
**ICANN Transcription
Transfer Policy Review PDP WG
Tuesday, 21 September 2021 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 21st of September 2021. 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 apologies from Barbara Knight (RySG), Tom Keller (RrSG), Zak Muscovitch (BC), and Steve Crocker. They have formerly assigned Beth Bacon (RySG) and Eric Rokobauer (RrSG) as their alternates for this call and for remaining days of absence.

As a reminder, an alternate assignment must be formalized by way of a Google Assignment Form. The link is available in all meeting invite e-mails.

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remain as an attendee and will have access to view chat only. Alternates not replacing a member are not permitted to engage in the chat or use any of the other Zoom room functionalities.

If you're an alternate not replacing a member, please rename your line by adding three Z's before your name, and in parenthesis "Alternate" after your name which will move you to the bottom of the participant list. To rename yourself in Zoom, hover over your name and click Rename.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. And seeing none, if you do 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 on 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 everybody to, I think, the last day of summer for us northern hemisphere people. Autumn starts soon, within hours I guess. And maybe that's sad for some, or maybe that's good for others. So it's here. Halloween season, yes.

Just a few things to bring up before we jump into our discussions. And again, as we try to do every week, I open up the mic to any

stakeholder group that wants to maybe provide us some insight on any discussions happening behind the scenes, especially now that we've made our way through two good topics—the Auth-Info and the Losing FOA. I think that we kind of wrapped that up last time. We'll just cover that briefly here in a few minutes.

But I just wanted to open up the mic to anyone with any discussions from their groups over the past week or so on any concerns or comments about these Losing FOA discussions we've had for a few weeks now. So, anyone who wanted to come forward and discuss anything? Okay, good. Again, we'll try to keep that open for anybody that wants to talk about anything their stakeholder groups are talking offline—off this meeting, anyway—and bring forward so we can address them.

The only other thing I had was, I think we mentioned a few weeks ago that we've worked on some draft or candidate recommendations from our Auth-Info discussions, our TAC discussions. And I think that we're to that point now that we'll probably be putting those out this week yet for everyone to see and start commenting on. Again, just some early conclusions from what our discussions were on the Auth-Info charter questions. And we'll look to get those out sometime this week so everybody can take a look at those.

No specific meeting action items, but the action item being that I'll review those and provide comments and questions in the working documents that get sent out. So again, hopefully we can multi-thread this. We'll provide some of those recommendations and we can comment in the working documents themselves. And if anything big comes up, we'll bring them up in meetings. But

hopefully we can resolve those just in the documents themselves and continue forward with our scheduled discussions. And hopefully we can continue to do that with the Losing FOA recommendations, and so on and so forth. So I just wanted everybody to know to be on the lookout for those this week.

And I think that was all I needed to address before we jump into discussions. Any questions/comments from anyone? Staff? Anyone from the group? Okay.

All right. Let's jump into the Losing FOA documents. It seemed like we got to a very good spot last week on the changes that we were looking at doing. And I think we got through all of it, and it appeared that we got down to maybe three optional or required notifications to go through the whole transfer process from beginning to end.

And I think that we got to a good spot last week, possibly having an early request type of optional notification, but then having the required TAC notification with some different information in there; and finally having the Losing registrar provide a notification that the transfer's been complete and notice on some type of form of, if this was an error, here are the steps to work through.

I think that's what we agreed to over the past few weeks on this. I think that's what we got to. But I'd want to make sure that that sounds right to everyone before we move off. And again, all this is documented in the Losing FOA working document. We'll call it Sarah's Friendly Transfer Step Spreadsheet.

So I will open it up. Anybody with any concerns about what I said? Is that how everybody thought we left this, and we can move forward on those? Okay. Well, good. I like that.

All right. So we will move forward with that understanding and we'll get those all down. And again, if you take a look at the working document, all those things are in there. If you find something that you disagree with or just have questions on even, just put some comments in there and those will pop up and we'll see then. But we'll assume that's where we are at and we can conclude—at least, first deep dive into the Losing FOA—we can conclude our discussions on that and move into our discussions on the Gaining FOA. Okay.

And the Gaining FOA. Again, staff has provided us a nice working One Document here that we can use for all of our discussions and any research that we need here. Again, the form of this document is very similar to the previous ones that we've used with the relevant information from the current policy provided here at the top.

Again, we don't need to go through this. I'm sure everyone's read most of these things. It's just good reference to have here as we go through these so we can look at them quickly. And again, I think we'll just go down to the questions themselves later on here. So if we can down to, I think, it's question A1. There we go.

So I think we've got five specific charter questions for the Gaining FOA discussion. And again, I think that we've talked about this, all parties have, for probably three and a half years now. A few months maybe. Maybe even less than a few months prior to the

Temp Spec coming out, and ever sense of the Temp Spec has come out. So I think a lot of this is maybe a refresher kind of thing because we haven't really looked at a lot of this in a few years.

But let's jump into this. And again, the first question is the obvious big question. Is the requirement of the Gaining FOA still needed?

Okay. No, that's great. I think Caitlin was going to jump in and actually maybe do a brief overview of the document from top to bottom so that if I missed anything—because there are a few sections in there that we can use. So if Caitlin wants to jump on and just talk about the document itself before we jump into the questions.

CAITLIN TUBERGEN: Thanks, Roger. Roger did provide a good overview. I'll just highlight a few points starting at the top of the document. As you can see, this document is identical in format to our previous two working documents—the Losing FOA and the Auth-Info code or TAC document.

So we do have the policy language included first, and most of you are very familiar with that language. So we won't go ahead and read all of it, but I just wanted to note that as an overview of what the language shows is, in short, how the Gaining FOA must be transmitted—and that's either electronically or physically; who the Gaining FOA must be transmitted to; the transfer contact, which was defined as the registrant or admin contact. However, the admin contact field is going away since the EPDP Phase 1 Team recommended elimination of that field.

