
ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 01 March 2022 at 16:00 UTC

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JULIE BISLAND:

All right. Good morning, good afternoon, and good evening, everyone. Welcome to the Transfer Policy Review PDP Working Group call taking place on Tuesday, the 1st of March 2022.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. For today's call, we have apologies from Theo Geurts and Owen Smigelski (RrSG). They have formally assigned Jody Kolker and Jothan Frakes (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. All members and alternates will be promoted to panelist. Observers will remain as an attendee and will have access to view chat only. As a reminder, when using the

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chat feature, please select everyone in order for all participants to see your chat and so it's captured in the recording. Alternates not replacing a member should not engage in the chat or use any of the other Zoom room functionalities.

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

Please remember to state your name before speaking for the transcription. Recordings will be posted to the public Wiki space shortly after the end of the call. And as a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you. Over to our chair, Roger Carney. Please begin.

ROGER CARNEY:

Thanks, Julie. Welcome, everyone. Just wanted to start off with we received a request this morning from one of the team members for a moment of silence, trying to be sensitive to political differences and not trying to alienate any community members. And also recognizing that ICANN as an institution tries to stay neutral at all times. I still do think a moment of silence is appropriate in light of the humanitarian crisis in Eastern Europe at this time. So I'd like to take the next minute of silence. And please just use the silence to reflect as you feel appropriate Thanks.

All right, thank you, everyone. Let's go ahead and jump in. I don't think I have anything to share. But I wanted to open it up for the

stakeholder groups if they wanted to bring anything forward. That they've been talking about outside the meetings. Anything they've thought about in the last week or so. And again, any discussions that maybe they're having within their own stakeholder groups, if they want to bring those forward now, that would be great. Zak, please go ahead.

ZAK MUSCOVITCH:

Thank you, Roger. Nothing to report from the BC other than in approximately three weeks' time, the BC is going to have a dedicated call to discuss transfer locks. And subsequent to that, I imagine that I'll be reporting back with Arinola on some feedback from the BC. Thank you.

ROGER CARNEY:

Great. Thanks, Zak. That's great to hear. Any other comments or discussions any stakeholder groups want to bring up? Okay, just one topic. I know we haven't gotten there really yet, but we were sort of avoiding the second charter question here on the NACKing, and it had to deal with some comments from WIPO. Staff and I did meet with WIPO yesterday. And we can share some of those findings from that when we get to that section, but we did get quite a bit of clarity on that charter question two there.

And a lot of you know, if you've read this through, a lot of this is not specifically pointed at the transfer policy itself. There's a couple of spots that I think we can take a look at. But again, I think a lot of this—and when we talked yesterday, agreement that a lot

of this applies to the RPM PDP phase two working group, probably.

So I just wanted everybody to know that we did talk with WIPO in forum yesterday, just to get some details on their concerns. And then it does look like there's a couple points we can pull out and discuss for this group, and probably just refer the remaining items to Council or to the RPM PDP working group.

So. Okay, but let's go ahead, I think let's jump back into our discussions that we left off with last week. And I think we were mid poll last week. I don't know if we have the poll available this week or not, I guess I forgot to ask staff. I think we got through the first few items in the poll. Okay, great. Thanks, Emily. And maybe we should start with the edits that maybe we made through the first five items, I think that we got through in the poll. So maybe we scroll up first, to some of the comments and see if we have anything there on—I know that we were trying to maybe expand 3.7.1 and there were a few suggestions there. Emily, please go ahead.

EMILY BARABAS:

Thanks, Roger. Hi, everyone. At this stage, we haven't actually provided redlines for any of the text. We've instead provided some comments on some of the suggestions, as you can see in line here and the existing text, and then also captured some of that feedback in the deliberations below here starting on the first section of the deliberations.

And so I think what we were hoping to do is to get a little bit more input in the document for folks to sort of weigh in on some of the things that have been suggested before we actually do the redlining as well as provide any suggested texts that they'd like to see in response to some of the concerns raised. So that's kind of where we are at the moment on the items in 3.7. Thanks.

ROGER CARNEY:

Great. Thanks, Emily. Yeah, thanks for that update on that. And again, I think I saw a few comments by a few different people throughout the early sections here. And again, I think that for everyone else, take a look at their comments, and see if you support those comments or not and if we should be updating. And I'll have staff direct if we need to add or update anything here.

I think we can go through these comments real quick on these first few. Can we see? Yeah, there we go. Thank you. On the fraud, and we had a fairly good discussion last week on this if this should be expanded, or even a few comments on is fraud too big of a definition? Should it be defined somewhere so that people know specifically what that's looking at?

I know that last week, there was a few comments on adding the registration agreement, violation of the registration agreement or abuse as words here, and we kind of went back and forth on what does that mean? And does one of them cover the other? So again, I think, think about those things. And if you want to comment in the doc, that's great. Otherwise, we can talk about it. Keiron, please go ahead.

KERION TOBIN: Thank you. Yeah, just on 3.7.1. Just a [inaudible] comment. I'm happy to go with evidence of fraud or abuse. But I think we need to remove the violation of the registration agreement out entirely. I think it just gives ICANN more [inaudible]. And every registration agreement is going to be completely different for every registrar. So I just don't think it's kind of necessary to have anything in regards to an individual register registration agreement. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. Other thoughts and comments on that? Steinar, please go ahead.

STEINAR GRØTTERØD: Yeah. Hi. Regarding fraud, this is rather tricky, because what sort of tools do ICANN compliance has to identify fraud other than what the registrars have if there is a dispute between the registrant and why they can't move? I'm just wondering, I'm a little bit—And I understand the reason and the rationale behind it. But it is very vague, in my opinion, the way it's been put today. Thank you.

ROGER CARNEY: So Steinar, you like the ideas, it's just how does that get enforced if different registrars claiming fraud is your concern, right?

