
ICANN Transcription

Transfer Policy Review PDP WG

Tuesday, 30 May 2023 at 16:00 UTC

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JULIE BISLAND:

Good morning, good afternoon, good evening, everyone. Welcome to the Transfer Policy Review PDP Working Group Call, taking place on Tuesday, the 30th of May, 2023.

For today's call, we have apologies from Raoul Plommer (NCSG), Zak Muscovitch (BC), Crystal Ondo (RrSG), Prudence Malinki (RrSG), Catherine Merdinger (RrSG), Osvaldo Novoa (Council Liaison). They have formally assigned Juan Manuel Rojas (NCSG), Arinola Akinyemi (BC), Jothan Frakes (RrSG), Christopher Patterson (RrSG), Essie Musailov (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 emails.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

All members and alternates will be promoted to panelists. Observers will remain as an attendee and will have access to view chat only. 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.

Please remember to state your name before speaking for the transcription. Recordings will be posted on the public wiki space shortly after the end of the call.

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior. Thank you. And over to our chair, Roger Carney. Please begin, Roger.

ROGER CARNEY:

Thanks, Julie. Welcome, everyone. I don't think I have anything big to share here to get started. Just a quick reminder that we will be meeting next Tuesday before everybody heads off to ICANN for those that are heading there. Our final meeting before ICANN 77 meeting. So I think that's about it. I'll open the floor up to any of the stakeholder groups that have any comments or questions or discussions they want to bring forward that they've been having offline that they want this group to address. So I'll open the floor up to any of the stakeholder groups. Great. I think that we'll go ahead and jump. Caitlin, are you going to jump into the? Okay, perfect. The work plan.

CAITLIN TUBERGEN: Yes, thanks, Roger. And just our trusty reminder of where we are in the project work plan. So you'll see here that we're on meeting 93. We're on track to get through the remaining TDRP charter questions. And we do have that additional meeting next week, as Roger noted, which puts us in a good place going into our meeting at ICANN 77. For those who may not have been at our last call, the goal for meeting at ICANN 77 is to go over the proposed initial conclusions from the working group regarding the transfer emergency action contact and the transfer dispute resolution procedure. And since we're on track for getting through the remaining charter questions, or at least having some initial conclusions, it will be good and beneficial to seek community input during the ICANN 77 session since there will likely be some folks in the audience and online that don't normally attend these meetings or haven't been closely following the work of the group. So that's where we are going into ICANN 77. And then following ICANN 77, we'll clean up anything related to the TEAC and TDRP and move into the next topic, which is ICANN approved transfers.

So as we've been doing in our last few meetings, what we'll do is recap the outcomes from last week's call. So we have some preliminary agreements on charter questions G1 and G2 related to the TDRP and then we'll continue our discussion with the remaining questions G3 through G5.

So with respect to charter question G1, as a reminder, that question asked the working group if there is enough information available to determine if the TDRP is an effective mechanism for resolving disputes, and if not, what additional information is needed to make this determination.

So after discussing this last week, it seemed that the group had agreed that no new recommendations are needed in this specific regard, and that the group would respond to the charter question by noting a couple of things. Number one, the limited data that was available to be reviewed by the working group, which is the published TDRP cases, and note why it's limited. That's two reasons. Number one, the published TDRP cases are limited in number, and we've discussed at length why that is, in part because the scope of the TDRP is limited, and also that many disputes occur outside of the TDRP. That's in part because a lot of these issues are resolved informally through the registrars before they escalate to a TDRP case, and in situations where the registrars are not able to resolve the cases informally, the registrant or the registrar would take them outside of the TDRP. So, for example, registrants would file an action in court if they weren't able to have the registrar file a TDRP.

Secondly, we would summarize how some of the limits of the TDRP don't necessarily indicate a problem with the dispute mechanism itself, but rather the limited scope of the policy. So, as the group has mentioned in multiple calls, the TDRP deals exclusively with alleged violations of the transfer policy, and that the only folks that can use the TDRP are registrars themselves.

So, some of you had mentioned that some issues related to transfers aren't necessarily violations of the transfer policy, so they would fall outside of the scope. So, for example, some instances of domain name hijacking are not clear violations of the transfer policy. Sometimes someone from a company might register a domain name on behalf of the company, and some sort of

business relationship goes sour, but the registrant of the name is that former employee, and that isn't necessarily a violation of the transfer policy. That's really a business relationship gone sour, and the TDRP isn't designed to handle that particular type of case.

So, in conclusion, with respect to this case, it seems that the working group believes that the TDRP is effective for the limited scope of issues it is designed to address, and I think that's where we closed on that question. But I'm going to pause to see if anyone has a different recollection of where that discussion ended up, or any additional thoughts to add here as staff goes to produce the first iteration of the response to this question for the working group's review. Steinar?

STEINAR GRØTTERØD: Hi, this is Steinar for the record. We, At-Large, have kind of signaled that we do like to have some sort of opening for the registrants also to have a way into the TDRP. Even though the TDRP is something that you should use when there is a dispute about the process, and not, in the example of hijacking is not within the TDRP.

