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ICANN73 | Virtual Community Forum – GNSO Transfer Policy Review PDP Working Group  
Tuesday, March 8, 2022 – 10:30 to 12:00 AST

JULIE BISLAND: Hello, everyone. Welcome to the Transfer Policy Review PDP Working Group call. Please note this session is being recorded and is governed by the ICANN expected standards of behavior.

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With that, I will hand the floor over to Roger Carney. Please begin, Roger.

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ROGER CARNEY:

Thanks, Julie. Just a quick update. This session is going to be mostly a working session for the PDP working group, but I did want to start out with a really brief introduction to what we've been doing and where we're at for those that weren't able to catch the policy session a couple weeks ago.

Our transfer group started meeting almost a year ago last May and we've made really great progress, actually, since then, with some really good discussions, and moved the process along. We actually have our work broken up into three separate phases: Phase 1A, as we're calling, that redoes mostly the main transfer policy (inter-registrar transfer policy) itself, and then a Phase 1B that talks through the changes of the change-of-registrant policy (again, Part 2 of the current main policy), and our Phase 2 work, which was going to be focused on transfer disputes and any of the mechanisms around that. Again, the reason for [A1 and AB] is we'll end producing a final report on that prior to moving on to our Phase 2 work. And that first A and B again [inaudible] policy and change-of-registrant policy work will be encompassed into that final report, and then we'll start looking at the individual pieces of the [inaudible] and what needs to happen there.

Today we're on target with our 1A phase. We're scheduled to release a draft report in June of this year. I think the draft report is actually in progress now. We still have a couple discussion points left for the working group before we can start tackling that initial report group-wise, which will probably be may not until next month when we start tackling the initial report. So we'll take a couple months to flesh that out before we get it out to the public. But, again, we're going really well,

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at a good pace. The group has worked really well together and moved this along quickly.

And, again, we only have a couple items left to talk about: what we're wrapping up; denial-of-transfer reasons, bulk discussions, and anything left over. Specifically one big one was talking about, at a high level, those transfer dispute processes and a quick reversal, so that we can settle on some of our early recommendation in a regular transfer policy.

And I think that's about it. Again, it's just a quick overview of what we've been doing and where we're heading shortly. Other than that, I think we'll jump into our work.

Before I jump into work, though, I always like to give the stakeholder groups a chance to jump on the line and talk about anything that they've had discussions over since the last meeting last week—any comments or conversations that they want to bring forward that the group should know about or maybe need to discuss. So I'll open the floor up for any of the stakeholder group to bring any of those things forward. So, please.

Okay. Nothing to note this week. Great. And I know that the Registry Stakeholder Group still is looking at a couple questions for us and we'll get back with them when they have those conversations on their side.

So, other than that, I think we can jump into our work where we were working last week on reasons for denying a transfer. We had a good week last week with the poll questions. And I think we've used them

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now the last two weeks, trying to get through all the different reasons that you can or may or should deny a transfer. I don't remember where we left off.

Staff, what number were we on there in our poll? It was down in the 3.9's, into the may-not-deny. Let's go ahead and finish our poll questions and then we'll go back real quick to any recent comments on 3.7, 3.8., and 3.9, just to try to wrap up those comments and questions before we move on. So if we can jump into our remaining poll questions. Julie, do we have those? Caitlin? There we go. Thank you.

All right. So we've moved on the second item in the may-not-deny reasons. So let's look at this. No response from the registered name holder or administrative contact. So this is one of the reasons that registrars cannot deny a transfer. If they send something to a registrant and they don't get a reply, they can't deny that transfer just for that reasons. So, again, no response from the registered name holder or administrative contact, which obviously is going to go away.

So we have a few options here: leave as a may-not and keep language as is ... Oh, maybe I should preference this. Just the active working group members need to do the poll questions. Anyone else can just cancel out of the poll questions and we'll just use the active members' responses. Again: leave as a may-not and keep the language is, leave as a may-not but make some edits to it, remove from the list, or needs some further discussions. If you want to take a couple seconds here and answer and then we'll discuss the results.

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Okay. Let's go ahead and show those results, please. Okay. So the majority were in the top two, though we did have some "removing from the list" or "did want to discuss a little further." But the majority we're looking at is keeping this as a may-not and obviously some possible edits. Obviously, the administrative contact would have to be removed in light of the EPDP Phase 1 recommendations.

But I think what we need to focus on here is maybe those that want to remove it or those that want to further discuss.

And I see Sarah made some chat in there. There's some action in the chat there about what that really means and how the interactions happen. So I don't know if Sarah or someone wants to bring that forward. But I'll open it up to anyone that answered that wants to discuss it further or remove it from the list.

Sarah, please go ahead.

JULIE BISLAND:

It looks like she might be having some audio issues, though.

ROGER CARNEY:

Okay. We'll let Sarah work on that for a bit. But if we go back and look at some of Sarah's chat, her concern was, is there an early part of the transfer where the registrant has to respond? In our current recommendations, they do not have to respond. Obviously, the TAC is going to be provided in the mechanism the registrar providers, which may be e-mail. Or it may just be control panel or it may be some other

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mechanism that the registrar is using. So there is no direct requirement of a response from the registrant to initiate the transfer. So I think that one of the purposes here is, if you don't hear from the registrant, that doesn't mean you can stop the transfer. Obviously, it was initiated by a controlling interest. So it should continue along unless you do get a response where they're saying not to let it go along.

Keiron, please go ahead.

KEIRON TOBIN: Hello. Thank you. Sarah just commented in the chat, so I'm not sure if Sarah wants to go first. She's put her hand up.

SARAH WYLD: No. Thank you, Keiron. Please go ahead. I'm still kind of confused and I don't know why.

KEIRON TOBIN: So all I was going to say is, prior to GDPR implementation, before, obviously, this was more important, but as we now go into a world where data protection is obviously more important, then I think it's one of them where we can remove it from the list. I'm not in favor of leaving it as it is either. Or administrative contacts as well. And I definitely think that needs to be removed.

