point, it's not ... It's the timing wise that we're kind of changing here.

Keiron, please go ahead.

KEIRON TOBIN: Thank you. Just a quick question for staff. In terms of when we set the thing out, was that just directly to WIPO or was it a general kind of consensus? Just because NAF, the National Arbitration Forum—and the other ones out there as well—I just wondered if they had any further input as well just before we just look at WIPO in itself. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. I'll jump Kristian here real quick and see if Caitlin wants to answer that.

CAITLIN TUBERGEN: Thanks, Roger. And thanks, Keiron. To answer your question, the feedback that we received from WIPO was part of a public comment proceeding that was open to everyone. So we didn't see targeted input from WIPO, but if the group thinks that I would be valuable, we could certainly reach out to other providers to get

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better context in terms of what the issues may or may not be. But this was part of a public comment proceeding on the Policy Status Report for the Transfer Policy which was kind of the document that predicated this PDP Working Group.

ROGER CARNEY: Great. Thanks, Caitlin. Before I jump into Kristian, I just wanted to ... Sara posted something in chat about, so there's no chance of NACKing once the TAC is gone. And I would say that that's not exactly right. I mean, there's always a chance to NACK up until the registry does the transfer. So post-TAC there's still a probable path to NACKing. It's just that that window is undefined because it could be quickly or not. So just my comments.

Kristian, please go ahead.

KRISTIAN ØRMEN: Thank you. That's basically almost what I wanted to say because, for example, if we give out the Auth-ID and then three days, after we get evidence of fraud then we are going to lock the domain. So the policy needs to make sure that we can lock the domain for these good reasons.

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

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THEO GEURTS: Yeah, I agree with Kristian there. I think these are very good reasons where you can deny a transfer, regardless of if you NACK it or you lock it. k it.

On the comments from the UDRP provider, what I'm reading there is that there are some issues, mostly related to people not following the policy. And I don't think we can fix that. And I don't think the people in the other working group can fix that. If people are going off script and they are not following the policy, you will get the complaints that are mentioned by the UDRP provider. So I don't think we're going to be able to fix that. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Yeah, and that's something that, obviously, the RPM Working Group can look at. And as you said, you can't fix someone that doesn't follow the process, but maybe you can account for some of those common things in the process now that they know them. And maybe they can. Maybe they don't want to. But, yeah, that would be definitely in the RPM Working Group, I guess, scope.

Steinar, please go ahead.

STEINAR GRØTTERØD: Hi. I'm a little bit confused. All of this is referring to the UDRP but not the URS. And of for the new gTLDs, URS was mandatory and UDRP was optional to include in the RA. And for the URS, the registry was informed and requested to lock a domain name when there's a dispute. In the UDRP, from what I understand, the registry is not being contacted. Hence, we have the problem with

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maybe the registry approved a domain name that is in their UDRP dispute.

I don't know whether this is the way forward, but could we kind of include URS into this policy and not only refer to UDRP? Thank you.

ROGER CARNEY: Great. Thanks, Steinar. Thank you for highlighting.

STEINAR GRØTTERØD: Sorry about that. I didn't see that there.

ROGER CARNEY: [inaudible]. Thanks, Steinar. So let's go ahead. And, again, I mean there's quite a bit on the UDRP and everything. But let's go ahead.

I think one of the big questions we need to solve here is, is the list correct. And we've got three different lists here to review. Are they still valid? Are there new ones that need to be included? Those kinds of questions we need to ask. And I think, even fundamentally, are those three groups correct—that they may deny it, that they must deny it, and may not deny it for certain reasons? Are those the correct ones? Are we missing a category of a NACKing here?

And to the point that I think Kristian brought up—someone brought up—is the terminology correct or ... We're talking about reasons for denying a request. And Caitlin mentioned it. There's a working

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definition of “NACKing.” Is that what we should be using? Should we change that term so that it’s more fundamentally correct and crosses more from that transfer request time to basically any time before the TAC is used at the registry? That’s the time where a denial can occur, which is a little different than today’s NACKing. But I think that, still, today’s NACKing allowed for that pre-look at it. So just thoughts.

