
ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 29 August 2023 at 16:00 UTC

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JULIE BISLAND:

Good morning, good afternoon, and good evening. Welcome to the Transfer Policy Review PDP Working Group call taking place on Tuesday, the 29th of August 2023.

We have no apologies for today's call. 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. Statements of Interest must be kept up to date. Does anyone have any updates to share? If so, please raise your hand or speak up now. Seeing no hands, all members and alternates will be promoted to panelist. Observers will remain as an attendee and will have access to view chat only. Please remember to state your name before speaking for the transcription. 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.

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ROGER CARNEY:

Thanks, Julie. Welcome, everyone. Just a couple of updates, I think, once you've just seen the chat. So yes, we will be skipping next week's meeting. Again, I think that this came as a good timing spot. But also, yes, there is a U.S. holiday on Monday. I can't say that that affected a lot. But yes, definitely had discussions around that. But also, we were planning to wrap up our bulk discussions today and then start a new topic so we thought it was a good timing for a break. That's why no meeting next week. But again, we want to wrap up the bulk discussions today so let's not waste too much time and jump into that.

Other than that, I think the only other item for me, does any of the stakeholder groups want to come forward? Any comments, discussions they've been having? And maybe, Steinar, I'll have you jump in after the review because we'll talk about that specifically from the ALAC's concern. So, Owen and Steinar, when we get to our fee discussion, before we get to our free discussion. Steinar, do you have anything else to add now? Okay. Thanks, Steinar. Great, thank you.

Okay. I think we can go ahead and jump into our agenda here and just get the review going so that we can get into some more substantial discussions and hopefully get any of the remaining big items closed as we were hoping to wrap up our bulk discussions today. So I think I will turn this over to Julie real quick to give us a recap of our discussions last week and anything that came in since then. Julie?

JULIE HEDLUND: Thanks, Roger. Welcome, everyone. This is Julie Hedlund from staff, filling in for Caitlin today. So let's go first to a recap of the agreements from the last meeting. Today's slides start on slide 52, just a continuation of the slides from last week. So then moving on to slide 54, what you see in front of you for Preliminary Agreement #1. In the previous discussion, the working group suggested taking examples out of the text of the agreement, but retaining them in a footnote to assist those implementing the recommendation. During last week's call, it was suggested that there should be an example included that does not involve involuntary termination since the registry could also choose to waive a fee in a voluntary situation.

So in light of that suggestion, support staff has added the highlighted text which you see before you. We'd be interested in your thoughts on this text. And in particular, if you'd like to, you can enter your comments directly into the working document. For example, if there's a different example you'd prefer that we include or if you want to make changes to this example. So let me just pause there and see if there are any questions there on Preliminary Agreement #1. So that addition, a registrar chooses to voluntarily cease operations with a specific TLD. Roger, I'm not seeing any hands or anything. Let's see. Jothan. "The middle example could be removed and keep fist and last." What do folks think about that? I want to highlight the middle example. Jothan, please.

JOTHAN FRAKES: I was just suggesting that because you've got two kinds of negative examples. I'm just more thinking of it from the optics of

how often people are bashing on registrars, that perhaps if we have one is involuntary termination, the latter is sort of a voluntary termination. And in the case where a registrar is making a choice to do this, rather than having it be kind of negative, it's purely a sentimentality concept. Thank you.

JULIE HEDLUND: Thanks, Jothan. I see Sarah notes in chat. "The first two examples do seem to be both involuntary termination." I'm not sure we need both, but don't have any strong fields. I see Rick's hand is up. Rick, please.

RICK WILHELM: Thank you. Rick Wilhelm, Registries. I'm fine with keeping the middle one in. I would note that when we talked about this last week, I thought there was a comment that I think that I put in the chat that it should be unresponsive to accreditation renewal notices. Because as it's written right now, the comment last week was that it was ambiguous because it might be misconstrued about domain renewal notices, and that was the situation here. Thank you.

JULIE HEDLUND: Thanks, Rick. We can make a note of that. Any objection to adding accreditation to renewal notices? I'm not seeing any hands up or anything in chat. Okay. It looks like we're making a note of that. Thanks.

All right. So, I think, Jothan, I'm not seeing any objection. We'll keep both the first, the second, and the third examples with a modification to the second example. Jothan is saying okay. Thanks, Jothan.

All right, moving along to Preliminary Agreement #2. And just a reminder where we stood on this one, during the meeting last week, Rick suggested that the current policy holds the gaining registrar responsible for any fee, and wondered why the working group a change to the losing registrar. So, with that suggestion, the working group agreed to revert to the language of the gaining registrar in part because, one, the gaining registrar is the entity inheriting new customers. Two, a potentially insolvent entity like a terminating losing registrar would be unlikely to pay the fee. And three, it seems unlikely the registry would waive a fee for a company that is no longer doing business with, that is the losing registrar. So no one during last week's discussion objected to changing back to gaining registrar, and that is reflected in the language that you see highlighted here. Gaining registrar through the transfers, inheriting new customers and to the losing registrar may be going out of business and accordingly may be unable to pay the fee on gaining registrar of course listed in Preliminary Agreement #2. I see a thumbs up. Theo, I don't know if that's for this change or the previous. Any comments/concerns? Roger, I don't see any hands up unless I'm missing anything.

ROGER CARNEY: That sounds good. Let's go ahead and move on.

JULIE HEDLUND:

All right, excellent. So moving right along. Slide 56. So [inaudible] have updated Concept 2 and Concept 3 for the feedback from the working group in the last discussion. And just to note that we didn't make any changes to Concept 1 but we've included here for comprehensiveness. For Concept 2, it was suggested to remove the reference to abusive pricing and instead provide language regarding transparency. Highlighted here, we say, "In order to promote transparency in pricing." That was added to. For Concept 3, the word "total" was added before fee for clarity. The numbers are highlighted, by the way, because we're awaiting suggestions, and we'll come back to that on this call as well for the suggestions on pricing. Any concerns about these changes? All right, I'm not seeing anything.

Moving to slide 57. Thank you. So here, staff added some language in attempt to address some of the working group's concerns with Concept 4. The added language attempts to clarify that when the group agrees to a total fee. Right now, there's just an example of 50k. Registries are not required to charge a fee nor are they required to change the maximum allowable based on the apportion percentage. That is when multiple registries are involved.