STEINAR GRØTTERØD: Exactly. And what within ICANN in different stakeholder groups, and we have a long and wide discussion about DNS abuse, which we have certain difficulties to identify and the definition of what is really DNS abuse, etc. In my opinion, fraud is even more complex to identify. So it is rather tricky. So I don't know how this has been enforced today. But maybe ICANN Compliance can give some sort of input on what sort of problem this kind of wording creates. Thank you.

ROGER CARNEY: Great. Thanks, Steinar. And maybe I'll let Holida think about that and maybe she can come on if she has any thoughts on it. Farzi, please, go ahead.

FARZANEH BADIEI: Hi. I'm just a little bit confused. And maybe I'm just mixing things up. But I thought that we kind of discussed the violation of registration agreement, because we didn't have a good and consistent abuse definition. And we were going to open a can of worms if we wanted to get into the weeds of like, what is fraud and what is the abuse? And it's not by no means it's clear if we put fraud and abuse.

So this is why we suggested and we discussed having like violation of registration agreement. But I don't know now. It seems like some have changed their mind. But I think that we need to work on how we can—I don't think the way is to go and to provide the definition for fraud and abuse. But interested in hearing what Holida has to say. Thank you.

ROGER CARNEY: Thanks, Farzi. Yeah, and I think you're absolutely right. I think that's why it was brought up and the discussion started last week on that. But yeah, I think that you're hearing that maybe that creates more issues than it solves. And again, I think that that's still open for discussion. So, anyone that wants to talk about that, please do. Holida, please go ahead.

HOLIDA YANIK: Thank you. Thank you for the interesting question. Currently, Compliance does not have a list of the activities or terms that could be defined as a fraud and that may be used while investigating the cases in here, but when the registrar provides us the reason, this reason as a transfer denial reason, we look at the issue and the explanations provided by the registrar usually these cases may involve fraudulent activities by non-registrant, by the third party who has access to the control panel, or may be sometimes it may also involve violation of registrar's terms of use. So it really depends on the case by case.

ROGER CARNEY: Great. Thanks, Holida. Yeah, and I'll just note that obviously, we've been using this in the current policy for many years now. I don't know if it goes back before that actually or not. But obviously, this has been used and appears to function okay. Again, can we make it better? I think that's the goal here is to try to make it better not. But you know, just looking at it for multiple years, many years now, it's provided a useful feature that's been

used. And ICANN Compliance and registrars appear to be using it in a satisfactory way. But I think that making improvements is a good goal here.

Okay, any other comments on this one? And again, if you think of something, please jump in the document and put some comments in the document so that staff can see if there's any necessary changes needed on this. And again, our obvious policy is if we can't agree on a change or anything, it probably stays the way it is in the current policy. So if we want this to change, we need to get a good movement on reasons why it should change and what that change looks like.

Okay. Let's move on to the next item here real quick. Yeah, obviously, we need to update—remove the administrative contact piece of this part. But we also had some comments on if the goal here was the identity piece here of the name holder if it was bigger than that, and I think that we came along the lines of probably being bigger than just the identity of that. And a few comments here, just the validity of the transfer request, [inaudible] that was not requested by the name holder, or Catherine put a good one in here as well, reasonable concern over the identity of the RNH, or that the transfer was not requested by RNH or that the transfer request is otherwise not valid. And she notes that obviously, the last item that she says they're not valid is very broad, but does allow for that flexibility there. Thoughts on updating this language? Again, Sarah and Catherine provided some items here. Obviously, again, the administrative contact has to be removed. But the other part of reasonable dispute. So Farzi, please go ahead.

FARZANEH BADIEI: Thank you. I think that we talked about the word “identity.” And well, it can bring up some privacy concerns. We discussed this, and I suggested that we might want to rephrase this and not use the word “identity,” because we are really talking about ownership here. So I think that Sarah's suggestion to have like reasonable concern that the transfer was not requested by the registered name holder might be like a better phrasing, or we talked about ownership, whatever we can to replace the word “identity” of the name holder, that would be great. Thank you.

ROGER CARNEY: Thanks, Farzi. Yeah, and that's a good examples of how we can replace [inaudible] or like you mentioned, using ownership as an idea. Okay, any other comments, questions on this? Okay, again, a couple edits here and I think that we'll be in a good spot on 3.7.2. Okay, and let's move on to 3.7.3. This was something maybe that ICANN Compliance was going to look at and actually assigned to homework last week as well, to see if we can clean up what the previous or current registration if we can change that language anyway to I guess be more specific about what that means. Is it the current renewal, is there a past due amount on the registration that's active now? And again, I think that that's where some confusion always comes in is, what is previous or current registration? Holida, please go ahead.

HOLIDA YANIK: Thanks, Roger. I actually provided some recommendation for 3.9.1 about clarification for pending or future registration period, but in this case, yeah, I found registrar advisory. So, I provided a

link there, which clarifies what should be done, what should be considered for the transfer requests in auto renew grace period. However, for item 3.7.3, I would recommend the group to consider about providing clarification for the expiration date, which expiration date should be considered as a point of distinguishing for previous and current. So would it be the registry data or registrar data which is triggered by transactions between registrar and registrant?

But my concern would be in here that upon auto renewal, some of the registrars may update their own registrar data and make it the same as the registry WHOIS information. So, I was kind of lost in here and would open this for discussion, if possible. Thank you.

ROGER CARNEY:

Great. Thanks, Holida. Yeah, and the timing of that does happen to cause some confusion. And maybe Jody can talk to some of that on if the registry has an auto renewal, the expiration date is automatically changed on expiration date at the registry. But the registrar still may not have actually received the renewal. Jody, please go ahead.

JODY KOLKER:

Thanks, Roger. Yes, what typically happens with most of the top-level domains is that when the domain expires at the registry, a batch job will be run either on the same day or the same night as when the domain expires, and the domain will be auto renewed at the registry. So the registry will show that the domain is registered

until a year later of that date, but typically the registrars—and I'm sorry, Theo's not here, I'm his replacement today.