Theo, please go ahead.

THEO GEURTS:

Actually, how you just laid it out, I think that is the way to go about this. And when we are talking about certain of these topics, the one from Compliance where they have some issues with registrars and abuse of domain names, that is definitely something that could use some more clarification on what the actual issue is there because I don’t recognize it. But for the rest, I think, yeah, you laid out a pretty good flow there. So I think we just need to go with that. Thanks.

ROGER CARNEY:

Okay, great. Thanks, Theo. Sarah, please go ahead.

SARAH WYLD:

Okay, so several thoughts kind of summing up or answering these several questions that Roger laid out. Okay, so, yes, we should rename “NACK.” It feels to me that this term is very technical. It corresponds with “ACK” for acknowledge the transfer. We can leave it alone in the EPP or wherever. But, yeah, we should call it

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something different in the policy that is going to be human readable.

Number two, I think the groupings are correct. We've got may, must, and may not. Yes. I do agree that we should review the things within each group to make sure that they belong there, if we're missing anything, etc.

Finally, I think that we should move this whole transfer denial process to occur when the TAC is requested—that's when the registrar needs to evaluate if there is a reason to not permit the transfer—rather than after the TAC has been provided to the domain owner who gives it to the new registrar. At that point, there is ... Some time, there is a little window. But it's a very little window. So that's not, I think, a great time for doing the review and denial. Thank you.

ROGER CARNEY:

Great. Thanks, Sarah. Yeah, and I think that's an important thing. Obviously, it's easier in that front, but if you look at transfers and—and I'll let the operational people of the different companies ... How often, how quickly does a code get used when presented? That denial could be ... We've said that the time to live is going to be 14 days. So really, it's 5 days plus 14 days. So it could be 19 days that you could deny, and I'm going to use—I think Owen said it—deny a transfer.

So I think that, yes, it could be as short as probably hours or whatever it is. But realistically, it's probably closer to a week or so that you can look to deny that transfer. Obviously, it's much

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simpler if you do it in that pre-TAC creation time. And I don't know if we step into that and, say, do a recommendation that this is the better spot to do it. But obviously, you have up until the TAC-gets-used period to deny for these reasons. Just my thoughts.

The other thing I was thinking about is, out of the three groups, there are two that are fairly non-flexible. Right? You must deny a transfer for these reasons, and you may not deny a transfer for these reasons. The other one is fairly flexible. And I think that when we discuss those items, you have to think about that because one registrar may do it and one registrar may not. And then we're starting to introduce some possible confusion at the registrant level if we allow that.

And I'm not saying not to or not ... I just think that we need to think about ... That "may" section provides a little more consistency issues, I would say. And again, I'm not saying not to have it and those aren't the right reasons. I'm just saying we need to think about that.

Okay. I think we've agreed. Let's not call it NACKing going forward. As Sarah said, that's going to happen in the back, in the EPP. And the system people will always be calling it NACKing. Policy wise, let's change that to some denial—transfer denial—reason. So I think that's easy enough to get an agreement on.

Okay, do we want to jump into the first list, then? Again, maybe the first list is the harder one to go through, again, because it's the flexible reasons why denying. Obviously, I think that the "may" is important, but I think we have to be careful on how much flexibility is allowed there. So just my thoughts.

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So, any comments on ... Is any one of these reasons not valid anymore? Let's throw that open before we get into adding. Are any of these reasons not valid or should any of these reasons be put into the other groups, however that works?

Theo, please go ahead.

THEO GEURTS: Yeah. I think that most of the, I think, actually all of these reasons are still valid. Our support teams still use them on a day-to-day basis in certain cases. And it is pretty clear what they are, so I don't think we need to change much here. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Okay, we have six, I think. Six or them? Yeah, six currently in this group. And Theo supports keeping the six.

Sarah, please go ahead.

SARAH WYLD: Yes. If you could please scroll down just a bit. I think items 3.7.5 and 3.7.6 might need to just change the timing listed there because these are what allows us to deny the transfer during those periods that we are now altering the period of. Thank you.