The highlighted language attempts to make clear that a registry may charge up to but not greater than the allotted percentage. So we welcome any updates here. So what we'd like to get is—and maybe this is a good time for Steinar to raise his comment—we either agree to fees or perhaps we agree to completely remove the fee. Note that if there's no agreement, the status quo remains and that is there was a fee in the policy to begin with. That's what

we'd go back to if there was no agreement. Also, we did earlier provide an example of tiered pricing, which we could do here as well. But, Roger, maybe I'll turn it over to you to facilitate this discussion at this point, see if Steinar wants to raise his comments as well. Okay. I see Steinar's hand is up. Steinar?

STEINAR GRØTTERØD: Hi. I don't know whether this is the time to do that. But I just want to inform the working group about some sort of an intensive discussion that has taken place in the Consolidated Policy Working Group the last week. And it kind of started by Michael Palage was listening into the recording or maybe attending live, but he is not an alternate and not representative of At-Large. Anyway, he was listening to the recording last meeting. What he heard was that he was afraid that this working group will get into something that is, to the way I understand it, the antitrust competition legal stuff that we have to take care of because there were references to certain amount fees into the contract. As one thing that he kind of recommended in this was that we should try to make any policy without any specific numbers due to the antitrust and competition laws that is present.

Having that say, we're going to have a Consolidated Policy Working Group meeting tomorrow, and I have asked for some clearance about what At-Large should advocate in this working group if we should advocate anything, and so on. I just want to give some sort of an early warning that there might be some comments coming from At-Large in that area. I guess there are also members in this working group that also participated in the Consolidated Policy Working Group mailing list, and there is a set

of all these pros and cons. It's also been some sort of a spin off and so on. But my point is early warning. I hope I'll come back with some clearance about the view of At-Large in this area. Thank you very much.

JULIE HEDLUND: Thanks so much Steinar. I see Owen has his hand up. Owen?

OWEN SMIGELSKI: Thanks, Julie. While I certainly can appreciate antitrust concerns, things like that or setting prices, I'm not really sure that that is anything that we necessarily need to consider within this group. I do know that ICANN was set up with consultation from some antitrust experts, and there's a legal team which is always looking at these kinds of things. This price for bulk transfers has been in the policy for, my goodness, I don't know how long. I know the RAA has specifications with regards to how much money a registrar can charge for a bulk access to registration data, which is \$10,000. So, I mean, ICANN does in several areas specify costs and prices, and they do have price caps in some of the Registry Agreements, and they do dictate fees and things like that. So I'm not really too concerned. I think we should go ahead and do what we want to do, see if there's any public comment. But if we have something that we think is work and reasonable and makes sense in terms of a process perspective, then fine, and then leave it to somebody else later who's a lot smarter in those stuff about antitrust laws which are horribly complicated to even a simple attorney like me. Thanks.

JULIE HEDLUND: Thanks, Owen. I welcome comments from others regarding the issue Steinar has raised, but also we have the highlighted language here. Does anybody have any comments on that language and the question of whether or not to include fees or to not include fees, or something else? I see Catherine's hand is up. Catherine, please.

CATHERINE MERDINGER: Thanks. I agree with Owen in that I don't see this as an issue. I also am concerned that if we're not allowed to talk about the fees, does that mean the fees can't change ever? So are we going to always be stuck with a \$50,000 fee forever if we're not allowed to talk about it? So even if we ought to get rid of it, that's a discussion that would potentially, according to this issue, be an antitrust concern. So I think it's kind of a bit of a red herring.

On this language, I have a question about do we have thoughts on how this could work if one of the registry operators wants to waive their portion of the fee. Let's assume that .abc wants to waive their fee because this is what they do. They never charge for these things and they always waived the fee. Does the other registrar get to bill for the \$50,000 or are they limited to the \$16,666.67? Thought? Thanks.

ROGER CARNEY: Great question, Catherine. I think Theo brought that up last week as well. Rick has a solution, I think. Rick, please go ahead.

RICK WILHELM: The Registries, we haven't really kind of contemplated this too heavily, although the notion of a proportional fee is something that Galvin and I were talking about. It's not out of the question, but we haven't run it by our full Registry crew. But the initial reaction would be that the idea that one registry would waive it and the other registries would benefit from it would seem to be a little bit antithetical. So unless Jim starts yelling at me in the back channel here pretty quickly, I would say no, Registry DEF would not be able to benefit from Registry ABC waiving the fee. There are incentives.

ROGER CARNEY: Great. Thanks, Rick. Yeah, thanks. I think to your first point there, this is obviously one solution. So as you discuss that amongst the Registries, it will give you feedback on it and any other ideas as well. I had the same idea, Rick, that the percentages would be set up front and whoever waived them waived them, and no one would get to adjust their numbers based on who waved or not. Catherine, your hand popped back up.

CATHERINE MERDINGER: Yes, I was just going to say then I think that needs to be clearer in whatever language. If this is what we end on, we need to make that more clear. But otherwise, that sounds good. Thanks, guys.

ROGER CARNEY: Great. Thanks, Catherine. And thanks, Catherine, for bringing it up. I'll throw it back to Theo since he brought it up last week or the week before, if that kind of also falls in line with what his concerns were. Again, obviously, yeah, we would have to put some language into to account for it. Rick, please go ahead.

RICK WILHELM: Thanks. Just a question. When Jim and I were thinking about this thing, a question that we had was, the \$50,000, is that the number? Because in one spot, it's in brackets, and in another spot, it's not in brackets. Then also, is that number based on a minimum number of names? So that's one question. One question is the \$50,000. Two is the current policy is there's a minimum number of names that's involved. Is that also in play here? Third question is, is there a minimum number of names that a registry has involved in order to qualify? Fourth question—if so, what is that? Another question is, how does all this get handled? Because the math on this is difficult to determine. Because as we know, as those within earshot know, when you're doing these kinds of transfers, the names move up until the very last minute. There's probably more questions here but those are our questions that help in understanding is a registry allowed to bill for one name, as an example? Thank you.