It also goes into detail about when the Gaining FOA will expire, and that registrars need to retain the Gaining FOA for evidence in a Transfer Dispute Resolution Proceeding.

We also included, under the policy requirements, the actual language of the Gaining FOA. And registrars are required to use that language. I note that it's required to be sent in English. Registrars can send it in whatever other languages they deem appropriate. But at minimum, it needs to be sent in English in this exact format of language.

And then lastly we included the language from the Temporary Specification or the interim Registration Data Policy. And as everyone is aware by now the Gaining FOA requirements were changed from the Temporary Specification mainly because, in many instances, the Gaining registrar is not able to send the Gaining FOA because the relevant contact information that the Gaining registrar would transmit that Gaining FOA to is oftentimes redacted.

So the Gaining registrar is not required to send the Gaining FOA. And we put in a note about the Board resolution that provided a little bit more clarity about the lack of requirement to send that Gaining FOA. And that's because there was—which I believe we touched on earlier. The language about whether the information was available was causing some heartburn in the Registrar Stakeholder Group, and so the GNSO Council sent a note to the ICANN Board, and ICANN work passed a resolution noting that there will not be any compliance enforcement of the Gaining registrar's requirement to send the Gaining FOA until such time as

this working group works on this requirement and it's settled within this policy group.

So that's all of the relevant policy language and updated language from the Temp Spec and the Board resolution. If we can scroll down a little bit, please.

So Roger had just started going through this, the relevant charter questions. As Roger noted, there are five charter questions for this topic. They're all highlighted in blue. The italicized text under the charter questions notes additional questions from staff, and a couple of different notes under the tables under the charter questions provide previous feedback on this topic. And that feedback came from both the IRTP Working Group Part D which previously deliberated on this charter on a similar question about the utility and necessity of the Gaining FOA. So we provided some previous feedback in case that might be helpful.

We also included relevant feedback from survey respondents as part of the survey from the Transfer Policy Status Report, which was administered in 2018, I believe.

A couple of things to note as we start discussing these charter questions that the group may want to consider. These questions are highlighted later in the document. The first is, "Noting that several Registrar respondents to the survey expressed concern with a wholesale elimination of the Gaining FOA due to lack of a paper trail for evidentiary purposes, how can these concerns be mitigated?"

So under the table that notes, “Is the Gaining FOA still needed,” under that Yes column, the staff support team populated texts from Registrars who believe it should still be retained. So in the event the group does determine that the Gaining FOA should be eliminated, we just wanted to flag those concerns and note that we should also be considering how to mitigate those concerns.

And the other question to consider is that the language of Temp Spec which was highlighted above in the policy section provides that, “Until such time when the RDAP service (or other secure methods for transferring data) is required by ICANN to be offered ...” Right. Where Emily’s highlighting right in Section 1 up there.

One thing to keep in mind is, are there other ways for registrars to securely transmit data to one another outside of RDDS. For example, could the Naming Services Portal be considered for this purpose, or could another portal be considered as we deliberate these questions?

But hopefully that provides a good overview of what you can find here. I’ll turn it back over to Roger so we can start discussing the questions, and if anyone has any additional feedback or an additional input on these questions. Thank you.

ROGER CARNEY:

Thanks, Caitlin. That was great. I should have had you just do that and I could have saved myself a lot of time. Thank you, though. That was much better. I appreciate it. So, yes. Again, I think ...

Oh, Theo. Please go ahead.

THEO GEURTS: Yeah. Just an observation here. I'm looking at this screen— [inaudible] Yes, No—which is very handy. But looking at Yes, “Some IRTP-D Working Group members noted ...” I actually have a little bit of a problem with that. I mean, yes, I was one of these working group members back in the time. If you would ask me ... And let's keep in mind this many, many, many years ago. And if you would ask me the question like this, and this, and this, I would probably have said, “Yes, it is handy to have a paper trail for this, and this, and this reason.”

But post-GDPR, asking me the same question? I would have given a completely different answer. And so I'm sort of wondering how valuable these comments from the working group from back then were. I mean, we are in a completely different situation due to the fact that we are now discussing if we should get rid of it because we have not been very successful in applying the Gaining FOA.

So I wonder if we don't go down a path here where we go back on rethinking some very, very old stuff—what working group members, including myself, said back in 2014, almost a decade ago. Thanks.

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

CAITLIN TUBERGEN: Thank you for pointing that out, Theo. And that is a really good point. The IRTP-D Working Group members did deliberate this many years ago. We just provided it for background information, noting that there was previous policy work. Obviously, the landscape has changed drastically since that group deliberated this issue.

However, I did want to note that underneath the first two bullets, there are several bullet points noting that the FOA should still be retained. And that survey was administered post-GDPR. So I don't think that is the prevailing opinion, but I did want to note that there are Registrars who believe that this is important for evidentiary purposes.

And that's why, when I was presenting the document, I wanted to note that if indeed the group does decide that this requirement should be eliminated, that the group should consider how to mitigate these concerns that other Registrars have provided post-GDPR. Thank you.

ROGER CARNEY: Great. Thanks, Caitlin. Yeah, and again, I would say yeah. We're not going to spend any time on, as Theo mentioned, some of the obvious issues. But there are some other things in there, even the IRTP-D idea of a paper trail. Okay. Everybody still talks about that kind of concept, so it's not like that comment's completely invalid. But to Theo's point, those discussions were many, many years before GDPR or any of the more current data privacy laws. So, yeah, we won't spend any time on those except for pulling out those pieces that actually seem still relevant. Okay.