ROGER CARNEY: Yep, great. Great, Sarah. Thanks for—



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SARAH WYLD: Oh, sorry. But other than that, I do think that the items in this section all correctly belong in the “may” section where they are.

ROGER CARNEY: Okay, great. Thanks, Sarah. Other comments on ... Again, our standing policy is that if we don't have consensus we won't change it. But we're already getting consensus that this list is correct. So we'll probably just confirm what's in the policy besides updating timelines, obviously.

Anyone else say one of these shouldn't be her? And again, I think Sarah said it in chat. Should it be in this group or should it be in another group even if we think it should stay? I think that's important to get it into the correct group as well.

Theo, please go ahead.

THEO GEURTS: Yeah. I'm wondering about 3.7.4, the authorized Transfer Contact. From a policy point of view, I think Transfer Contact used to be the admin contact, but that is going away unless I'm very much confused and I don't get it right and I'm not sure what Transfer Contact actually means. That could be completely valid. Thanks.

ROGER CARNEY: Yeah. I think Sarah and Berry put it in chat. I think if you look at the policy, “Transfer Contact” is defined as registrant and/or the admin contact. So I think that we could probably just change this

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to “registrant.” But again, maybe that's not right. But I think, yes, updating the Transfer Contact so that it's correct in our EPDP Phase 1 changes so that we can do that.

Sarah, please go ahead.

SARAH WYLD:

Thank you. So now that I've said that these all properly belong in the “may” section, I think I disagree with myself.

So, okay, 3.7.5 and 3.7.6. I think we decided we want to make those standard requirements for all registrars. Right? So I feel like that means they belong in the “must” section. And then actually, 3.7.4 also. I wonder if we should consider putting that in the “must” section. Or I guess I would be curious as to why we want it to be in the “may” section because that would mean that we have the option to not deny the transfer even though the domain owner has now told us not to do the transfer. That's interesting.

Berry, I owe you a beer. So, yes, I think those probably should move. The ones above, I feel like maybe makes more sense for them to be optional. Maybe 3.7.2 also belong as a “must.” So ultimately, I think I was too quick.

And then a separate point or a separate thing to consider—also credit to my fantastic co-worker, Rich—are we talking here about denying a transfer? Or are we talking about denying the provision of the TAC which also has the effect of denying the transfer? But I think we should figure out which one we're actually talking about here, so that we're very clear. Okay, thank you.

ROGER CARNEY: Great. Thanks, Sarah. And that's a good point and we need to be clear on it. If we see it as the same, that's fine but let's be clear that provision and the denying of the transfer, we apply those the same. And if we don't, then let's be clear that we don't. Owen, please go ahead.

OWEN SMIGELSKI: Thanks, Roger. Hey, everyone. So I agree with Theo in the chat and also, along with Sarah, I think we should qualify that this denial is both pre-obtain the TAC as well as post-obtain the TAC.

And I bring us the first scenario that I know that my registrar does as well as some other registrars. And then also, that I've seen—and this actually was a subject of a reconsideration request that went to ICANN. And the scenario is, a customer has a domain name, they're doing bad things on the Internet, selling opioids for example is one that I have seen commonly. Registrar receives a report. Registrar locks the domain name and suspends it.

Then the bad guy comes back and says, oh you know what, I want to go sell illegal drugs somewhere else. And they try to obtain the—at this point, it's the AuthInfo Code and they can't because it's been shut down and then the customer complains to ICANN. And the reason why the transfer was denied was because of evidence of fraud. And so it was denial of the ability to even initiate a transfer there.

So I think they could be applicable to both scenarios, before obtaining of the TAC as well as post-obtaining the TAC. And we

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should clarify that there but I don't think we should really touch that anymore. Thanks.

ROGER CARNEY:

Great. Thanks, Owen. Let me throw this out because I think it will go back to how we started the discussion. Maybe it was Kristian that brought it up. But to Berry's swim lane chart and timing, we have moved and it's a little wordy. I guess, a little depending on the language you use.