But, yeah, I'm happy to go with this consensus of the rest of the group here. I think it's one of them where, is it needed? No. I would be happy to get rid of it. If there are changes, yes. Maybe we just need to go into a

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bit more detail and also maybe specify as well that no response is required. So no response is required from the registered name holder. Does that make it redundant then? Potentially.

ROGER CARNEY: Right.

KEIRON TOBIN: So I'm kind of on the fence with this one. But I think to maybe remove it is an option as well. Thank you.

ROGER CARNEY: Thanks, Keiron. And I think that obviously you have to take in context the section heading here: The registrar may not deny a transfer for this reason. So, yeah, it's one of those where you have to read the whole thing together to get that feeling.

And I think that, as Keiron said, 60-some percent of the people thought it was useful still. [inaudible] be removed. I think that's [inaudible] to be made, but right now we're looking at keeping that. So we'll leave it there.

Sarah, your mic was sounding well, so please go ahead.

SARAH WYLD: Imagine a situation where a losing registrar decides that they want to continue using the FOA2 and then they send it out but the domain owner thinks, "I don't have to do this anymore," so they don't answer it

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because they've already provided the TAC to the gaining registrar. And then the losing registrar says, "Well, nothing prevents me from denying your transfer because 392 has been removed from the policy." Is that [inaudible]?

ROGER CARNEY:

Yeah. And I think that that's why it's still important to be in there. Again, I'm not sure of the argument of removing it. Again, I think, with a registrant not being affirmative either way, it's handled today and should be handled in the future.

Okay. I think the plan here is to keep it in and at least remove the administrative contact. If others have some clarifying comments, please put it in the document and we can look at those as well to see if we need to make this more clear or people. So thanks, Keiron. Yes.

Okay. So let's go ahead and close that and jump into our next one. Okay. And, again, reasons why a registrar may not deny: domain name and registrar lock status, unless the registered name holder is provided with a reasonable opportunity and ability to unlock the domain name prior to the transfer request. So, again, I think that this is part of another topic earlier in, but if there's a lock on it, that's not a reason to deny the request—if it's just a registrar lock, obviously. If it's a COR proceeding or UDRP or some other kind of lock like that, obviously, we've already allowed for that. But here it's: just a plain registrar lock should not be a reason to deny the transfer.



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So our options again are the same: leave as a may-not and keep the language, leave as a may-not but make edits to the language, remove from the list, or don't know and would like to discuss further. So let's take a few seconds to answer. And we will discuss shortly.

Okay. Let's go ahead and show the results.

Catherine, thanks for that. And maybe we can look at that.

Well, let's go ahead and jump into this. It sounds like a good chunk of people want it to stay in and maybe with some edits. But there's obviously 27% that are not sure if it should be there or they need to discuss it.

So, Owen jumped up first. So let's go with Owen.

OWEN SMIGELSKI:

Thanks, Roger. So my concern here is that the common way to deal with abusive and fraudulent domain names for registrars is to place the domain name into a registrar lock. I understand, yes, that might not be something that could block the transfer, but it certainly needs to have the ability that, if a domain isn't registrar-locked because of abusive conduct, that domain name transfer can be blocked because the last thing we want to do is have somebody transfer about abusive domains or be able to transfer out abusive domain names. I know some of the registrars blocked the ability to transfer by denying access to the auth-info code or the future-called TAC. But I just want to make it abundantly clear that we can still have the ability to block abusive domains from being able to transfer out to a different registrar. Thanks.

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ROGER CARNEY: Thanks, Owen. Yeah, and I know we have, in the above list of why they may actually deny a transfer, if it's fraudulent. And I think we were still working on that language. But for fraudulent possibilities, the registrar may. So I don't know if what you're suggesting is "maybe you refer to above samples," or something like that. I mean, obviously, we don't want to try to contradict what we've already said earlier. So maybe we just need to make that clear.

Jody, please go ahead.

JODY KOLKER: Thanks, Roger. I guess what I'm having a tough time understanding as part of this in an operational way is that, when a domain name is placed on a client-lock status, if that's what we're considering to be the registrar-lock status, when a registrar places a domain on a client-lock status, the registrar will then never get to deny the transfer because typically what happens is the registry will deny the transfer—the attempt of it—because the domain already is in a client-lock status. So the registrar would never even get the message to deny that transfer.

ROGER CARNEY: And I think that's where the second part of this language comes in, Jody. If it is in a lock status, registrars have to provide the opportunity for the domain name holder to change that [at a] transfer.

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JODY KOLKER: All right. Okay, thanks.

ROGER CARNEY: Is that correct? That’s my understanding of this. Thanks, Jody.

JODY KOLKER: Thanks.

ROGER CARNEY: Sarah, please go ahead.

SARAH WYLD: About the lock status, I do think we should try these standardized terms. “Registrar lock” is, I think, not super meaningful to me. So if that does refer to one of the specific EPP statuses, let me know which one. Like, if it’s client-transfer-prohibited maybe, I would assume—oh, and Rick just put that in the chat—that it is client-transfer-prohibited, but we should actually say so. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. Jody, I assume that’s an old hand?

I’ll jump to Owen. Owen, please go ahead.

OWEN SMIGELSKI: Thanks, Roger. Not that I’m trying to solution one thing or another, but historically, the reason why ICANN has allowed some flexibility in ways to implement locks is that some registrars might, instead of putting it

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in a registrar lock, some might put it into the EPDP status code of client hold. Other registrars may put in dummy nameservers so it doesn't resolve or they may put in some nameservers that show up that tell that the domain is suspended. Or they could just some sort of internal hold that makes it so that the customer can't transfer out. So they provided a number of different opportunities across different models, etc., and things like that.

And so I'm not saying I'm against moving towards the EPP—because it's good to have something that is readily easy to see and identify—but I think it might cause a little bit of friction among registrars which had some established business practices for upwards of, say, 20 years in some cases due to this. So this could actually represent a significant change. Thanks.

ROGER CARNEY:

Great. Thanks, Owen.

Steinar?

STEINAR GROTTEROD:

Hi. I do agree that we have to find some sort of a common understanding of what is being seen as a registrar hold. My understanding is that there might be a combination of client EPP parameters, like client-transfer-prohibited, client-update-prohibited, etc. It could identify the status.