ROGER CARNEY: Jody, you cut out on us.

JODY KOLKER: [inaudible] Are you still able to hear me?

ROGER CARNEY: I can hear you now.

JODY KOLKER: Okay. I'm not sure how much you heard of that. I may have to switch my Internet provider here. Anyway, what happens is typically the registry will auto renew the domain name on the day it expires. So in the WHOIS, the registry will show that the domain has been renewed, it will advance the expiration date by a year. However, the registrar typically usually will not update the expiration date for their WHOIS. it will remain the same as it was before. So those expiration dates will be out of sync. The registrar will not typically update their expiration date in their system until they have received payment from the registry. Or I'm sorry, from the registrant or the owner of the domain. I think that's what you're asking for Roger.

ROGER CARNEY: Yeah. And I think that's Holida was trying to get too, was, how can we update this wording so that again, the hard part is when it does expire, and it shows that it's a year longer now even though there may not have been any monetary satisfaction of that new year yet from the registrant to the registrar, how can we account for that in this wording here top make sure that it's right? Steinar's question in chat, is Jody only referring to thin registries? Not that I know of, but maybe Jody can talk to that.

JODY KOLKER: Yeah, it doesn't matter if it's thin or thick. It's really up to the registry to decide if they're going to auto renew the domain on the day it expires. But some registries don't auto renew the domain until 45 days after it expires. It's just a difference of philosophies there. Thanks.

ROGER CARNEY: Thanks, Jody. So yeah, so that's a good question. Steinar, please go ahead.

STEINAR GRØTTERØD: I'm a little bit confused because I thought the auto renewal always occurred when the date and the time for the expiration of a domain name if the registry or their service is set to auto renewal of domain names. But I also noticed that when you're looking at different top levels, and the WHOIS output, there is a mix of registry expiration date and registrar expiration date. So putting expiration dates here, we kind of have to identify, if we identify it is

to be the registry or the registrar, we have to make sure that it is possible for the end users at least to identify this date. Thank you.

ROGER CARNEY: Thanks, Steinar. And I think that's what Holida trying to get at, was there being multiple expiration dates. And people sometimes change those. How do we make this so that it's understood for the correct payment period? And as Steinar mentioned, if that's using registrar expiration date as they control that date and they control when they get—control I suppose is in air quotes—they know when they get payment for that satisfactory renewal. Jody, please go ahead.

JODY KOLKER: Thanks, Roger. I agree with Steinar. I think that's a great idea, that maybe the expiration date should say registrar expiration date on there, because that's really what the registrar is going off of, is our own expiration date, not necessarily at the registries. And that would be based on what they've been paid for the domain. Just wanted to say I agree with that. Thanks.

ROGER CARNEY: Thanks, Jody. Okay, any other comments on that? And maybe if Holida has any follow up on that, I think that that was her point, too, is to clarify what that expiration date really was. Okay. Everyone give a thought to that, read that through and see if registrar expiration date makes more sense there. And then as Steinar says, it at least directs people to the correct date as those dates can fluctuate during that expiration cycle there.

Okay, let's go ahead and move on to Sarah's question mark of what is registrar hold in this last part when it says that a domain name must be put into registrar hold status by the registrar of record prior to denial of transfer. And I think Sarah can jump on here. But she's wondering what the register hold really means here.

Thoughts, anyone? Jody, please go ahead.

JODY KOLKER:

I'm kind of curious about this myself. Because by contract, aren't we supposed to be—I don't want to say misconfiguring the DNS or interrupting the DNS resolution of the domain, whether that's changing the name servers of the domain so that it doesn't resolve as it did before, or we can also put the domain on what's called a client hold, which is the same terminology as a registrar hold, I believe. But I'm wondering if that exact wording from the contract is supposed to be in here instead of what we currently have right now.

Okay, thanks, Jody. Yeah, and I do remember that there's something I can't remember where it's at. But Greg, please go ahead.

GREG DIBIASE:

Sorry, lowering it. I think I misunderstood the question.

ROGER CARNEY: Okay. Thanks, Greg. Okay, so I think there's enough confusion on what this registrar hold is to take a look at, do we need to add something more specific in here? You know, and again, this is talking about payments and denying of a transfer so that if there's no payment, what is the registrar supposed to do here? Steinar, please go ahead.

STEINAR GRØTTERØD: What about using the EPP status that is also being referred to in the WHOIS, identifying what's supposed to be registrar hold in bracket? And I think client transfer prohibited is one of them, or maybe more, client update prohibited, etc. But this is on the client side, not on the server side. Thank you.

ROGER CARNEY: Thanks, Steinar. Sarah. Please go ahead.

SARAH WYLD: Thank you. I wonder if it was kind of intended to mean client hold status. I think I've heard people speak of a registrar hold meaning client hold EPP status. So it's possible that in this case, that was the intent. And I think I heard Jody or somebody say that the intent here was to take it out of the DNS or interrupt the operation of the domain somehow so that the person knows there's an issue. Maybe didn't say why but to interrupt the operation. So the way we could achieve that is by using client hold. Ultimately, I think the real thing here is that we need to use a term that everybody will understand in the same way, ideally, a defined term. And so if we move it to client hold, I think that solves the problem. Thank you.

ROGER CARNEY: Thanks, Sarah. And again, what we set it to, I'm not specific on, but to your point, the goal here would be to make sure that it's consistent across all implementation. So Greg, please go ahead.

GREG DIBIASE: Yeah, I was going to say I think it needs to be specific, like EPP says, like client transfer prohibited. I'm a little unsure on client hold, because then we'd be making an obligation to take the domain offline. And I'm kind of curious what people think about that. Because I don't think that is mirrored elsewhere in our agreements, that in this situation you have to suspend if it's not expired yet. I'm curious whether people think.