And again, that's an interesting question, as you said. Kristian says in chat that TAC notification is a sort of replacing of the Gaining FOA. And as I read through the actual language that required Gaining FOA, you kind of see that a few of our notices actually touch on pieces of that. So I think that it's one of the things ...

We talked about Losing FOA for a few weeks, but I think we stretched that into even some of the Gaining FOA discussions as went through it. So I think we'll revisit some of that because it's just natural that these two things are crossing over, especially as we designed those notifications over the past few weeks. Okay. Again, thank you for all of that.

All right. Let's go back up to the question itself. And maybe I can propose the talking point that, okay, without consensus, obviously how we typically work is that nothing changes. So if people don't agree that this stays or leaves, then it stays. So there's nothing to dispute there.

So I would say the onus here is on .. Okay, getting rid of it is the onus. So let's look at ... Today let's say that it's going to stay. And why won't it stay? Does that make sense to everybody? So let's figure out what the reasons are for it not staying. And I think Theo will probably jump on, "First thing first is GDPR." But yeah, it's obviously broader than that, even any of the data protection laws. And not necessarily even getting rid of it completely, but maybe replacing it. And again, as we discussed through the Losing, I think we've already started replacing some of it.

But again, I kind of want to prompt the discussion of, okay, if we can't agree, then the gaining FOA stay. So any discussions on that?

Theo, please go ahead.

THEO GEURTS:

Yeah. Thanks, Roger. And asking the question if the Gaining FOA stays, I mean, I don't see how that would work in reality. I mean, we don't have it now, that requirement, because we have a technical issue because the data is not available in the public WHOIS anymore. So you can't send the Gaining FOA. So that is your technical issue.

And then, as you mentioned, we have a fair amount of data protection laws floating around which have all the principles and requirements on how we process data. That is also an issue. And if you look holistically at the GDPR, and I think it is something like Article 11 which talks about privacy by design and privacy by default.

And that is answering the question right there. Is the Gaining FOA still needed? And in my opinion, the answer is no, it is not required because we are not doing it for the last three years now. With several ccTLDs, I have never sent a Gaining FOA in a decade or, in some cases, never ever.

So do you need a Gaining FOA before the transfer itself? And I think the answer is there, it is not required. So if you would apply the GDPR there with the privacy by design requirement, you could already go like, "Okay, we don't need this." And if you want to

make this a requirement for the Gaining FOA, then you will have a major problem on constructing a vehicle to make it legal under the GDPR. And that is going to take in account Article 11. It's going to take in account the Articles 40 through 44. So accountability ...

I mean there is a boatload of things under data protection law and its principles to take into account and I don't think it is needed because we can operate without it already. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. So yeah, I think you've hit on a of the points of keeping it or not. But I would say, okay, I think it's a fairly good, solid argument that it's not needed in its current form, but are there any pieces of it that should be kept and moved forward? And again, as we've talked a little bit about it, I think we've pulled some of that forward in our prior communication discussions. But is there anything left here that would be useful and still valid to take forward?

So I think that's probably how the discussion should lean. Yes, we don't think the current—and we've got a lot of reasons for it—the current requirements of the Gaining FOA are needed or even doable. But can we find pieces of the Gaining FOA as it was—I can't even say today—as it was three years ago that are still useful and take those forward?

And one of the examples is in that first bullet of the Yes, the paper trail. Are there still pieces of not just the Gaining FOA, but holistically looking at the transfer process of ensuring a paper trail of the event, of the transfer. And we even talked about that in the

Losing FOA as, yes, we can keep some of that. And are there other pieces that we need to continue with or enhance?

Theo, please go ahead.

THEO GEURTS:

Yeah. And that is basically weighing down the purposes of what you are doing and then applying them to a data protection law like GDPR or CCPA. And then you have to ask, how useful is this? And I think that the evidence effect, if you're looking at that, into the relation of the mass processing of data—of personal data in this case. I think having a paper trail is no comparison to the amount of processing. I mean, it is only so often that you need that evidence and, again, since we're already not doing it anymore, I highly question the statement that it's protecting registrars. I think that is already being very questionable.

So you always boil down to the purpose of it. And there is also the issue of, you don't actually know or you cannot be sure of the fact that you have a legal basis to process the data at the other registrar. I mean, there is an assumption that you are acting on behalf of the registrant, but it could be that you are transferring a domain name that has been sold. And then you are processing the data of a data subject that is a) not your customer, and b) will not be a customer in the foreseeable future.

So what is your legal basis to process the data at the other registrar? You don't. So that is another issue that is often overlooked. Thanks.

ROGER CARNEY:

Right . Thanks, Theo. Okay, so again, I think Theo has laid out, and I haven't heard anybody say any other way, that the current Gaining FOA needs to stand. So I would say let's work down this green set of questions or set of comments here and see if we can pull something useful out of these that maybe we can look at continuing with or trying to solve. I think if we say that the FOA is no longer needed, then let's look at why people thought it was needed still and see if those reasons are valid, as Theo pointed out.

Obviously, 12 years ago it seemed valid to have this. And with GDPR, that kind of goes out the window. And for over three years now we've proven the need part of this. So, okay, let's move on from that. But let's look and see if we can tease out any good things that we should take forward from it.

And again, if we look at the first one under the Yes column, I think we've talked about that quite a bit. And getting the paper trail. We've talked about that even in our communications about, those communications should be ... Some of those are required and some of them aren't. And those required ones would show some proof of that agreement.

I don't know if anybody has any comments on the first bullet of this. I don't really have anything that I see there that I can pull out of there, but anyone else see anything that's useful that we can take forward, that we can improve on?

Sarah, please go ahead.