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To Owen here, I'm aware that some registrars do particular nameservers, don't resolve nameservers, etc., but actually we have a scenario where the registries don't know and will not stop a transfer. But a client-transfer-prohibited will actually do that from a registry level. Thank you.

ROGER CARNEY:

Yeah. I think we talked about this prior (what Owen brought up): "lock" can mean many different things. Obviously, that's what we need the discussion to focus on: okay, do we want that to be specific or do we want that to be open so that, even on a domain-create lock, there doesn't actually have to be an EPP code if the registrars enforcing that ... I mean, the registrar can enforce this by not designing a TAC. So there is no way a transfer can happen. And there's still no lock on it, but that would be a lock in a way if that's what they're claiming.

So I think that we need to be, as Owen said, looking at that. If we're trying to be more specific and we need to more specific, good, let's do that. But if we need that extra flexibility, as Owen mentions, we need to come up with a way to communicate that clearly.

Sarah, please go ahead.

SARAH WYLD:

Thank you. So I don't know. I woke up fuzzy-brained or something. I'm trying to just make sure that I understand what our goal is with this particular item, 3.9.3. So I wrote it in a different way, which I just put in the chat. So here's what I understand we're saying. If the registrant

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could unlock the domain but didn't do so, then it's okay to deny a transfer because the domain is locked. But if they don't have the ability to unlock the domain, then whatever lock it is is not allowed to fail the transfer. It cannot prevent the transfer. Is that what we're saying here? Because that seems reasonable to me, setting aside the question of what kind of lock it is. Thank you.

ROGER CARNEY:

I think. That's how I would interpret that, Sarah. And, again, I think how you've reworded it is basically taking into account the section heading of this whole thing of 39. The registrars cannot deny these.

Owen, please go ahead.

OWEN SMIGELSKI:

Thanks. I haven't had my coffee yet here, but I felt the concern I had raised was if ... Say the registrar locks a domain name for abuse. Under Sarah's wording here, that would be one that the registered name holder could not remove. So then they would not be able to transfer. So the lock should prevent the transfer.

ROGER CARNEY:

Correct. And I don't know if we need to be more clear in these sections here. Obviously, if there's a denial above, that's a reason that overrides these reasons below. And I don't know if that's clear enough in here, but if you're denying a transfer for abuse, then the locks don't even matter

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because you're denying it for abuse. So I don't know if that needs to be clarified. I'm just talking out loud here.

Jody, please go ahead.

JODY KOLKER:

Thanks, Roger. I agree with Owen. And I agree with the general statement that you just made, Roger. I believe that we've got to make these really crystal-clear as to why you can do this or not. And we've got to be crystal-clear on the lock. I mean, is it an EPP lock that we're talking about or is it a lock for, as Owen said, abuse? And then it should say something in this 3.9.3 that says you can deny this for spam or abuse by placing the lock on the domain name and removing the ability for the customer to be able to change the EPP lock on the domain because the domain is locked by the registrar for spam and abuse. I think it's really got to go through that in this 3.9.3 in order to be really clear about it. Thanks.

ROGER CARNEY:

Great. Thanks, Jody. Greg, please go ahead.

GREG DIBIASE:

Taking Sarah's and Owen's points together, I'm wondering if we can revise Sarah's text to say, "If the RNH is eligible to unlock the domain but didn't, then it's okay to deny the transfer." So I wonder if that could satisfy Owen's concern that, if the domain abusive, it's not eligible. Maybe that's a solution for combining both of these ideas.

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ROGER CARNEY: Great. Thanks, Greg. Yeah, and I think that’s the key: we need to, again, formulate some language that shows that—and Steinar even put it in chat—“you must deny” obviously overrides this section, “may deny it,” kind of overrides this section. So if you do deny it for one of those above reasons, then these things don’t really apply because you’ve already done that diligence on the front side and identified it as whatever—payment for current registration fee or whatever—so that none of these other reasons here stop that denial of transfer.

Again, as Jody was trying to describe that and he walked down that, he ended up with probably a two-paragraph statement for 3.9.3, which I think that we can probably solve if we put in language that talks about—I don’t know if this is the right term—order or precedence or whatever here, where, if you denied it, then these reasons don’t apply. Something to that effect.

Thoughts on that?

Catherine, was that explicit into my comment?

CATHERINE MERDINGER: Sorry. It was, if one supersedes the other, we should make that explicit of, like, “Except for the things listed above,” or whatever.

ROGER CARNEY: Great. Thanks, Catherine.



Okay, so let's think about that. And we can come up with that wording. But as we go through these topics here, let's go through them with that assumption that, obviously, if a denial has already happened for a reason, then things don't actually account for that. And if we come across one of these may-not-deny's that breaks that, I think that's important to acknowledge, too. Is there one of these that supersedes a denial? I don't think so. I think that's why this section of this policy was written in this order: so that it made sense to follow through it. But, yeah, I think that we need to be more specific about, if there is an order of precedence, that we need to identify that. And, again, if one of these may-nots breaks that, we need to call that out specifically.

So I think, talking through that, this still is applicable. And maybe we need to change this language. And I think Sarah and Greg talked through some of it.

Sarah is suggesting, if we're reordering sections, to put the "must" first, then "may," and then, "may not." No, that's good, Sarah. That's part of that discussion: do we do that and do we add the comments in there, obviously, of that those sections override those later items.

But I think that, with that idea, even if we do make the order change as Sarah is suggesting, this reason of denial or may-not-deny still is applicable. Is that right? I think that we can keep this in here. And maybe we need to change some of the language, but we also need to add some supporting language on how someone looks at this and understands that must-deny overrides these reasons here.

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Okay, Sarah. So you're not still sure this applies. So we'll come back to it then after we talk about some of those other edits to set the precedence level. I think I'm using that right. Okay.

Sarah, please go ahead.

SARAH WYLD:

Thank you. I'm wondering if we could ask ICANN Compliance if there are any examples of an issue specifically under this 3.9.3 that we could like as to a real-life situation of when it might have happened. If that's not available, that's fine, but I think it might be informative. Thank you.