ROGER CARNEY: Steinar, please go ahead.

STEINAR GRØTTERØD: Sorry for making a mistake. I was actually copy pasting wrong and what I meant was transfer prohibited, not client hold, because that will kind of kill the domain name totally resolving on the net. So sorry for all the confusing in that one. But my point was actually referring to the EPP's references that we have also in the WHOIS and the RDAP instead of using kind of something that it could be misunderstood as registrar hold. That was purely my point. Again, apologize.

ROGER CARNEY: Thank you, Steinar. Okay. So in chat, Jody dropped in the EPP status code link on client hold. And as Jothan says, it doesn't prohibit a transfer. But I don't know if this policy is intended to prohibit the transfer. And again, I think that's what we have to come to, is, what does this need to do? And how do we make it consistent? Jody, please go ahead.

JODY KOLKER: Thanks, Roger. I'm kind of echoing what Greg said. Is this necessary? Because my question is, what this policy is stating is that you can't deny the transfer for a domain for nonpayment unless you've interrupted the DNS by putting the domain on client hold. In and what I'm curious about is, is that really what we want to have in here? I'm not sure which way I stand on it. I'm just curious what others think. Thanks.

ROGER CARNEY: Thanks, Jody. And Just a reminder, we're in this first section of the registrar may deny a transfer for this specific reason and again, we'll tighten up the expiration date, but for registration periods. So again, you can't stop a transfer if they're going to renew it somewhere else. But you can stop it if they haven't paid you for the prior use of it. And again, I think a couple people now have mentioned, does this last section help? Does this last sentence help this idea or not? So Sarah, please go ahead.

SARAH WYLD: Thank you. I'm thinking along those same lines, I wonder kind of like, Why is 3.7.3 so different from 3.7.1 and 3.7.2? Why does

3.7.3 necessitate doing something to the domain that like interrupted in some way while 1 and 2 do not? They seem fairly similar to me that they're all like, a problem. They're all a big problem. They're all a similar problem. So if we have it for 3, why don't we for the other two? And I'm just not sure we need it. Yeah.

ROGER CARNEY:

Okay. Thanks, Sarah. And I think that's where the discussions been kind of heading here in the last minute or so is, does this last sentence really provide anything to help 3.7.3? Maybe it's true, and maybe it's somewhere else in some other policy, but does it help this 3.7.3 make it more clearer, more concise? Does it help this 3.7.3 at all? Or should the last sentence be removed? And if not removed, we would have to get a little more specific on what we mean by this.

So I think the idea is—and several people have brought it up, does this second sentence here need to exist? And 3.7.3, we're hearing no. Are there others that think this is still applicable? And again, maybe someone from prior IRT transfer policy development has a reason here, and maybe we can even look back on why that happened, and see if we have anything specific to it. So Jody, please go ahead.

JODY KOLKER:

Thanks, Roger. I think I can understand why it was put in here. And I just want to give my view on this. A registrar could be stating that they've never been paid for the past year, but the customer is not aware of it, because their domain still resolves, their email still

resolves, everything they're doing is still working. So they're just not quite aware that their domain has expired, and that they owe money.

So putting the domain on a client hold like this would make the domain no longer resolve, their email would no longer resolve. And it really makes it front and center to the customer that they've got an issue that they need to correct. Otherwise, if it's a registrar that doesn't do that, the customer may never know why they can't transfer the domain away. I don't know, I'm just throwing that out there as a different view. Just curious what anyone else thinks. Thanks.

ROGER CARNEY:

Great. Thanks, Jody. Yeah, and Just a reminder, the language in the heading of the section does say that the registrar must inform the registrar why the denial happened. But to Jody's point, this registrar hold would provide that prior knowledge even before a transfer even started or was initiated. So, Greg, please go ahead.

GREG DIBIASE:

Yeah, I'm wondering if this is an attempt to link with the [ERRP,] expired.

ROGER CARNEY:

That's what Sarah [inaudible]

GREG DIBIASE:

Whatever the current initials are in the renewal policy, which says you have to suspend the domain or interrupt the resolution path a certain amount of time after expiration. So maybe it was that, right. They're trying to link those two obligations regardless if the idea of this is that they will get some type of notice before they lose the ability, their domain expires, or they lose the ability to renew it.

I think that is covered in the renewal policy. So I don't think connective tissue—Yeah. Jothan. Good. Yeah. I don't think the connective tissue is necessarily needed, because we do have that backstop in the renewal policy. And it's just kind of confusing.

ROGER CARNEY:

Great. Thanks, Greg. Again, I think that the way we're heading is the removal of this last sentence, but I would like to ask staff actually if we can maybe look back and see if we can find anything that suggests why this was put in here. And maybe that's still applicable, and we're just not thinking about it. If we can't find it, that's fine. But maybe we can find something that suggests why this was put in.

And to Jody's point about notification. Obviously, if you put a register hold on earlier, prior to a transfer request, there's a likelihood if the domain is being used, that the registrant would notice. And again, that's prior to the transfer request, but specifically at a transfer request, the registrar's responsible for telling them that anyway. Okay. So let's see if we can find any backstory on this. Otherwise, I think that what we're hearing here is maybe this should be removed, just as it's not adding to anything here.

Okay. Let's go ahead and move on to our next item then. Thank you. 3.7.4, go to a must. And I think that we had pretty good agreement on that, going to a must. Yeah, and updating transfer contact. Transfer contact is one individual now. Okay, thanks, Steinar. It sounds like we have good agreement on that last sentence on 3.7.3 removal. But any other comments on 3.7.4? I think that this one was fairly straightforward. Move to a must and update transfer contact. I don't think there was much else here that we needed to do so. Okay, and if anybody has anything again, please add it, and we'll see it in the document.

