

GNSO Council Transfer Policy Review Scoping Team Initial Scoping Document

6 April 2020

1. Status at the Initiation of the Transfer Policy Review Scoping Team

On April 22, 2019, ICANN Org delivered the most recent version of the [Transfer Policy Status Report \(TPSR\)](#) to the GNSO Council. ICANN Org delivered the TPSR pursuant to Recommendation 17 of the [Inter-Registrar Transfer Policy \(IRTP\) Part D PDP Working Group's Final Report](#), which provides, “[t]he Working Group recommends that contracted parties and ICANN should start to gather data and other relevant information that will help inform a future IRTP review team in its efforts.”

The TPSR provides details on the intended purposes of the Transfer Policy (formerly known as the Inter-Registrar Transfer Policy (IRTP)), an overview of the domain name transfer process, the impact of the Temporary Specification and the Registration Data Access Protocol (RDAP) on the Transfer Policy, metrics related to the Transfer Policy, and a summary of the public comments and survey responses to the published TPSR.

The GNSO Operating Procedures do not prescribe specific steps to be taken in response to a Policy Status Report. As this is the first such review activity, the GNSO Council was able to consider a range of options to determine the best path forward. During its [meeting on September 19, 2019](#), the GNSO Council agreed to launch a call for volunteers for a Transfer Policy Review Scoping Team, comprised of interested and knowledgeable GNSO Members that were tasked with advising the GNSO Council by providing recommendations on the following:

- approach to the review (for example, by initiating a new PDP);
- composition of the review team or PDP working group, and
- scope of the review and future policy work related to the Transfer Policy.

The GNSO Council sent out a call for volunteers for the Transfer Policy Review Scoping Team on [October 3, 2019](#). The Transfer Policy Review Scoping Team held its first meeting on [December 5, 2019](#).

2. Ask from the Transfer Policy Status Report

The Transfer Policy Status Report (TPSR), the first of its kind, was intended to provide an overview of the Inter-Registrar Transfer Policy (IRTP). It includes readily available and general data on domain transfers, brief analyses, and a history of the Policy Development Process (PDP) for the consideration of the GNSO Council and ICANN community. It may serve as a basis for further review of the IRTP or, at the discretion of the GNSO Council, it may provide sufficient information as a standalone report for assessment of the policy.

As noted in Section 1 above, the mandate for this TPSR stemmed from two sources:

1. [IRTP-D Working Group Final Report, Recommendation 17](#): “The WG recommends that, once all IRTP recommendations are implemented (incl. IRTP-D, and remaining elements from IRTP-C), the GNSO Council, together with ICANN staff, should convene a panel to collect, discuss, and analyze relevant data to determine whether these enhancements have improved the IRTP process and dispute mechanisms, and identify possible remaining shortcomings.”
2. [Consensus Policy Implementation Framework](#), Stage 5 “Support and Review: Policy Status Report”: “Compliance and GNSO Policy Staff should provide a report to the GNSO Council when there is sufficient data and there has been adequate time to highlight the impact of the policy recommendations, which could serve as the basis for further review and/or revisions to the policy recommendations if deemed appropriate.”

As the TPSR did not mandate an outcome but was intended to serve as an informational resource for the GNSO Council, the GNSO Council initiated a Transfer Policy Review Scoping Team, which was tasked with providing recommendations to the GNSO Council on how to approach further policy work, if any, on the Transfer Policy.

3. Approach to the Review and Scope of the Review

Following a review of the Transfer Policy Status Report and the [Contracted Party House Tech Ops White Paper](#) on the Transfer Policy, the Transfer Policy Review Scoping Team recommends the GNSO Council consider launching a standard policy development process, or series of standard policy development processes, during which the Transfer Policy will be reviewed holistically. The Transfer Policy Review Scoping Team recommends the holistic review of the Transfer Policy include, but not be limited to, the specific issues outlined below by the TPRST. Pursuant to GNSO Processes and Procedures, the Transfer Policy Review Scoping Team understands that, prior to formally launching a PDP, the GNSO Council will instruct staff to develop an Issues Report.

4. Recommendation to initiate a PDP on the Transfer Policy

The TPRST originally considered a narrowly-focused EPDP to address issues related to the Form of Authorization (FOA); however, during the Team’s work, the ICANN Board passed a [resolution](#) regarding the Transfer Policy on 26 January 2020. Specifically, the Board resolved, in part, “[w]hereas, on 31 October 2019, the [GNSO Council requested](#) that the ICANN Board instruct ICANN org to defer compliance enforcement of the Gaining Registrar FOA requirement until this matter is settled in the GNSO’s planned Transfer Policy review.” The TPSRT agreed that this resolution removed both the urgency to address this policy issue and the necessity for an EPDP on this issue.

The TPRST believes that this PDP, or series of PDPs, remains of high importance and should be given priority as the GNSO Council considers the next round of PDPs to launch. Although the

aforementioned Board resolution has lessened the urgency of the specific FOA issue, the GDPR and similar national privacy legislations have rendered the Transfer Policy ineffective and unworkable as written. Accordingly, the ICANN Community would benefit from the development of a fully-functioning and relevant Policy.

