
ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 09 January 2024 at 16:00 UTC

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DEVAN REED:

Good morning, good afternoon, and good evening. Welcome to the Transfer Policy Review PDP Working Group Call taking place on Tuesday, 9 January 2024.

For today's call, we have apologies from Eric Rokobauer (RrSG). 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 emails.

Statements of Interest must be kept up to date. Does anyone have any updates to share? Please raise your hand or speak up now.

All members and alternates will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. Please remember to state your name before speaking for the transcription.

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As a reminder, those who take part in the ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

Thank you. And back over to Roger. Please begin.

ROGER CARNEY:

Thanks, Devan. Welcome, everyone. Hopefully, everyone had a good break off. It's been a few weeks since we've last talked, so Happy New Year to everyone. I think that the good news is 2024 may be this PDP's last year of real work. So we'll push through and get the Transfer Policy updated and moving forward. So that's great.

Not a whole lot for updates. I just want to make sure that everybody's had a chance to get caught up. I know there's a lot of people out toward the end of last year, and I wanted to make sure everyone got caught up on where we were standing in everything. So if anybody has any questions, please feel free to jump in and let us know. I just want to make sure everybody's on the same page so we can move forward with our change of registrant discussion so that we can progress it and wrap this up before we get to ICANN.

Zak, please go ahead.

ZAK MUSKOVITCH:

Thanks, Roger. So just to let you know, Roger ... Thank you for the heads-up about the last call that I missed. I did listen to the Zoom at 1.5 speed. So it helped me get through it faster. And so my suggestion is we all talk at 1.5 speed today. Owen is the only one that does that regularly. Thank you.

ROGER CARNEY: Thanks, Zak. Yes, it is nice that you can change it because it does help review a lot easier. Okay, and I guess I'll just open it up to any of the stakeholder groups that want to bring anything forward that they've been thinking about. Again, I know it's been slow over the past few weeks, but any comments or questions any stakeholder groups want to bring forward, we'll open up the mic now.

Okay. I think, then, we can go ahead and jump right into our—oh, go ahead, Steinar, please.

STEINAR GRØTTERØD: Yeah, hi. Happy New Year, everybody. If I recall correctly, I think Sarah put some questions to the metrics that ICANN Compliance delivered to us before Christmas, and there was some sort of feedback on that one. Yeah, I see Christian responding. "Compliance is still working on the response." Okay, so within a couple of meetings, we will have some updates maybe.

ROGER CARNEY: Thanks, Steinar. I don't know if Holida's on. I guess I didn't look to see. Maybe not. But hopefully, yes, within a couple of minutes. And maybe Christian even told me to bring that up, and I forgot to. But, yeah, they're still working on that. So hopefully within the next few meetings, we'll see those here in January sometime.

Okay, any other comments/questions before we jump in? Okay, great.

I think I will go ahead and turn this over to Christian so he can do a recap for us and get us moving forward on our agenda. Christian, please go ahead.

CHRISTIAN WHEELER: Thank you, Roger. And thank you, Steinar. So we've asked for an update from Compliance. Holida, I believe, is sick, currently, so we'll hear back from them with progress on this. We'll definitely let you guys know. So, yeah, hopefully, we'll get a response from them in the next meeting or two. So we'll definitely keep you up to date on that.

So today, we just want to go over, so, previously, the last two meetings, the group has been discussing what kind of added security measures should there be in the new Change of Registrant Policy. What makes sense? What is the current policy doing or not doing that we can still address some of these security concerns associated with possibly domain hijacking or hopping?

Let's move over to here. The group has kind of talked about two columns, essentially. One is security measures when there is an improper change of registrant. So that's one issue. And then the other is: what security measures should there be when a change of registrant is followed by a Registrar Transfer Request? So those are two distinct issues that the group has talked about at the last two meetings.

And we presented a poll for each and went over the options that the group discussed. And so these are the options again. I'm not going to go through them all again. But, essentially, for the first column

where there's an improper change of registrant, most people's first choice was Option 1, that the registrar has to provide contact information. And then Options 2 and 3 where they have to investigate and respond—they have to provide a dispute or appeal process, without going into too many specifics about that—got the most votes for second and third choices.

So staff has kind of thrown together some draft language for you all to look at today just to get your reactions based on those conversations that you had and see what the group thinks that they can agree to. It's still very preliminary language, so [we'll just kind of] capture where people's thoughts lie on these concepts moving forward for what the group can agree to.

And then for the second set of security measures where a change of registrant is followed by a TAC request, the group seem to align more closely that no special requirements are necessary, that the WHOIS accuracy and other policies should remain separate from this, the transfer practice in Group 1A. That those security measures are largely sufficient.

However, there was also some support for the idea of keeping the lock but maybe reducing it to 30 days and allowing registrars to lift it. So we did see support there as well. So I just wanted to highlight those again.

So we've put together some draft language for you guys to look at, see what you guys think about it, can agree to or definitely can't. So that's what we're going to talk about today before we move back into our conversation about definitions and possibly changing the definition of "change of registrant."

So when you see a COR (change of registrant), just know that there's a pin in that until we can decide how the definition is going to look moving forward.

So with that, I'll just move on to the first column, which is the idea of an improper change of registrant. So the current policy is that registrars have to notify the prior registrant and the new registrant before or within one day of completion. And it has to contain contact information for questions. So that is the current policy.

So this is a preliminary recommendation that you can think about. It states that, "The working group recommends that following a change of registrant"—which, again, that definition is in progress—"the registrar must send a notification of the change of registrant to the prior registrants as listed in the registration data immediately prior to the change of registrant and the new registrant without undue delay, but no later than 24 hours after the change of registrant occurred."

So it's essentially saying that they have to send a notification to the prior and new registrant.

And [I'm just going to] pause here. There is more to this, so I'm just going to pause here really briefly. Just, well, this idea at its face. Just curious what the group thinks about this idea, just maintaining essentially that the registrar has to send a notification to both within 24 hours of completing the change of registrant. So I'll just leave it there. Leave it to you, Roger. If the group wants to hold off until discussing the more meat of it in the next slide, we can do that. But [inaudible].

ROGER CARNEY: Thanks, Christian. Yeah. And, again, I think that, as Christian highlighted here, the change of registrant with the asterisk here is—and it is the definition that we talked about many weeks ago now, what that means. And we'll get into that at the end of this, but is that truly change of control versus change of just information of registrant? And, again, I think that's why the asterisk is here, so that you can keep that in mind when you're looking at these recommendations. Obviously, we still need to solve that and get to a conclusion on that.

Sarah, please go ahead.

SARAH WYLD: Thank you. Hi. I'm so sorry. I think I just have to be really stupid in public for a minute here. I have lost track of what we have decided overall with regards to the whole change of registrant process. And so it's difficult for me to come to an opinion on what to do with an improper COR when I cannot correspond that to the broader process. Like, this looks very reasonable, but—right.