SARAH WYLD: Thank you, hi. So, yeah, the requirement to have some kind of paper trail to audit these transfers is a good requirement. We should do that. That's a useful thing. It just doesn't have to happen this way. So maybe if we're making a list of useful concepts that we're going to take out of this and put somewhere else, that should be on there. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Okay. And I completely agree with you, Sarah. I think it's a great idea, and I think we've already talked about it several times. And obviously I think that those communications that we identified in the Losing will provide a paper trail, at least a start of that, if we don't enhance it any more than that.

Okay, let's jump into the second bullet. But let me jump here in the chat real quick first.

Okay. Yes, the second bullet here. I guess I'm not sure, and then maybe someone can talk to this. Maybe one of the registry partners can actually talk to this. This is more of, does the FOA provide a tool for the Registries? I'm not sure. Does the Gaining FOA provide a tool for the Registries? And again [inaudible] because I'm not sure I see that. But maybe there is something there.

Theo, please go ahead.

THEO GEURTS: Yeah, that's a good question, given the fact that the largest registry doesn't have any of that data. So I don't see how that is very useful at all to begin with. So I'm reversing, sort of, the statement there. I mean it might be useful for some gTLD registries, but the largest ones do not have a contractual or business relationship which is true. So I don't see how that is useful as a tool to begin with.

ROGER CARNEY: Yeah. Thanks, Theo. And I was struggling there too, but again, not being a registry, I don't know if this does or not. So do any of the Registry stakeholder groups want to talk to it, maybe they can enlighten us. Or maybe it doesn't even make sense to them either. Again, IRTP-D was many years ago.

Okay, well let's ... Thanks, Beth. That would be appreciated. Beth said that she would check and make sure that they don't see anything. That's right.

Let's go ahead and jump into the third bullet then. I'm guessing maybe Caitlin or Emily can tell us, but I'm guessing this is from the survey staff that was sent out.

"It is very important that the FOA confirmation letter is sent to the original registrant, which may affect the security of the domain name."

Yeah. I agree, Sarah. It seems a little vague. And I wonder if ... Thanks, Eric. I was just going to say that same thing. I wonder if we didn't solve this one already with our communication or our notifications from the Losing FOA. It seems like we did because

we specifically mentioned that especially the final communication would be sent from the Losing registrar.

Again, anyone else see anything in there? I'm seen a lot of the chat that says that looks good. Thanks, Caitlin. Okay, that makes sense.

All right. Let's go down to the next one then. "As a Registrar, we believe the FOA process is still needed. Because once the domain name theft has happened, it is a very strong evidence for Chinese Registrars to handle the court case. The FOA mechanism had already been admitted by many judges in China. We cannot throw the FOA process away ..." Okay.

Theo, please go ahead.

THEO GEURTS:

Yeah. What we are looking at is ... I can understand that it is a handy thing to have and maybe that there are jurisdictions like in China, as stated here, they sort of rely on that in their decision [based] making. But the reality is, of course, now China has very strong privacy regulations itself. So you have to wonder if it's still a reality what is stated here.

I mean, for all we know this has been changed already. I don't know when the statement was made, but if it was made around 2018 a lot was not known. And you still have to weigh the question. Is it still that relevant to basically go against a lot of other data protection laws where you have to do a ton of stuff to make this requirement happen? And still you are facing the technological reality that the data is not there.

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

SARAH WYLD: Thank you. Yeah, I just want to further build on what Theo was just saying. Yeah, the data's not there. I think the ship has sailed. We have already determined as a group that we're not ... And maybe we haven't. Maybe I'm just assuming, but we're not going to suddenly decide that somehow this registrant information should be public. Right? That's not an option here.

So this point that's highlighted on the screen is suggesting that getting all of that registrant info from the Losing registrar to the Gaining one is useful ... Yea, I can understand it was very useful. But we are way past that right now and I think, here, it doesn't matter what the jurisdiction is, whether it's China or anywhere else in the world.

What they're suggesting is that we go back to the old method. And we're already not doing that. So I think we should just move on from this one. Thank you.

ROGER CARNEY: Thanks, Sarah. Yeah. And just note that I'm not sure that they're suggesting to make it public and open. And again, I've read it three times and I'm not sure exactly what it's saying. But it seems like, is there a way that it can be happening behind the scenes between registrars? Yeah, right there. Thank you for that.

I think the Theo has kind of answered this already, though, that that transfer of information may not be valid in different circumstances. So it becomes a risk factor that has to be addressed. But I think that was the point of this. Is there a different way? Obviously not—I think, anyway—obviously not going back to the public WHOIS, but is there a way that can go forward.

And to Theo's point. I think the discussions over the past few years have led everyone to the point that that still causes risk factors that people aren't comfortable with.

Theo, please go ahead.

THEO GEURTS:

Yeah. And I think when, of course, when this statement was made, the person who made this statement had no idea what we already did in the previous phases on the work that we are already doing on how we are dealing with the TAC and with the notifications. So maybe that would be completely certifiable for the person who made the statement if you would look on the work which this working group is doing. It would go like, “Okay, that is a very good solution that would satisfy whatever legal requirements in that country.”

So I think the further we go along through the statements, a lot of things have changed. A lot of thinking has changed. We know a lot more on how things are supposed to be working than prior to the GDPR. It was a real eye opener for people who never really thought about data protection. I guess a lot of us within the ICANN community have learned a lot about data protection over the

years. And like I said, the work that we did previously on the attack and notifications, that could be very well acceptable to many of the people who made these statements. So, yeah, there's that. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Yeah and, again, I think the key here is that I think people understand that the data is not public. And I think the important thing out of this was, is there a way, a mechanism that obviously doesn't exist today—or no one's sharing that fact—of sharing this information between registrar and registrar without exposing it anywhere else? And what I've heard so far as that that's not something that can happen or should happen, and it goes against the GDPR as it is, as we understand it today.