But I do imagine that there might be cases where the process is not followed. And the registrant kind of discovered that, and that makes the registrant unable to follow that and have somebody to talk for them, whether it's a losing or gaining registrar. And I don't know where we could actually have that kind of idea put forward into the policy or the process, but I think I'm not the only one that kind of had signaled that there must be some way for the registrant as well. Thank you.

ROGER CARNEY: Thanks, Steinar. Just to follow up on that real quick. You know, the TDRP is used for any, I'll say perceived, maybe, [inaudible] on that maybe somewhat, but process in the policy itself that is not been followed or is broken or something like that. So, the TDRP can be, and it typically is, initiated by a registrant going to their registrar, but to actually get into the TDRP process, there has to be a clear link to a policy violation. And I think that's the tough part, and as Caitlin just mentioned, the scope of the TDRP is fairly narrow and it just focuses on violations of the policy itself, which a lot of disputes, the majority of disputes actually fall outside of the scope of the policy. The policy can be followed, but a transfer dispute still comes up and most of those transfer disputes issues are of that flavor and that's why it does get handled outside of the policy and outside of the dispute mechanism by the gaining and losing registrars. Hopefully, they can handle it themselves or it goes to court.

So what we've heard in this group is beyond that, looking at those other things outside of the policy issues, again, the TDRP matches well to the policy, but then it's only scoped for that few items and the policy gets followed most of the time in a dispute. It's just that other things occur outside of that policy scope. So, it's one of those where what we've heard several times for weeks now is maybe there's another mechanism or another way, not specifically looking at a new mechanism or anything, just the idea. And I think that's the key that we've heard the past few weeks is this group doesn't need to get into it too deeply, but it's one of those where there's a concept of, okay, there's transfer issues

happening. Is there something that the community can do about it?

And I think that somehow, and it's a discussion on another charter question, somehow the challenge for this group is to come up with some wording to key the community into that and see if there's action that needs to be done outside of this group. Hopefully, that helps, Steinar. Thanks. Steinar, please go ahead. Your hand's up.

STEINAR GRØTTERØD: Yeah. Hi, this is Steinar again for the record. Well, I'm really happy that most of these cases are solved directly between the gaining and losing registrars and without any influence in a good way. But my key thing here is that if the registrar doesn't have the cooperation from the registrar, he's in a kind of limbo and the only way he can go forward is go to court. And I think that's something that doesn't ring well in my ears. But I do understand that this process is connected to following the steps in the transfer policy, and not about hijacking, etc.

But I'm looking for somewhere to have, maybe not on this particular charter question, but somewhere that we can have this opening that there will be other ways than just go to the court if there is a lack of cooperation from the registrar to the registrant on complaints in a dispute, transfer dispute. So maybe guide me in where we can put this or, yeah ... Thank you.

ROGER CARNEY: Great. Thanks, Steinar. And yes, I think that there's multiple people on the call that have the same feeling as you. Maybe

different reasons or whatever, but you and the ALAC bring up something that is supported by other groups as well. So we'll get to a little bit of that here in a while. But yeah, and again, I think the challenge will be coming up with some useful wording from this group so that we can at least trigger the community into a thought process and see where that goes. But yeah, we'll touch on it here in a little bit as well. So any other questions on this one? Otherwise, I'll have Caitlin go on to the next. Okay, great. Caitlin, if you want to take us through.

CAITLIN TUBERGEN: Thanks, Roger. Okay, so this seems to be okay as is. And Steinar's concerns, as Roger just noted, will be addressed in Charter Question G3, which is going to be in a couple of minutes. We'll go over that one. And we can add additional thoughts at that time. So thanks for bringing that up, Steinar.

But next we'll go to G2. And as you may remember, G2 was about a dispute resolution provider for the TDRP, specifically the ADNDRC, noted to the IRTP Part D Working Group that in some of the cases that processed, appellees and appellants fail to provide sufficient information to support arbitration. Is this an issue that needs to be examined further in the context of the policy? And then specifically, are the existing informational materials about the TDRP sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they need to give to this dispute resolution provider?

So during last week's call, and as the homework to last week's call, all the Working Group members were asked to review the

requirements in the TDRP that note what complainants and respondents need to provide in terms of documentation to file a TDRP complaint and response. And I will note that when the ADNDRC reported this issue to the IRTP Part D Working Group, this was before the TDRP was updated to provide clear definitions and make it a little bit more user friendly in terms of what the policy says about what needs to be provided to make it easier for filing parties to understand what it is that they need to provide.

So the cases that the ADNDRC had published where there was issues in filing documentary evidence seemed to be from the same registrar and were again prior to the updates to the TDRP. So the group noted last week that it seems that the requirements are pretty clear and ultimately it's on the filing party and the responding party to make their case using whatever evidence they'd like to submit, but that the TDRP of course shows the general elements that need to be provided so that the panel can make a determination.