So this here is a Google Doc that I just pasted in the chat, which I pulled from the Working Documents section, Group 1B. So if I want to remind myself of where we landed on what the COR process would look like, is that what I should be reviewing? Thank you, and I apologize.

ROGER CARNEY: Yeah. Thanks, Sarah. And, again, yeah, obviously, there's some things that we've purposely discussed—again, as the definition here—discussed and move forward from so. But, yeah, this document is what we're agreeing to, so it should be updated with anything [inaudible]. But maybe it does help to go through the next couple of things here just to help pull everything together a little better.

Theo, please go ahead.

THEO GEURTS: Yeah. I think we're tripping up on the improper COR again. We have no idea if it's improper or not. So in general, it must be if there is a COR, then there's a notification. I think that solves the entire problem.

ROGER CARNEY: Right. That's right, Theo. And we discussed that, I think not last—maybe it was last session, but at least two meetings ago—that we're not talking about impropers, per se. We're talking about a change of registrant and what happens when you do that and what needs to happen.

Steinar, please go ahead.

STEINAR GRØTTERØD: Yeah. I'm just curious about when we're talking about the definition of "change of registrant," are we then going back to the stuff about

a material change? Is that what is meant to be included in the definition—when there is a change of registrant?

ROGER CARNEY:

Right. Thanks, Steinar. Yes. And that's exactly—we want to get into that discussion at the end of this. But, yes, that's what we're talking about. What makes a change of registrant? And, again, that's what the asterisk here is for. And in meetings prior, we've talked about: are we talking about change of control or change of communication mechanism? What is that hook that we're looking for?

And as we talk through this, people weren't necessarily talking about change of registrant being an address change or something like that. But what happens when the email gets change and that's the form of communication? So, yeah, that's still something we're going to cover here today, hopefully, and get resolved. But, yeah, that's that material change again.

Okay, maybe I'll go ahead and let Christian just jump into the next part of this so that maybe it starts pulling it together a little bit more.

Go ahead, Christian.

CHRISTIAN WHEELER:

Thanks, Roger. And, yeah, just to clarify, this would pertain to the whole change of registrant process. This is something that's already largely part of it. It's just kind of affirming that based off of these security measures discussions—yeah, and don't get tripped up on the titles too much—but the recommendation is referring to the process itself, and it would apply to all changes of registrant. And

all changes of registrant, they have to send a notification to both of them that it's occurred.

And the top piece up here, that's all the same from the last slide. So this blue text is the one to focus on. So the notification has to be written in the language of the Registration Agreement. This is pulling from some of the same ideas from Group 1A. So nothing too controversial here, I would say.

But this 1.2, "The registrar must include the following elements in the change of registrant notification: the domain names, the text stating that the contact information was updated, the date and time of completion of the change of registrant, and instructions detailing how the prior and new registrant can take action if the change was invalid, or how to initiate a reversal."

So previously, the notification currently just contains contact information for questions. This goes a little bit—a step beyond that. So beyond just providing contact information, this would say that the registrars in the notification have to provide instructions for how they can take action if that change was invalid or improper, if you think of it that way.

So what does the group think about that requirement? Without going into specifics about what that reversal or change process, that appeal process, if you want to call it that, has to be. It just has to provide instructions. So I'll leave it there.

ROGER CARNEY:

Thanks, Christian. Theo, please go ahead.

THEO GEURTS: Yeah, thanks. So this looks pretty good, though I do wonder if sending a notification to the new registrant does actually make any impact. If somebody is stealing a domain name, I doubt that the new registered e-mail address is going to end up at a person who's doing legit stuff. So it goes straight to the criminal, and he isn't going to reverse the action anyways. But these are my comments. Thanks.

ROGER CARNEY: Thanks, Theo. And my only response to that is, you know, looking at legitimate change and someone changes their e-mail because they no longer have the old e-mail then the new one, to me, kind of makes sense in that scenario. But I agree. When we're talking about a possible hacker or something, it won't make much sense.

Sarah, please go ahead.

SARAH WYLD: Thank you. Hi. A couple thoughts. The title on the slide where it says "Improper CORs," I recall [inaudible] at the previous meeting as well. So I would greatly appreciate if that could be updated for the future just because I know I'm going to get confused by that every single time.

I do think where it says "new registrant" in, like, the fourth line near the top, there should be a comma after that.

I like this process overall. Does it need some kind of note saying that if the prior and new registrant is the same, then you don't have to send it twice? Should we tell people that? Thank you.

ROGER CARNEY:

Thanks, Sarah. And maybe that does get added. I think that once we get into what that definition of that change is, maybe that will help us clean that up some. But, yeah, that makes sense.

Zak, please go ahead.

ZAK MUSKOVITCH:

Thanks, Roger. I know we've got other options to consider, but just in terms of this one clarification [inaudible]. So from the preliminary recommendation, I understand that the notification should be sent out or must be sent out immediately prior to the change of registrant without undue delay, but no later than 24 hours after. Is that really saying that you're supposed to do it prior to the change of registrant occurring, but it's okay if you don't; you can do it a day later? And if that's the case, shouldn't it be one or the other?

ROGER CARNEY:

Thanks, Zak. Actually, I think that maybe the language is being tripped up. I don't think it has to happen before. That middle text in that third line is not talking about before the change of registrant. It's talking about what the data was prior to the change. My guess is notifications will be sent at the time of change. So it's going to be changed. The registrant will come in and update their e-mail

address or whatever they're updating. And then a notification will be sent automatically. I think—

ZAK MUSKOVITCH: I see, okay. Yeah, that language was mixing me up. [I'm sorry].

ROGER CARNEY: Okay. And I think the 24-hour part was to facilitate maybe some registrars that have some manual processes so that they have to do something, and then they have to do that. And that's the only reason, I think, that 24-hour part is in there for that facilitation of some registrars that maybe are more white-glove kind of registrars, or they have a specific process that they follow.

Okay, great. I think we can go ahead, Christian.

CHRISTIAN WHEELER: Thanks, Roger. And, yeah, we can clean that up to make it clearer. So, yeah, the notification would be after the change of registrant is completed, which, as people have said, is usually almost instantaneous. So that 24 hours is just providing a cap that it can't be later than a day after it's been completed.

I do just want to highlight something down here at the bottom. Something that's kind of related to it. Just that the Section 3.7.8 of the RAA, "The registrar currently does have the responsibility to investigate any reports of inaccurate registrant data and take reasonable steps to correct the inaccuracy."

So the idea that was previously talked about that they have to investigate and respond to any reports of inaccurate data, that's actually something that's already in the current RAA. So that's something that we probably don't need to include here. So that's why I just wanted to highlight that just to show that that base is covered. Whenever the registrar gets a report that, "Hey, this information you have for a registrant is not correct," they do already have to take steps to update that. So I just wanted to note that.

And moving on to the next preliminary recommendation. So this is pertaining—this is to help address ... Yeah, apologies for the title. This would be part of the process, but this is looking to address the security concerns associated with registrar transfers when there is a change of registrant.