ROGER CARNEY: Great questions, Rick, because I think that you started it with the bracketing that I think we have to consider all these numbers, basically, in brackets because we're using them as examples now and we need to get to that number. I think that your questions are

very pointed and the group should be able to answer each one of those and I don't think they have yet. So I think that's still up for discussion of, okay, what is that number? And is it based on a certain number or up to a certain number, whatever that is? And to your point, is there other numbers that matter? If there are five registries and one registry has five names, are they going to get a part of that dollars? Again, you would think they would probably waive it, but maybe not. But are there bounds that we need to put? Again, this whole idea here is just basically an upper bound to begin with it, the lower bound or the floor, whatever, and we're going to call it, it's going to be the zero dollars registry waving it, but all those things I think that Rick had, I think it was five or six questions, I think they are pertinent and fall into simple bulleted, okay, what do we do with this and how does this happen? The group just needs to work on those. Theo, please go ahead.

THEO GEURTS:

Thanks. So when do you want those questions to be answered, Roger? Is it today or is it something we're going to think of in the next hundred meetings that we have left? I was thinking.

ROGER CARNEY:

Two weeks ago, but since we didn't, I think we need to put them in the working document, and then have everybody take a look and input their comments in there. We'll put the questions in the working document so that we know what bounds we're really looking at and trying to set. I think that the ones that Rick brought up make sense, but maybe we'll find that, "Okay, that one really doesn't matter." I think we'll put all of those and any others that

anybody can think of here. Again, this is just one proposal. If someone has a better idea or a different idea that could solve this issue, I'd love have it brought forward. But let's put these questions or these open items or limiters here into the working document and have everyone take a look at them. And we've got a week off so let's take the next two weeks and look at them and make your comments in there, and hopefully we can get them resolved offline. Then we have one good proposal, and then maybe somebody will bring up another proposal. Julie, please go ahead.

JULIE HEDLUND: Thanks, Roger. Just to confirm that staff has taken an action item to capture those five questions. It was five, I believe. We'll record that in the notes and we'll also put those in the working document. So, looking forward to the working group providing some suggested answers or comments on those. Thank you.

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

THEO GEURTS Thanks. Another thing that sort of crossed my mind while going through these concepts, it would be sort of good to know in advance—let me phrase it like that—that something like Concept 4 is actually something that is acceptable for the Registries. You put in a lot of time here, and then and at the end of the day, there's a ton of problems. Because I could definitely sort of see that certain Registry members have completely different ideas

about Concept 4 and they might go like, “Okay, what’s the magic number here?” And then you have all these different kinds of magic numbers for all these many, many, many registries. So yeah, I mean, if you’ve got to do some work on this for such an approved transfer, there is always a cost for starting up, doing this, doing that, and that will be definitely different among registries. On the other hand, yeah, we can’t accommodate every registry in world, just like we can’t accommodate every registrar in the world. Thanks.

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

RICK WILHELM: Thanks, Theo. I appreciate that. One, just to let you know, I’m guessing that if we were not all watching, Julie could probably type out rough answers to these in real time. But typing in real time while 40 people are watching is kind of hard so we wouldn’t certainly want to put her on that kind of spot. So I’m grinning as I say that. I don’t think that these questions were killer difficult.

I think that getting everybody to agree on the actual numbers that we put into the boxes that Julie and the rest of the staff team put into the spots are going to be interesting. Is it 50,000? What are the thresholds of the names? What is the cut-off percentage of where people may or may not bill? That sort of thing could get interesting.

I also think that this sort of a proposal is going to be kind of difficult to administer. I’ve not come up with, as I’ve been thinking about

this, and Jim and I have had some sidebar on it previously to this call. We've not figured out a way for this to be administered without ICANN Org being involved as an intermediary, maybe someone else has, but I don't know of a way for it to be done without ICANN operationally getting in the middle of it. From the Registry perspective, not speaking for the full Registry, but just wearing my PIR hat, we're not opposed to this sort of a concept. Wearing my PIR hat, I don't know if all of this is worth the effort. For these fees and the amount of money that we're talking about and all this mechanism is really worth it, I think it would be interesting for us to explore concepts related to loosening fees and reducing fees here in exchange for more flexibility around BTAPPA as something to float for broader discussion, and maybe that's a way that we can find some common ground that makes for more capability for everybody. That's just something to consider because I don't know that where we are right now with these fees that all of this effort is going to be worth it for everybody. Something to think about. But to your overarching point, I think, Theo, that if we would come up with reasonable numbers to fill in these boxes, I think, Theo, that we'd be able to get somewhere. Hopefully, that's helpful. Thank you.

ROGER CARNEY:

Thanks, Rick. I agree with you. I think that the questions posed aren't difficult questions getting to that exact number, maybe the harder, but I don't think that the questions themselves are going to take a lot of time to, I guess, get to a spot. I think that final number may be a little more difficult.

To your point on is it more complicated than it needs to be, really, I think what we're talking about is these full transfers anyway. So, it's one of those where maybe it is, an engineering term, overengineering this a bit on the fee structure. And maybe we'll find that out. I think the more comments we can get on this in the working document, the better for us and we can lead down that path. Kind of keeping separate the idea here of the full portfolio moves either for everything that a registrar has sponsorship of or even down to all in one TLD. Obviously, that gets a lot easier because then you're just dealing with a one-on-one factor. But I think when we get into our next discussion here real quick on the part or the partial portfolio moves, then it gets to be a little different. Berry, please go ahead.

BERRY COBB:

Thank you, Roger. To Rick's point about the discussions he had with Jim and thinking through this that you probably don't see a way how ICANN Org would not be involved or conversely would have to be involved in this process. Would you mind if we add to the action item of those five questions that there's a sixth question about trying to put some substance about why through this process, whether it's either just concept for all the concepts about why ICANN Org would need to be in to help manage this process or be in the middle of it, just so that it'll help staff in terms of substance for the report? Thank you.

ROGER CARNEY:

Thanks, Berry. Rick put in chat "Great suggestion." So I think that's another one to add in there. Okay. Any other comments on

this before we jump into our next topic here? Again, we haven't solved this, I understand that. But we'll get those put in the working document so that everybody can take a look at and start tweaking them and commenting on and seeing if we can get to a fairly good level of comfort.