So let's jump to 3.7.5, which I think is where we ended our polling last week anyway. And this is, obviously we need to update the time when we get to that. And actually, I think what we're saying in 3.7.5, I think we also said this should go to a must. Because if we're setting the timeline, then obviously we're saying it's a must. But again, the timeline has to be updated when we come to that agreement.

Okay, so yeah, I think 3.7.5 moving to a must is good. And I think 3.7.6 was a must as well. But I don't think we have—maybe Julie or someone can tell me, Caitlin can tell me if this is where we actually stopped last week. Emily maybe. Okay, thanks.

Okay, so let's go ahead and jump back into the poll then so we can get some discussion going for the poll. And I think this will take us right back to 3.7.6. Yes. Excellent. So again, just those that are active participants need to answer this. Otherwise, you don't need to answer them. And we'll read through the question and give a few minutes and if there's any clarifying questions needed before concluding the poll, that's good.

But let's go ahead and jump into these. 3.7.6 is a domain name is within 60 days, obviously updating, or a lesser period to be determined after being transferred, apart from being transferred back to the original registrar in cases where both registrars so agree, and/or where a decision in the dispute resolution process so directs, transfer shall only mean that an inter registrar transfer has occurred in accordance with the procedures of this policy. It was a long winded one, but I think our options here is leave it as a may and keep the language as is, leave as a may but make edits, change to a must and possibly make edits, or other/don't know, more discussions needed.

Again, this kind of goes in line with 3.7.5 talking about the period of locking, which again, we're not sure of that timeline yet, but we'll get to it. So please select your choice here and we will discuss shortly.

Okay, let's go ahead and show the results. And I think as we noted, we thought this would move to a must. And again, as Jothan pointed out in chat, these are dependent on our future discussions on the transfer dispute and the reversal of a transfer. I don't want to say clawback, but reversal.

And again, obviously, some updates will need to happen on the days. But I think otherwise, it's fairly straightforward. And it looks very well move to a must. But those that want to leave it a may, if you want to talk to that and you have strong opinion on why it should stay a may, please go ahead and jump on. Or if you're not sure, and you want to discuss something else about it—looked like a couple people have not completely agreed on moving it or updating it. So anyone have any thoughts that they want to bring

forward? Otherwise, I think that we'll jump this to a must and obviously update the days once we get to that spot.

And Jothan pointed out in chat possibly our discussion on reversal or whatever we're calling that, if it's needed, may make some people change their minds on if it's a may or must. But for now, I think we'll say that it goes to a must and if those discussions lead us down a different path, then we can update that.

Okay, let's go ahead and close out this and jump into our next question. And now we jump into the next section of must deny. And again, we've moved a few into here but let's take a look at these original five in here. And the first one being a pending UDRP proceeding that the registrar has been informed of. It must deny the transfer if you know that there's a proceeding ongoing. So we do you want to leave this as a must and keep the language as is, leave as a must but make some edits to the language, change to a may and possibly edit, or don't know and want to further discuss that. So again, please go ahead and answer. Just those active participants need to answer. And we will discuss shortly.

Okay, let's go ahead and take a look at the results. Okay, so strong support for leaving it a must, 80-some percent. Maybe there's a language change or and there's even someone that suggests maybe this goes to a may. So anyone that wants to speak to this, please. Emily, go ahead.

EMILY BARABAS: Thanks, Roger. I just wanted to remind folks of a conversation that happened because it was a couple of weeks ago now. There was some suggestion that perhaps clarifying the language of what it means for dependency of a UDRP proceeding to be in place to specify that it can't be transferred, that the name can't be transferred once the registrar receives the notification of the complaint from a UDRP provider. So that still is a potential clarification that could be made if folks supported it. And there was also some discussion of potentially combining the language of this provision with 3.8.4. So, just wanted to highlight those. Thanks.

ROGER CARNEY: Great. Thanks, Emily. I'll just bring up also the informed of ... We sort of discussed with WIPO in forum yesterday as well. They mentioned that if a complainant sent the UDRP request to the registrar and to the provider, possibly at the same time, some registrars were putting that stop, putting that "lock" at that time prior to the provider actually looking at the request and confirming the request and then notifying the registrar. So, they've mentioned that. They didn't say it happened often or not but they did say that some registrars take a UDRP complaint as valid as soon as it's submitted and prior to when the provider actually has to notify the registrar of record. There may need to be some clarification there as well that can be added. Should registrars only do it when the provider acknowledges it back to the registrar or should there still be the flexibility of registrars blocking that, just on the knowledge of the complaint.

Again, any comments? Zak, go ahead.

ZAC MUSCOVITCH: Yeah. I think that's a really good observation by WIPO in forum that some registrars just have been informed of a complaint—a UDRP complaint. But technically there's a question about whether it's pending or not because it hasn't been commenced and it hasn't been notified by the provider to the registrar in accordance with the rules. So I think some more precise language could be useful there, perhaps referencing the procedure in the UDRP rules which constitutes a notification by the provider to the registrar.

Otherwise, anybody ... There's the case that the provider has pointed out that somebody, a complainant, can provide a complaint that hasn't been gone through administrative compliance by the provider and hasn't been officially commenced as that situation.

There's also the situation where someone just emails a registrar saying that they plan on commencing a UDRP. So the question is: is that a pending UDRP proceeding?

So, I think if it's more precise, it turns on what I think we discussed in a couple of calls, I believe as Emily mentioned, which is the formal notification of the commencement of the proceeding by the provider to the registrar in accordance with the UDRP rules. Thank you.

ROGER CARNEY: Great. Thanks, Zak. I think that's the key is do we want to enforce that. It seems more, as Zak said, and [inaudible] technically correct or not, but it seems more correct that there's various points

prior to the provider actually agreeing that this is a valid complaint that a registrar may get notice. Is there harm there? Obviously, there's potential harm if someone can just file something that's not administratively correct to the provider and there's been a hold on place. I think we have to think about that.