So currently, registrars have to impose a 60-day lock following a change of registrant, but they may allow the registrant to opt out of it prior to the change of registrant request. They don't have to offer the opt-out option, but they can. So this recommendation is that "The working group recommends eliminating from the Transfer Policy the requirement that the registrar impose a 60-day inter-registrar transfer lock following a change of registrant." This requirement is detailed in Section [2.3.2] of the Transfer Policy, just for reference.

Additionally, "The working group recommends eliminating from the Transfer Policy the text regarding opting out of the 60-day lock, as this text has been overtaken by the removal of the lock requirement in the Transfer Policy." So essentially, this recommendation is getting rid of the 60-day lock entirely as well as the option to opt out because now that lock is no longer relevant if it's deleted.

And so some of the rationale behind this was that the group has recognized that the 60-lock is really a source of confusion and frustration. It hasn't really definitively demonstrated that it prevents domain hijacking.

And so the group's other recommendations from Group 1A, for instance, provides sufficient security, things such as the enhanced security around the TAC, as well as the 30-day lock that would happen after a registrar transfer, which would still hypothetically give someone time to catch if there was something that didn't go right with the COR prior to that, as well as the notifications that we just discussed to the prior and new registrant that would provide instructions for taking action.

So this recommendation would essentially be that, given these other security measures that are in place with the TAC and the notifications, there is no need for a 60-day lock.

So I'm going to leave it there and see if the group would agree with that idea [inaudible].

ROGER CARNEY:

Great. Thanks, Christian. Perfect. And I think this is kind of a culmination of a long time of discussion. And I think we maybe solidified this in the last couple of meetings, but I think it's been a long time in that we had Compliance talk about [some] numbers with us and some of the bigger issues [inaudible] hijacking [inaudible] been, the confusion around this lock and being able to update data. It's [inaudible] almost every reasonable data privacy

laws make happen. Registrants should have the ability to update their data.

And this caused a lot of confusion, and one of the highest things to hit Compliance is, "Why can't I now transfer because of this?" So, again, I think this has been a long time coming. It's just good to see on paper where we're at.

Theo, please go ahead.

THEO GEURTS:

Yeah, thanks. And just to highlight. I had a terrible day, so my brain is totally utter mush. But correct me if I'm completely off base here, but on point two, "mandatory 30-day transfer restriction following inter-registrar transfer." So if I'm reading this correctly, if there has been a change of registrant in combination with a transfer to a different registrar, there should be a 30-day transfer restriction. Am I reading that right?

ROGER CARNEY:

Well, I think this is where we kind of left a couple weeks ago. There's a true separation between changing a registrant and a transfer requestor a TAC request. And bullet two here is just noting, no matter what, if there is a change of registrant or not, there is a 30-day mandatory lock after it's transferred. And I think—

THEO GEURTS:

Okay, got it.

ROGER CARNEY: Okay. Thanks, Theo. Zak, please go ahead.

ZAK MUSKOVITCH: Thanks, Roger. Point number one refers to enhanced security measures surrounding TAC issuance, and this is something that we've heard many times throughout the working group about the enhanced security measures. And I apologize in advance, but in terms of explaining this to my constituency, the BC, I could use a little reminder and help about what the enhanced security measures are surrounding the TAC. And sorry to sidetrack us.

ROGER CARNEY: No, Zak. I think that's a good question. I think that's probably a good, maybe, primer page that we can maybe ask staff to put together. Looking back, in Group 1A made a lot of changes: standardizing TAC length, making TTL on it, and all those things that we did. And I think that all those things together, it would be nice to have maybe a one-pager with Group 1A measurements. You know, recommendations.

Again, recommendations—I don't remember, Christian. Maybe it was 20-some that we did in Group 1A. But it would be good to maybe pull out what those security measures are that we did in Group 1A. Because there's probably, I would say, maybe half a dozen of them that we enhanced the TAC with, moving forward.

Okay, any other comments here on this one, specifically? Thanks, Zak. Again, I think this has been maybe more than a year's process of coming to this actual language here. In the last few meetings we've had, I think we've got to actually some pretty good agreement

on it. I just think that over maybe even multiple years' time now, we've been adding the rationale to this as to why this is. So I think that we're in a pretty good spot with this recommendation.

But, again, I think, it's still open for any discussion, especially since this is the first time we're seeing it on paper.

Okay. Christian, I think we can move on to our next, if there's nothing else.

CHRISTIAN WHEELER:

Cool. We've heard the mention of "due diligence" a lot during the discussions. That's the five days. The registrar would do their due diligence. We couldn't actually find where "due diligence" was mentioned in the Group 1A actual recommendation language, so we thought that maybe it would be good just to note it here because that was something that was part of the discussion when, removing the lock, that the idea is that the registrars should still do their due diligence if it was following a change of registrant. Just to kind of keep that in mind.

So the preliminary work-up here, the preliminary Recommendation 12, that's just what's related to this idea. But the Recommendation 3 here—or it could be a 12.1 depending on wherever it goes, if the group wants to agree with this. But this is just some language to try to codify or include that idea of due diligence.

So this states that "When a TAC request follows a recent change of registrant, registrar should utilize the five-calendar-day period for TAC issuance to ensure due diligence that the TAC request is

requested/authorized by the Registered Name Holder or their designated representative."

And in this instance, "recent change of registrant" could mean that it was completed within 30 days before the TAC request was received.

And, "For avoidance of doubt, registrars should always ensure due diligence when completing a TAC request, but especially so when a change of registrant has recently occurred."

So this was just an idea to try to highlight that the registrar should do some due diligence if there was a recent change of registrant and they receive a TAC request. So I'll leave it there.

ROGER CARNEY:

Thanks, Christian. Yeah, and this is awesome that we're pulling back the specific recs out of our Group 1. And, really, it is a good question for the group. Should this be moved into the Group 1A as a 12.1, or do we leave it here? So I think that's a valid question as well, if we continue with it.

Theo, please go ahead.

THEO GEURTS:

Yeah, I'm not sure how I would do this. Every time there's a TAC request and there has been a recent change, whatever reason, it means there's been a change of registrant. That could be talking 30,000 changes of registrant in combination with a TAC request.

Am I supposed to follow that up with all the different resellers that I have?

I will be [gladly] to do so, but that's going to require a lot of workforce. I'm not sure if my boss is going to be happy about that. So I'm not sure how we're going to do this on an operational manner. Thanks.

ROGER CARNEY:

Thanks, Theo. Yeah. And, again, I think the reason the language isn't specific here on exactly what due diligence is, is that it affords the ability for common scenarios to be able to go through fairly easily where maybe some more high-level—maybe three-letter, one-letter domains that had a change of registrant in the last 15 days. It's just calling out, you know, recognize that a change of registrant is a big impact, possibly.

But to your point, the majority of change of registrants are simply maintenance, and it's something that occurs regularly prior to a transfer.

Owen, please go ahead.