As Julie mentioned, today the policy states 50,000 for more than 50,000. So if we don't come up with a solution, then the current policy stands and it'll carry over. So think about that as you're looking at it and providing comments. Do you oppose a solution in the effect of going back to what is the status quo of today, which is \$50,000 for more than 50,000 domains? Again, that technically could be multiple \$50,000 fees if someone's transferring a million names to four or five different registries. I mean, it could be the number of registries times 50,000. So, just something to think about as you're commenting.

Ken, I don't know that we ever got to that. Ken's question in chat, so everybody knows, "Is there a rationale behind the 50,000?" I don't remember. It was just part of I think the original couple or maybe the original one BTAPPA that had that fee in it. So I don't know what the rationale was behind that. I don't know if we ever dug that up, actually.

JULIE HEDLUND: Roger, this is Julie. Should I go ahead on to the next? Let's go to the next slide.

ROGER CARNEY: Let's do that. Thanks, Julie.

JULIE HEDLUND: We were thinking this would be a good time to put up a couple of poll questions before we dig into the questions that are related to the partial bulk transfers or the change of sponsorship transfers. Is this a good time for us to do that?

ROGER CARNEY: I think that's great. Yes.

JULIE HEDLUND: All right. Excellent. Julie B, over to you for the bulk questions.

JULIE BISLAND: Thank you, Julie. I'm going to go ahead and launch the first question.

ROGER CARNEY: Okay. I think we just have a couple of them. This is kind of driving to our next discussion on a partial. So the first question, do you support the scope of voluntary bulk transfers, sponsorship changes, including partial bulk transfers being expanded and/or made uniform across all registry operators via an update to the Transfer Policy?

Again, I want to make a delineation here that we've been talking about full sponsorship moves. So, either the registry was getting out of business for whatever reason and they were going to transfer all of their names somewhere else or they were getting

out of a TLD and they were transferring all their names out of that TLD somewhere else. And now we're talking about maybe a step smaller than that and it's getting into that partial idea of maybe a reseller is just moving or something and they're just moving a part of their names to somewhere else. So I think that that's where the lines are being drawn here. So I think the question here is trying to get across, should this be uniform, just partial across all registries? So it should be in the policy? And if you agree with that, yes, no? Jothan, please go ahead before we get in.

JOTHAN FRAKES:

I had commented, we're not specifying here, but it should be stated for the record that this has to do with gTLDs, not ccTLDs. ccTLDs are out of scope. Thank you.

ROGER CARNEY:

That's correct. Thanks, Jothan. Again, so do you support this policy being updated to include that? I suggested that the point of this one question is should it be in the policy? Rick, please go ahead.

RICK WILHELM:

I already responded, but one of the things that was talked about that question was that it said "made uniform," because you could expand it but not necessarily make it uniform. So the way it was worded, I answered one way, but you could expand it and have the expansion have flexibility in it.

ROGER CARNEY: Sorry, that you already answered.

RICK WILHELM: I'm smiling.

ROGER CARNEY: I know. I think the idea is obviously expanding it and we will allow as much flexibility as we could, to your point. Obviously, flexibility can still be uniform. But yes, expanding it. But I think the key here is, should it be embedded in the policy? And our next question will kind of be the reverse of this. So should it be updated in this policy?

RICK WILHELM: Yeah. I guess maybe it depends on whatever. Thank you.

ROGER CARNEY: Thanks, Rick. Okay. Can we see the results? I think everybody had the time as I was talking too much. Okay. Our next question will help tease this out some more even. Majority said yes, it should be embedded in policy and made somewhat uniform. As Rick mentioned, I don't think uniform means the exact same, I think uniform is just it can be a framework to allow for it, but it's still the same framework for everyone. Okay. Let's go ahead and go to the poll too because I think it helps out explain what the two questions before.

Okay. Do you support the scope of voluntary bulk transfers, including partial bulk transfers, being expanded or made across

uniform offer BTAPPA via the updates to the BTAPPA? So would you prefer being policy basically was the first question, and this is in BTAPPA. Maybe Rick and Jim can explain a little more, even for me, but BTAPPA is a service that some registries optionally provide. A lot of registries don't provide BTAPPA. Quite a few offer a BTAPPA solution but it's optional. So the registry gets to choose to have a bulk solution, a bulk service. And the first question was asking, should it be a policy so that all registries have to do it? This is suggesting can the BTAPPA be updated? And it's still optional for a registry to do. Before I call, is there any question? Okay. So go ahead and take a couple of seconds to answer. Steinar, please go ahead.

STEINAR GRØTTERØD: Just for clarity, just to beat up a question, kind of indicate that the fee, if you select yes, it has to be the same for all registry operators? Or am I totally out of scope here? Thank you.

ROGER CARNEY: Steinar, I wouldn't say it would have to be the same. Again, I don't even think either way you go, were allowing registries to add flexibilities to their fees. What our last discussion was about was just making sure whatever fees they create don't overburden the losing or gaining registrar, I guess, in that scenario. I think that we still are on the assumption that registries will get to set their own fees for whatever they're doing and have that flexibility. The discussion we had prior was just setting a cap on that. Hopefully that helps.

Okay. Let's go ahead and see the results. Interesting. I don't know if it makes sense to have. To me this was an either/or, but maybe it doesn't have to be and BTAPPA still can be part of it. But I was thinking the first question was basically, do we make this part of policy? And to me, that meant that BTAPPA wouldn't have to be updated, and all registries would have to do it, support a bulk or sponsorship change as we're describing it. BTAPPA, I was thinking it would be optional. So I think that it's interesting because we had a pretty good response on yes for both of them, and I was thinking they would be opposites of each other. So any thoughts from anybody? Catherine, please go ahead.

CATHERINE MERDINGER: Thanks. I will say going into the first question, I did not know this was going to be the second question. So I stand by both of my answers. But I think that was a little confusing of not knowing that the either/or was set up this way, going into the first. And I wonder if it's possible to get a question that's like, "Where should this live?" Policy BTAPPA, the kind of thing where those two are the only options. Or unless there's a third question, it's going to present a third option.

ROGER CARNEY: There is not, but thanks, Catherine. Yes, that would have been a good one to have is do you support BTAPPA or policy or not sure.

