

## NCSG Input to Transfer Policy Review PDP WG

### Questions

This request for input is focused on the following topics:

- Transfer Emergency Action Contact (TEAC)
- Transfer Dispute Resolution Policy (TDRP)
- ICANN-approved Transfers
- Items raised in the Expedited Policy Development Process Recommendation 27, Wave 1 Report

Dear Transfer Policy Review PDP WG

Thank you for allowing us the opportunity to answer your questions about the topics discussing the WG currently.

At the Noncommercial Stakeholders Group, we care about not for profit use of the Internet and human rights. Some of those rights are privacy and freedom of expression as well as security.

### Transfer Emergency Action Contact (TEAC)

#### ***F1) Is additional data needed to support evaluation of the effectiveness of the TEAC mechanism?***

Yes, additional data is needed to support the evaluation of the effectiveness of the TEAC mechanism.

According to what has been presented there is not much information about the effectiveness of the TEAC mechanism. It is important to have a cluster of criteria to assess it to measure effectiveness such as: response time, quality of response and percentage of solitudes made.

The TEAC mechanism is an essential part of ensuring the stability and security of the DNS system in emergencies. While some information is available on the TEAC mechanism's effectiveness, there is certainly room for improvement in evaluating its performance.

One key area where additional data could be helpful is in measuring response time. It would be useful to track how quickly the TEAC mechanism is activated in response to an emergency situation and how quickly the relevant parties can provide assistance once they have been contacted. This information could identify areas where improvements can be made, such as streamlining the process for activating the mechanism or improving communication between the parties involved.

Another crucial area to consider is the quality of the response. It would be helpful to evaluate the effectiveness of the response provided by the TEAC mechanism in terms of its ability to address the emergency situation at hand. This could include looking at whether the response was timely, whether it was effective in mitigating the threat, and whether any additional support was required.

Finally, it may be helpful to look at the percentage of solitudes made to evaluate the effectiveness of the TEAC mechanism. This would involve tracking the number of times that the mechanism was activated but could not provide adequate support, either due to a lack of available contacts or other factors. By monitoring this metric, it may be possible to identify areas where additional resources or support are needed to improve the mechanism's effectiveness.

Overall, while some data is already available to evaluate the effectiveness of the TEAC mechanism, there is certainly room for improvement. By tracking response time, evaluating the quality of response, and monitoring the percentage of solitudes made, it may be possible to identify areas where improvements can be made to better support the stability and security of the DNS system in emergency situations.

***What data is needed?*** Whether we start from the point that Registries and Registrars already should have contact information, there's no new data that is necessary to activate this mechanism. In case there's no information about the Registration Name Holder a phone and email should be enough.

The data needed to activate the TEAC mechanism, if Registries and Registrars already have accurate contact information for the Registration Name Holder, then no additional data is required. If the contact information is unavailable, the Registration Name Holder's phone number and e-mail address should be sufficient to activate the TEAC mechanism.

It is also worth noting that ongoing monitoring and evaluation of the TEAC mechanism could provide valuable data to inform future improvements and ensure that the mechanism remains effective in addressing emergency situations.

## ***F2)***

NCSG considers that the time frame should be wider to allow registrars to respond to communications via TEAC channel because sometimes the requested information is not answered, due to time, agenda or other issues to permit a registrant to respond in a timely manner. It is also important to remember the time zone differences applied to this frame, and maybe could be applied with an Anywhere on Earth (AoE) Time Zone to solve it.

Also, it is important to consider that small and medium-sized registrars should have staff enough to be able to respond, when an issue like this has been raised.

NCSG recommends to the WG not only have a concern about the requests made in English but also include the availability to respond to those requests in any language besides English, at least in French, Spanish and Chinese.

***f3) To what extent should the 4-hour time frame be revisited in light of these concerns? Are there alternative means to address the underlying concerns other than adjusting the time frame?***

The 4-hour time frame should be revisited to, at least, 24 hours. As we mentioned before, the alternative to address this could be the existing issues for any parties involved to provide a timely response to the request.