OWEN SMIGELSKI:

Thanks, Roger. I just wanted to highlight and repeat that this is a process that's going to be going on automatically by systems. This is not going to be something that registrars are going to be looking at or manually reviewing. There may be [something here], but just make sure that due diligence is not going to be applied every single

time that this type of change of registrant occurs or these TAC requests are going on.

So this has to be something that is automated or [automatedable], I guess, would be the word. Sorry about that. So just to make sure that, perhaps, the due diligence can be built into creating the system that allows this to happen as opposed to checking and reviewing each one.

I can understand that the smaller registrars, that may be possible. It [may] take a lot of work, but larger registrars or registrars with resellers, this is going to be something that's got to be coded and done by the system. Thanks.

ROGER CARNEY:

Thanks, Owen. Absolutely. And I think that's somewhat why we're not being specific on what due diligence is here—to allow for that. And, again, I think when you look at some registrar's models—and, again, more a white-glove, more hands-on kind of registrar—maybe they do pull this out and really dig into it. They call it and do whatever they do because that's what their business model is.

Other registrars are looking at patterns or whatever, and they'll use those patterns to move forward. And that's all systemic. It's not somebody's actually looking at it. It's something that they designed and made, and they see the patterns moving forward. But, yeah, I agree, Owen.

Berry, please go ahead.

BERRY COBB: Thank you, Roger. Can I get a sound check? Can you hear me?

ROGER CARNEY: You sound good, Berry.

BERRY COBB: Great. Thank you. Just to add a little bit of color on this preliminary recommendation here. Setting aside the language or specificity or lack thereof about what due diligence is, I do think what's important here is in regards to coalescing towards the final group of recommendations that something is going to be necessary here.

And I'm not suggesting that this is a "must" versus a "may," but when I think about the current policy today and the intent of the 60-day lock on COR changes, the aspect that this could potentially be removed does address the primary frustration that this group is trying to cure—the COR change or material change prior to transferring the domain to another registrar.

And primarily, the way I'm visualizing this, again, is kind of going back to the swimlane, and also in reference to Zak's earlier question about the security enhancements that we made in Group 1A. And if you'll try to, again, go back visually through that swim lane, there's only a [inaudible] point in time when the Registered Name Holder actually hits the button or whatever to request the TAC. The very next step after that request enters in ...

I think it was labeled on the swimlanes "frictions to cure." And if there are any frictions such as locks on the domains, those kinds of things, there's a sub-path to cure those frictions. And that particular

swimlane today—again, not a consensus recommendation—but it's not specifically making a reference to a material change of what we've defined in the COR.

And so I think to help aid in constructing this Initial Report for public comment, it will be helpful to identify exactly what kind of "due diligence" is going to bridge the gap, assuming that the essence of what COR exists today is more in tune with certain types of notifications.

So I think kind of that's the hole that we're trying to fill as we're thinking about all of these recommendations as a package. Thank you.

ROGER CARNEY:

All right. Thanks, Berry. Theo, please go ahead.

THEO GEURTS:

Yeah, thanks. So if we are not sure what "due diligence" means, then we must hash that out, or lest we end up in a situation that some other party will make sure what "due diligence" means. And if that becomes de facto standards, that might be problematic.

I don't mind using big data models to see patterns and all that kind of stuff. We already do that. But those are not infallible. Sometimes there's a new pattern. But I'm really afraid that we'll end up in a situation that I'm going to have to check every bloody COR in combination with the TAC request, especially that there's a 30-day period there. So you could be looking at thousands and thousands of domain names.

Again, we cannot end up in a situation that we do diligence in a manual manner. And that's what I'm afraid of. Thanks.

ROGER CARNEY:

All right. Thanks, Theo. Yeah. And, again, to me being very specific on due diligence is going to be costly, but I think the problem is different registrar business models that facilitate different types of due diligence. And, again, we've talked on it prior. Some registrars are security-conscious. Some aren't, and their due diligence won't be the same as a security-conscious registrar or, again, a smaller, more specific registrar that may do things—everything—manually. It's one of those things where those registrars do exist.

So I think we need to be careful on how specific you get there because it is a wide range, and it's based a lot on what that registrar's business model is.

Okay, any other comments on this? And maybe if Christian has any follow-ups to clarify anything as well.

Steinar, please go ahead.

STEINAR GRØTTERØD:

Yeah, hi. I do understand that due diligence can be defined or seen differently by the registrars, but do we have some sort of other wording that could kind of put the focus on ...

The way I read this is that the registrars has to do something, but it doesn't necessarily go into detail what sort of technique or methodology they should use to check whether the TAC is going to

the right person, the right registrant. But can we replace that in a different wording and still have the element of control? Thank you.

ROGER CARNEY:

Thanks, Steinar. Good point. Is there something that, language-wise, makes better sense here or can clarify those points? Again, I don't know. Maybe some of the lawyers here can tell us if "due diligence" actually has some specific meaning or not that we have to be careful on. Not that I'm aware of, but it's one of those where I think that language came up just out of happenstance. And to Steinar's point, is there anything better that we can use there?

And, again, I think that, obviously, the registrar business models dictate a lot of this. So that's why we're not trying to be precise here onto what action has to happen.

And to Theo's concern, again, when change of registrants happen constantly throughout the day, it's not something that you're looking for. It's something that is found.

Zak, please go ahead.

ZAK MUSKOVITCH:

Thank you, Roger. Yeah. As a sometimes lawyer, I would say that "due diligence" is one of these terms that often gets thrown around, and most lawyers don't even know really what it means. It's an amorphous term, but [inaudible].

To, I think it was Steinar's comment just now, if the objective of that sentence is for registrars to ensure that the TAC request was duly

requested, then maybe we should just say that instead of using a term like "due diligence." Just get to the nub of it.

The other aspect here is that—as I put into the chat—at the end of the day, because this recommendation says "registrars should," registrars really don't have to do anything to comply with this. They don't have to conduct any due diligence. They just should. They don't have to. And so any registrar who doesn't want to do due diligence won't have to, and they wouldn't be out of compliance in my view. Thanks.

ROGER CARNEY:

Thanks, Zak. And I think it's important because some people have been trying to think about how to operationalize this and everything. And I think some due diligence is a registrar that creates a system that the TAC request system already has that built in. And, again, I think that's a high probability.

Now again, other registrars don't have that and won't have that, and maybe they choose to do something else. And I think the whole due diligence really came about was just to be able to give the registrars an opportunity. And that when someone makes a TAC request, our policy doesn't say that registrars have to issue the TAC immediately. It gives them that five-day window to do what they need to be doing, what they feel they need to do in order to make sure that TAC request was valid.

And, again, definitely, if people can come up—and Zak provided a possible language change there—if anybody can come up with

something that maybe is a little bit clearer, that's definitely something we're looking for. So that would be great.

Sarah, please go ahead.

SARAH WYLD: Thank you. I put some suggested text in the chat that might be helpful.

ROGER CARNEY: Okay. Staff will pull that out. Thanks, Sarah.

CHRISTIAN WHEELER: Yes. Can you hear me?