So instead of updating the evidentiary requirements, the group had tentatively agreed or preliminarily agreed to respond to the charter question by summarizing the data that was reviewed by the Working Group, and that included the text about what should be filed for a TDRP, the cases published on the TDRP providers' websites, as well as the existing information ICANN provides on its web pages related to transfer disputes and transfer related issues. Also summarizing how the Working Group concluded that the information that is required to be filed by the filing parties is sufficiently clear and no conspicuous gaps exist at this time, that

again it's ultimately on these parties to provide the evidence to support their case.

We did, however, have that discussion last week that given the Rec 27 report and data protection requirements in general, that the group is looking at those requirements and there may need to be some updates based on Rec 27, for example, and that in the event that those elements are updated, that it should be drafted in a way that's understandable to filing parties, to providers, as well as to the panelists, so that it's user friendly.

And last week, Zak noted that there is a limited number of cases filed for TDRP, which has been kind of a consistent theme throughout this discussion, and that maybe as more cases are filed, that it will be clear that there is some sort of misunderstanding, but at this time there isn't, so we would just note that in the response to this charter question.

So if anyone has anything else to add or recalls that discussion differently, please feel free to raise your hand and we'll take note of it before staff starts drafting the first iteration of the response to charter question G2.

ROGER CARNEY:

Great, thanks Caitlin. Any other comments from anyone on this one? Seems pretty straightforward. Seemed like we got agreement on it fairly easily. So, okay, I think we can move forward from this one, Caitlin, and move on to our newer, I guess, ones.

CAITLIN TUBERGEN: Thanks, Roger. So we had a pretty, pretty detailed discussion of charter question G3 last week and that specifically, if the TDRP is considered to be insufficient, are additional mechanisms needed to supplement the TDRP? So last week we had a pretty detailed discussion about a potential registrant mechanism for the TDRP. And this slide is identical to what we went over last week. So what I wanted to do here was to discuss this potential new dispute resolution process for registrants in a little bit more detail.

But to tee up the discussion, we discussed last week that this was actually a charter question for a previous Transfer Policy Working Group, specifically the IRTP Part D Working Group. At the time, the IRTP Part D Working Group recommended not to develop a dispute option for registrants. And the reasoning there was that they didn't want to overload the TDRP or cause confusion, specifically because a lot of the evidence that needs to come forward in a TDRP is in the hands of the registrar, likely.

I did want to note, however, that another recommendation in that IRTP Part D report noted that the Working Group recommends that staff, in close cooperation with IRTP Part C Implementation Review Team, ensures that the IRTP Part C Inter-registrant Transfer Recommendations are implemented and monitor whether dispute resolution mechanisms are necessary to cover the use cases in Annex C. Once such a policy is implemented, its functioning should be closely monitored and, if necessary, an Issues Report be called for to assess the need for an Inter-registrant Transfer Dispute Policy. That's Recommendation 9 of the IRTP Part D Final Report, which I'm going to paste into the chat, just for everybody's reference.

So what's interesting about this is that the IRTP C Final Report had a recommendation about an Inter-registrant Transfer Policy, which is now in the Transfer Policy as the Change of Registrant. So it is closely related to that recommendation, and as we've known from previous discussions about the Inter-registrant portion of the Transfer Policy, that it seems that just about everyone that's taken part in that or that has implemented that or deals with that is dissatisfied with how that ended up. But I wanted to just flag that so that when we go back to the discussion of that, that's on the group's mind as it talks about if an issue report is needed for registrants and transfer issues.

What you'll see at the bottom of the slide, it was referenced in that recommendation, the use cases in Annex C. So those use cases appear on pages 41 and 42 of the IRTP D Final Report. And what I've pulled are the two that seem to deal with registrant claimants. The first notes that two registrant claimants dispute to be the registered name holder immediately prior to or directly following an Inter-registrant Transfer. This is an issue entirely between registrants, and so there's no compliance role in this. And secondly, two registrant claimants dispute who is the registered name holder of a domain name without an Inter-registrant Transfer having taken place. There are a number of reasons for such a situation to occur, including but not limited to a contractor registering a domain for a client, two business partners splitting, an admin contact leaves the company but remains listed in the WHOIS database. Again, this is entirely between registrants, and there's no compliance role here.

So the reason that staff put these examples here is partly because it's alluded to in a previous group's discussion of having a registrant dispute mechanism, but also to ensure that this is the types of things that the working group had in mind and if there's any other use cases that the working group had in mind that need to be considered. And I say that because as staff drafts a response, that seems to be that the working group does think that there is a gap here, that there may need to be a dispute resolution procedure for registrants, and that should be looked at into a future issue report. If there's anything additional that needs to be included there to make sure that the response is comprehensive here. So I guess I'll turn it over to Roger to open up the floor to see if this sounds right. And if there is anyone in the working group, for example, that doesn't think that this should be considered in an issue report or has concerns with it, it'd be helpful to hear from those folks as well. So I'll turn it over to Roger and see what the working group members have to say about this.

ROGER CARNEY:

Great. Thanks, Caitlin. Yeah, and I think this leads a great segue from where we left last week as well on this topic. The interesting thing I noticed here in the two use cases that Caitlin put forward here is the idea, and the last two words on each one of them, three words, no compliance role. And it does seem like that's true with what the working group has talked about. It's not necessarily—again, it's what we've talked about, and even today, of, this isn't going against policy. This isn't going against—the idea we're talking about. It isn't going against policy. So there wouldn't

be a compliance role in that, at least. And again, I didn't think about it until I saw it here. I wouldn't see a compliance role in that.