And as Zak mentioned, in the UDRP rules, there's a specific call-out that says the provider has to provide notice to I think everyone, basically, at the same time ICANN and registrar and everyone else that, yes, there is a complaint and it started the process.

So, okay. I think that the idea here is to keep this in the "must" section but need to update the timing of the proceeding. What does the proceeding mean? When does that really start? So I think we need to come up with language, and again that helps define the informed of piece of that too because, if we say that it's tied directly to the UDRP rule of provider notification that's informed of by them. I think that's a good [inaudible]. Unless people disagree with that, I think that's where we need to direct this towards is being specific that this is when the provider notifies the registrar.

Okay, let's go ahead and close this one and move on to the next one.

So, 3.8.2. Court order by a court of competent jurisdiction. Okay, our options again are leave as a must and keep the language as-is, leave as a must but make edits to the language, change to a may and possibly edit, or just need more information or want to

discuss it further. So, please go ahead and make your choice here and we will discuss shortly.

Okay, let's go ahead and show the results. So, definitely keep as a must. Everyone agreed on that. There were some ideas of maybe updating the text, and if someone wants to come on and suggest some text or wants to talk about what that is ... Keiron, please go ahead.

KEIRON TOBIN: Thank you. I don't understand why it says a court of competent jurisdiction. Any court order, every country that is recognized, unilaterally has its own laws put in place, so I don't understand a competent jurisdiction. Just a court order in general would be perfectly well to suffice. Thank you.

ROGER CARNEY: Thanks, Keiron. I'm not a lawyer but I think competent jurisdiction has to be ... I won't even try. Zak, please go ahead.

ZAK MUSCOVITCH: Thanks. I've been following Twitter so much these days, I'm going to use some Twitter language. So, lawyer here. And think this was discussed briefly a week or two ago as well.

The reason that one could include competent jurisdiction here is there's a kind of limitation on just any court order is that some registrars, for example Tucows in Toronto or GoDaddy in Arizona or Namecheap in Washington. Whatever the case is, they

sometimes take positions that in order for a court order to be effective and binding on the registrar, it must be what's sometimes referred to as regularized or court-approved locally.

So, the procedure would be let's say someone in Timbuktu has a court order, then they would send it to the registrar. The registrar—let's say it's based in Toronto where I am—is fully within its rights to say, "Yes, we're not bound by a Timbuktu court order. You must now obtain, get it localized by having a court in our jurisdiction, in our province of Ontario, Canada to essentially approve it." It's often just a rubberstamp. It's an extra procedure.

Sometimes registrars take that position because they don't want to have to necessarily comply with a court order that may be obtained in a jurisdiction that they don't believe has a fair court system or they may just take the position generally, "Listen, we're a registrar located in this specific jurisdiction. If you want a court order to be enforced against us, get one in our jurisdiction." So that's often what a court of competent jurisdiction means.

It is open to interpretation. A registrar could take the position that says, "But Timbuktu court is a court of competent jurisdiction generally." Other registrars could say, "No, competent means within our own home jurisdiction." Thank you.

ROGER CARNEY:

Thanks, Zak. Okay. So, I think we can leave it as-is. I think that that's a good explanation there. Zak and Sarah is agreeing with that. So I think that we can leave that as competent jurisdiction

and that would be obviously the registrar's prerogative of decision there.

Okay, any other comments on this one? All right. Let's go ahead and close out of that and go to the next poll question, please.

All right, 3.8.3. Pending dispute related to a previous transfer pursuant to the transfer dispute resolution policy. Okay. And our choices again are leave as a must and as-is, leave as a must but maybe edit it, change to a may with possible edits, or just other want to discuss further/not sure on that result. Again, this is must deny a transfer for this reason. So, select one of your options here and we will discuss shortly.

Okay, let's go ahead and look at the results. We've got high 90% here of keeping it as a must and the language seems mostly okay. It looks like one person wanted to discuss further or possibly suggest some edits on the wording here. So let's go ahead and jump in if someone wants to talk about possible updates to this to make clear or if somebody wants to discuss this further for any other reasons. Any thoughts among anyone that selected edits or want to discuss? Steiner, please go ahead.

STEINAR GRØTTERØD: It's understanding of this that any previous dispute is not finalized, is not been settled and that's why it must be impossible to transfer it. Is that your understanding of this point? Thank you.

ROGER CARNEY: Thanks, Steinar. Good question. Mike, please go ahead.

MIKE RODENBAUGH: I believe that's what it was supposed to mean is that it has to be a pending proceeding under the TDRP. I think this wording is a little ambiguous and maybe allows too much wiggle room because it says it's a dispute related to a transfer pursuant to that ... It's much more broader than I think it was intended to mean or that it actually has been meaning in practice, which is that there has to actually be a pending TDRP dispute with respect to that specific domain name.

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

SARAH WYLD: Thank you. No disagreements. Just is it possible that we are going to change the transfer dispute resolution policy in some way that affects this? Should we make a note to come back to this when we really get into that? Maybe even if we just change the name of it. I'm just imagining it might be something we need to note to come back to later. Thank you.

ROGER CARNEY: Thanks. I think obviously anything that refers to any of the dispute mechanisms we'll need to touch back on to make sure that's still valid. Should we clean this up prior to that, and as you noted, so that we can come back to it? As Mike suggests, maybe this is a little too broad or maybe we could get a little more specific here.

I can't think of how this gets broken, and again I'm sure somebody has an idea or have seen it used incorrectly. So making it more clear is obviously a good thing. Anybody with ideas on how to clarify this, make it more clear, make it more precise, please jump on and discuss it or add a comment to the document?

Sarah, please go ahead.

SARAH WYLD:

Thank you. I think I'm just finally now understanding what Steinar said like five minutes ago, so my apologies for catching up slowly. The pending dispute part seemed reasonable to me, but related to a previous transfer pursuant ... Do we need the word previous there? What if it's a pending dispute about the transfer that's submitted right now? Although I guess under a new process there won't be time for it to be at that point. Okay, I'm not sure if that was helpful or confusing, but thank you Steinar for pointing out that word "previous" in there.