NCSG suggests that any changes to the 4-hour time frame should be made with careful consideration of the potential impact on the effectiveness of the TEAC mechanism, as well as the potential cost and burden on registries, registrars, and other stakeholders involved in the process.

One alternative means to address the underlying concerns could be to enhance the quality of the information provided by domain name registrants at the time of registration. This would enable registries and registrars to more quickly and accurately identify the appropriate contacts for the TEAC mechanism, reducing the response time required.

Another alternative means could be to develop more automated tools for the TEAC mechanism, such as artificial intelligence and machine learning algorithms that can quickly and accurately identify and contact the appropriate parties in the event of an emergency.

***f4) Section I.A.4.6.2 of the Transfer Policy states that “Communications to a TEAC must be initiated in a timely manner, within a reasonable period of time following the alleged unauthorized loss of a domain.” The Transfer Policy Review Scoping Team noted that this timeframe should be more clearly defined. Is additional guidance needed to define a “reasonable period of time” after which registrars should be expected to use a standard dispute resolution process?***

In order to be able to react if a small organisation doesn't want to lose its domain a reasonable period of time would be a month later or let, at least, after the renovation window (if applicable) to use the dispute resolution process.

Additional guidance is needed to define a "reasonable period of time," after which registrars should be expected to use a standard dispute resolution process. Currently, the Transfer Policy does not provide a specific timeframe for when a TEAC must be initiated. It is up to the registrars to determine what is considered a reasonable period of time. This lack of clarity can lead to inconsistent policy application and potential abuse.

To address this concern, ICANN could provide more specific guidance on what constitutes a "reasonable period of time" to initiate a TEAC. This guidance could consider factors such as the nature of the alleged unauthorized loss, the complexity of the case, and any extenuating circumstances that may affect the timing of the TEAC initiation.

In addition to providing more guidance, ICANN could consider implementing a process for monitoring and enforcing compliance with the Transfer Policy. This could include regular audits of registrar practices, as well as penalties for non-compliance. By holding registrars accountable for adhering to the Transfer Policy, ICANN could help ensure that the TEAC mechanism is used appropriately and promptly.

***f5) According to section I.A.4.6.2 of the Transfer Policy, the TEAC may be designated as a telephone number, and therefore some TEAC communications may take place by phone. The Transfer Policy Review Scoping Team flagged this provision as a potential item for further consideration. Do telephone communications provide a sufficient “paper trail” for registrars who may later wish to request a transfer “undo” based on failure by a TEAC to respond? Such a request would require the registrar to provide evidence that a phone call was made and not answered, or a call back was not***

***received within 4 hours. Noting this requirement, should the option to communicate by phone be eliminated? Is an authoritative "system of record" for TEAC communications warranted? If so, what are the requirements for such a system?***

The TEAC should also consider to designate mail as a means of contact. In the case of small or medium-size registrars it could be difficult to reach RNH, especially if the owner or contact for a specific domain is living in a country different from registrar or registry.

NCSG considers that telephone communications are not sufficient to answer this solitude. One the reasons could be, again, time differences from both parties involved. Registrars and Registries should take into account that sometimes there is no information to contact them easily to return a call back. We do not believe that communication by phone should be eliminated, but they have to provide a "system of record" and recall the owner about the availability, or not, to record a call.

The use of telephone communication for TEAC may raise concerns about the ability to provide a sufficient "paper trail" in case of disputes between registrars and the TEAC. Registrars may need to provide evidence that a phone call was made and not answered or that a call back was not received within 4 hours to request a transfer "undo." Given this requirement, it is worth considering whether telephone communication is appropriate for TEAC communications or whether an alternative method should be used to provide a more evident record of the communication.

An alternative approach could be establishing an authoritative "system of record" for TEAC communications, for which e-mail is very suitable. This system could be designed to capture all TEAC communications and ensure that they are logged in a way that can be used to support subsequent disputes. The TEAC and the Registrar could use the system to ensure that all communications are accurately captured and stored, which could help mitigate any concerns about the sufficiency of telephone communication as a "paper trail."