So again, I think the important part of this was, looking for another alternative of sharing that information. And I think what I'm hearing is, no, at least no one has thought that way yet. And I haven't heard anybody on the call yet, but maybe someone here does have an idea of how we can, again, share that. I think Theo has outlined in many way how that doesn't work.

Comments? Again, I think that was the big part of this bullet anyway. Kristian, please go ahead.

KRISTIAN ØRMEN:

Thank you. If we did find a way to share the registrant information, this would be a loophole for people to try to get registrant information that is redacted.

ROGER CARNEY: Thanks, Kristian. And again, I think the important part here is that someone's trying to look for a different way. And I would say that right now, no one has come up with that way. So I encourage, if anybody can come up with a way to do that, to share it. But right now I haven't heard any ideas to be able to share or even exchange that information somehow.

Okay. Again, on this bullet, I think that was the important part. Is there another way? And if someone can think of another way, let's discuss it and see if it works or not. And we can move forward on that.

As everybody mentioned, it was always nice to have and it's no longer allowed to be there. Obviously there was a utility for it before. And if there is a way to get that utility back, then it sounds like people are for that. But it's that problem of getting that utility under the known circumstances today.

Okay, let's move on to the next bullet. I think this is somewhat similar to what others are saying, that the record keeping piece of this ... And I think if we're still providing that record-keeping piece in the communications that we have and the checkpoints that we have built in already, that we're solving this question here without actually keeping the FOA or without needing to keep the current FOA, I should say.

Okay, let's move on. Theo, please go ahead.

THEO GEURTS:

Yeah. Somewhere already stated it in chat that this all deals about transfer disputes, etc. And like I said, these statements are pretty aged, so to speak. I mean, and I've said this already, like one of the first goals ... Redaction of the data already removed a major TAC factor on unauthorized transfers. The people [here] with these statements, the extra level of security is already there due to the GDPR. So a lot of these statements just rehash themselves or are somewhat redundant.

And they are also, in the current situation due to the technical and legal situation that we are in, are nice to have but are just not realistic anymore. I mean, we can come up with tons of nice-to-haves. I can mention a couple ones myself. But I know they will not be realistically achievable due to legal and technical issues that we are in now. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Okay, all right. So the current bullet we're on there in the middle of screen. "The FOA gives overall authority to the registrant or the domain name owner. It should be enabled for customer satisfaction and to mitigate unauthorized transfer."

And I think we've actually kind of—[at least] in my head—I think we've moved this, the "overall authority", not from the FOA but to the actual TAC itself once that TAC ... And again, something different from the current situation or the current systems to what we've described is that the TAC is only valid during the transfer window. So I think the TAC actually takes over this, with the "overall authority" piece of it.

Anyone else have thoughts/comments on this one? Okay. Thanks, Sarah. Yeah.

Okay, let's move on to the next one. "FOA approval should continue. Some registrants might inadvertently share their EPP code without understanding the effects." I assume that means the Auth-Info-Code. "Approval from the registrant email is a must." Again, we don't have necessarily approval here, but we have them notified.

Holida, okay. If everyone wants to take a look at Holida's note in chat there. And maybe Theo or one of the other resellers can talk a little bit about that as well.

Theo, please go ahead.

THEO GEURTS:

Yeah. I just read it and, being on the spot, I'm not sure how this relates to our work. I mean, I'm not dismissing issue. We also have resellers that will not provide the Auth-Code for a million wrong reasons, which you need to step in as a registrar to make sure it does happen. And usually, from my point of view, when resellers are not providing the Auth-Code it is usually because under misinformed reasons or financial motives and not understanding the rules and regulations that we are under in contractual requirements, etc.

We also get these complaints from registrants. We look at them and we solve them because we still have the requirement as a registrar to make sure that the Auth-Code is provided within five days, either by us directly or through a reseller or sub-reseller.

That issue never goes away, I think. And I don't see how it's related to our work. But it is an issue and it happens, but I think it always gets resolved. And don't think ICANN Compliance has discredited a registrar based on not providing an Auth-Code. So I think everything is being solved, maybe sometimes a little bit slower than expected. But I think there's always a solution. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Yeah and, again, I think we've said this multiple times through the many weeks of discussions we've had. A lot of this discussion is focused on the few percent of transfers, and it's something just to keep in mind that we're talking about if something goes wrong which is, in a lot of cases, less than a percent of the time. So it's one of those things where you have to balance that as well and give that consideration.

Sarah, please go ahead.

SARAH WYLD:

Thank you, hi. I like this one just because it is different than the others. It had a different reason. That made me happy. But registrants getting or sharing their Auth-Code without understanding it is not a reason to require the Form of Authorization. If they're already sharing their Auth-Code, they're already not reading what's on the screen in front of them. Right?

So that is an issue to address within the Transfer Authorization Code dispersal process. Distribution? You know, when you give them the code. That's when you tell them what the code is for, not

when they're doing a Form of Authorization. I'm sure most people don't read the whole thing anyways. Thank you.

ROGER CARNEY:

Thanks, Sarah. And one thing I would say on this is that I think ... Again, I'm going back to what we've just discussed in the Losing. But the notification we've talked about of the TAC sent out provides ... It goes to the registrant and provides them away to stop the transfer before it happens. And then also, the registrant from the Losing registrar gets a notice when the transfer happens and how to dispute it.

So anyway. Berry, please go ahead.

BERRY COBB:

Thank you, Roger. Listening to some of the discussion with relation to privacy laws or GDPR in general, and specifically kind of picking up on Sarah's response back to Steinar about a lawful basis for processing this data. Full disclaimer, I'm not a privacy law expert. Even three years of EPDP allowed me to learn more about it than I probably cared to.