ROGER CARNEY: Yep. You sound good, Christian.

CHRISTIAN WHEELER: Yeah. So Sarah in the chat says, "When a TAC request follows a recent change of registrant, registrars may utilize the five-calendar-day period for TAC issuance to review and validate any recent COR changes."

I believe it's "may utilize."

ROGER CARNEY: Theo, please go ahead.

THEO GEURTS: Yeah, thanks. I've been noodling on this for a little bit now, and I still do not see how I can perform any due diligence on this in an automated fashion. I mean, how? That is just ... The only thing that I can come up with is sending another e-mail [within 120] hours if the situation as described has occurred. And then that is the only thing that I can come up with, is sending another e-mail because I cannot check anything on a reseller level on what's happened there. Did the registrant log in correctly? I do not know. I don't have that information.

So to me, it sounds that this "shall" requirement of due diligence—which we don't know what it is—I don't see how I can even comply with it in any manner, regardless if it's manual or automated, because I fail to see how I can automate something that is basically not there, obviously going through [some route] which adds additional barriers for the business model that we are in, which I don't think is the goal of this working group—to separate business models where one is favored and another one is not favored. Thanks.

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

CATHERINE MERDINGER: Thanks. I think Theo makes a really good point. And I also think, to Sarah's language, I like it better than this recommendation because I have issues with the idea of due diligence and how this is going to be enforced. Who's going to tell me what due diligence is? Is the

fact that the person was logged into their account when they requested it sufficient? Do I need to be doing something else? Because I'm already doing that all the time. Right?

But then, to Sarah's language, that's something we could do anyway. Do we need a recommendation that says you're allowed to use that time to do this extra due diligence if we have those five days anyway? Though, I'm not sure that this recommendation—I don't think it's fit for purpose as it is, and I don't know how to change it to make it useful. Thanks.

ROGER CARNEY: Thanks, Catherine. Volker, please go ahead.

VOLKER GREIMANN: Yes. I heard the interpretation that this is not binding, but [inaudible], "shall" is always very close to "must." And while there is some wiggle room there, I think Contract Compliance will most likely interpret this as something that a register will have to do. Therefore, when we struggle even with the concept, then I think this, at best, should be a "may."

And maybe it could be a recommendation that comes into the section of reasons where a registrar may deny a transfer—i.e., "if, following due diligence, the registrar has determined that the request is not authorized, the registrar may deny the transfer." But I don't think that this is ultimately something that should affect the [Auth-Code].

So I'm struggling with this. I'm trying to make it better, but I'm not quite there yet. Thank you.

ROGER CARNEY:

All right. Thanks, Volker. And, again, I think that when we get to be specific in it—as Sarah maybe highlighted, you know, the "shall" to a "may"—"shall" is generally thought of as: this occurs unless there's a reason for it not to occur, and you have to be able to explain what that reason was. It is a "must" with a caveat that you can opt out with a reason, and someone has to judge that reason.

But to get back to Catherine's question on "due diligence." And, again, that's kind of the reason why we're not trying to define it because different registrar business models will see it differently, what that is. And to your point, is someone logging in enough of the due diligence? I'm guessing maybe some [registrars think so]. Maybe other registrars think that there has to be two-factor if they're going to do a TAC request. And, again, these security models are different for registrars in what the registrars feel. So I think that's why it's trying not to be specific.

But one of the reasons this recommendation exists and people think, "Okay, but we can already do that," which I think is true, but we're trying to use that as an explanation or rationale as to supporting why we're getting rid of the 60-day lock. And it's because registrars have that ability. And if you don't specifically call that out, will there be pushback on removing the 60-day lock, because what's helping that decision?

So, again, this is kind of tied to that 60-day lock removal as one of the rationales behind it.

Catherine, please go ahead.

CATHERINE MERDINGER: Thanks. That is really helpful, Roger. I'd forgotten about that 60-day lock in public comments, etc. I think I would then say I support Sarah's language.

The other thing I wanted to mention is, just, I understand that the due diligence aspect is going to be up to the registrar discretion, to an extent. But I guess I'm thinking ICANN Compliance is going to potentially get a— you know, if a domain transfers that shouldn't have transferred, they might get a complaint against a registrar saying they didn't do the due diligence.

I guess if the text says "may," then it's not really an issue. But if it's a requirement and they didn't do the due diligence, then a registrar has to fight with ICANN about what appropriate due diligence is. And I still don't think we've solved the reseller registrar—the wholesale registrar problem. Right?

So I guess I'm still a little squishy on the enforcement side and how that plays out with Compliance because that's where the rubber hits the road on this. Compliance is the one that has to enforce it, and I don't know that Compliance is in a great position to be enforcing this text in a uniform way. I think it's all going to be very squishy and wishy-washy.

That's not that helpful. I'm just—yeah, thanks.

ROGER CARNEY: No. That's great, Catherine. And that's right. And I think that, as stated here, all we're doing is creating a problem for Compliance because, again, "shall" is "do this unless you have a reason not to," basically. And then "do this." But what is "this"? And if we make it a "may," it removes the compliance item out of it because it's an optional thing.

And then you go back to the question that everybody's bringing up: well then, if we can already do it, then why ... And, again, I think it's more of an explanation or support for the 60-day concept that registrars still have the ability to do things if they choose to in that manner so [that they] help explain it and set the expectations and comments.

Theo, please go ahead.

THEO GEURTS: Yeah. So [what] you just said there, Roger, I think that is excellent. Yes, when it comes to registrars, making sure in a sense that domain name theft doesn't happen, that is a good thing. And if we call that due diligence, excellent. But I think that's already happening all over the place already.

Earlier on, you just mentioned, like, was two-factor authentication enabled? Well, that is actually a huge debate among security experts if something should be forced to be enabled or not, and you see registrars coming up with creative ways, like giving customers a discount if they enable two-factor authentication.

But still, I think the point is every registrar who is serious about this who has encountered domain name theft—and if that happened, sort of experienced the drag or the horribleness that comes with it—every registrar who experienced that wants to make sure that doesn't happen again. So I think this entire due diligence or the prevention aspect of it is already baked into most of the registrars. And for those who haven't baked it in, they probably never experienced it. That's the other side of the coin.

So I think this "shall" should still be a "may" because I think we're already doing the best that we can. Thanks.

ROGER CARNEY:

Thanks, Theo. And I agree. As you said, I think many registrars do this today and have been doing it for a long time, especially, as you said, those that run into the issues.

I think that, to me, the biggest—and, again, it's just my thought here—I'm not sure other people recognize that that's what registrars do, so I think it helps us to put that down so that people see it and can relate to it and can relate to why we're making decisions on other parts as well. And, again, just my two cents on that.

Theo, please go ahead.

THEO GEURTS:

Yeah. While I recognize that, there is also the other issue that when it comes to our business model, the wholesale business model, we don't have much to do diligence with at all. And as you mentioned,

"shall" means that it's up to our discretion to what that means. And in my case, that would mean very, very little.

