ICANN77 | PF – GNSO: Transfer Policy Review PDP Working Group
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JULIE BISLAND: Hello, everyone, and welcome to the Transfer Policy Review PDP Working Group session. Please note this session is being recorded and is governed by the ICANN Expected Standards of Behavior. During this session, questions or comments submitted in chat will only be read aloud if put in the proper form, as noted in the chat. If you would like to ask your question or make your comment verbally, please raise your hand. When called upon, kindly unmute your microphone and take the floor. Please state your name for the record and speak clearly at a reasonable pace. Mute your microphone when you are done speaking. This session includes automated real-time transcription. Please note this transcript is not official or authoritative. To view the real-time transcription, click on the closed caption button in the Zoom toolbar. To ensure transparency of participation in ICANN's multi-stakeholder model, we ask that you sign into Zoom sessions using your full name, for example, a first name and last name or surname. You may be removed from the session if you do not use your full name. With that, I will hand the floor over to Roger Carney. Thanks, Roger.

ROGER CARNEY: Great, thanks, Julie. Welcome, everyone, and thanks for sticking it out to the last day and coming up to the last hours of the meeting. So thanks, everyone, for that. It's interesting. I think we've all had many meetings in this room this week, but generally all the participants start over here near the door, so this side fills up quickly, and today this side. I don't know if everybody is trying to get their steps in in the last day or something.

Anyway, we have a pretty good agenda to review all the work that we've done and get to the actual action parts of our discussion since, actually, ICANN 76. So everything we're presenting today is what we've worked on basically since 76, and it is wrapping up a big discussion on our dispute mechanisms, the TEAC and the Transfer Dispute Resolution Policy. So I don't have anything else to add. I think the only thing I'll say is I think we have a week off after this, and then we'll get started back up in two weeks. So just so everybody is aware, you can get next week off, and hopefully you can recuperate from this week. Other than that, I think I will turn it over to Caitlin. Okay.

CAITLIN TUBERGEN: Thanks, everyone. My name is Caitlin Tubergen, and I'm part of the ICANN Org staff support team for this working group. So as Roger noted, the group is going to be presenting today their preliminary recommendations on two topics. The first topic is the Transfer Emergency Action Contact, or the TEAC. And for those of you who are unfamiliar with the TEAC or because it's the last day of an ICANN meeting and some of you may be tired and forgotten what the TEAC is, this is kind of a very quick recap of the main points of the TEAC.

The first is that, as the name implies, the TEAC is used for urgent communications relating to interregistrar transfers. And this point of contact is for use only by registrars, registries, and ICANN Org. So that means that registrants do not have access to this particular contact. The important point to note about the TEAC is that once the TEAC is contacted by any of the appropriate parties, it must respond, or that contact must respond, within four hours of receipt of that message, and it has to be a non-automated response. However, noting that the final resolution of that issue will likely take longer than four hours, but the initial response needs to be made within four hours. And can we go to the next slide, please?

So the Working Group had, I believe, seven charter questions related to the TEAC, and what we're going to do now is some of the Working Group members have kindly agreed to discuss the Working Group's preliminary findings on these charter questions and any draft recommendations that's made thus far. So I am going to turn it over to Owen Smigelski to talk about Charter Question F1.

OWEN SMIGELSKI: Thanks, Caitlin. With regards to questions related to the TEAC, there are several things that the Working Group reviewed. There were some survey results, which were from the policy status report prior to the PDP. We looked at metrics that were available from ICANN's Contractual Compliance department, and then also input from registrars and registries, either within the stakeholder groups or through direct participants in the Working Group itself.

The Working Group agreed that the data above was sufficient to inform our deliberations. Part of the concern with the available data that we had was because the TEAC is decentralized. There previously was kind of an add-on service for ICANN with a system called Radar, which was before the Naming Services Portal, or NSp, and there was the opportunity to track via that, but that was not a requirement. So because TEAC can work via email or telephone, there's no one way to track that, so it was difficult to have actual full data or comprehensive data that we could do. But there was some anecdotal evidence from registrars, especially, and how we utilize those channels. Next slide.

I think some of the things we had a lot of discussions around was the timeframe, which is currently four hours, and that was a concern, and some of the participants, myself included, noted that there appeared to at times have been some gaming of the system, where, say, during the Chinese New Year holidays, a request would come in for TEAC, or I also saw where it would be to a North American-based registrar, Christmas Eve, a request would come in, because the penalty for not responding within four hours is a 100% reversal of the transfer.