Requirements for such a system could include capturing all communications between the TEAC and the Registrar, including any relevant metadata such as time and date stamps. The system should also be designed to ensure that the captured data is tamper-proof and cannot be altered after the fact. In addition, the system should be easily accessible to both the Registrar and the TEAC, with appropriate security controls in place to ensure that only authorized personnel can access the system.

Using telephone communication for TEAC may not provide a sufficient "paper trail" for registrars who may later wish to request a transfer "undo." Given this concern, it may be worth considering alternative methods of communication, such as establishing an authoritative "system of record" like e-mail for TEAC communications, which would capture all TEAC communications and provide a tamper-proof record that could be used to support subsequent disputes.

***f6) The Transfer Policy Review Scoping Team indicated that there are several factors that make a Registry Operator's obligation to "undo" a transfer under Section 6.4 of the Transfer Policy challenging:***

***i. Registry Operators do not have access to the designated TEACs for***

***each Registrar, making validation of an undo request nearly impossible.***

***ii. There is no way for Registry Operators to independently verify that a Registrar did not respond within the required time frame or at all since Registry Operators are not a party to, or copied on, communications between the Registrar TEACs.***

***iii. Transfer “undo” requests associated with the failure of a TEAC to respond are unilateral so there is no validation required prior to a Registry Operator taking action. This has, on occasion, led to a “he said”, “she said” scenario.***

***iv. Follow on to f6 iii., if the policy were to be updated to allow for some level of validation by the Registry Operator prior to taking action, the requirement to “undo” a transfer within 5 calendar days of receiving an TEAC undo request leaves little to no time to attempt to validate the request prior to taking the action***

To address these challenges, revisiting the Transfer Policy and considering potential changes may be necessary. One possible solution could be to require Registrar TEACs to copy Registry Operators on all TEAC communications, providing them with visibility into the process and allowing for better validation of "undo" requests. Another solution could be establishing an authoritative system of record for TEAC communications, ensuring that all parties have access to the same information and reducing the likelihood of a "he said" or "she said" scenario. Additionally, it may be necessary to revisit the time frame for "undo" requests and consider whether a more extended period of time is needed to validate requests properly and avoid erroneous transfers.

***f7) To what extent are changes to the policy needed to address these concerns? Are there other pain points for Registry Operators that need to be considered in the review of the policy in this regard?***

The concerns the Transfer Policy Review Scoping Team raised regarding the challenges Registry Operators face to "undo" a transfer under Section 6.4 of the Transfer Policy are significant and require careful consideration. While it is clear that changes to the policy may be needed to address these concerns, it is also essential to consider other pain points for Registry Operators that may arise in the review of the policy.

One potential solution to address the concerns raised by the Transfer Policy Review Scoping Team could be to require Registrars to provide Registry Operators with access to the designated TEACs for each Registrar. This would enable Registry Operators to validate "undo" requests and independently verify that a Registrar did not respond within the required time frame or at all. It would also provide an authoritative "system of record" for TEAC communications that could be used as evidence to support transfer "undo" requests.

Another potential solution could be establishing a mechanism for validation by the Registry Operator before taking action on a transfer "undo" request. This would help ensure the request is legitimate and prevent the "he said" or "she said" scenario that sometimes arises. However, given the tight time frame for "undo" requests (5 calendar days), it may be challenging to implement a validation mechanism that does not unduly delay the process.

In addition to these potential solutions, it is essential to consider other pain points for Registry Operators that may arise in reviewing the policy. For example, Registry Operators may face challenges related to the availability of technical resources to manage transfer "undo" requests or the potential for abuse of the "undo" process by Registrars who may use it to circumvent legitimate transfers.

Changes to the policy will likely be needed to address the concerns raised by the Transfer Policy Review Scoping Team. However, it is important to carefully consider the potential impact of any changes on all stakeholders, including Registry Operators, Registrars, and domain name holders, and to work collaboratively to develop appropriate, effective, and sustainable solutions.