The TPRST now recommends the GNSO Council initiate a PDP, or series of PDPs, as applicable, for policy work on the identified issues with the Transfer Policy, which are described in more detail below. The TPRST suggests the issues be approached in the order in which they appear in the chart below, i.e., the first PDP (or first issue if only one PDP is initiated) would cover the Gaining & Losing FOA and any authcode management issues, the second could cover the COR, and the remaining issues would be included in individual PDPs or grouped into one PDP.

The TPRST recommends that the GNSO Council instruct ICANN Policy staff to draft an Issues Report (draft resolution provided), outlining, et.al., the issues described in detail below.

<p>Gaining & Losing Registrar Form of Authorization (“FOA”)</p>	<p>URGENCY (High) COMPLEXITY (Med)</p> <p>Following the adjustments to public RDDS information which were made in order to comply with the General Data Protection Regulation (GDPR), Gaining Registrars, in most instances, are unable to identify the Transfer Contact via the public RDDS, as this information is now redacted.</p> <p>The Temp Spec has provided a temporary workaround: specifically, “if the Gaining Registrar is unable to gain access to then-current Registration Data for a domain name subject of a transfer”; however, the GNSO Council has flagged to the Board that ICANN org’s interpretation of this language has resulted in an untenable situation for registrars. Accordingly, both the need for the Gaining FOA as well as the specific language in the Temp Spec should be further discussed as a matter of policy development.</p> <p>The TechOps group has proposed a process with greater reliance on the authInfo code and some changes in the lines of responsibility (between registrars and registries) with respect to its management and use. This greater reliance may suggest that the FOA is no longer needed. This needs greater review and discussion. See the TechOps report for additional information.</p> <p>Losing FOA also requires deliberation as a function of the overall security apparatus.</p> <p>https://www.icann.org/en/system/files/correspondence/drazek-to-chalaby-31oct19-en.pdf</p>
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<p>Authcode Management</p>	<p>URGENCY (Med) COMPLEXITY (High)</p> <p>Authinfo code management is largely a technical issue. However, given proposed changes of responsibility that come from the management of authInfo codes, there are possible policy considerations that should be deliberated:</p> <ul style="list-style-type: none">• Questions on who (Ry or Rr) should be the authoritative authcode holder• Which role should issue it?• What is the TTL? (TTL management and consistency are desired)• Who is the authoritative authcode holder?• Confusion on when transfers can be NACKed.
<p>Change of Registrant (“COR”)</p>	<p>URGENCY (High) COMPLEXITY (Med)</p> <p>This procedure has been overtaken by events; however, there is also an outstanding issue with customers of privacy/proxy services and how this process should work for domains using those services which should be addressed by a PDP.</p> <p>The COR process does not achieve the stated goals and is not relevant in the current & future domain ownership system; as such, it should be in scope for this policy development work.</p> <p>The COR process is burdensome and confusing to registrants. Registrant point-of-view: When the domain exists within a single registrar, why should a material change of the registrant trigger a “transfer” process action such as “Change of Registrant” and lock the domain for 60 days? When transferring domains between registrars, registrants often “clean up” their contact data before the registrar transfer. The COR process hinders this immensely.</p> <p>Change of Registrant is a completely different topic than a transfer between Registrars and should be addressed in separate efforts. The scenario where a Change of Registrar occurs simultaneously with a Change of Registrant should be addressed as a discrete use case since this occurs frequently in the domain aftermarket. A standalone policy should be considered for this, and the policy should also consider the aforementioned use case where a Change of Registrar occurs simultaneously with a Change of Registrant.</p>

Transfer
Emergency
Action Contact
("TEAC")

URGENCY (Med) COMPLEXITY (Low)

More detail surrounding the use of the TEAC channel is needed if this mechanism is to continue to be included in the Transfer Policy. Below are some specific pain points:

1. The time frame (4 hours) for Registrars to respond to communications via the TEAC channel has been raised as a concern.
2. The time frame within which communications to a TEAC must be initiated should be clearly defined versus the current reference of "within a reasonable period of time following the alleged unauthorized loss of a domain". Given the sense of urgency associated with use of the TEAC communication channel, it seems appropriate to establish guidance as to what is a reasonable period of time. If several months have passed since the alleged unauthorized loss of a domain name, it seems that using the standard dispute resolution process would be appropriate.
3. Section 4.6.2 provides that the TEAC may be designated as a telephone number. It would be difficult for the Registrar to prove that a phone call was made and not answered, or a call back was not received within 4 hours, if a Registrar later wishes to request an "undo" based on failure by a TEAC to respond.
4. There are several factors that make a Registry Operator's obligation to "undo" a transfer under Section 6.4 of the Transfer Policy challenging:
 - a. Registry Operators do not have access to the designated TEACs for each Registrar, making validation of an undo request nearly impossible.
 - b. There is no way for Registry Operators to independently verify that a Registrar did not respond within the required time frame or at all since Registry Operators are not a party to, or copied on, communications between the Registrar TEACs.
 - c. Transfer "undo" requests associated with the failure of a TEAC to respond are unilateral so there is no validation required prior to a Registry Operator taking action. This has, on occasion, led to a "he said", "she said" scenario.
 - d. Follow on to 4.c., if the policy were to be updated to allow for some level of validation by the