The interesting thing is it's one of those where if there's a gap, that's what everybody's looking for. And it's that gap. It sounds like what the group is saying is that gap between identifying an issue and recognizing that policy hasn't been broken. So the next step would be in today's world, basically trying to get the registrars to agree to the issue. And if not, then it goes to court. And to me, it sounds like what the working group has tried to state is that there's a possible gap or a possible area of solution there between the registrars basically agreeing that they don't agree and going to court. And I think that that's what I've heard. And I'd like to hear from others, you know. And again, Steinar, please jump in because I think that's where it fits what you were just discussing is when someone, a registrant identifies a transfer issue, they bring it to their registrar and the registrar says, well, it's not a policy violation so we can't use the TDRP, we can go to the other registrar and see if they agree on that. And then that's where it starts to make that decision point. If they agree, then it's fairly simple. And it gets resolved. But if they don't agree, basically, there's nothing that you can do except go to court next. And I think what I've heard from the group is that's where there may be a chance for an intermediate step of resolution.

But please, again, I invite everybody forward to say, is that the right gap that at least I've seemed to have notified or seemed to have pulled together? Or is it something bigger than that or anything different than that, I suppose? So please, Jothan, please go ahead.

JOTHAN FRAKES:

Sure. It seems like a slow news day, so I'll jump in here. I made an intervention in the chat earlier mentioning that it is often the case that registrants unfamiliar with our various policies that we have as registrars will sometimes look up after not paying to renew a domain and see their registration of their domain is now at a different registrar. And look for, I think, whatever means they can find to try to figure out what happened and get the domain back.

So I think that the mention there is that it conflates or at least overlaps with EDDP and ERRP policies related to how a registrar processes a domain in the event of nonpayment. And that can often mean a transfer to another party. This happens within a registrar as well, where the registrant becomes a new registrant. In fact, that may even be a higher frequency when the registrant just, they don't pay for the domain and they don't get to keep the domain name.

And the world at large, pardon the use of at large, it's not meant to reference the same group, is not familiar with all the ways of ICANN. And so they'll just say, hey, somebody else has my domain, I better dispute this, and look for whatever mechanism they can find to be applicable. So I guess I'm taking the long way around the barn to say that we definitely want to make sure that other policy is considered to have been followed before we start to create a new policy that might conflict with those so that whatever appropriate levels of frictions that are in place remain in place for the certainty of a domain to be—I guess, a transfer within a registrar can be sound. And hopefully I'm articulating that well. I think in a lot of the situations that I've faced, both on the helping a

registrant on either sides of this, it's often been the case that EDDP or ERRP were the applicable policies and that they were followed and other mechanisms were needed. So what we probably don't want to create or make happen here is something that is in conflict with those. Thank you.

ROGER CARNEY:

Great. Thanks, Jothan. Yeah, and definitely it's great to bring those into the fold because I mean, obviously there's more than just the transfer policy that affects a name moving from here to there. So I'm not sure that I've heard that scenario before, Jothan. Mostly, I think that as you were describing it, it seemed like, yeah, a very common issue that's probably a registrar customer service issue that, again, I think most registrars would say is probably somewhat common.

Obviously, I don't think that, like you said, it hits the transfer concept, but definitely something to watch so that you're not making something worse by trying to fix something else. So, Jothan, please go ahead.

JOTHAN FRAKES:

Yeah, just a new hand in response to that. Yeah, and I think you made a good observation there. It's an appropriate observation. The reason, I think, and the reasoning and logic behind this being something that was designed to kind of flow through registrars was that this is typically resolved with a quick tier one support call, helping understand how the rules work. Oh, did you pay to renew the domain name? No? Okay. Well, here's what happens. Instead

of launching a transfer dispute with a misunderstanding of how things work. In the regular world, the power company shuts off your power. So you have maybe more notable indications. Of course, your power can't move to the next building. But so maybe that it isn't applicable. But there's, I think, more clear cut examples in the world. And I think it's the reason there's not clear cut examples. Or it's not immediately known to the registrant, hey, did you renew the domain name, is an important question. Sometimes they think they did. When they go to investigate, they realize they haven't. And that's where their domain was no longer under their control.

And so giving them a giant lever to dispute a transfer without some level of, I don't know what you'd call it, the appropriate level of friction is something that's maybe something we'd want to really put a lot of thought to if we want to do that or not, because we're going to get a lot of noise and a lot of effort that could have easily been resolved.

And we don't hear about this, Roger, because it's often the tier one support people or customer service that are helping the registrant realize that this isn't a transfer issue. Thank you.