ROGER CARNEY:

Thanks, Sarah. And I think that, along with that, Sarah, maybe Compliance can share any experience they've run into where there's been a disagreement on how to apply these and in what order.

Holida, please go ahead.

HOLIDA YANIK:

Hello. I can explain it with the example that we usually see that relates to this item. So when the registrant comes to Compliance and says, "Hey, I was not able to unlock the domain name, and the registrar did not to my request to unlock it, and when we addressed it with the registrar, the registrar responds to us that the registrant is already provided with the facility to unlock it via the control panel via domain name account. But, however, the registrant does not have access to the account."

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So, from the Compliance standpoint, failed access to domain name accounts are outside of scope and are not addressed within the transfer policy. And we request the reporter registrant to work with the registrar and provide this section as a justification. So we say, “Hey, the registrar already provides the unlocking opportunity for you within the account. So the registrar is compliant.”

So I hope this clarifies it and I hope I didn’t confuse you.

ROGER CARNEY:

No, Holida, you actually just tried to make the ... Obviously, the registrant is the one that’s bringing this forward, but you tried to get the registrant together for a little education on actually how to do it. It’s not necessarily that they may not have had the ability. They just didn’t know how to do it. Is that correct, Holida?

HOLIDA YANIK:

Yes, correct. Thank you.

ROGER CARNEY:

Okay. And, Holida, please think about—we don’t need a response now—maybe taking it back to the group and ask, has there been any scenarios where there’s been an issue of things getting out of order here? Like maybe it was put on denied because of fraudulent aspects of the account. So maybe the transfer was denied for that reason, but a registrant said, “Well, yeah, but you can’t do that because you can’t lock that unless you give me a chance to unlock it.” Again, just see if there is

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any ongoing issues of precedence here that we may need to account for. And, again, it's nothing you need to answer now but it's just something to think about and take back to the group. Thanks.

Okay, so we'll table this one. It needs a little more discussion, but we did find a few things that we want to change, obviously. And that is maybe the order, as Sarah suggested—I'm not opposed to that at all, and it sounded like there was some agreement to that—and maybe put the “must deny” first, the “may deny” as the second section in this group, and in this third section maybe the “may not deny” reasons. And maybe we need to add some language to be more explicit on the order of use here. So, again, I appreciate anybody jumping in the document and adding some text, some language, to facilitate those changes that we're talking about.

Okay. And, again, we'll circle back to this when we make those changes. And, again, if anybody wants to make suggested verbiage changes to this specific one, please put that in the document as well and we'll cover those. Sarah has provided a couple and I know Greg suggested some as well—edits to this—to make it seem to be a little more clear to everyone.

Okay, let's go ahead and jump out of that and jump into our next one. Okay, so, again: reasons a registrar may not deny include 3.9.4, which is domain name registration period constraints other than the first 60 days of initial registration, during the first 60 days after a registrar transfer, or during the 60-day lock following a COR section pursuant to the below section of COR. And, again, this talking about domain name registration period time constraints other than those. Obviously, we're

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looking to update those timeframes, so we'll have to update those. But, again, I think we need to focus on the domain name registration period timeframes other than what we've already discussed. So are there are other ones? And, again, a registrar cannot deny the transfer for constraints other than those.

Do we want to talk about this before we jump in? Is there anything to talk about? Is it clear?

Jody, please go ahead.

JODY KOLKER:

Thanks, Roger. I'm just curious. Does anyone have an example of this? I'm having a hard time wrapping my head around it. Thanks.

ROGER CARNEY:

Yeah, Jody. And I'm not sure—maybe it's just for the catch. And I think Sarah put in chat that, basically, you cannot deny it except for those explicit timeframes that are outlined.

Yes, Catherine. No, you cannot deny a transfer just because it is expired. If there's other reasons, then yes. But for an expiration only, no.

Holida, please go ahead.

HOLIDA YANICK:

I can bring an example as we as Compliance. So the registrars denying a transfer after, say, two years after COR or after maybe six months after

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renewal—this kind of period—did not fall into the allowed non-transfer periods. Thank you.

ROGER CARNEY:

Thanks, Holida. And I think Jody’s question was more on ... Obviously, those fall outside those periods, but has a registry actually tried to deny it for that reason? I think that’s what Jody’s question was. And, again, I think this is a catch-all situation where it’s basically just saying that the only time constraints are those that we explicitly already made and no other time constraints can affect a transfer.

Any other questions or comments before we vote?

Okay, let’s go ahead and vote and then obviously we’ll continue discussing. So, again, the options are: leave it as may-not and keep the language, leave it as may-not but make the edits for clarity, remove from the list completely, or just need to discuss further. Take a few seconds and we’ll talk about the results.

Okay, let’s go ahead and shove the results. All right. So the majority think it should stay in here. A good strong support of updating the language to be a little more clear. But there were a couple people that thought maybe we should discuss it a little further. And I invite any of those that want to discuss it further to come forward. And let’s open that discussion up.

Berry, please go ahead.

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BERRY COBB:

Thank you, Roger. I think I will join Sarah and the mid-morning foggy here. So not trying to presuppose any final recommendations that this group may come to, but based on where we sit today, 3.9.4 seems to be kind of a catch-all for the inconsistencies that exist in the transfer market today. So the 60 days of initial registration aka the create-lock is not a standard across the industry. 60 days after a transfer is not a standard—at least not yet—[where] there’s variables in how that’s implemented. And then of course we have the COR, which is a requirement for material change of a 60-day lock, which we’ll get to in Phase 1B.

The group seems to be coalescing—no confirmed agreements yet—around that there is going to be a standard create-lock of X duration and seems to be coalescing around that there will be a post-transfer lock of X duration. And then of course, if we were to assume that COR doesn’t change, except the duration, then ... And all of those are going to be musts.

So I guess, based on my foggy, I’m starting to wonder if this will even be necessary based on where the group is forming around our prior discussions about the locks. Thanks.

ROGER CARNEY:

Great. Thanks, Berry. And I don’t think that was foggy at all. I think that was pretty clear. And I think that maybe you’re right. And, again, I think I used the same language, Berry: that this was a catch-all kind of spot, to catch any of those “ought to be’s”. But you made it much more descriptive in the problem of today’s variability in these timelines,

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where what this group is, as you mentioned, coalesced around is setting these strict timelines and making everyone do them, not making them optional or not.