We used to deny transfers, most of the time deny transfers on transfer. And again, a little wordy because it's always been a buffer that the registry allowed. I mean, you never deny a transfer. You always deny prior to the transfer. And again, it may get a little technical and wordy because the losing registrar always had the ability to NACK a transfer but the transfer never occurred in that NACKing window.

So it's always been a transfer request, being able to deny a transfer request, and that transfer request is all the way up until the transfer actually occurs. And today, we're suggesting that the registry gets to do that transfer without any buffer to the losing registrar. That buffer is built into the beginning. So do we just plainly say, these are the reasons to deny a transfer request? Does it cover that? Just a thought. Keiron, please go ahead.

KEIRON TOBIN:

Sorry, mine is not in regards to that but if anyone—Berry, is yours in regards to what Roger just mentioned?

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BERRY COBB: No, different.

ROGER CARNEY: Keiron, please go ahead.

KEIRON TOBIN: Okay, thank you. So I was just going to say, if we do potentially move 3.7.5 and 3.7.6, I think we do need to update the language from the date of up to instead of within just because I think it will help get rid of some of that language in terms of [if it's put up] to ICANN compliance. Thank you.

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

BERRY COBB: Thank you, Roger. So two points, one, kind of chatting with staff, this is our brainstorming phase of the discussion, so we're early days here. But we are thinking that the review of these lists are prime candidates for maybe the next session that we do some polling just to make sure we get more tangible input into what changes we're proposing here or what the group is proposing here.

Secondarily, with this may section and building on Sarah's suggestion of should these be migrated to must, food for thought, and obviously no decision here today but something to think about

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as we talk about this over the next few weeks is, what is the specific reason why any of these need to remain a may? And in the spirit of some of our prior—sorry. In the spirit of some of your prior discussions, we’re trying to avoid may’s where possible in the policy document.

And so it’s conceivable that an end state may be that the may section isn’t even necessary. Maybe it is, but just something to think about. And for the record, it was Caitlin’s idea, not mine.

ROGER CARNEY: Thanks, Berry. Kristian, please go ahead.

KRISTIAN ØRMEN: Thank you. I think one of the big differences here is that if you have in the policy that you may send to this notification, then it doesn’t really matter because we can send as many notifications as we would love to as long as we don’t spam our customers. But here, it’s a question of we may lock or deny a transfer, but if it’s not in the may section, we’re not allowed to do it. While if it’s an email notification, we’re still allowed to even if it’s in the policy or not. So because of that, it does make sense to have a may in this section. Thank you.

ROGER CARNEY: Great. Thanks, Kristian. And I think that—even when we first pulled this up, because Sarah said, well maybe this one. I think you can say, do they all fit in must? If there’s evidence of fraud, you must deny it and resolve the evidence. And again, I think the

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evidence—number one and two here to me are probably more subjective. Evidence of fraud, what is that evidence and how do you do that? But does that still provide a may to it or should it be a must?

If there's any evidence of fraud, should you just deny it and then resolve that evidence? And once that's been resolved, then you can move forward. To me, one and two is way more subjective than five and six because we've actually made those statements. So just my thoughts. Kristian, please go ahead.

KRISTIAN ØRMEN: Thank you. Sometimes, without getting too specific with evidence of fraud, I would probably not lock the domain because I would be very happy to see that customer moving away.

ROGER CARNEY: A valid point. Thanks, Kristian. Sarah, please go ahead.

SARAH WYLD: Thank you, yeah. I do think this is a really good avenue of thought. I think for the first three on the list, it is important that the registrar has discretion to review the situation and make a decision as to whether that warrants denial of the transfer or not. And so for that reason, I think they belong in the may section. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Good discussion here. I think we're heading down to the idea that okay, maybe four, five and six

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belong in the must. And I'm not saying that we're going to do that, I'm just saying that it's leaning that way. I think people need to think, okay, do those fit in a must? And again, to Sarah's point, I mean, one and two and three are very subjective.