But we're talking about the transfer of a domain of the registered name holder. We can have debates about whether they own it or they license to use it. But from my understanding of GDPR, the transfer of this domain does require extraordinary measures to protect the domain subject or the data subject. And I think a lawful basis can be determined to process their data for this particular thing.

I recommend that the group not just immediately say otherwise, and maybe even as a possible option that we can consider—although it's not necessarily part of the charter—but if we need legal advice about exactly how the processing of this data can or can't be lawful, then perhaps maybe we ought to think about trying to submit a request to the GNSO Council for budget to seek that legal advice. But I just want to open it up here. I think what I'm hearing here is that most of the discussion is that, "No, we can't do this. We can't do that."

And I think, as Roger pointed out earlier on, this is an existing consensus policy. Yes, it is broke based on the current environment that we have, but I do offer up that we're going to need consensus to undo this. And that at the same time, that the group should think about or think outside of the box, for lack of a different word, about are there other ways that security can be maintained which is also an important aspect that we need to consider here to come up with a solution that's better. Thank you.

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

THEO GEURTS: Yeah, thank. And I'm going to disagree, which is probably no surprise. I am a certified GDPR practitioner. I did used to do a lot of consulting on GDPR for several companies. And in my honest opinion, if I would have found a way to make this requirement happen, I would have come up with a solution and I would have mentioned it. And there are even some technical solutions to ease

out this process, but in the end you will run into issues with data protection law.

And the suggestion to open up some budget to this. I'm not opposed to it, but basically the fact that we are not doing it now, not having any issues with it or any substantial issues with it, given the fact that other registries in other spaces in the ccTLD space can operate without it is a strong suggestion that the requirement of the Gaining FOA is a road to nowhere to keep it alive.

And the fact that it can be done by other registry operators and the fact that we are doing it now already makes the suggestion that, okay, keeping this alive is sort of impossible because if you can transfer a domain name without a Gaining FOA, then I suspect that the DPAs in Europe will sort of have the idea like, "Okay, if it's already happening, then why on earth should you process data again when it is not required?" And that is one of the basic principles of data protection law.

The GDPR does not say, "If you don't collect it, you don't have to protect it." That is not something that is said within the GDPR, but it is the mindset of the GDPR to process as little data as possible and not come up with all kinds of ideas/purposes to try to get to the point so you can process the data again while you can already do it without. That is the fundamental principle of privacy by design. If you don't need it don't process it.

And I think we already have been demonstrating that for a couple years now. And we already made sure in our previous work that we have added extra security. So I honestly don't see that asking

for legal advice will get us to a point that we will send this notification again. And I will not repeat the added layer of security which I highly question. So, there it is. Thanks.

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

GREG DIBIASE: Yeah. I just kind of want to go back. I think Roger said it well in the chat. If anyone can suggest a way that this data could be obtained, bring it forward. But I mean, I think within this group that we have assembled here and the collective however many years since GDPR that people have been trying to think about this, no one has really come up with an idea. So I think that we have enough expertise here that we don't even need to get into the legal part of it. We're talking about, from a functional perspective, we can obtain this data.

So I think how Roger said it is right, that if someone has a concrete idea of how this workable, please bring it forward and let's discuss it. That would be great. But so far no one has, and I don't see the need to go to the GNSO or somewhere else when all of this group, and after however many years it's been since the implementation of GDPR, no one's really come up with anything.

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

WISDOM DONKOR: Thank you very much. Yes. Just thinking about the ICANN ODI, the Open Data Initiative. I don't know if that has something to do with how to collect data because that could be one platform where data could be published for the public. So I know sometime back, ICANN did launch the platform and we were supposed to start using it. I don't know what happened, and then that didn't happen. And I know a new date was announced, and then that also—I've been following but it looks like nothing is happening within the open data side. So if anyone has any idea, maybe we could discuss it and see how relevant this could be to the [inaudible].

ROGER CARNEY: Thanks, Wisdom. Yeah, and I'll be honest, I'm not sure that I followed the open data initiative close enough. I don't recall it having any personal data in it, but again, I didn't follow it close enough to know that. Sarah, please go ahead.

SARAH WYLD: Thank you. Hi. I just pasted the link to the ICANN page for the open data initiative into the chat. It's not super clear in that page what exactly this data includes. My understanding is that it's not personal data, and of course, as we all know, anytime you're publishing personal data, you need to have a lawful basis for it. I can't imagine that ICANN would suddenly have that. So I feel like more would need to happen for that to be useful, but at this point, I don't think that's really going to solve our issues. I also wanted to say—and I'm sorry, I'm going to repeat what I put into the chat, so apologies for those who read it, but I do think there is some benefit to verbalizing these things.

So one thought I want to support Theo saying about data minimization, that's a very important principle that we have to always employ. We use the least amount of data possible to do the job. We know that we can do transfers without that data sharing activity. So we probably shouldn't do it.

The other thing that I find useful always to do is to go back to my Article 6 lawful bases for processing data and think about whether any of them apply. So I will just take a quick moment to think about three of those six. Performance of the contract, that's the most common one. I think it doesn't apply here, because the contract is not between the losing registrar and the gaining registrar. They would need to have that contract in order to require the data sharing to perform it. And that's not there, it doesn't exist.

So then the consent of the data subject. The data subject can consent to sharing their data with the gaining registrar by providing their data. They might tell the losing registrar to share their data. Maybe that falls under the right to portability. But it's very difficult to make sure you've got the right person consenting. And that's something that we've encountered in other ICANN-related conversations. So that's iffy, not reliable, etc.

And then of course, legitimate interest, everybody's favorite, does mean that we have to do the balancing test. Does this processing balance against the privacy rights? We know that we can do transfers without it, so it does not balance.