ROGER CARNEY:

Great. Thanks, Jothan. Yeah, and that's a good point. I mean, you don't want to make something so broad that—and again, I'm not saying it just that encourages overuse. I won't say abuse, but overuse on simple, as you just mentioned, Jothan, simple educational or awareness going into your electric issue. The immediacy comes up a lot easier when someone turns off your

power because you notice it right away, whereas a domain name may not get noticed as quickly. And again, I think that obviously some would, some are impactful immediately, but I'll go to Caitlin. Thanks.

CAITLIN TUBERGEN: Thanks, Roger. And thanks, Jothan. I do think that Jothan raises a good point that it's important to kind of think of all of the things that this could open up to and maybe be too broad and to think about the ramifications of that. I think what would be helpful for support staff to understand is it's one thing to open up the TDRP as written to registrants or former registrants and allow them, if their registrar does not want to file a TDRP, to file a TDRP themselves. It's another thing altogether to take some of the use cases that are on the slide and allow for some sort of administrative proceeding through ICANN to handle things like that.

So, for example, two business partners splitting or a contractor registering a name for a client, that's not a clear-cut violation of the transfer policy. That just may have been a negligent business practice or folks not thinking ahead that sometimes things go sour and it's probably best not to have an employee register your name for you. But having some sort of administrative proceeding deal with something like that gets really, really complicated because the panelists that would be looking at something like this would have to be well-versed in all sorts of property law across jurisdictions and it could get super complicated.

So, I think what we're looking for here is, is it that the group would like to see an opening in the TDRP for registrants, which I think is

something that at least ALAC or I could be misinterpreting Steinar's comment, but that folks would, that ALAC would like to at least see an opening for registrants. And if there is some sort of administrative procedure or dispute resolution mechanism that working group members believe that there's some sort of gap that warrants this, what types of things that's designed to address? And is it the use cases from the IRTP-D final report? Is it something else? It would just be helpful to further understand that. Thank you.

ROGER CARNEY:

Great. Thanks, Caitlin. And thank you for calling out that distinction between expanding TDRP to a different initiator possibly, the registrant, and really, I think what I'm hearing is a different mechanism altogether, but it's good to clarify that and what people are looking for. So, Steinar, please go ahead.

STEINAR GRØTTERØD:

First, I would like to say that Jothan's examples are excellent. And in the case that where a registrant hasn't renewed his or her domain names, well, it should never ever be in the process of a transfer dispute. And if the support officer can convince the registrant to do that, well, he's done a good job.

But I'm thinking here that what we have seen based on the temp spec and the problems that the gaining registrar has in identifying the registrant data. And we have some proposals made up in phase 1A, different mechanism to kind of have in brackets [paper flow] to ensure that the previous form of authentication, the papers

cannot be used, but they will now be substituted by a new process.

But I can clearly see that there will be a scenario where the gaining registrar said, I have collected all the information according to the book, but the registrant saying that, no, you haven't done that because you haven't asked me and what the guy you asked, he was not authorized to do this, etc.

So the registrars do have followed the process that they are disputing about the actual transfer based on lack of information or lack of data or lack of workflow, lack of professionalism between the registrars.

And that's the opening where I see that the registrant here is—the only way as it is per today is to go to court to kind of dispute the processes between the registrars, the losing and gaining registrars has followed. And that is exactly what I think we should try to avoid, that purely based on the new facts that there are new processes being proposed in phase 1A. Thank you.

ROGER CARNEY:

Thank you for that, Steinar. I'm going to jump into something that Caitlin asked about. When I look at these two use cases from IRTP-D, it sounds like to me, a lot of the use cases, or a lot of what everyone was discussing fall into these use cases. But I want to make sure that if there are other use cases that people see, we get them documented so that it provides that additional information for anyone that's looking at this. So, if anybody thinks of any other use cases, and I'm going to bring Zak's name up

multiple times here, so hopefully when he listens to this, he'll see that and see if he has anything to add there. But I think if we could come up with, if there are any other use cases that fit here.

And I think Steinar just kind of described what I was describing earlier is that, and I think what Caitlin was trying to separate was from what I'm hearing from the group, it's not that a registrant has access to the TDRP, because the TDRP, again, is very scoped to policy requirements. And I think looking at these use cases and what others have talked about, and as Steinar just mentioned that possible solution area of disagreement between gaining registrar and the prior registrant.

Obviously, there's a path today, and Steinar mentioned it, you go to court and you can resolve it there. And I think that what I'm hearing from this group is, is there a, is there an [inaudible] somewhere of something lighter weight than going to court? And again, I'll call back to the fact on this last three words here, of these two use cases, is that no compliance role. And I don't think, even the scenarios that we've heard so far, that this is an ICANN issue. As Caitlin mentioned, an administrative panel setting in between here, the jurisdictional issues alone seem kind of daunting. Not that it's impossible for sure, but it's just something to consider.

And again, I think that we've probably spent already too much time trying to get into the details of this. I don't think that it's appropriate for this group to solve it. I think if there's a need for it, a new group with more specific, I guess, qualifications or ideologies, would be better suited to answer that question. And I don't know if it's not more than just that. Is it a question of should there be something

here? And it may be as simple as no, here's four reasons why, or it may be a little more complex and say, well, we need to investigate it.