But still, if we come up with an ICANN [complaint], how is that going to be—I mean, we're already running into the issues now of what "due diligence" could mean? So definitely, it's going to come up when there is an issue. And we are looking at ways to motivate our resellers to step up the game or reach a higher bar, so to speak. But those changes are extremely slow.

So I'm still on the very cautious side on this when it comes to the wholesale model. Thanks.

ROGER CARNEY:

Thanks, Theo. I think it's clear that this "shall" has to be a "may" here. But, again, I think Zak brought up the "due diligence." Maybe there's better words even for that, that we can come up with. Everybody put their thinking caps on and think about what we could use there. But I think this is definitely not just for operationalizing. But for the flexibility and for compliance, the "shall" has to be a "may."

Okay, any other comments? A great discussion on this. It's greatly appreciated. Okay, great.

Christian, I think we can move on if you have any other [clarities] you want on this as well.

CHRISTIAN WHEELER: No. I'll add, just on a personal note, that I kind of interpret "due diligence" as ensuring that the TAC request is authorized by the Registered Name Holder. I almost interpret kind of that as that's already part of the normal process when providing a TAC, that they have to make sure that the TAC is being requested by someone who's authorized to issue the TAC.

So how I would see it personally is that if Compliance were to get a complaint or something like that that they didn't do their due diligence, what they would be looking for was: was this transfer requested by someone who wasn't actually authorized to make that request, and it was still granted?

So that's kind of how I interpret the due diligence aspect of it. And this is something that's already in the policy, but maybe not something that's stated. But I do get that "due diligence" itself is kind of squishy.

And I would also just as for color, too, that this will also depend on how the group defines "change of registrant," or if it changes it to "change of control," for instance. So it may not be every single update to contact information that would be something that might be considered a change.

If it's something that might be a change to the anchor contact method, then that is something that the registrar would need to ensure or just take a look at that in relation to the TAC. So part of this might also have a strong relation to the definitions discussion that will be upcoming.

Now, I do also want to provide some alternative recommendation because the group did—well, there was a lot of support for getting rid of that lock. There was also some support for reducing the lock rather than getting rid of it—reducing it to 30 days, consistent with Group 1A recommendations.

So just for completeness and to just ensure that we've really fully explored this issue, there is an alternative recommendation to hear that would sort of replace, in this case, the previous Recommendations 2 and 3 that we've been discussing so far. So we just wanted to throw this out there to see if this is something that the group would prefer over getting rid of the lock.

So this would state that, "The working group recommends that the required 60-day inter-registrar transfer lock following a change of registrant be reduced to 30 days or 720 hours, consistent with the 30-day restrictions following initial registration and inter-registrar transfers," which is the Group 1A recommendations.

A little caveat to this, or addition to this, is that, "Registrars may continue to provide the registrant with an option to opt out of the 30-day restriction prior to the change of registrant. Additionally, if the prior registrant did not opt out prior to the change of registrant and the 30-day transfer restriction is imposed, the registrar may subsequently remove this restriction only upon explicit and documented agreement of both the registrar and the new registrant."

So this is a recommendation stating that they can reduce it, that the lock be reduced to 30 days. It would still be required, still have a prior opt-out option, but the registrar would have the ability to

remove it if there is documented agreement between the registrar and the registrant.

So what does the group think about this idea instead of getting rid of the lock and that due diligence piece?

ROGER CARNEY:

Thanks, Christian. And I'll say that I think—I'm not sure he's on today—I think Jothan was the one who actually threw this out just as a compromise to try to maybe smooth the gap open here. But I think, the past few meetings, we've leaned well away from this. And to actually get back to the original Recommendation 2 here, the preliminary one, we talked ourselves into just removing it.

But as Christian mentioned, we wanted to cover all possibilities here. And as this was brought up by one of the working group members, at least one of them, we wanted to cover that.

Theo, please go ahead.

THEO GEURTS:

Thanks. So when I look at this, I find the language very consumer-unfriendly, and I find it rather arbitrary. Those who had a opt-out in the past—"Well, no discussion with you. Oh, you forgot to opt out at some point. Oh, now we want to have this and this and this. We want documentation, blah, blah, blah."

I think that is going to be very unreasonable and hard to enforce without having major clashes with some registrants over that. I mean [everything]—maybe it's the language itself that comes on

strong, like an explicit and documented agreement of both. It almost sounds like we need to sign a contract in blood. That's maybe an exaggeration, but it sort of feels like it. Thanks.

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

SARAH WYLD: Thank you. Hi. I lean towards not being super into this. I think I'd rather just have no luck at all. I think many or maybe most of these domain updates happen in relation to the need to transfer to a new registrar. So the lock is going to cause problems.

And we learned from the existing COR process that people do not understand the opt-out. No matter how hard you try to explain it, it's difficult. I do like the potential here for the removal of the lock upon agreement, but as Theo said, just practically, that seems really difficult.

And if we—I don't know. If we're putting in an exception, then do we really need the rule? And I know sometimes we do, but here, I'm not feeling it. Thank you.

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

VOLKER GREIMANN: Yeah. Absolutely no objections against shortening this period. I think this is ultimately a question of how much protection does the registrant need in case of an unwanted change of registrant data ...

I feel, however, that the agreement should not be between the registrar and the new registrant because the registrant basically just executes what the parties want. We don't have a role to play. We do not agree to anything here. We just look at the agreements between parties and then basically execute the transfer or the change, whatever the case may be.

The question here is, however, we're dealing with a purely online situation, and therefore it is sometimes complicated to see whether agreement actually exists or one party is just faking the agreement of the other party. We do already have the confirmation requirements within the Transfer Policy that requires the e-mails to be sent, but even e-mail accounts can and are regularly hacked.

So I'm not quite sure whether this maintains the security of the registrant. But in any case, the registrant should not be part of any agreement here. Thank you.

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

ZAK MUSKOVITCH: Thanks, Roger. All good points I heard recently. I just want to harken back to one of the original concerns, as I understand the registrant's perspective when it comes to the opt-out.

As the preliminary recommendation reads now, registrars must impose a 60-day register transfer lock now, but registrars may allow the Registered Name Holder to opt out. That's current. The difficulty that registrants had with that policy, which is the current policy, is "this may allow" because there was inconsistent ability of registrants, depending on what registrar they were at, to opt out.

And so one of the primary concerns going into the working group, from my understanding, was if we're going to have an opt-out, it should be mandatory and consistent amongst all registrars, and it should be something that a registrant can easily find and identify in the Transfer process so they don't find that, "Oh, I could have opted out, but it was never brought to my attention," or "I didn't realize," or, "I couldn't find it," etc.

And so that's the problem that I have with the current preliminary recommendation as well. Because 2.1, "Registrants may continue to provide the registration with an option to opt out." I really don't like that because from a consumer and registrant perspective, I should have the same rights regardless of which registrar I select, and I may not be a registrant that's sophisticated enough to select a registrar based upon this. It may not even be apparent to me when selecting a registrar who provides the opt-out and who doesn't.