And to Kristian's point, even if there is some maybe they're willing to get rid of, that registrant, there's a payment issue or whatever. Maybe they're satisfied that that's all they're going to do and it's better that they move to somewhere else.

But yeah, I think everybody agrees that these are still valid reasons. It's just, should they be may or must? And it seems like we're kind of splitting that in half. The top three stay as a may and the bottom three, four, five and six go into the must category. Obviously, with some changes that we've talked about here, so wording changes and time changes.

Okay. Any other comments on the may section? And again, not that we won't touch on it again, just that we're going to move on from this and talk about the must section.

Okay. Let's go ahead and move on to the second one. And must deny for these five reasons. Are they still valid? Do they still belong? Are they still valid reasons of a denial? And should they be moved? Should it be a may or must? I'll open it up again. I think that the must obviously has been working but maybe it's not working for some, so we need to revisit that. And again, 3.8.5 probably has to be updated to our new timeline, whatever we set there. Zak, please go ahead.



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ZAK MUSCOVITCH: Thank you, Roger. I had a question about 3.8.5. Just in terms of how this works practically speaking. So my understanding is that, if the registrar was given the opportunity to opt out and did, then that's fine. But if the registrar didn't opt out for whatever reason, then the registrar must prevent the transfer. And so I'm just wondering, genuine question, from a practical perspective, why is it this way? Why is it must? If a [registrant] for whatever reason, maybe they weren't aware of the opt out. It wasn't brought to their attention. They changed their mind. What is it that's important about making it prevented at that point? Thank you.

ROGER CARNEY: Great. Thanks, Zak. Yeah. And as Emily noted in chat, we'll dig into a lot of the change of registrant stuff in our next phase. But since this is a NACKing question, a transfer request denial reason—start saying that right. Sarah has trained me on the TAC versus the AuthCode now, so I need to train myself on this other piece. Berry, please go ahead.

BERRY COBB: Thank you, Roger. Just to build on Zak's question here. So in thinking about our approach, phase 1A and 1B as we kind of discussed is everything of the old term about inter-registrar transfer policy. This particular 3.8.5 is likely going to be untouched until we have our deliberations in phase 1B about the change of registrant.

Just noting though that I think Zak's question is good because it was the implementation of COR and the requirements around the

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locks with this opt out option that is probably the second biggest issue for the reasons why the transfer policy even got initiated. The first being the changes to GDPR and access to registration data. So just wanted to emphasize that. Thanks.

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

KEIRON TOBIN: Thank you. I'm just not sure whether we could here collate 3.8.1 and 3.8.4. So where it says pending UDRP proceeding that the registrar has been informed of. We could combine both of them through a pending UDRP or URS that the registrar has been informed of as well. Thank you.

ROGER CARNEY: And you just put Sarah's hand down. Thanks, Keiron. Kristian, please go ahead.

KRISTIAN ØRMEN: Thank you. Since I'm going to miss the fun and change of registrant, I'm just going to note that I would definitely prefer that this period of days would be the same as we have after creation and transfer. And because of that, I think in this document we have to note that day window is maybe likely to change. Couldn't we just remove that 60-day? Because then it would mean the same because then it would just be whatever days that we decide when we get to the change of registrant. Thank you.

ROGER CARNEY: Great. Thanks, Kristian. Yeah. And that's something we'll have to look at in the wording as well. Do we keep calling out the same days or do we set that and make that reference to something specific? But sorry, Kristian, that you won't be here for that discussion. Any other comments? I think that 3.8.5, yes, let's hold our decisions. And as we said, we'll tag this knowing that we're going to be reviewing this in phase 1B and when we go to comment our initial report on 1A, we'll just make sure that we note this will be reviewed along with our 1B work.

It seems like it still applies but how it applies and obviously the time will probably be updated. But looking through one through four it sounds like that we're good with those and maybe somehow combining one and four. I mean, they're saying similar things. I don't know if calling them out in separate lines makes it clear or if it's more automatic that people associate URS and UDRP as similar enough to be combined into one. Okay. Zak, please go ahead.