But I think the key here is, are there other use cases that we should add here? And what wording should we be providing in our report so that the community looks at it and says, okay, this should be something that council should look at, GNSO should take a look at or not. And again, looking at the resources and everything. GNSO can take it up whenever they want or however they want to do that. Or again, it could be as simple as we don't see the need. These have been outlined before, and we don't see it. Or again, we'll look at this at a later date. So Rick, please go ahead.

RICK WILHELM:

Thanks, Roger. Registries, in this case, really don't have much of a spoon in the soup. I don't want to say dog in the fight because people that like dogs don't like that sort of term. But it occurs to me that rather than making a registrant involved process that's specific to transfers, that if you're going to do something involving registrant complaining about their registrar, it shouldn't be narrowly scoped around transfers, but should be open up enough about where it can handle other things, because these transfer things are frequently around renewals that went sideways or, as Jothan mentioned a little bit earlier, other situations.

So I would encourage the group not to just, rather than starting a new process that involves a registrant, where it's only limited to transfers, it's quickly going to come up, I would believe, that it

needs to be more broad. So I would more look at this as an issue where registrants have complaints about registrar practices and open the aperture up a little bit. Hopefully that's helpful. Thank you.

ROGER CARNEY:

Great. Thanks, Rick. And again, it's definitely something to look at. And again, I think well beyond the scope of this group. And even registrant transfer to me is beyond the scope of this group. But yeah, and I think that that's valid. And should that something along those lines. I honestly don't know where that gets driven from. I don't know that this group needs to drive that. You know, we recognize that there's an issue in the transfer, a possible gap in the transfer resolution, dispute resolution. So I think that that's something that we can key on. So, Caitlin, please go ahead.

CAITLIN TUBERGEN:

Thanks, Roger. So what I might suggest here is that we have as an action item for the working group, if there is any additional use cases the working group would like to consider in terms of registrant disputes and what gaps may be missing, to send those to the list. And also something that we could consider is that in responding to this charter question, that the working group has identified a gap and believes that registrants should have access to a dispute mechanism, but that a different group would eventually explore that.

But we could have a specific question to the community, kind of like we did with the phase 1A report, where there were some

issues that the working group is specifically seeking feedback on from the wider community on what they think, if there's any gaps that they've identified, if they think it's a bad idea, a good idea, etc. That way we have a little bit more information on this specific issue.

But for now, it seems the working group is agreeing that there is a gap, that these use cases are part of that gap and any others that the group identifies, and that it recommends further work be conducted on this outside of this working group. So staff can work on drafting a response to that and also drafting a specific question to the community, if you think that would be helpful.

ROGER CARNEY:

Great, thanks, Caitlin. Yeah, and I think, yeah, good call out on any homework or whatever we're going to call it. If anyone sees additional use cases here, the more use cases that come up, the better here. So I think that's great. And again, I don't know if the group is calling it a gap or a potential gap. Obviously, there is a resolution path for all of these things that we're talking about. It's just, I think, is there a need or a want even to make it less—and again, that's a question I still have is, is it less complicated? Is it less costly? I have no idea, to be honest. I don't know the cost of disputing a transfer in the court system. I don't know that it would be any cheaper if an administrative body sat in between. You would think so, but I don't know, to be honest. And again, not something I particularly want to look at right now, but something that we can forward on to others to consider, I think. And again, I don't know if it's a gap in that it's not being done because there is

a path. It's just, is there a better path for registrants, I think, is the thing.

Okay. Any other comments on this? Again, anyone that can—and I'll say Zak's name maybe once or twice more here so that he gets cued in on this spot of the call, but anyone that can come up with other use cases that they've thought through that seem to be in this transfer-related, dispute mechanism-related field here as these two from IRTP-D, please put those to list and we can get them in. Okay. I think we can move on, Caitlin.

CAITLIN TUBERGEN:

Thanks, Roger. So the next two charter questions, or I should say the final questions related to the TDRP are G4 and G5, and I'm actually going to go over them together before we break them out to discuss since they are related. So the first question is, G4, are requirements for the processing of registration data as specified in the TDRP compliant with data protection law? And G5 asks, are requirements for the processing of registration data as specified in the TDRP appropriate based on principles of privacy by design and data processing minimization?

So before we discuss this, I just wanted to touch on a couple of issues in hopes to simplify these questions. The goal of these questions isn't for this group to be an expert panel related to data privacy, but rather just asking a couple of questions. So the first is, what does the processing of registration data mean? And I have the definition on the slide, but it includes the collection, recording, organization, structuring, storage, adaptation, etc., etc., processing of data. And then what exactly is privacy by design

and data minimization? So kind of to think about what these things mean.

Privacy by design just means at a high level that the group is thinking about data protection before engaging in any data related activity and designing processes and products to minimize the use of personal data for the specified purpose. And then data minimization really just means that a data controller should limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose.

So with respect to the processing of registration data being compliant with data protection law, data protection law varies jurisdiction to jurisdiction. And this question isn't trying to get the group to understand every data protection law in existence. In fact, some of the early input noted that data processing under the TDRP occurs by parties other than ICANN and contracted parties, specifically the TDRP provider and TDRP panelists.