ROGER CARNEY:

Thanks, Sarah. I think that's the issue. Does that middle part help? Does it do anything? Obviously, if there's a pending transfer dispute proceeding going on, you would want to stop this but does that middle section help do that or does it actually add confusion?

Okay, let's think about that, and as Sarah mentioned, obviously, we'll touch back on this specifically because whatever changes that are made to the transfer dispute policy, we'll have to review the whole transfer policy for all those items. But obviously we want to note that directly here.

But I think people should think about does that section in the middle of this sentence really help? Can the previous transfer be removed here? Can the language be a little more clear here? So, think about that. And if you guys think of anything, anyone thinks of anything, please put it in the document. Just add a comment. Thank you.

Let's go ahead and jump on ... Barbara, please go ahead.

BARBARA KNIGHT:

I almost think that we do need to clarify that a little bit a previous transfer may be the result of a domain name jumping from registrar to registrar. I think Jothan had put something in the notes relative to that.

So, the previous transfer may be a legitimate transfer. So I would probably vote for just saying pending dispute under the transfer dispute resolution policy.

ROGER CARNEY:

Yeah. Great. Thanks, Barbara. And I think that's a good wording. Again, everyone just take a look at it. Does that help? Does it not? If you have other wording suggestions, please drop them in there on Emily's comment there.

Okay, let's jump into number four then. Okay, so must deny. Reason here is URS proceeding or URS suspension that the registrar has been informed of. And I just want to call back to what Emily mentioned was there was some discussion about combining number one and four together, if somebody could work out the

wording to help there. Ow, we can keep them separate. It's just that they're very much similar to each other.

So, let's jump in. Again, responses are leave as a must and keep the language, leave as a must but make edits, change to a may and possibly edits, or other/want to discuss further. Again, think about should one and four be combined and is that a slight edit. Or should they be separate just to make the distinction that they are two different processes. Please go ahead and answer and we'll discuss shortly.

Okay, let's go ahead and see the results. Okay. So, keeping it as a must is 100%, so that's good. But maybe some edits and I assume that those edits are maybe combining the two to maybe streamline it. I don't know. Anyone that thought of some edits, that may help. And again, maybe the proceeding as we talked about in 3.1, maybe proceeding has to be updated as well to make sure that that's a specific point in time. Keiron, please go ahead.

KEIRON TOBIN:

Thank you. Yeah. I'm not opposed to combining 8.1 with 3.8.4 although I would say if we were to leave 3.8.4 as it is, the URS proceeding or URS suspension that the registrar has been informed of, I think it's easier just to say URS action, the registrar has been informed of because they both practically make ... Any URS is essentially ... Any form of action from a URS is going to prevent it anyway because that's at the registry level. I just think the word "action" can remove some of that wording there. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. Any other ideas, thoughts, comments on that? Steinar put in chat that maybe they should stay separate as they are different processes. And as Keiron just mentioned and as I may have alluded to earlier, is that obviously, I think that in 3.8.1, the pending proceeding and the URS proceeding and in 8.4 I think still has that same problem of okay, what is that? And as Keiron was trying to solve with maybe just changing it to action or something like that. Thoughts and comments on that. Steinar, please go ahead.

STEINAR GRØTTERØD: Maybe my memory doesn't serve me correctly. But if I recall, from my days being a registry operator, I actually think that when there was a URS, the first thing registry has to do is to lock the domain and preventing transfers and updates, etc. So if this is correct, then the transfer cannot be executed. It's been locked by the registry. So must at least, but I'm not sure. And it should be referred to here, but I'm not sure where the wording is completely correct. Thank you. Or understandable.

ROGER CARNEY: And that's a good point to call out. You know, the UDRP is registrar focused so that the registrar is dealing with those and the registry has little, if nothing to do with it. Whereas the URS is very registry specific. And that goes to the registry directly. And the registrar should be notified, but the registry is doing the locking on their side. And again, I think it's useful to be in here, on the

instance of you can deny it for that reason, and that way the registrar knows up front without having to dig into it. But obviously, those two have different meanings. UDRP is registrar focused and URS is registry focused. Steinar, your hand is up.

STEINAR GRØTTERØD: Yeah, just a short comment. I also think I remember that the registry has to execute these locks within 24 hours of the receipt of the notice. So there's kind of a clear requirement been put on the registry. So after 24 hours, the domain name cannot be transferred, because it's locked by the system. Thank you.

ROGER CARNEY: Great. Thanks, Steinar. And just [inaudible] the staff that I'm sure they're paying attention to what Zak and Jothan are saying in chat there about some suggested wording. But Zak, please go ahead.

ZAK MUSCOVICH: Thank you, Roger. So just thinking a little bit forward about trying to future proof the transfer policy in the event that one day before it gets reviewed and revised again, that perhaps in the interim, there's different rights protection mechanisms, maybe it's not the UDRP or URS, maybe there's a third one or maybe the terminology gets changed, for example. So I'm wondering whether the language could be more generalized, perhaps an additional point like a 3.8.6 or maybe we revise the URS and UDRP provision to say something to the effect that UDRP, URS or other consensus ICANN rights protection mechanism policy has been commenced and notified by the provider. That's all. Thank you.

ROGER CARNEY: Great. Thanks, Zak. Yeah, that's a tough one. You try to future proof, which is a great thing. But it gets tricky on timing and implementation status and things like that. If a new RPM comes into effect, and then the transfer policy references new RPMs, does that take effect immediately? The new RPM may be able to handle that by implementing an implementation timeframe where it works, that the transfer policy doesn't have to affect—and I think it just gets a little tough. But it's always good to do.