	<p>Registry Operator prior to taking action, the requirement to “undo” a transfer within 5 calendar days of receiving an TEAC undo request leaves little to no time to attempt to validate the request prior to taking the action.</p>
<p>Transfer Dispute Resolution Policy (“TDRP”)</p>	<p>URGENCY (Low) COMPLEXITY (Med)</p> <p>General concerns as to the efficacy of this policy were raised by the scoping team, but it is understood that this DRP is not used often.</p> <p>There are two providers of the TDRP:</p> <ul style="list-style-type: none"> • The Forum - https://www.adrforum.com/domain-dispute/gtld#tdrp - three have been filed to date. Two cases were Denied while the other complaint was Withdrawn. • Asian Domain Name Dispute Resolution Centre - https://www.adndrc.org/tdrp - Four have been filed to date. One complaint outcome resulted in the domain being returned to the filing Registrar. Two other complaints show results of appeal denied while the last one was cancelled due to improper jurisdiction. <p>The scoping team reviewed the EPDP Phase 1 Registration Data Policy Impacts (Wave 1) Report. The analysis notes several aspects of the policy that require the processing of registration data that should be further analyzed if it is compliant with data protection laws and determine if the requirements are still applicable based on concepts of privacy by design and data processing minimization.</p>
<p>Reversing Transfers</p>	<p>URGENCY (Med) COMPLEXITY (Med)</p> <p>Any new/updated Transfer Policy should clearly establish lines of responsibility (roles) between Gaining and Losing Registrars and the Registry, specifically related to reversing a transfer after completion. Should the line of responsibility be redrawn? Integrated? Under what circumstances should a transfer be reversed, and what should the process be? Used to be included in AuthInfo discussion.</p> <p>Some Registries are adding the 60-day serverTransferProhibited after completion, so they are enforcing some policy today. However, industry wide standardization is lacking.</p>
<p>Rec#27 Wave 1 Report</p>	<p>URGENCY (Med) COMPLEXITY (Med)</p>

	The scoping team is largely supportive of the findings within the Rec#27, Wave #1 report, given the similarities with this group's identification of primary issues. These issues should also be included in the scope of a future PDP.
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Each policy topic listed above should consider and evaluate the following:

1. TechOps Report - The TechOps report is not a policy issues document itself and therefore not listed in the above table. However, this report should be referenced as it contains useful information for the primary policy topic (<https://docs.google.com/document/d/1EFwhfq2t3ccHuPBYmxxSm6176MMryTdf9bk3imojzVQ/edit>).
 - a. The TechOps group has completed a comparison of the proposed transfer process and a comparison to the TempSpec. A drawing is located here: https://docs.google.com/drawings/d/1CK_3kr1aZJ3SRxlzU1NQUVI_vhRBWH7Ucgf8JHoE/edit
2. Security & Privacy Reviews - during the PDP deliberation, the Working Group should consider security, especially mitigation of domain hijacking. Due to Data Protection laws and cybersecurity laws (an ongoing process), CPs are required by law to ensure the highest level of data protection and security of their customers. As a specific topic and at the outset of any PDP, a privacy impact analysis should be performed on any possible recommendations to ensure they are lawful and enhance the security apparatus for the transfer of domains. Specifically, the current contractual language should be reviewed and future consensus policies should contain technology agnostic language.
3. Reporting - as a part of a PDP exit criteria, data and metrics should be identified to measure if the policy changes met the intended outcome(s). As part of the Issues Report, staff should identify up front what data may be available to help inform the PDP's deliberations.
4. Registrant Education - Registrar transfer and owner change needs a better and more aligned experience for registrants. The following issues are prevalent, but may not be standalone policy issues:
 - a. Today's transfer experience varies significantly from registrar to registrar, and some registrants give up in the process;
 - b. CCTLDs transfer process differs from gTLDs;
 - c. The process begins with the losing Registrar, which is not obvious;
 - d. The current gTLD process lacks transparency.

5. Composition of the PDP Working Group

At this time, the Transfer Policy Review Scoping Team does not recommend straying from the open Working Group Model. It does, however, recommend, similar to the Transfer Policy Review Scoping Team, that the GNSO Council note it is looking for volunteers who possess

policy and/or technical expertise on the Transfer Policy (urge representation from Registrars and Registries). The Scoping Team anticipates that not all SGs/Cs within the GNSO will have interest in this policy issue, but the Scoping Team is concerned about lack of participation in the eventual PDP. To that end, the Scoping Team asks the GNSO Council to consider including “represented Observers” for those groups that do not wish to participate fully or nominate active WG members. The assigned Observers would be required to monitor the WG’s discussions, potential recommendations, and timeline of milestones. The represented Observers would also be required to keep their respective groups informed of the WG’s status and upcoming milestones. While some GNSO SGs/Cs may not have active WG members, the goal of requiring represented Observers is to ensure all groups will be fully informed when the GNSO Council starts to consider the policy recommendations.