The second aspect of this—we've heard some comments on it just now as well—relates to the very end of the proposal about explicit documented agreement. I think that the gist of this is good in the sense that even if the registrar has the 30-day lock because it hasn't been opted out of it, a registrar should have the discretion, based upon the circumstances and its relationship with the registrant, to override that.

And so rather than focus on explicit and documented agreement—which, once again, we're into these amorphous terms or unclear terms—think that the focus should be on allowing the registrar to waive or to override that 30-day lock if it hasn't been opted out. Thank you.

ROGER CARNEY:

Great. Thanks, Zak. Yeah, and you brought up, definitely, one of our early principles of trying to be standard and trying to make this consistent across registrars, but across the policy so that we're not trying to ... Obviously, we see the current [inaudible] being a little confusing and maybe not [being implemented] right.

And to your point about: are they smart enough to even know to go to a registrar that has an opt-out? To be honest, the policy doesn't say that it has to maintain it, so they may have it and then get rid of it. And so then now, it's not even there. So the consistency was definitely something that we've always talked about, which is something we will continue to try to strive for.

Theo, please go ahead.

THEO GEURTS:

Yeah. I think what Zak pointed out is pretty reasonable. Speaking as a registrant, I think if I want to transfer a domain name and there's a lock on it, I should be able to remove that lock and not go back to the registrar and hash it out with them. Even if I'm [the] reseller, it's just burdensome for a registrant. I think it's my domain, and I should just click a button to unlock it and not go into any documentation or whatever. That creates [inaudible]. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Okay, any other comments on this? Again, we put this in here just because it was brought up as an option, as a compromise, maybe. Whatever you call it. It was brought up, so we wanted to clarify and make sure that if there was support or not support, which one makes more sense here. We wanted to make sure we close that loop.

So what I'm hearing is that the original preliminary Recommendation 2 is something that the group is more supportive of than this idea here, again, removing the 60-day locks completely and making—I think maybe it was Sarah that said it maybe a month ago or so—making the change of registrant and the transfer requests or TAC requests two separate processes and keep them separate on purpose with their strengths on their own. So not trying to tie them together. So removing the 60-day lock achieves that idea, too, of separating those two concepts.

Okay, any other comments here? Okay.

Well, Christian, I think we can move forward on this, then.

CHRISTIAN WHEELER: Thank you, Roger. Yes. And there was one more idea that we thought about floating. It doesn't sound like, though, that this is really a path that the group widely wants to pursue in lieu of removing the 60-day lock entirely, but just thought about raising it. Again, this doesn't have to be a long discussion if the group doesn't really seem to want to do the previous alternate.

But this was a separate idea, or one where it would still be the reduction from 60 days to 30 days. But this recommendation would be eliminating that opt-out option entirely so that the registrant can't opt out prior to the change of registrant. Once there's a change of registrant, that 30-day lock then would occur no matter what. But the registrar may remove the lock in certain circumstances. And that would be something that the group would determine what those circumstances are.

So this would be getting a little bit more specific about the lock. This would, hypothetically, be more security and consistent across them, but there would have to be specific circumstances where the registrar can remove that lock.

So, again, we can open it up for discussion, but it doesn't sound like this is a path that the group wants to go through. But I'll pause it here, and then we can move on to definitions, briefly.

ROGER CARNEY: Great. Thanks, Christian. Zak, please go ahead.

ZAK MUSKOVITCH: Thank you, Roger. Christian, I would be remiss if I didn't remind myself and the working group of what, generally, the BC's position has been on this issue.

And that's that (a) there should be a default 30-day lock, not the 60 days—so, a shorter lock—(b) there should be the ability to opt out, but it should be consistent and mandatory across all registrars and be easily accessible by registrants; and (c) there should be

discretion to remove a lock even if it wasn't opted out based upon the circumstances, as kind of suggested in the last sentence of this alternate 2.1. Thank you.

ROGER CARNEY:

Great. Thanks, Zak. Any other comments? Okay, I think we did a good job today in getting these talked through and worked through. So probably the big part of this discussion is here in the change of "registrant" versus "control" and what we're initiating all of this process on.

Something that we've talked about prior to this meeting here, but something we haven't settled on—and, again, this gets into the definition of "material change" and all those things. So pulling it all together and making a decision moving forward on: what is the trigger here, and what are we doing, and what are we specifically talking about?

So, again, I don't know if we're going to tease this out completely in the next 14 minutes, but we'll definitely get this introduced and a discussion started.

Christian, please go ahead.

CHRISTIAN WHEELER:

Yeah. So just as a reminder again, "'change of registrant' means a material change to any of the following ..." which would be the registrant's name, the registrant's organization, or the registrant's e-mail address. Group 1A recommended getting rid of references to

the administrative contacts. That's no longer valid. So, again, name, organization, e-mail address.

And a material change is the same [inaudible]. It's not really a typographical correction, but registrars still have the freedom to determine whether or not something counts as a material change.

So the group had previously discussed that the current definition of "change of registrant"—it should be "of registrant"—is not fit for purpose and should be replaced with "change of control," that being more in line with the intent behind the changes.

So the question is: should "change of control" be defined as "a material change to the registrant's contactability, their primary contact method, their anchor contact method"? And then we can go into more detail about what that should mean. Or "change of registrant"—should that be maintained? Is "change of registrant" fit for purpose? Maybe we just need to do some tweaks to what a material change means.

So this is something that the group has talked about a bit, for last year and this year—well, I guess last year was last year. But the group has talked about this a lot, but we just want to nail down. Does the group like "change of control"—in which case, what does that mean exactly—or "change of registrant," as currently?

So I will leave that there for a brief 13-minute discussion. Over to you, Roger.

ROGER CARNEY: Great. Thanks, Christian. Yeah, and I think this is the big thing that we need to iron out. And, again, I don't know if it's difficult or not. It's just something we need to agree on and move forward so that we know what we're doing.

And, really, it does come down to, you know, are we just leaving it at "change of registrant" and tweaking what a material change is? Or are we [making it] "change of control" here? Do we need to make a difference between those? Are we just going to say if e-mails change, then that's what we're talking about? If they change their name, we don't care?

Again, we just need to iron those out and get to the bottom so we know what we're talking about and what is affected.

Theo, please go ahead.

THEO GEURTS: Yeah, thanks. So regarding "change of control" or "material change," I think when we talk about this, always has the context been always a relation with domain name theft.

And if you look at this, what a material change is now, I think if you looked at it within the light of domain name theft, then the only material change that is actually very relevant in this process—that's the e-mail address. The rest of the material changes that are currently defined as now, those have no influence when it comes to domain name theft, and it's basically a major blocker to get the accuracy of the data up-to-date. It's a blocking issue right now, which runs a little bit [afoul] with the GDPR.

But when it comes to the e-mail address, I think that is something you can call a material change because that is important when we are talking in relation with domain name theft because that could be a red flag when that changes. And if that e-mail address changes, then that needs to be a process which we already defined with notification, etc.