Okay, sounds like keeping them separate, I think, is the idea, but need to update so that we know specific points in time about, again, proceeding of when the registrar's informed on these ideas. So again, what is a proceeding and where does that notice come from? I think we kind of solved that. And then Zak had some language in chat that got some plus ones. So maybe we take a look at that and we can update both of those similar like that.

Okay, any other comments on this one? Good agreement. Great. Okay, let's go ahead and close this and do 3.8.5. Okay, thank you.

EMILY BARABAS: Hi Roger, we actually don't have a poll question for 3.8.5 because that's one that we're going to be revisiting after phase 1B. And I think there was agreement that there would be a pause on discussing that until those deliberations are complete. So no poll question there, but then we can just go ahead and skip to 3.9.1 unless there's something else that needs to be discussed here. Thank you.

ROGER CARNEY: Thank you, Emily. I think we did agree that and I just forgot. So thank you. So yes, let's jump into the may not deny section and jump into 3.9.1 actually. So 3.9.1, you may not deny a transfer. So 3.9.1 is nonpayment for a pending or future registration period. And I think Holida provided us some information that they thought on this one as well.

So let's go ahead and look at 3.9.1. Should this be left in may not and language [stays?] Does it stay here and some edits are needed? Removed from the list. Does it apply anywhere, or further discussions needed on this? Okay, please go ahead and select your choice and we'll discuss shortly.

Okay, let's go ahead and show the results there. Okay, so it needs to stay, obviously, 100% of people think it needs to stay here in the section. But a good more than 50% thought the wording should be updated. And I think again, the wording on what pending—I think the pending is the big thing, pending nonpayment or pending ... So I think that—Actually, is there some comments there? Oh, Holida, go ahead.

HOLIDA YANIK: I found this in advisory and noted that this issue was previously discussed during previous policy reviews and was left for the consideration of the future PDP. And yes, I would here recommend to make some changes to clarify the language and make it more precise. So for example, to say, like may not be denied on the basis for nonpayment of fees for the registration

period after the expiration date, or as we discussed previously, after the registrar of record expiration date, if the domain name is in auto renew or something else, but I'm stuck here. Sorry.

ROGER CARNEY:

That's okay. Yeah, I think we need to update this so we can do that. Let's work on the wording. And I think again, Holida has provided some good information in the doc. So we don't have to edit this now on the fly. But I think again, Holida has pointed us to some good verbiage that we can actually use here in our comments. So let's take a look at that in 3.9.1. We agree that it should stay here. Great. We probably should update it so that we're more clear on what that pending or future is so that it avoids any conflict there.

Okay. So again, everyone take a look at that. And if they get some wording that they think works good, including Holida and staff, if they come up with something, let's share that in the doc and we can discuss that and get it updated.

Okay, so let's go ahead and close out of that one and jump to the next question. 3.9.2, no response from the registered name holder or administrative contact. So you may not deny a transfer for this reason. So should this stay in the may not and keep the language as is, leave as may not but make some edits, remove from the list, maybe it goes somewhere else, maybe just drops off the list completely, or maybe needs further discussion. So please go ahead and make your selection and we'll discuss shortly.

Okay, let's go ahead and show the results. So there is a different response here than we've been getting. The majority of people thought it should stay in here, and probably with some edits. And obviously, I think the administrative contact thing should probably be removed, but other edits than that may be needed as well. But there were also some that thought, maybe remove it from the list completely, or just several people want to discuss it further. Keiron, please go ahead.

KEIRON TOBIN:

Thank you. Yeah, I understand where the person mentioned just in regards to get rid of it, I did vote to kind of just potentially make edits, but I'm actually just trying to work out what is the purpose of this.

ROGER CARNEY:

Okay, thanks, Keiron. Good question. I think that's valid. Is there a reason for it? Does it help? And maybe Holida or someone from staff may know the reason behind this. And thinking about it, it's like, okay, cannot deny a transfer just because you haven't been able to talk to the registrant or get a hold of the registrar. Holida, please go ahead.

HOLIDA YANIK:

I guess this might be related to the gaining FOA, which required affirmative response from the transfer contact. Maybe so.

ROGER CARNEY: Yeah. And when I think about it, it seems like just because you don't get a response from the registered name holder, is that a valid reason to deny a transfer? And I think that's the impetus of why this is falling in here. So, Keiron, please go ahead.

KEIRON TOBIN: Yeah, actually, now Holida said that, that probably would actually make sense as to why that's there. And obviously, if we don't have that, it seems obsolete. And I would probably now change my vote to be in favor of to get rid of it. Thank you.

ROGER CARNEY: Great. Thanks, Keiron. So we're getting some people thinking maybe this isn't needed, others that thought this was needed and should be kept here. Maybe we discuss those ideas of why it should still be here. Steinar, please go ahead.

STEINAR GRØTTERØD: My vote was I didn't know exactly what I was doing. So I took that option. But if we agree upon a process in the registered name holder to get the TAC, and the TAC is handled in a secure way, etc., I don't think this is needed at all. I think that can be removed from the section of the policy.

ROGER CARNEY: Okay, great. Thanks, Steinar. Okay, we're almost out of time here. So I want to wrap this up. And we'll come back to this next week at our ICANN meeting next week. But yeah, and maybe I'll just leave

it with the thought of as Steinar talked about, sort of the process there if a TAC is requested, we're going to send a notification to the registered name holder. Is there a possibility that registrar would try to deny the transfer just because they didn't hear back from the registered name holder when they tried to notify them?

Again, since we're changing the losing and gain FOAs, maybe this does go away. Just think about that. And I think that here is not so much the registrant, more the registrar. Is there a way a registrar could abuse this? And that's the one reason I can think of right now. But again, we'll pick up on this next week. And I think the majority of our agenda for ICANN is on bulk, but we'll touch on these and finish them up as well. So, okay, again, thanks, everyone. And we will talk to you next week at ICANN 73.

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

[END OF TRANSCRIPTION]