Any other comments, questions? Again, I think that it's going to lead into our discussions of slides 59 and 60. So it's not like we're

making a decision here. We're just getting the feel. Steinar, please go ahead.

STEINAR GRØTTERØD: Hi. I must admit, I'm just talking privately, not in my At-Large hat here. But I do realize that with the new TLDs, there are a wide difference in volume and policy and so on. So I'm not sure ... My thinking is that maybe BTAPPA is more fit for the wide scale of the total gTLDs today than it just having the policy and a fixed fee when this was created back in the time where there was only the legacy TLDs. Because there will be scenarios where you may have TLDs that doesn't actually have the total volume that we're talking about to be qualified for these transfers whatsoever but still want to serve the clients, registrars, and the resellers in a good way. So that's my thinking. Thank you.

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

THEO GEURTS: Thanks. That is indeed a great point that Steinar brings up. We've been struggling with a question, but it does come up quite a lot of times when we do these bulk transfers among resellers. In the past, the first thing we ask from a reseller, "Okay, you want to move? Okay, give us a breakdown of all the TLDs and that have the exact numbers for it so we can see what needs to be done in bulk or with a transfer of sponsorship, and what can be done in the regular way." Because let me put it this way, if we have a reseller with a TLD that only has 50, then the math for us is pretty

easy. That is not worth the time of a developer to get involved because development time for us is super, super expensive. So that is something we would delegate to support like, "Okay, try to do that as a normal transfer." And yes, there will be a regular process and it's not as smooth as a transfer of sponsorship. But it's just a cost-based decision like, "Okay, this is just not worth it." So we do this business decision-making all the time when we are dealing with a complete portfolio change divided over many, many TLDs. Usually when we are looking at an average reseller with 1000 domain names, you got like 100 different TLDs involved, sometimes even more. You just break it down to the low numbers and you go like, "Okay. This can be done manually. This can be done manually through a regular process." And then you go with high numbers. And that's obvious, of course, with the high numbers you go like, "Okay. This should be a transfer of sponsorship because that is worth doing it because the other process is way too expensive to do that way." So it's always a cost and balance kind of exercise there. Thanks.

ROGER CARNEY: Thanks, Theo. Sorry, everyone, for that noise earlier because my dog got happy. Jothan, please go ahead.

JOTHAN FRAKES: I think maybe to build on what Theo was saying, the choice to be able to do this manually is going to become a lot more complex once we've completed our work and we've got the new sort of text auth code solutions in place. That's going to change substantially

and may require that same developer time or more to be thinking about that.

I also note that I didn't yet see us discuss any efficiencies where there's a variety of TLDs involved at a given sole provider where those might be bundled or there might be an overall cost with a service provider if they are, for example, the common registry operator for a block of TLDs. Thank you.

ROGER CARNEY:

Great. Thanks, Jothan. I think maybe that applies here more than our previous discussion as I think the previous discussion handles a family like that. If a registry has 10 TLDs, that \$50,000 fee still gets split. So to me, the math doesn't change. They're going to get the same amount or whatever.

Sarah has a good point. I think it goes along with the discussion that's happening. When we're talking about portfolio moves, the big thing to me anyway is that the registrant impact on a normal transfer—Jothan just kind of talked through—it's even going to be more complicated when the policy comes into effect or more hard to do what we do today. But in a sponsorship change, the expiration dates don't change, there is no renewal. But on a normal transfer, it's obviously at least a minimum of one year addition to that. Obviously, there's the pieces to that, but that to me is the thing that impacts the registrant the most. And we've talked through the sponsorship changes, bulk changes, that the expiration dates not changing. And to me, that's a kind of a big factor because it's more registrant-focused than anything else.

Okay. Any other general comments here? Or we'll jump into our more specific discussions. Okay, great. Maybe I will transfer this back to Julie, just so she can give us an overview of what we're looking at here. Julie?

JULIE HEDLUND:

Thanks, Roger. We're now on slide 59. Just to remind us all, we received a comment in the working document that is from Owen. So he was noting that perhaps we should be considering adding opt-out instructions. So we've added this highlighted language and included where "applicable" to account for situations where it may not be possible to opt out. So like a company going out of business, for example. Now, we would like to confirm with the working group where applicable language should be retained here. That is up on your screen highlighted in yellow.

ROGER CARNEY:

Great. Thanks, Julie. Again, I think it was a good addition. I think we talked about it several weeks ago now about giving notice and allowing different paths of that notice. Obviously, opting out is a possibility. But as Julie mentioned and as others mentioned, that might not actually be an option. But the other option is the 30-day notice supplying them with the ability to go ahead and transfer before that time and letting them know that if they want to they should before whenever. Again, 30 days is a minimum marker, not a maximum marker. So I'll jump to Sarah. Please go ahead.

SARAH WYLD: Thank you. I really appreciate the focus on the registrant's experience. Roger, you had brought that up just before we started this slide. Also, I think that's really important, so thank you for that. In this context, I'm not really sure when we would have a partial portfolio transfer that they couldn't. I mean, if it's a partial, it's probably not going out of business. But anyways, even if the registrant is no longer able to keep that domain with that particular registrar who's trying to initiate to BTAPPA, so they couldn't opt out and say, "No, just don't move my domain," in that context, the opt out would instead be that the registrant decides to move their domain to another registrar voluntarily like a third registrar. So I don't know that we need the "where applicable" wording. I do think it's really important that registrants always are able to choose who their provider is. So I do think we should include those instructions. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. I think not being able to opt out comes in when maybe the reseller is getting out of business and transferring the names to a different reseller or maybe to the registrar even. But that reseller is no longer going to be in business. So it's one of those where you can't opt out and stay with the reseller because the reseller is going out of business. But then again, that's still a partial. So I think it's just something to think about in that context. Rick, please go ahead.