So I think that we don't have a lawful basis for that data processing and we don't have a need for that data processing. So we should just not do it. Thank you.

ROGER CARNEY: Great. Thank you. Theo, please go ahead.

THEO GEURTS: I echo all of Sarah's points. I just wanted to go back to Wisdom regarding the Open Data Initiative, which is a great initiative and there is a ton of data there. I can tell you we use that API ourselves. But like Sarah already pointed out, there is no personal data in that. So you [can't] use that initiative. And if you would try to set up to get personal data into that dataset—or datasets because they have multiple—ICANN Org would run into many issues with GDPR and other data protection laws. So it's not applicable. Thanks. But great idea.

ROGER CARNEY: Great. Thanks, Theo, and thanks, Wisdom, for pointing that out. Okay, any other comments, questions on that? Okay. Let's jump into the next bullet. It says yes to keeping it, to add an extra layer of security if there's a hijack. I assume this is actually meaning there's—again, going back to the paper trail, I assume the hijack just happened if that's what they're saying here and they're just wanting to go back and look at it. So I don't know if anyone else has comments on that. Again, I think this is solved by good recordkeeping and logging, as we've talked about.

Okay, yes, e-mail notices should be mandatory. And I think that, again, our losing FOA discussion which turned completely different than I thought we would do, did show that obviously, we believe that e-mail notifications are important, and who they're

going to is an important topic as well. So I think we're solving that one as well.

So let's go to the first bullet there on the next page. All efforts to confirm a transfer should be taken to protect the owners. Okay. And again, I think that goes back to the proper notifications and starting with the tech itself, how that's generated and reviewed. So I don't know if anyone has any questions or comments.

Okay. Let's jump into that second bullet. The FOA included as part of the transfer process lets us pull additional information should there be a dispute or claim of hijacking with a domain transfer and ensure it is handled correctly. Always better to have more records and be overprepared than not.

Again, I think this is falling on the same lines as many of these, of having the proper documentation in place to confirm the transfer. And also, one of the important parts that I'm not sure if this hits on is the ability for the registrar itself to stop the transfer or to at least get into the dispute process. So I think that we're still doing this. I think the reasons in here is, yes, to have a good audit trail.

Yeah, that's a tough one, Sarah, the last sentence is a little—and again, it seems somewhat smart to be more prepared. You try to be prepared for everything, but there's risk in keeping all that data or trying to process all that data.

Okay, let's jump into the third bullet, concerned about removing it, it can be replaced with similar connect e-mail whenever domain is unlocked and an auth code is set [inaudible]. Okay, so I think again, on that third bullet, the notifications we came up with in the

losing FOA discussion fulfills what that is saying, at least in my mind. I don't know if others have thoughts on that.

Okay. And the last bullet on here I guess goes back to one of the earlier bullets. Without an FOA, as a registrar we're unable to provide this to the judge. It'll be a very bad thing, registrar, if such court cases—and again, I think here, without an—again, in quotes, a paper trail, an audit trail or any notifications at all, I think that that would be obviously a valid concern. But I think that notifications in the trail provide for this protection here. Theo, please go ahead.

THEO GEURTS:

Yeah, two comments there. Like I stated, there are registries who operate without, so clearly, those judges were able to solve the issue there. And maybe that is also something to think about when we move forward. If we are at some point that we make a decision that we are going to stop using the gaining FOA, something to think about when you are hitting the subject which will come up at some point during this course when we talk about transfer disputes of unauthorized transfers or on how to claw back an unauthorized transfer, that is actually the process where you start looking like, okay, we don't have the gaining FOA anymore. Can we in that process when discussing that subject build in or improve that process where we claw back the domain name or come up with a situation where UDRP providers will render decisions? Because we already have such a policy. It's not used much and you have to wonder how these people do operate currently now for the last couple years without having access to the gaining FOA. So that is something to keep in mind as we go

along. We will hit this issue again in the future and we may come up with solutions there that we haven't thought of yet. Thanks.

ROGER CARNEY:

Thanks, Theo, and thanks for pointing out the tie into—obviously, the dispute process here or the clawback, whatever it is going to be, obviously plays into this and even our prior discussions on notifications, how those will work together from end to end. So I think even if we finish all these discussions, once we get into transfer dispute, we'll touch back on a lot of these discussions and decisions as we go through that as well. Okay, any other comments, questions? I think that was the last bullet point.

I don't think we need to go over the noes here, unless someone saw something in there. I didn't notice anything in it, but if someone saw anything in the noes that we should bring up—and again, some of the noes may help our discussions later as well. I think most of the noes is what we've already been hearing.

Okay, let's go ahead and move on to the second charter question. Okay, so this is an interesting one because—I'll just read it off. If the working group determines the gaining FOA should be a requirement or any updates apart from the text needed for the process. For example, should additional security requirements be added to the gaining FOA. An example is two-factor authentication.

I think this is an interesting question because our response to the first charter question as it stands today is no, the gaining FOA is not required. But interestingly enough, we did solve all of those

yes things by what we did in the losing FOA. So it's kind of a twisted way of—we're not keeping this gaining FOA, but we improve the overall process to include these things.

And it's interesting that this says if the working group decides to keep it—and I think the working group is deciding, at this point until we hear something else, to not keep it, but we did do kind of the last part of this, the last sentence for example, additional security measures, I think we did add into that losing discussion a multiple. Because I think we took that losing FOA discussion a little broader than just sticking on the losing FOA itself and we expanded that. So I think that that discussion sort of answered this or provided those other items here.

But any response, comments on the charter question itself? Saying the first question, if we're answering it as no, the FOA is not needed, it becomes a little tough here. But I think that there's still—again, especially the additional security requirements, I think that we've already done. So Theo, please go ahead.