### **Transfer Dispute Resolution Policy (TDRP)**

***g1) Is there enough information available to determine if the TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP? If not, what additional information is needed to make this determination?***

According to what has been discussed the TDRP is not an effective mechanism because there are not many cases raised where a request has been solved, also there is a general concern about the costs of the process and because many registrants do not respond to those requests.

The effectiveness of the Transfer Dispute Resolution Policy (TDRP) in resolving disputes between registrars in cases of alleged violations of the Inter-Registrar Transfer Policy (IRTP) is a subject of debate. While some information is available regarding the TDRP's use and outcomes, it is unclear whether this is sufficient to determine its overall effectiveness.

Additional information that may be useful in evaluating the TDRP's effectiveness includes:

- The number of disputes that have been resolved through the TDRP compared to those resolved through other means, such as court proceedings or arbitration
- The average length of time it takes for disputes to be resolved through the TDRP
- Feedback from registrars and other stakeholders regarding their experiences with the TDRP, including whether they believe it to be an effective mechanism for resolving disputes.
- Furthermore, it may be beneficial to examine whether any systemic issues contribute to disputes between registrars and, if so, to identify ways to address these issues.
- While some information regarding the TDRP's use and outcomes is available, additional data and stakeholder feedback may be needed to determine its effectiveness.

***g2) The ADNDRC reported to the IRTP Part D Working Group that in some of the cases it processed, appellees and appellants failed to provide sufficient information to***

***support arbitration. Is this an issue that needs to be examined further in the context of the policy?***

***i. 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 the dispute resolution provider***

The Policy is published and available to anyone who needs it. We believe that information provided by a requestor never is enough to solve an issue like this, therefore this should be examined in detail further more.

The issue of registrars failing to provide sufficient information to support arbitration is a concern that may need further examination in the context of the policy. It may be necessary to evaluate whether the existing informational materials about the TDRP are sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they must provide to the dispute resolution provider.

If registrars are unaware of the information required to support their case, it could lead to delays and inefficiencies in the dispute resolution process. It may be necessary to provide additional guidance and training to registrars on the TDRP process and the types of information required to support their claims.

Additionally, it may be necessary to evaluate whether the TDRP rules and procedures need to be updated to provide more clarity on the types of information that must be provided by the parties to the dispute. This could help ensure that all parties have a clear understanding of the evidence required to support their case and can provide it promptly and efficiently.

Additional examination and potential updates may be necessary to ensure that the TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP.

***g3) If the TDRP is considered to be insufficient:***

***i. Are additional mechanisms needed to supplement the TDRP?***

***ii. Should the approach to the TDRP itself be reconsidered?***

If the TDRP is found to be insufficient, additional mechanisms may need to be considered to supplement it. For example, an alternative dispute resolution mechanism could be developed, or existing tools could be enhanced. It may also be necessary to reconsider the approach to the TDRP itself, such as revising the criteria for eligibility to use the TDRP, providing more detailed guidance on the types of disputes that may be resolved through the TDRP, or increasing the role of ICANN in the TDRP process. Ultimately, the effectiveness of the TDRP will depend on how well it is designed and implemented and whether it adequately addresses the needs of registrars and the wider community.

***g4) Are requirements for the processing of registration data, as specified in the TDRP, compliant with data protection law?***

According to TDRP, specifically on 3.1.2 and 3.1.4, the complainant should include name, postal and e-mail addresses, and the telephone and fax numbers, and the same info for respondent and the evidence documents that apply for the case.

The answer to this question depends on the specific data protection laws in question, as requirements for processing registration data may vary by jurisdiction. However, the TDRP does include provisions related to data protection, such as requiring that all personal data be processed following applicable laws and regulations and providing for the redaction of specific personal data in documents submitted during the dispute resolution process.

If a specific jurisdiction has data protection laws that are more stringent than those outlined in the TDRP, it may be necessary to make adjustments to ensure compliance. Additionally, as data protection laws continue to evolve, it may be required to review and update the TDRP to ensure ongoing compliance periodically.