RICK WILHELM: Thanks, Roger. I don't disagree with what we have here. But I would offer that it will be a little bit tedious for us to be doing things

like these preliminary agreements. Because one of the things that we've gotten here is this is redundant with one of the items in the BTAPPA boilerplate language, and I don't think it's really kind of worth our time to be establishing preliminary agreements on the various elements around all of the things in the BTAPPA boilerplate language. This one here, we've stuck our finger on opt out. And I would offer that right now the number in brackets 30 days is different than the 15 days that's in the BTAPPA boilerplate language that I'm coming up with when I search it out on the search engine. So I think that rather than kind of doing preliminary agreements on each of these things, we would be better off rather than starting from the boilerplate language rather than kind of going one by one and stuff like that. Again, I'm not objecting to the concept that there should be notification or anything like that but just rather than starting from the basics that we should start from the status quo. Thank you.

ROGER CARNEY:

Thanks, Rick. Again, I think this gets back to Catherine's discussion of our poll questions. Because I think the intent was should we try to enforce these? The 30-day came up a few weeks ago, I think, maybe even a month ago as we were discussing it through. I think that the idea is, are we updating? Are we recommending updates to the BTAPPA that has minimum requirements in it? And maybe, as you just pointed out, Rick, the 15-day actually becomes a 30-day, and maybe we're suggesting that. Or are we saying we don't want these policies to be optional at the registry, we want them to be enforced across all registries, which, to your point, Rick, means we should pull in the framework

or BTAPPA that we, again, not start from scratch, but use what is out there. So I think it goes to that dynamic of, okay, are we going to allow this to be optional? Should this be optional for registries to support partial sponsorship changes? Or are we going to say all gTLD registries have to do this? So it's either BTAPPA within RSEP that they get to optionally do the service? Or are we saying it's in policy and all registries should support this? Again, that was the intent for those original questions. And maybe Catherine had the right question that I should probably come up with. Pick one of these two, we're not sure.

Okay, any other comments or questions here? As Rick pointed out and so on thought a few weeks ago, this makes sense. But to Rick's point, it's part of the BTAPPA language. I think, Rick, maybe two or three weeks ago, you popped in the BTAPPA reference link. So if you still have that handy, that'll be useful for others as well.

Okay. Let's go ahead and jump to our last one here. Julie?

JULIE HEDLUND:

Hey, thanks, Roger. So this is Preliminary Agreement #4, also on change of sponsorship or partial bulk transfers. Just as a reminder, on this one, there was a comment from Owen in the working document. He had noted that while Registration Agreements may permit such transfers, we need to make sure that registrants have agreed to those terms prior to initiating the transfer, and then include sending out any required notifications. So support staff have added the highlighted language that is additionally prior to initiating the transfer, the losing registrar must

ensure that they or their resellers, where applicable, have confirmed the affected registrants have agreed to the terms.

So we've tried to add that to address Owen's concern. We'd be interested to hear from Owen whether that's the case. And we'll also note that Theo had responded to Owen's concern, asking, "Isn't it simply the responsibility of the gaining registrar? I'm not sure this is a policy requirement. In the case of a reseller or other entity, it is up to them to make sure their agreements reflect or mirror the agreement with the new registrar." So let's maybe open this up to discussion. Thanks so much.

ROGER CARNEY:

Thanks, Julie. Thanks for Rick for dropping that BTAPPA link. But to this point, I'll jump to Theo real quick. Theo, please go ahead.

THEO GEURTS:

Just to add some more color to it, I always check when we are going to do a partial transfer of sponsorship in these processes when we are talking with the new reseller that is potentially wanting to move to us, we go through this entire process like, "Okay, what needs to be done?" I always point out during these talks like, "Did you even read our Terms and Conditions?" because there's always a couple of things that are going to be very different. I always point out two key points that they need to seriously consider about. First of all, you're going to be working with a Dutch registrar so Dutch law applies, and there are some oddities in our law. That is one thing a new reseller wants to move to us should consider.

Another example, which I always throw out, is make sure that you don't transfer domain names to us or register domain names with us that are considered rogue pharmacies because we have zero tolerance against that stuff. We don't want to have websites selling fentanyl or oxycontin or whatever garbage without a subscription. Then you always get these people like, "Those are good points." I always make sure that I'm going to read their agreement, what they are proposing to their customers to mirror our agreement that we have to make sure, A, it's ICANN compliant, and B, it's compliant with ours. My initial thinking was it should be the other way around what is suggested here. I mean, the gaining registrar is going to be responsible for all that stuff so they need to make sure that it is up to par. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. As you walk through that, I realized that maybe it's both of those factors have to actually work in that... When we were talking about giving notice—and Rick can jump in if this is part of the framework as well—but when you give notice to a registrant, I think this text here in yellow, to me, it's stating it doesn't hurt anything and it helps make everybody to feel good about it. But when the registrant registered the name with whatever entity, they agreed to their terms. So if the bulk transfer was allowed in the terms, then they've already agreed to it. But to your point, Theo, I think that they didn't agree to the new potential registrar's agreement. And not just the reseller, as you mentioned there, but the registrants themselves have not agreed to a new registrant agreement. Thanks, Owen. I think that's right. I think that that's an interesting fact that just because a reseller wants to

move doesn't mean the registrants are going to agree to that new registrar's Terms of Service. So I think that notification has to address that as well. Theo, please go ahead.

THEO GEURTS:

Maybe it is just me, but I don't see how I am going to check the agreements of customers which are actually not my customers. I mean, these registrants are not my customers. I mean, the reseller is my customer. So I don't know how I'm going to check if everybody has agreed to the Terms and Conditions of the new registrar. Maybe I'm just being way too practical. We've never done that in the past. The other situation that I just described prior this, that's being done all the time. But checking up on the resellers that are going to leave, I mean, mostly resellers who are leaving, they're the most cooperative ones. Thanks.

ROGER CARNEY:

I think that the ones that are leaving aren't the losing registrar's issue. The ones that are coming in or that you're adding to me would be—even if it's a reseller, if a reseller is moving into your network, then to me, the gaining registrar would be responsible for assuring Terms of Service was signed. Just a thought in my head right now. Sarah, please go ahead.

SARAH WYLD:

Thank you. We're thinking of this as a one or the other. But wouldn't this be a situation where the gaining and losing registrars need to work together to do this transfer? It's not going to be a surprise to the gaining registrar that suddenly all these domains

are showing up. The gaining registrar is going to want these domain owners agree to their terms. Maybe in the notification that is sent out to domain owners, maybe it should say, "On X date, 30 days from now, your domain will be moved to X registrar. And as part of that, you will be subject to those Terms of Service. If you don't want to, then you can transfer your domain somewhere else before then. But once the transfer happens, those are your terms." Maybe something like that. Thank you.