ZAK MUSCOVITCH: Thank you, Roger. So minor point, maybe not relevant to this part of the discussion, but just putting my lawyer hat on and taking a look at the difference between 3.8.1 and 3.8.4 which look very, very similar. The nuanced difference could be that a pending UDRP proceeding that the registrar has been informed of. That means it's been officially commenced pending I would say. But 3.8.4, you could interpret it that a registrar has been informed of

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an intention to commence a URS proceeding there. It's not necessarily commenced. Just throwing that out there. Thank you.

ROGER CARNEY: Great. Thanks, Zak. Yeah. And again, it's great that we have multiple hats here to look at those. Keiron, please go ahead.

KEIRON TOBIN: Yeah, I think we would need to change the wording in regards to that if we were to combine them. I think it just makes sense to combine them. Just in regards to Zak's point as well, a URS is usually initiated at the registry level. And so yeah, in terms of combining them, we'd probably have to make that a bit clear. But I do think they could be quite easily put together. Thank you.

ROGER CARNEY: Okay. And I think if we can come up with some wording and maybe even to Zak's point maybe we can even clarify. Obviously, there's some nuance here that makes them slightly different and maybe combining them gets rid of that nuanced difference that maybe wasn't even intended. So let's look at if it makes sense to combine those and how we can combine those wording wise. Caitlin, please go ahead.

CAITLIN TUBERGEN: Thanks, Roger. I just wanted to build on a couple of the previous comments as one of the people that was responsible for drafting this language many years ago. So at the time that section 3.8.4

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was added to the policy, a direct read-through of the URS proceeding as Keiron noted ensured that the registry was notified of the URS. And the registry applied the lock, but there was no mention of a registrar which is why that language was added.

And for the UDRP proceeding, we added that language as well [inaudible] comment I think it may have been Sarah or Theo had made earlier when we were discussing the locks, is that when a UDRP proceeding is filed, generally speaking, the provider will go through some administrative checks before notifying the registrar about proceeding.

And so there may be a time lag where a UDRP has been filed by the complainant but the registrar has not yet been notified of that. And of course, if they haven't been notified yet and incidentally the name is transferred, that's not a technical breach of the transfer policy because the registrar wasn't notified. So wanted to ensure that a registrar wasn't being punished or penalized for something that they were unaware of.

ROGER CARNEY:

Great. Thanks, Caitlin. Good to have the history there. Okay. Any other comments here? I think that everybody's in agreement that these belong here in this section and they still belong here. 3.8.5 obviously is going to need some work when we get into phase 1B.

And again, is there some wording in 3.8.1 and 3.8.4 that can be combined or not? Maybe it shouldn't be, but maybe it should be just to—again, as people pointed out that they're similar. Is it similar or is it the same? And can that wording be updated so that

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it's clear? But we'll keep the ideas here no matter what, just if we can combine them or not. Any other comments here? Theo, please go ahead.

THEO GEURT:

Yeah, sorry. Maybe this has been answered before, just lost track of the conversation due to some external factors. But the registrar of record must deny a transfer in the following circumstances. A pending UDRP proceeding that the registrar has been informed of, is that the official notification from the UDRP provider or somebody who claims that there is going to be a UDRP proceeding? Thanks, [inaudible].

ROGER CARNEY:

Thanks, Theo. And I think that that's exactly—if you look at one and four, I think that's some clarity we can put in there as to where that information is coming from. That would be an important – Sarah, please go ahead.

SARAH WYLD:

Thank you. Yeah, good question from Theo. I agree. I have a different question, and I'm terribly sorry. So if Caitlin already answered this, don't answer it again now. I will go listen. But in 3.8.1, it's a pending proceeding. I took that to mean that it's already been initiated with the UDRP provider.

But then, in 3.8.4, as I think Zac pointed out, it's just a proceeding, it's not a pending proceeding. So what is the intention there? Is it

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that the 3.8.4 one doesn't have to have been provided to the—  
submitted already? Yeah, thank you.

CAITLIN TUBERGEN: Thanks, Roger. I'll go ahead and answer that.

ROGER CARNEY: Okay, Caitlin.