And the early input also noted that data protection law varies by jurisdiction. And I just wanted to note here in the slide that the EPDP that looked at registration data processing analyzed that processing under the GDPR, which is the most stringent data law in existence at the time. So the hope is that anything that is compliant with GDPR would also be compliant with the other data protection regimes out there.

And then in answering the question, the group was asked to review 3.1.2 and 3.1.4. So I'm going to jump ahead just quickly to show again what privacy by design and data minimization mean, just for your reference. But essentially what the group is being

asked to do is, what is the purpose for processing data under the TDRP? And is the data that's included in a complaint and response relevant and necessary to accomplish this purpose? So we included some draft purposes here for the group to think about. Specifically, one purpose of the TDRP is to enable a registrar to file a complaint of response regarding an alleged violation of the transfer policy, as well as enable a panelist to determine, based on the documentation submitted, whether a transfer policy violation did in fact occur.

There's also a requirement for providers to publish TDRP cases or decisions, and that purpose is to enable transparency and also to help future filing parties. And also a purpose would be to ensure that the TDRP provider is able to administer the proceeding. So what we have here, I'm sorry to jump around on the slides, that we thought might be helpful, is to include the various elements that may include personal data, or just the elements that you need to file under 3.1.2 and 3.1.4, and see if there's anything that maybe raises a red flag to the group. We'll just introduce these, and the group is welcome to discuss, but also to review these after the call.

Just as an introduction, in going through these, I don't believe that support staff or leadership noted any items here that don't seem to go to the purpose of administering a TDRP or filing a TDRP or deciding a TDRP, but of course that's open for discussion. So under 3.1.2, the elements that the complainant would append to the complaint would be the complainant's name and contact info, the respondent's name and contact info, the domain name, the incident giving rise to the dispute, or in other words, the alleged

violation of the transfer policy, the remedy sought, any relevant legal proceedings that were filed in tandem or previously, certification of the complaint was indeed transmitted to the respondent, and then there's a required signature to a required statement in the TDRP.

And then for 3.1.4, the documentation would depend on if it's a gaining registrar or losing registrar. You'll note that some of the elements have an asterisk next to them, and those are elements that may no longer be required or should be thought about by the group in terms of what is available. So, as we know, the gaining registrar FOA is no longer required. A copy of the WHOIS output for the date the transfer was initiated and a copy of the identity used, those aren't really relevant anymore since a lot of the data has been redacted. And then we also have the elements from a losing registrar, and noting that Rec 27 kind of touches on the relevant history of WHOIS modifications and the WHOIS output.

And then moving on to Section 3.5, this is the section about publication of decisions. You'll note that the panel does have the authority in exceptional cases to redact portions of the decision for any reason. But decision reports, which I believe we showed you last week, show, at a minimum, the domain name that was under dispute, the names of the parties involved in the dispute, so the two registrars, the decision of the case, and the date of implementation of the decision.

So those are really the elements that go to filing a case and publishing the decision, and we wanted to include those on the slide to see what the group thought of those, if any red flags are raised. And I know we've probably said this in relation to other

parts of the transfer policy in terms of updating it, but registrars are required to abide by their applicable laws and governmental regulations, and that does include any sort of data protection or privacy law in their jurisdiction. So no matter what the policy says, their local law would supersede. But I see that Theo's hand is raised, so I'm going to turn the queue back over to Roger, and hopefully that made sense, but I'm happy to answer any additional questions.

ROGER CARNEY:

Great. Thanks, Caitlin. And it was great to have them put together, since they do go together. So I'll go to Theo. Please go ahead.

THEO GEURTS:

Yeah, thanks. So if you're talking about privacy by design, etc., etc. basically the goal of that thing is achieve your goal processing the least amount of personal data as possible. And if you go through these TDRPs or UDRPs, which is maybe a better example, I always wonder what a panelist is going to do with a postal address. I mean, is it really irrelevant, and so on. I mean, it could be sometimes a letter is being shipped or being sent for postal, but you know, you have to wonder, is all that information required to achieve the goal to come to a decision with all that information.

That being said, I think if you start off with a TDRP and you use the least amount possible, then at a certain point, it will be the dispute provider who will require more information. Because at a certain point, when you go into these investigations, you review

the case, then certainly it makes sense to have the postal address and see if there's been a change of the postal address. I mean, that could be all a reason that a panelist has to review for whatever reason they have. And I will assume that the panelist or the dispute provider has a valid reason to process all the data.

So I think to a certain extent, it is not all up to us to determine what a dispute provider needs for information. I mean, that is basically up to the dispute provider to sort of have privacy by design and by default, embedded that in their own processes. And so basically, I'm putting the ball back to the TDRP provider, who will need to process the information and it's up to them to make sure that all the processes and legal basis under whatever data protection law are being followed. That is not basically up to the registrar or registry or any contracted party in this case. Thanks.

ROGER CARNEY:

Great. Thanks, Theo. And I think you're hitting on a point that kind of makes sense to me, that obviously, every dispute is slightly different. So the information needed will be different. Obviously, there's a base layer of information that is consistent, who the registrar is, what the domain name is, the dates matter, of issue, and things like that.