So maybe at some point this doesn't become as useful, but again I think it doesn't harm anything to have it. I don't know because of that catch-all. So I think that, if we agree on the two timelines and then even a COR timeline, if we get to that spot, maybe we do revisit this and see if it's still applicable. I think it's still good now, maybe with some edits.

Sarah suggested possibly editing this with "expiry." And I think maybe that came from Catherine as well. I don't know if that goes here or if maybe that's a new one or if that's something we need to account for separately.

Sarah, please go ahead.

SARAH WYLD:

Thank you. I think I'd just like to hear from the group. And perhaps we need to take it away and think a little bit about it first. If the policy says that you can deny a transfer at this time and at that time and at no other time, and during the expiry period is not one of the defined times when you may deny the transfer, do we need to specify? Or is it just mentioned so it's not prohibited? This is my question. I have leaned in both directions in the last 15 minutes, so I don't know what I think yet. But hopefully as a group we will come to that. Thank you.



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ROGER CARNEY:

Thanks, Sarah. And I think, when you lay it out technically—some of the technical [inaudible]—you obviously get to the same point you did: “Well, you can only do it here. You can only do it here. That’s not in those, so you can’t do that.” But should it be made more clear via language? And, again, it’s mostly because we’re here talking about it and we’re probably the closest people to these things. So when we start stepping back to other people, is that going to be clear to them? So, just a thought.

There you go, Sarah. It may be an implementation note. And, again, it’s one of those where, if we’re concerned about expiry being an issue, maybe it should be its own or, as Sarah said, we should pull it out and put it in a footnote to be explicit about it.

Okay. Excellent. And great discussion. And, again, I think we leave this in here. Obviously, I think it needs to be updated based on any changes we’re making elsewhere on the timelines and everything like that. But let’s think about either adding another one or a footnote to this that addresses the expiry issue. And I think, if we’re asking the question here, it’s probably good to be clear about it because it’ll probably come up later as well.

Excellent. Okay, let’s go ahead and close this one out and jump into our last one, I think. All right. 3.9.5. And, again, reasons that they may not deny a transfer: general payment defaults between registrar and business partners, affiliates, and cases where the registered name holder for a domain in question has paid for the registration.

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So I think that that's fairly clear, but let's open it up for any questions, any comments, before we vote on this.

No? Okay, let's go ahead and vote on this then. And, again, the options are: leave as may-not and keep the language, leave as a may-not but make edits to it, remove from the list, or want to discuss further.

All right. A couple more seconds and we'll see how we turned out.

Okay, let's go ahead and show the results. Okay, so it looks like fairly strong support for keeping this. And maybe there's some edits, but there's at least one person that thought maybe we needed to discuss a little further. So I invite anyone that wants to discuss it further or anybody that wants to make edits as well to come online and make those suggestions, even if they don't have a perfect suggestion, just on where it's a little confusing and could help.

Owen, please go ahead.

OWEN SMIGELSKI:

Thanks, Roger. So I guess was a little just confused about this in general because it looks like the transfer could be blocked if the registrar [and the partner having a payment] as opposed to the registered name holder. I just wanted a little bit more clarification because I was trying to think of what type of scenario this might be, and I thought it might be something in general, such as the registrar also providing brand protection services for the registrant. So, that scenario. I'm not sure what it is. So if somebody could provide perhaps a little background context about what type of scenario we're talking about here, thanks.

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ROGER CARNEY: Great. Thanks, Owen. And I guess I never thought about the other features that may be added on, and is that something we should account for? But I think that this was trying to specifically address, yes, what you mentioned: a reseller to a registrar or something similar to that. But the registrant [inaudible] actually paid for the registration so that, if the registrant has paid for it, no matter what happens outside of that, it should be able to be transferred.

Steinar, please go ahead.

OWEN SMIGELSKI: Roger, [inaudible] I guess maybe then we can take the wording that is already in the RAA because “business partner” is just really broad and vague and is not anything that I recall being defined in there. “Affiliate” could also mean a privacy-proxy service which is owned by the registrar. So if we want to specifically talk about resellers, that ... And, again, the transfer policy ... This wording here is probably old and predates the actual definition of reseller in the RAA. So maybe we just want to make it be “reseller” so that it’s abundantly clear. Thanks.

ROGER CARNEY: Thanks, Owen. Steinar, please go ahead.

STEINAR GROTTEROD: I made a posting to the working group with some information I received the other day about registrants or registered name holders having to

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pay a certain fee to the registrar for handing a transfer out. I have personally never experienced that, even though I've been using different registrars for a long period of time. But I was kind of shocked also with the fees that were connected to this kind of service for some registrars.

Further, I don't know whether that is something that is common now or if it's just a rare situation. But if this is something that registrars do, will this fall into 3.9.5; that the registrant has paid for the domain name but not for a particular service to transfer out from that registrant (from the losing registrant to another registrar)? Thank you.

ROGER CARNEY:

Great. Thanks, Steinar. And I think, Steinar, I know I touched [on both]. And, again, an open question here is, should this be even more general? Owen was just talking about other services probably. And I think that, even if it's not specifically talking about that, should we talk about that? And Owen mentioned, it was a brand protection or something, and someone, I think, said privacy or proxy protection. If those services aren't paid for, should a registrar be able to block a transfer, even if the registration is paid for? Again, I think that's a discussion this group can have: if that makes sense or not. It seems, if the registration is paid for, then it should be able to transfer. But there are other circumstances where that makes sense, where a different service has to be paid for before ... Is that something we need to address? Do we need to make sure that it's allowed or not allowed? I think that's probably the big thing.

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Comments? Questions?

So it sounds like we are okay with this item. It just maybe needs to be worded so that it fits purpose better.

Owen, please go ahead.

OWEN SMIGLESKI:

Thanks, Roger. So to kind of go along with what Steinar was saying there, while I understand that there was a concern about such a fee being there. Again, I don't think it really has appeared much there. I seem to recall only one case of that coming up when I was at ICANN Compliance, although obviously I didn't see all of them. So it's a very rare thing and [as Holida put into the chat,] there are other ways to get that otherwise.