THEO GEURTS:

Yeah, I agree we already put in extra security requirements during our process, so I think we already covered that part. And looking at additional security requirements here in the yes section in light of GDPR, losing registrars, etc., but in reality, the GDPR has already upped the security requirements of the registrants a lot, besides some registrars who take stuff very lightly, apparently.

But I think by law, it's already getting more and more requirements being requested of us, and the majority of the registrars are doing

more and more stuff to protect the registrants. So this question seems a little bit backwards in that sense. And yeah, like you mentioned, we already added extra requirements, and you really want to have more requirements while regulators, laws already requesting that of you, as a registrar. Thanks.

ROGER CARNEY:

Thanks, Theo. Kristian, we don't have a poll today. We will have one coming up. Today was more the open discussion, and hopefully the poll kind of pulls all the discussions together.

Okay, and again, let's just run through these yeses and why people thought it should still be a requirement and what is in there. The first bullet is improve the FOA by offering SMS or other forms of verification. It's interesting, And I think we've kind of sliced up a little bit before, is the communication mechanism, we're trying not to be specific about it and allow for flexibility.

And it's interesting that this question or this comment here is tying it to verification and not just notification. So something just to keep in the back of the mind is I assume if you were notifying a registrant of their TAC request or presenting their TAC to them over SMS, that you would allow SMS response. But sometimes maybe not and you just direct them somewhere else.

And the second bullet here, suggesting that the registrant e-mail could be shared via the registry and not actually shared externally. I don't know that sharing it through a medium changes that. But Theo, please go ahead.

THEO GEURTS:

Yeah, that will cause the same issues that we are currently having now, sort of just moving the personal data of registrants to a central place. You will still run into the same issues like the registrars are having now. So that won't make a difference from a legal point of view, so that doesn't change it. And there was something else but I forgot it. Thanks.

Oh, yeah, that was another point. For those who are present in the—I'm not that present myself—current IRT of the EPDP phase one, there is still the big question mark looming around regarding that IRT if registries have a legal basis to have that data. I don't think that has been answered yet, so I think at this given point of time, we should not go down a path where we have to assume that there will be a solution at such registries or a central place of a database where data exchange can occur. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. Okay, any other comments? Again, I think that with answering our first charter question, it answered the first part of this, but to be honest, I think that the last sentence here, we've actually done quite a bit of work on. So I think that that being here, how we answer that question when we get back to having to provide answers to all charter questions is, yes, we said the FOA was not needed, but we did these things to enhance the process. I don't want to say security, but the process as a total. So, any other comments, questions on the second charter question?

And I see we're down to about eight minutes, so I think I'll just introduce the next charter question and we don't jump in too deep

on it. And I think Caitlin kind of led us to this one earlier. Sarah, please go ahead.

SARAH WYLD: Sorry, Roger, I'm happy to listen to you introduce the question before I answer my thoughts on the question.

ROGER CARNEY: Okay. Let me read it just in case someone doesn't have it handy on them. The language from the temporary specification provides "until such time when the RDAP service (or other secure methods for transferring data) is required by ICANN to be offered, if the Gaining Registrar is unable to gain access to then-current Registration Data for a domain name subject of a transfer, the related requirements in the Transfer Policy will be superseded by the below provisions."

What secure methods, if any, currently exist to allow secure transmission of then current registration data for domains subject to an inter-registrar transfer request? So I think this goes to a lot of what we've been talking about, but I will let Sarah talk to it.

SARAH WYLD: Thank you. Hi. So it's interesting to me because this is a charter question, but I feel like we just shouldn't answer it. I think we should move on from it, because we've already determined that even if we have RDAP in place, we—as we discussed earlier—still do not have an actual need to share the data and no lawful basis, and so it just shouldn't be a requirement. Though figuring out a

secure method to do something that we actually have no need to do is perhaps not the best use of our time. Thank you.

ROGER CARNEY: So Sarah, you're answering the question by saying that you believe there's no need or reason, purpose for it.

SARAH WYLD: Sure. Answering the question by saying we don't need to answer it.

ROGER CARNEY: Okay. Thank you. Anyone else, comments on this? Again, I think this gets back to especially what Berry was trying to pull out earlier, was—and again, I think that Greg may have said it, it's like, can someone come up with a mechanism here and a reason for that mechanism, as Sarah points out, to allow this to happen?

As many people have said so far, it's been over three years that we haven't had this, so what's the true reason here? And does it add a level of security? Maybe that's a reason. But I'll open it up. And again, just jumping on here, additional questions to consider is, could registrars [inaudible] systems such as ICANN's naming portal for example to exchange this information? I think we kind of just talked about that and it's like ... You can use other systems but you come back to the same problem of, was it necessary to transfer that information? Theo, please go ahead.

THEO GEURTS: That is a very good question. Do you need the data? And I think in that respect, the GDPR has shown the ICANN community that in fact, we don't need to process vast amounts of data to achieve certain goals. So I think the point has been made time after time after the GDPR came into effect. So yes, do we need a lot of data to process something simple? And yeah, the answer keeps coming up, it is no, and it's the great thing, data minimization. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Okay, we just have a few minutes left. I guess we kind of did cover that since Sarah made quick work of it. But I'm not blaming that on Sarah, I'm just saying that it seems like that we've already had that discussion through this.

So four minutes left, I think we'll cut it off here and we'll start back up with charter question four next week, and maybe we can get some solidification around what we're thinking here and discuss those points next week as well. Any last comments before we call the call? Okay, staff, anything? Okay. Great. Thanks, everybody, and we'll start back on four next week.

JULIE BISLAND: Thank you, Roger. Thanks, everyone, for joining. This meeting is adjourned. You can disconnect your lines. Have a good day.

[END OF TRANSCRIPT]