To your point on postal address, I think you drove it down into that. It's like, maybe at some point that makes sense, but it doesn't seem like that would be a every time, every issue, every dispute need. So, to me, it's again, up to the working group if that stays in or goes away, but it seems like that wouldn't necessarily be needed on every dispute that goes to a provider. And I think that's

the key of this question, is, what items are standard and would be useful. And again, going by the good principles. And again, I'm not talking about any specific law here, but the good principles of data protection and minimalization. Obviously, there is a minimal set that we should be providing. But as Theo mentioned, I don't see that postal address is one of those, but maybe someone can make that argument for that.

And a few other things about, I think, G4 and maybe a lesser extent to G5. Obviously, we've made some changes in Phase 1A that will have to be reflected through these and some of the asterisks here it's kind of counting for some of that. But one of the things, and maybe I won't mention any specific names here, but the things that I've heard talked about previous since GDPR compliance went into effect five years ago now, I think, the gaining FOA hasn't been used. And compliance has withheld any issues on that. So, they're not stopping that.

So, when you look at if data is needed or not, obviously, that's not needed because there's still transfers occurring today and without issues. So I think that, again, we just need to take a look at each one of these and say, okay, what is that realistic minimum data set that's required? And as Theo mentions, it'll be up to providers to branch off, depending on what kind of dispute it is, on what other additional data they'll be required on those.

I think any other input on this is great. Please share any other thoughts. And again, as Caitlin mentioned—this is great. I think staff put this together because it pulls it all into one spot for the working group to take a look at. And I know it's the first time everyone's seen it. So, for sure, definitely go through these lists.

And so, you can become familiar with them and really look at each one of these items and say, is that needed? Does that have to go? Can that be situational, as Theo outlines, that the provider could actually ask for if they have reasons for it? If it's not a reason for every dispute, then it's probably not useful to send or require.

So, and again, on G4, there's a lot of information here. On G5, can you flip to that one, Caitlin? Yeah. Interesting on the data points that G5 requires when they do a transparency report. I think I don't see anything that they're currently required to report on that's an issue. But again, something for the group to look at definitely is the few items that they're required to report on, does anyone have concerns? Again, and not just GDPR, but concerns about data privacy as a practical purpose as well. So, Caitlin, was there a list? Did you have a list of what they're required to show as well? For the report for the provider. There you go. Thank you.

The providers have to report these things. And again, I think the names of the disputed parties there, I think, Caitlin, that's the registrars, I believe, not the individual registrants, because again, the dispute is between registrars.

CAITLIN TUBERGEN: That's correct, Roger.

ROGER CARNEY: Great. Thanks, Caitlin. So, again, I'm not seeing anything there of issue, but please, if anyone does see issue, bring that up. And again, thinking about the reasons here of the data privacy minimalization. And again, I'm not specifically trying to tie it to

GDPR. As Caitlin mentioned, there's other laws that are in effect here. I'm looking at the higher level principles of data privacy.

So I think the big things to look here, and if you see something you don't agree with, please let the group know. And again, on the bigger list of what the registrars have to provide back and forth, I think that that's probably useful—as Theo pointed out, maybe postal address is not needed, maybe the fax number is not needed. What items there in that list could be streamlined to at least initiate a dispute? And again, as every dispute is a little bit different, that follow-up of additional data could be on a dispute level, not on a policy level.

Okay. Again, please take a look at the two lists that are provided here on the reporting and the requirements for the registrars to send and highlight anything that you feel isn't needed to be done. And I'm assuming we're not missing anything, but please highlight anything that's not needed, so we can discuss and move forward on that and get that cleaned up as much as we need to. Okay. Any other comments from anyone? Okay. Caitlin, what is next?

CAITLIN TUBERGEN: That's actually the end of our agenda, Roger, because that concludes the charter questions. I think with respect to the data protection questions, in addition to the list on these slides, it might be helpful to review the draft edited TDRP, which includes those Rec 27 proposed updates, because that shows kind of what things are going to be crossed out or reworded. And we can have Julie submit a link to that or include a link to that with the action items from the notes. Because in the event that support staff did miss

something or you wanted to see these requirements in their full context within the policy, you're welcome to look at it there and see if we missed anything or if anything raises concerns or red flags as you review these in relation to data privacy.

ROGER CARNEY:

Great. Yeah, that's great. And I believe even in our Phase 1A, I think staff made a change or update, I shouldn't say change, but a note on the dispute resolution policy about the FOA and everything. So I know that it was recognized early by, especially some commenters as well. So I know that we're in the process of updating it, so we just need to finish that.

Okay, if that was it, then we can give everyone back a whole 15 minutes of their day. Any other comments from anyone? Okay, great. Well, have a great 15 minutes. Hopefully everybody can grab some coffee or soda or whatever they're going to drink and we'll talk to everyone next week. Thanks, everybody.

JULIE BISLAND:

Thank you, Roger. Thanks everyone for joining. This meeting is adjourned.

[END OF TRANSCRIPTION]