But I think the reason why that's there is not because registrars do charge that fee. It's because it's not explicitly prohibited by the consensus policy. So in theory, a registrar can impose any number of fees that they want to on a registrant just as long as it doesn't conflict with what's in the accreditation agreement or in the consensus policy. So a registrar could charge \$50 a year for just having a registrant as a client. Yes, that's crazy. That's abhorrent and nobody would do that, but it's not prohibited so it is allowed. Thanks.

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ROGER CARNEY: Right. And I think that the point of this is that, as you said, Owen, that fee doesn't break anything but it also shouldn't stop them from transferring away either. I think that's the point of this 3.9.5.

Farzi, please go ahead.

FARZANEH BADI: Hi. So I had two points. One is that—I know that it was a little bit noisy in chat, so sorry I didn't raise this point before—for the 3.9.5 reasons that the registrar of record may not deny, I think that, in this case, it should “must not” deny. And there is a really big difference between “may not” and “must not,” maybe not in practice for well-intentioned registrars. But I think language is very important there. So I think we need to have a discussion about that to discuss whether we need to change it from “may not” to “must not.”

The other thing is about the transfer fee. As I said on the mailing list, this is especially something that the Non-Commercial Stakeholder Group, since we do non-commercial communication and generally advocate for non-commercial domain name registrants [...] A hefty transfer fee is kind of anti-competition as well. And I don't know if the transfer policy is silent about this issue, about the fee issue. I know that ICANN cannot get involved with pricing and price control and stuff like that, but I don't know how we can go about it. But I think we need to have a discussion about how the policy should be address this, as there seems to be some differences in approaches among the registrars. And some are being charged hefty fees. Thank you.

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ROGER CARNEY: All right, thanks, Farzi. Yeah, I was going to circle back to the “must” and “may.” And maybe we could have staff take a look at where that language came from and see if there was a discussion around that. My guess was this is a fairly old policy and maybe the may/must/should idea was probably not as stringent then as we try to be clear now. But it'd be good to see if that language was derived. And maybe it was talked about then and there was a reason. But let's take a look at that. Otherwise, I think that the “must” seems more appropriate here. But let's see if there was reasons or if anyone here knows or can think of a reason why it shouldn't be a “must.”

Farzi, is that a new hand?

FARZANEH BADII: No. Sorry, I'm being a noob. Sorry.

ROGER CARNEY: Okay. Thank you. Owen, please go ahead.

OWEN SMIGELSKI: I think just one last thing here, not specifically to the point, is I think the reason why we have some of these weird legacy things in here is just to recall that the whole reason for having the transfer policy—or, as it was called way back in the good old days, the IRTP—was because there was no, when ICANN was created and the RAA was created, transfer policy. So there was no method for being able to have a way or system of doing

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transfers between registrars or registrants to move their domain names. And so I think what we may be seeing is just something left over from 20 years ago or whenever this was first being worked on. So perhaps it may not be applicable now because nobody is doing it because of back in the day when registrars were making it harder and there was nothing that prohibited them from doing so. That's why that stuff might still be there. Thanks.

ROGER CARNEY:

Great. Thanks, Owen.

Okay, Berry. Please go ahead.

BERRY COBB:

Thank you, Roger. To this [inaudible]—I think staff will try to help prepare for future discussions around this—our next step should be to really review all of these as a package and not necessarily just independently. There does seem to be support about reordering these for “must” and “must not.” And we still have to deal with the “may not.”

But I also note that the group has seemed to generally be opposed to at least minimizing where “mays” even exist in this policy. And I think this is something that I think we can all support because, this time around, we're being very surgical, if you will, and precise about what is and what is not required. So I think it's very conceivable that, when we review all of these NACK options or denial-of-transfer options, we very well may get into what is required and what is not required and be able to remove the ambiguities. And, where possible, maybe some of these migrate up



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into the “must” or “must not” and we’ll be able to sunset the “mays” in general. Thank you.

ROGER CARNEY:

Great. Thanks, Berry.

Okay, any other comments or questions on this?

Okay. And, again, I think we’ve settled on that this seems to make sense. And to Berry’s point, obviously we need to take a step back and see how it all fits together. As you mentioned, we’re being pretty surgical about this, and for good reasons. But I think that we’re in general agreement in keeping this but maybe with some updates to make it clear for everyone. So, good.

All right. No more questions? Comments?

Okay, let’s go ahead and close out of this. And we can go back up to Section 3.7 and see if we have any new comments that came in that we should address on any of these. Again, it doesn’t look like anything. We’ve done some updates. Maybe we can look at 3.7.1. And, again, I think that we talked about several things here. Obviously, currently it says “evidence of fraud,” and there was suggestions of adding other things in here. And I’m not sure that everyone has truly agreed on anything here. So it probably needs some more comments here if we’re going to change it. And, again, throw comments in this document or bring the up here if 3.7.1 should be expanded beyond fraud, just to identify other things. And, again, we did talk about [inaudible] do we need to define fraud, do we need to define abuse, and things like that.

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And it gets a little tricky when you start doing that. I don't know if we need to do those things. If this policy has been functioning for, I don't know, ten years or so and it hadn't needed to be done and there's been no conflict with it, maybe it doesn't need to be specific and it can stay fairly general there. But if we're going to change it, let's get some comments in the document so that we can take a look at those reasons and see why.

[inaudible]. I'm just reading some of the comments here. Excellent. Okay. So it sounds like maybe abuse, maybe registration agreement still. So I think that, before we get into that, if we can add some comments in the doc and have a little further discussion on if that makes sense ... And, again, some of the bigger things we talked about is, do we need to define fraud and abuse? So do we need to do those things ahead of time? Okay, so it does seem like there's some support for adding other things. And, again, there's support for these two items specifically in chat.

So let's—Farzi, please go ahead.

FARZANEH BADI:

Thanks. I'm just wondering why the Contracted Party House, if I'm not mistaken—most of them—are against adding violation of registration agreement and want to add abuse, which is totally an undefined concept at ICANN and creates a lot more problems. We discussed this and I remembered it. So I'd like to know why because I need to discuss this with NCSG and I need to come up with a position in consultation with them. So I need to know why the CPH is against this.