ROGER CARNEY:

Thanks, Sarah. And thanks for spelling that out because that was what I was trying to say, sort of, in a more general way. So I appreciate you operationalizing that for me. Rick, please go ahead.

RICK WILHELM:

Sarah must be hanging out with the operational folks these days. I had my hand up to tell not as a registry but as an end user. I went through this this summer. What Sarah said is roughly what happens, the place where I had a name, I didn't realize it but they were a reseller and they sold off that business, and they were moving the names. I got a notice that the name was moving and stay tuned, you're going to find out about more. There was no ability to look at terms. I didn't even get a link to where the terms were. It was just that your name is going to be moving, your term is going to stay the same, that sort of a thing. The language that we have here in yellow would not have been able to apply. Whoever was involved would not have been able to comply with this language. I would suggest that we don't put this in because

that won't work in the real world. The notification that move was coming, they were able to comply with that, just as Sarah said, but this confirming that I had accepted the new terms wasn't going to happen. Just to get a dose of the real operational world into it. Thank you.

ROGER CARNEY:

Thanks, Rick. Well, I maybe push back a little on that. Let's talk in the example of a reseller moving. As Sarah mentioned, these parties are going to work together. The gaining and losing registrars may necessarily want to work together or not, but the reseller is going to make that happen. When the reseller signs a contract with the registrar, part of that contract can be a stipulation of, "All the incoming ones have been notified of their new Terms of Service." I think there is a way to make that happen. And again, I think the notification is that path that gets you into that right step. But I think you can confirm. It's not physically making sure each one did this, but that the reseller is confirming that they're doing their job. Just my thoughts on it. Zak, please go ahead.

ZAK MUSCOVITCH:

Thanks, Roger. I have been on vacation for a while. This is an opportunity for me to pretend I know a little something or think I do, at least, because it's a legal matter. What I'm thinking about this is that if a registrant is notified that his or her registration is going to be transferred to a new registrar, there's no way of binding that registrar to the terms of the new registrar just by notifying them that this is going to happen. In other words, you can't really say that, "Registrant, your name is going to be moved

to ABC registrar in a month. And when that happens, you're going to be deemed to have agreed to a new registrar's terms," unless the original registrar, where the registrant is currently, is incorporated into their terms a provision that says exactly that. In other words, the current registration agreement would have to say something like, "In the event that there's a bulk transfer of domains that includes your registration to another registrar, then you will be deemed to have accepted the new registrar's terms upon such transfer unless you have moved your domain name to a third party registrar after receiving notice. Practically speaking, registrars would start incorporating that kind of term if they have not already, and that would enable the gaining registrar in the course of its due diligence about the transaction to ensure that either that kind of term is already in the losing registrar's agreement or that the gaining registrar insists that the losing registrar amend its terms to incorporate such a provision in advance of the transfer. Thanks.

ROGER CARNEY:

Great. Thanks, Zak. You're saying registrar. I think that that can be handled at the reseller because the reseller is the registrant's contact. So I think that, to your point, if the reseller has that in their agreement with the registrant, then that does work that same path that you were walking down. Theo, please go ahead.

THEO GEURTS:

There's also when a reseller moves to a different registrar, the Terms and Conditions of the reseller doesn't need to change at all.

ROGER CARNEY: Possibly.

THEO GEURTS: Possibly. I mean, depending how they set up. If it's broad enough, if they've mentioned something that registrant terms will apply, blah, blah, blah, there's other ways to deal with this stuff. But as a registrar, the gaining one, I think you always have a responsibility to point out in the Terms and Conditions to make to ensure that the stuff that you find important in your entire TOS that is being reflected in the Terms of Service of the reseller. I mean, that is basically one of the requirements within ICANN also that certain stuff is there. I think we covered that all but we do have a responsibility there as registrars. Thanks.

ROGER CARNEY: All right. Thanks, Theo. Okay. Any other questions, comments, concerns here? Good discussion on this, by the way. Again, yes, there's a lot of nuances to it. So it's good that we're teasing those out.

When we get into these partial sponsorship changes, I think the big factor here, and that we don't have an answer on, is where and how this is going to be enforced. Is it policy that all gTLD operators have to support a partial transfer or partial sponsorship change or is it going to be, as it is today, an optional service that registry operators provide? Again, if we want to set parameters on that, that's fine. But I think that the mechanism is—maybe I haven't thought about it. Are there two ways to do that? I don't

know. It seems like if we put it in policy, everyone has to provide it unless we're making policy that says it's optional. It's kind of weird. Again, I think it's a big decision and a big discussion we need to have. Is it optional for a registry operator or is it all registry operators have to support it? Theo, please go ahead.

THEO GEURTS:

I think moving forward, it's going to be a requirement that all registries operate under a policy that is applicable to all registries. I mean, we currently already are running into issues that one registry isn't offering BTAPPA and it creates a set of problems. It sets a barrier not to move your domain names to a different registrar. Because portfolio X under TLD ABC cannot move. And then you always have these issues, at least talking from a reseller perspective, where a reseller still has to use the old transfer system that registrars to move that out. And that is, in some cases, almost impossible. Then they just go like, "Okay, if we can't move X percentage of our portfolio through a transfer sponsorship, then it's going to be a no go," because that still involves 20,000 domain names and that's going to cost 200,000 in working hours of employees doing it manually.

I hope that we get more TLDs in the next round and we're going to have more registrations in all these TLDs. I think the numbers will only grow in the decades to come. And that is the perspective that we need to have in our collective minds that most numbers will be growing more and we won't be shrinking with the domain name numbers across all TLDs. That's why I advocate for a uniform policy. Thanks.

ROGER CARNEY: Great. Thanks, Theo. Any other comments on that split there, if it should be an optional service versus a policy decision? I think Steinar and Theo both hit on the same topic of the number of operators has increased dramatically. And as Theo just mentioned, possibly in the next few years, it's going to have another increase. Does that affect our decision-making here? Does it make any difference? I don't know. I'm just saying that it did happen and it's going to happen again, and we need to think about those things. Catherine, please go ahead.