CAITLIN TUBERGEN: I probably wasn't clear when I was explaining this previously and that's an excellent question. And I also think there could be more clarification.

So the nuance has nothing to do with if a URS or a UDRP has actually been filed in terms of section 3.8.4. So we could add some language there. So in terms of the questions going on in the chat about if a registrar has been notified that someone intends to submit a URS or a UDRP complaint, the relevant date is when a registrar is notified by the provider that there's been a UDRP or a URS proceeding filed against the complainant.

URS is a little bit different. And again, we can specify in the language because sometimes a registrar won't be notified at all of the URS proceeding. At least, as it works today. That's on the registry.

But yeah, the important point is the case has to actually be filed and the contracted party is notified that it's been filed by the provider. Not by the registrar, not by the registrant's attorney, but

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by the provider and it's ongoing at that point. Hopefully, that's more clear.

SARAH WYLD:

May I ask a follow-up question about URS? Okay, I'm going to assume that's a yes. Thank you, Roger. So okay, maybe this is my fault because I'm not super familiar with the URS process. But if the registry is aware of a URS that has been submitted to the provider but they don't notify the registrar, does somebody do something to make it so the domain can't be transferred? Like does the registry do a thing in that case? Thank you.

ROGER CARNEY:

Sorry about that, Sarah. Yes, I was talking to myself on mute. So I was trying to call on you. Caitlin, please go ahead.

CAITLIN TUBERGEN:

Thanks, Roger. I think the URS language was added to the policy by folks since it is a proceeding where domains are locked. My understanding is the registry applies a lock to the domain that a registrar cannot undo. So in other words, I think it might be that a registrar wouldn't be able to transfer a name pending a URS proceeding, if it's an active URS proceeding and the registry has applied the lock. We did add the language that the registrar has been informed of because there may be a situation where the registry has not yet applied a lock or wasn't informed or it went to the—there could be issues where a registrar transfers a name. But again, shouldn't be penalized by the transfer policy for



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something that they are completely unaware of and have nothing to do with.

So sorry if that's confusing. I would defer to my registry colleagues who deal with the URS if that's correct. But my understanding is it's not a registrar lock. It's a registry applied lock. And that's part of the reason that registrars aren't really implicated at all in the URS.

ROGER CARNEY: Thanks, Caitlin. Yeah, and Barbara did put in chat that yes, the registries apply the lock and the registrars may or may not know about that lock when it's put on. Okay. So maybe there's still reasons for separate but it sounds like we can add some clarity to both of them even if we do keep them separate. And if we do combine them, obviously we need to put some clarity in there. Keiron, please go ahead.

KEIRON TOBIN: I'm just looking at 3.8.2. Sorry, I don't mean to be pedantic here, but what makes a competent jurisdiction?

ROGER CARNEY: Thanks, Keiron. Maybe Owen knows the answer to this. Owen, please go ahead.

OWEN SMIGELSKI: Sure. Thanks, Roger. A competent jurisdiction is one that a registrar is subject to. So Namecheap, we're based in the US. We

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get a court order from an Antarctic court—I didn't want to pick on a particular country. Because we're not doing any business in Antarctica, we can freely ignore that because it's not a competent jurisdiction over us. However, if it's one from the US or another place where we are subject to the jurisdiction of, that's a competent jurisdiction. Thanks.

ROGER CARNEY:

Right. Thanks, Owen. Okay. Any other comments, questions? Looks like we're running out of time here. Okay, I think we're in good shape here with just one minute to go. I think we'll end here and pick up on the may not list next week in addition to maybe thinking about—we've covered we think that these belong and where they belong, fine. Are we missing any that we haven't really touched on?

So let's think about this may not list for next week. And along with, are we missing some that belong in any one of these categories? And I think that with less than a minute to go here, we'll wrap up the call and we'll see everybody next week. Thanks, everybody.

JULIE BISLAND:

Thanks, Roger. Thanks everyone for joining. This meeting is adjourned. You can disconnect your lines. Have a good rest of your day.

**[END OF TRANSCRIPTION]**