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ROGER CARNEY: Great. Thanks, Farzi. Owen, please go ahead.

OWEN SMIGELSKI: Thanks, Roger. So, Farzi, I think the reason why we wanted to put something more than just fraud in there is that fraud is some sort of thing where you're doing something improperly—lying, etc.; something along those lines—and it can relate to a lot of things that might be considered abusive—selling online pharmas illegally, phishing. That counts as fraudulent.

However, certain types of abuse—spam—even for a legitimate sale may not necessarily be considered fraudulent but it is also something that the registrars would like to be able to block so that that type of domain name is not being pushed out or being able to transfer out.

With regards to the violation of the registration agreement, I think that's certainly one we don't want to do because there can be a lot of things in a registration agreement you could put in there that would be kind of a minor thing. And being able to block a transfer for that could be concern if it has nothing to do with the use of the domain name itself. Thanks.

ROGER CARNEY: Thanks, Owen. Greg, please go ahead.

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GREG DIBIASE: I was just going to kind of say what Owen said or Owen touched on at the end of his comment there. You can put anything in a registration agreement, right? You can put very silly terms, like, “You violate this agreement by updating your domain on a Tuesday.” I don’t know. I feel like that might be really broad and could possibly give too many grounds for denial of transfer. Maybe I’m overthinking it.

ROGER CARNEY: Great. Thanks, Greg.

Farzi, does that help you, at least from the NCSG’s perspective that you can take back with the concerns from the contracted parties?

FARZANAHEH BADI: Yeah. Actually, Greg mentioned, I think, that there is a concrete reason that I can see now. One is that the registration agreement might be too broad, and that might actually give them too many reasons to deny a transfer. So that’s one thing that I can take to NCSG.

But then I have a counterargument. My counterargument is that broad terms like abuse and fraud are as broad as the registration agreement.

So I don’t have a replacement for fraud and abuse at the amount, but I’m going to take all this to NCSG and see what they say. Thanks.

ROGER CARNEY: Great. Thanks, Farzi. And, again, I think that obviously this policy has been in effect for a long time. So it’s always been fraud. And I wonder if

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ICANN Compliance or even any of the contracted parties have run into an issue where that broad statement of fraud has been a problem. Has it been a problem for a contracted party where they think it's fraud but Compliance didn't think so? Or Compliance thought, "Well, that seemed to be a little bit of a stretch"? I think that, if we can get some of that feedback again ... This policy has been in effect for a long time with a use of a fairly broad "fraud" term. So if there hasn't been any issues or if the issues have been minor with it, maybe the broad nature is better than being specific.

I think Rick and several people in chat pointed out that getting very specific makes it hard and doesn't allow the policy to grow. But obviously it also adds some specificity to it. Again, I think if we can look at, has that broad use over the past so many years been an issue? If not, maybe we can stick with the broad use.

Steinar, please go ahead.

STEINAR GROTTEROD:

I'm just curious, but I also know there is some problems there because, if you kindly refer to the registry agreements, Spec 11-3B, and the corresponding registrar accreditation agreement, particularly the registration agreements don't have that kind of specification of Spec 11-3B. So we have to put up wording that kind of takes the essence of common understanding of suspicious behavior but not necessarily fit into a definition that, if there are things that have not been defined, it falls out of this criteria. Thank you.

ROGER CARNEY:

Great. Thanks, Steinar. And I think, as you were talking, Steinar, Rick also suggested looking at other agreements and seeing if there's current language—again, this policy has been in effect for a while—that may be better for this. And maybe we can use some of the work that has already occurred.

Okay. So I think, if we want to keep the idea—I think we have some agreement that the registration agreement probably doesn't fit in here—maybe we need to work on—I don't know if I say it right by saying “scope”—the scope of the words here—fraud and abuse—and maybe find something that's a little more workable going forward.

So thanks, Farzi.

Okay. And, again, obviously as it stands, as we said before, if we don't come to a consensus on a change, then it stays the same. So if we want this to change, then let's get some rationale behind it and some wording behind it to what we wanted to see it be going forward.

Okay. And let's see. 3.72. Looks like we've updated it to ... “Reasonable dispute over the identity of the registered name holder” is in brackets because I think that a lot of issues with the identity came up, if that's right. We crossed out “administrative contact,” as we are getting rid of that. And we added that the transfer was not requested by RNH or that the transfer request is otherwise not valid.

So I think the bracketed was being maybe replaced by that last sentence. Is that right? I think that's how we had talked about it. I'll

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open it for discussion, though, because I remember the identity being the problem here and we were trying to get around that. So maybe it changes to “reasonable dispute over” ... Volker, please go ahead. Hey. Welcome, Volker.

VOLKER GREIMANN:

Hi. Just a question here. If we are saying that the transfer not being specifically required by the RNH [is] being the reason for denial, that includes scenarios where in-between parties—call them resellers, call them agents—requests the transfers, for example, to consolidate their portfolios with one registrar, and the old registrar doesn’t like that because they don’t want to lose the business. And therefore, they might require the request coming from the RNH directly, where that would probably cause a lot of issues for the entity actually managing the domain name.

So I’m not sure if that wording is correct, but rather if we were to say something like the transfer occurred against the will of the RNH, for example, that would probably meet the requirements better and not permit the registrar to deny a transfer just because of the one their bigger customers is moving out. Thank you.

ROGER CARNEY:

Great. Thanks, Volker, for bringing that up. Yeah, I think that’s the issue. We need to get to that wording to allow for those things (the intent or the will; whatever that is)—and to correct that. Again, I think the dispute

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over the identity was probably a problem along those same lines that didn't apply to that.

So other thoughts on updating the wording here to be a little more clear onto what we're trying to achieve?

Okay. So let's take a look at that and look at not necessarily "requested," as Volker mentioned, but maybe "intended" or "willful." But we can update that.

Yeah, "reasonable concern" versus "dispute." Good suggestion, Sarah.

Okay. Any other comments on that one?