CATHERINE MERDINGER: Thanks. I was just wondering if we know the history of why it wasn't part of this policy previously. If so, what were the reasons? Maybe it never came up. But why wasn't it previously included in the policy? Because, in my mind, it seems to benefit everyone if they're required to do it under the policy. But then I'm a registrar and I work for registry that already offers this so I might be only seeing one perspective. Thanks.

ROGER CARNEY: Great. Thanks, Catherine. That's a good question. Again, I don't know if it was because we had 12 TLDs and the majority of the numbers of registrations were already under BTAPPA. Again, I don't know, honestly, maybe it's in that document that I haven't read, when did that first start up and what was the premise of even initiating that concept? I'm sure it was some registrar that said to some registry in the registry, "We should provide that

service.” I think it gets down to the point of was it a nice idea of when it did start? And then to Catherine’s point, what was the impetus at the start? And was there ever thought about in here? Maybe Berry has the answer. Theo, the IRTP days contemplated that, but maybe it did. I don’t know. Was that a good solution that needs to be incorporated industry-wide or is it something that still can be left voluntary optional? Berry, please go ahead.

BERRY COBB:

Thank you, Roger. Berry Cobb. I’d have to dig into the deep spaces of my brain to try to recollect. I don’t actually recall the previous IRTPs getting into this because the 2012 round hadn’t even started yet by the time most of the discussions of the previous transfer deliberations took place. I definitely recall that they weren’t looking ahead to the expansion of the namespace in that aspect. By the time that 2012 round did start, staff and Org were already implementing the consensus policies. So we haven’t had a policy development on this until now. And of course, the market and landscape has changed.

ROGER CARNEY:

Thanks, Berry. Theo, please go ahead.

THEO GEURTS:

Thanks. I think back in those IRTP days, we didn’t contemplate the future that much at all. Back in those days, if you would have told me there would be a GDPR and the admin contact would be optional or be removed through some policy, I would have declared you completely nuts. But that is the reality that we are

facing with the other policy now. That if the admin contact is gone, which is now primarily used for resellers to authorize these transfers, that's going to be gone. We're talking about evolution here where it becomes harder and harder for a certain type of business, that is going to be impossible to run. That is the reality of it all. I mean, we didn't come to play that back in the day, but we do have to do it now because a lot of things are changing. Thanks.

ROGER CARNEY: All right. Thanks, Theo. Rick, please go ahead.

RICK WILHELM: I don't know. But I've been spending a lot of time reading and rereading and rereading the BTAPPA boilerplate. I think that there's some answers that live inside of that document. This is speculation not from the registries but from me. I think the answer is there. Because remember, this is transfer without extension of term. I think that probably folks who are reluctant to undergo transfer without extension of term. I think also, if you read that thing, there's no fees for ICANN in this. They're neither fees due to extension of term nor fees for ICANN. That's another one. Then also, if you go up towards the top, while Theo is—I'm not criticizing Theo's characterization. But the scope of this in the paragraph under the second headline, romanette i, romanette ii, they attempt to limit this in terms of a stock or asset purchase or similar transaction. I think that that wording is unnecessarily—this is me, Rick, wearing my PIR hat, think this is unnecessarily tight and it would be better to serve the purposes that Theo is relating, the things that Theo was talking about would be better served if

the wording here were loosened in order to just say, “If two registrars have an agreement and they have a list of names that they want to move without extension and they are willing to meet the fee schedule of the registry to do that move without term extension...” Because remember, if there’s no term extension, the registry doesn’t get any money. “...then it should be allowed to go.” Because right now under romanette i, it has to meet this qualification, which sometimes it’s hard to meet that threshold, quite frankly, having been involved in a bunch of these over the years. I think to give Theo the kind of flexibility that I think he’s suggesting that he would like, the wording there would need to be pried open a little bit. But I think that that gives us some experience or suggestions, in answer to Catherine’s question, some ideas about why it isn’t that way now, and maybe some hints about why it could possibly be improved. Thank you.

ROGER CARNEY:

Great. Thanks, Rick. To your point here, I think, these few bullets here mimic what was in the Transfer Policy even for the ICANN approved pieces of it. I think maybe one came with the other or the other went with the other. But I agree. I think that what the group is talking about is expanding this so that there is more flexibility in here and that it is not in these few strict instances that this can occur.

Okay. We’ve got four minutes. I want to wrap this up for today. Again, we’ve got two weeks before our next meeting and we’ve got some homework. Staff is going to update our working document with a few bullets for breakout cases on fees. Try to maybe get to a more agreeable or understandable, I suppose,

spot, setting some of those parameters or at least getting the parameters identified. Staff will get that in our working document and for the group to actually take a look at them, make comments, make suggestions on where they think it should go where it should be. Again, if someone has a completely different idea than Concept 3 and 4, I think it was, 4 was the big one that split it out, please add it into that working document as well so people can take a look at it and start thinking about it. Again, this was an idea that just formulated over the week. If it works out, great. If we have to switch it and move to something that's more purpose built, then okay. But staff will get those things put in there so we can all take a look at them.

The other big thing I think for this group is to think about on these partial sponsorship changes, should this be enforced, as Theo supports, across gTLD registries or should it be maintained similar to today even if the rules had to be updated, as Rick just suggested, but maintained as an optional feature for a registry through a BTAPPA RSEP thing? I think that discussion needs to complete. We need to get a resolution on is it going to be policy for everyone or is it still going to be optional for anyone? That doesn't mean if we pick one or the other, there can't be flexibility built in to allow for businesses to do what they need to do. Again, I think even if you choose BTAPPA, that doesn't mean we have to stay with the template as it is. We can make recommendation changes to it. But I think that's important. Is it a policy that everyone has? Is it optional as an RSEP service? Think about those things, put them in our working document, your ideas on that. I look forward to everyone's comments. We'll see everyone in two weeks. Thanks, everyone. Great discussion today.

JULIE HEDLUND: Thanks, everyone. Thanks, Roger.

JULIE BISLAND: All right. This meeting is adjourned. Thanks, everyone.

[END OF TRANSCRIPTION]