And that is, in my opinion, the only material thing that is in there. And the rest of what we have described many years ago—I wasn't too happy about it back then; not happy about it now—but that is the main issue that we should focus on.

And on the additional thoughts here—how does this affect the use of designated agent—I think there is no issue there. But when it comes to privacy proxy providers, I don't think we should wade in there because the current policy doesn't seem to bring up any issues there right now.

But I'm not 100% sure unless ICANN Compliance has a whole essay about it, which kind of problems that all entails. But if there is no issue there, I think we can skip that also. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Yeah, in the privacy proxy, that's a good point, Theo. Is it trying to solve something? As you mentioned, I don't know if there's an issue there or not. And if someone does have examples, it would be good to hear. I honestly don't know. I don't see or hear privacy proxy causing any issues here. But if someone does know it, that would be great. Or if Compliance can pull that up and see, that would be great.

Theo, please go ahead.

THEO GEURTS: Yeah, and I actually read that wrong, the privacy proxy, because somehow with my mushy brain, I read "third-party privacy proxy providers." But it's stated here as just "privacy proxy providers."

ROGER CARNEY: Yeah.

THEO GEURTS: Most registrars have such things in place, for whatever reasons, to comply with the GDPR or still sell it as an additional privacy product. It's been used a lot. So if that is really an issue, I think we would have heard about it now since the policy. That would have been a major thing if the privacy proxy providers would be causing an issue because they're still around a lot. So I agree with you. It's probably not an issue. Thanks.

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

VOLKER GREIMANN: Yeah, I agree with Theo. However, the question remains that there is some interpretation [rule] with regards to updates to registrant data when it comes to privacy proxy. Specifically to the question of: is this an actual change of registrant, or is this just an update that

removes the privacy proxy data? But that's going off the deep end of the discussion of what privacy proxy services actually are.

I know there's discussion that one element says that, yes, they are the registrant in every aspect, and therefore are also responsible for the domain name as long as they're in there. And then there's the other interpretation that says that they are only the registrant if they are not disclosing who the actual registrant is.

This is a very, very big minefield, and I don't think that we as the Transfer group should be defining privacy proxy and their role in the ecosystem at the moment. I think there's other groups that have done and failed, or done and succeeded, partially at least, there. And I don't think we should wade into that.

ROGER CARNEY:

Right. Thanks, Volker. And, again, going with what Theo was saying, I'm not sure that it's—and, again, if someone can come up with it, it's great. Then maybe we can talk about it. But, again, I think it's not a problem. Or at least not a problem that we identified today or one that we see in the future that this is causing. So I'm not sure that there's responsibility in spending any cycles on it.

Zak, please go ahead.

ZAK MUSKOVITCH:

Thanks, Roger. Yeah, great points by Volker there. My understanding is—and, admittedly, it's not a complete understanding by any means—is that there's very little policy at ICANN on privacy proxy providers as of now. And so if that is more

or less correct, I agree with Volker that this issue is far bigger than what we're able to deal in the Transfer Policy. It's also a minefield.

Nevertheless, I think that if we don't address it or create any carveout for it, the default has probably got to be that a change from John Smith to a proxy provider—a privacy provider, even if it's in-house or arm's length from a registrar, that's going to cause a change of registrant and trigger notification requirements and trigger locks, if there's locks, etc. I think that's the default position unless there's a carveout [inaudible]. Thank you.

ROGER CARNEY:

Great. Thanks, Zak. Yeah, and you described it the way that I don't usually see it. But, typically, a name is proxied or privacy [on it], and then it's gotten removed. And then, obviously, the question is: is that a transfer? Is that a change of registrant? What is that?

And to your point, if there's nothing, what does that mean? Again, this has been this way for many years. So, again, I don't know how much of an issue it is.

Theo, please go ahead.

THEO GEURTS:

Yeah. So in general—and looking back at the comments in the chat here—I'm excluding a lot here as a reason because I don't see the relevance if there is a change of registrant where the organization name changes to a new entity which then becomes the owner of the domain name, or if John Smith sells it to Barbara Anderson,

whatever. Sure. Those are all changes of registrant, and the domain name gets a new owner.

But do we need special policy around that? I think we've got laws in place that already cover such things, so that is not an issue. And, specifically, when we are talking about back in the day when we came up with all of this, this was all a method to prevent domain name theft because back in the day—it's almost more than a decade ago—we thought this policy with all the material changes would sort of curb all those issues around domain name theft.

Okay. It's now 2024. We know a lot better. So why would we carve out what a change of registrant is? It's already established in my mind that if there is a name change or an organization change, then the old entity goes to a new entity. The new entity becomes the new domain name registrant. If there is an issue with that, then we've got laws around that. Then you should file a lawsuit or whatever.

That is sort of outside of the view of the [permit] of this working group, in my opinion. And the real material change, again, is just the e-mail address that could be—and again, it could be an indication that something is up, and that should be protected. For the rest of the policy as it's written now, I always thought it was a blocker. Thanks.

ROGER CARNEY:

All right. Thanks, Theo. And you bring up a good point that when these items were created in the IRTP days, the environment was quite a bit different. A large intent here was to try to combat hijacking or domain thefts. And in reality, a lot of that was actually solved by

better security at registrars and things like that. In today's world, it's not as big or prevalent as it was when these rules were created.

Owen, please go ahead.

OWEN SMIGELSKI:

Thanks. I'll be quick, being cognizant of the time. I just want to add—yeah, Roger, this is stuff that has come up. It was originated well before the GDPR and the Temp Spec.

So, back in the day, everyone would have their information out in public. Those that utilized privacy proxy, before you could transfer to another registrar, you had to remove the privacy proxy so that the Gaining Registrar could pull the WHOIS data and bring that into the system. That's how they would send out the FOAs, as opposed to using masked data through privacy proxy.

So that was the concern—having to remove that would then frustrate the purpose of being able to transfer within the time because of the required lock. So I think, certainly, privacy proxy providers should be exempt from any type of change of registrant type of policy because of those complications.

Then also, just to highlight that if it's using a privacy provider, that is not changing a registrant. But if I have a domain name registered to my name and then I put on a proxy provider, then that is 100% a change of registrant just because the proxy provider then becomes the registrant, and it's licensing the domain name use to me.

So I don't want to complicate this further, but I just think that privacy proxy changes should be exempt from change of registrant. Thanks.

ROGER CARNEY:

Great. Thanks, Owen. And thanks for being quick there, Owen. I know you were trying to hurry up. And you were in 2.5, maybe, speed there.

We're out of time, so I think we'll take this back up starting next week. And, again, I think some of the questions here in the middle is definitely things we need to get ironed out. Even if we say the only thing that matters is e-mail address or the only two things that matter are e-mail address—or whatever it is that we come up with. I think we need to answer these questions so we can move forward.

Again, thanks, everyone. Great discussion. Welcome back, and Happy 2024 to everybody. And we'll talk to you next week.

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