Okay. So, yeah, let's look at the dispute and the "requested by" kind of thing and see if we can update those and see if that helps out. Thank you, Caitlin.

Okay. So on 3.7.3, just a couple changes. No payment for previous registration period. The domain name is past its expiration date at the current registrar record or for previous or current registration period if the domain name is not yet expired. And, again, 3.7.3 gets help several times throughout. And we removed, "In all such cases, [however], the domain name must put in the registrar" ... Yeah. Okay. So we removed that last sentence and we added just some clarity in the middle.

Any concerns or questions on that? Again, 3.7.3 gets a lot of help throughout and beyond this little section here.

Okay. And I think 3.7.4, 5, and 6 are crossed out because we moved them to 3.8. and to the "must" section. Okay, let's go ahead and start at the



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top though with the “must.” So 3.8.1. Some suggested edits to that: appending URDP proceeding that the registrar [hasn’t been informed] of by the provider in accordance with the UDRP rules. And this extra text was added to clarify that the registrar can only block the transfer when a provider has notified them, not when a complainant necessarily notifies the registrar. So this is the clarifying text of that notice has to come from the provider, not from anywhere else.

Any comments or questions on that?

Berry, please go ahead.

BERRY COBB: Actually, never mind.

ROGER CARNEY: Okay. Thanks, Berry.

Thanks, Zak.

Okay. And it looks like 3.8.2 was perfect for a long time, so we’re going to leave that the way it is.

3.8.3. It looks like we removed some text.

Keiron, please go ahead.

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KEIRON TOBIN: Sorry. Just coming to 3.8.1—appending UDRP proceeding—what’s the reason for “pending a UDRP proceeding”? Does that not make it just easier? If a UDRP is in process, it’s pending anyway.

ROGER CARNEY: Good question. I think that—and I don’t know; maybe somebody that’s more UDRP-knowledgeable than me [can answer]—they still call it pending even when the provider accepts it at the administrative level.

And to your point, Keiron, I don’t know if pending—

KEIRON TOBIN: [inaudible] with UDRP and any form of ... Until Paragraph 4K is implemented, everything is in its “proceeding” status. So I don’t understand why a “pending” would be there. Yeah, the word just doesn’t need to be there, I don’t think. I mean, obviously I’m happy to leave it, but a UDRP proceeding that the registrar has been informed of to me is clear enough. I don’t know how others feel, but yeah. Thank you.

ROGER CARNEY: Thanks, Keiron. Yeah, and I think if the word doesn’t fit, then let’s move it. And, again, I don’t know if the rules specify a pending or an actual ... Okay. I think we have general agreement to remove “pending” because the UDRP is ... Once the provider initiates that administrative review, it’s in process, so ... Okay. We’ll tentatively say that. If anybody has any

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comments or questions, let's add that to that. It just seems like it's an extra word that's not needed.

Okay. All right, so let's go back to 3.8.3. "Pending dispute under the transfer dispute resolution policy," is what the updated text is. We removed "related to a previous transfer" and "pursuant to," just to clarify where this intent is.

Rick had a chat question on 3.8.1.

Keiron, please go ahead.

KEIRON TOBIN:

Sorry. This sounds like I have a grievance against the word "pending," but, again, if we [implement] 3, "A dispute under the transfer dispute resolution policy" is fine. Like, a dispute in itself ... Yeah, I'm not hating on the word "pending." It just seems someone has gone pending-happy here. Thank you.

ROGER CARNEY:

Okay. And I see Zak has suggested maybe an edit in 3.8.1, so let's jump to that real quick. Maybe changing "informed" to "notified" because I think that is the language—Zak may correct me—out of the UDRP rules.

Owen, please go ahead.

OWEN SMIGELSKI:

Thanks, Roger. So, for 3.8.3, regarding a pending dispute from the transfer dispute resolution policy, I think the reason we're putting

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“pending” is—again, I’m not trying to argue against Keiron for having that word in there—it’s trying to differentiate when there is an actual TDRP pending versus one that’s threatened or something along those lines. So we want to make sure that there is an active TDRP in process that would ... Obviously, that’s when the transfer would need to be blocked. But if there hasn’t been TDRP filed or initiated, then the domain name ... While it might be subject to a potential dispute, it’s not a reason to block it at that point. Thanks.

ROGER CARNEY:

Thanks, Owen. Jothan, I think, for 3.8.1, that was the reason we added that. And you’re suggesting that is on 3.8.3 as well?

Volker, please go ahead.

VOLKER GREIMANN:

Thank you. With regard to what Owen was just stating, I’m not sure if that quite fits what is needed here simply because of the fact that, as soon as there’s ... A formal dispute and a regular dispute about previous transfer may be two different things. And in many cases, we’ve seen in the past in our registrar, the transfer occurred with a person that either was working for the former registrant or changed the data prior to the transfer, but it’s not a pending dispute under the policy. It’s just a dispute on whether the person that initiated the transfer was actually organized. And those can be quite messy. But if we allow the transfers to go in such cases, the damage to the person holding the rights in the domain name that might be fighting to get it back through legal

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procedures instead of the TDRP (because the TDRP doesn't apply in that case maybe) would suffer damages that they would probably [inaudible] to pay for it if we don't prevent the transfer.

So ultimately, I prefer the original language here. Thank you.

ROGER CARNEY:

Great. Thanks, Volker.

Okay, we have just a minute left here, so we'll wrap it up here. But I think we can continue, not next week—next week we're not meeting—but the week following. We'll meet back up at our normal time and we'll start back up here on 3.8.3 and talk about changes to this or updates to it or leaving it as is.

And we'll continue through these edits in our next meeting as well before moving on to the bulk transfer discussion. But I want everybody to take a look at that—the charter questions for bulk transfer—and specifically Charter Question B5, discussing if there's any need to address bulk transfers in the policy and how we can do that, especially focusing on some of the recommendations that we've already got on paper that we haven't actually said a lot on but at least have gotten written down and how those can be impacted by that bulk discussion.

So, again, we'll pick up here and then we'll move into the bulk discussions in our next meeting. Thanks, everyone.

**[END OF TRANSCRIPTION]**