So we thought that there should be a longer timeframe just because of time zones, holidays, etc., and this was not something that was a concern. It was sometimes raised that this was a problem for smaller registrars. It's also a problem for larger registrars, too, having to be able to staff on weekends, etc. So the draft recommendation was that the timeframe go from four hours to either 24 hours or one calendar day.

ROGER CARNEY: Great. Thanks, Owen. And I'll just add to what Owen said. One of the major parts of this is if a response wasn't received in four hours, today's policy does allow the losing registrar to request an immediate reversal. So I think the four-hour window was definitely an issue for a lot of people, and that idea that it could be used as a quick reversal system.

So I think the 24 hours was something that the group kind of went to fairly quickly and easily. So just to add a little flavor there. Thanks. Owen, did you want to do the next one as well?

OWEN SMIGELSKI: So the other thing was a concern is when you utilize the TEAC channel, should there be a definition of a reasonable period of time at which this is implemented? Because the policy says it must be done in a timely manner within a reasonable period of time following the alleged unauthorized loss of a domain. Some of the concern there is, what does that mean? How long is this when the actual transfer takes place? Is this when it's discovered by the registrar, when it's discovered by the registrant? It's possible somebody could be away on vacation offline for a month and come back and discover that something had been moved without authorization that could trigger this.

So there was discussed a 30-day inter-registrar transfer restriction for transfers and new registrations. That could help—was kind of the guidelines that we thought possibly for one of the ways of how to deal with what was considered reasonable there. I think that's it for this slide. Though now I'm getting to slides I haven't presented or prepared yet.

So one of the things here is we have put in there is that a draft recommendation as it recommends that the transfer policy be updated to state that the initial communication to a TEAC is expected to occur no more than 30 days after the loss. Again, that's still in brackets there. I think that means we're still subject to discussion and agreement upon there, but that's kind of a placeholder we have for now.

There's also a draft recommendation keeping similar wording in there that there must be a non-automated response when receiving that. So it's not an auto-reply. Somebody actually responds back to that. It could be via e-mail. I think it's substantive updates within 72 hours of three calendar days there because one of the concerns we identified with the TEAC is it only speaks now to the initial communication. As long as you respond within those four hours, you can then take three months to follow up next. So we wanted to make sure that because these were transfer emergencies that there was some additional action or additional guidelines to ensure that stuff happened timely.

ROGER CARNEY: Great. Thanks, Owen. Yeah, and I think that was the key is the current policy didn't really provide any guidance on the after effect of the initiation. And here it tries to create that concept of at least continuous communication as it's being progressed. So thank you, Owen, for stepping in and doing those. I think we will turn to Sarah for the next one.

SARAH WYLD: Thank you. This is Sarah. So as the TEAC is defined in Transfer Policy Section 4, it may be a telephone number or some other real-time communication channel. If the TEAC is used, both registrars have to have documentation about what happened. And so the charter question here is whether a telephone communication or escalation will create sufficient documentation that can later be referred to if, indeed, there is no response and the losing registrar needs to request a transfer undo due to that failure to respond.

Some registrars don't think that the very strict requirements about the contact method are helpful, and instead that flexibility is important, especially in an emergency situation. Some working group members thought that it might be worth using a system like the NSp, the naming the portal, to manage these escalations. But others think that the number of such escalations is not big enough to really warrant using a system like that, and concerned that it would introduce a single point of failure, which could actually make an emergency worse. Like imagine if you can't log in to submit the emergency contact, that would be bad.

So ultimately, the working group has agreed that discretion is important, and so a phone call or a text message could be used, but if the initial contact is not by email, then the registrar will also need to send an email to track what happened and create a paper trail. So from that, we come up with this draft recommendation four.

So this is recommending that the initial communication can be an email or be accompanied by an email, and then that email is what starts the countdown for the response timeframe that we talked about a moment ago. Yeah, I think that was everything on this one.

ROGER CARNEY: Great. Thanks, Sarah. And that actually is the end of our TEAC discussions and recommendations on those charter questions, the five charter questions we had for the TEAC. So maybe this is a good time, if anyone has questions or comments, the working group have any comments to add, this would be a good time before we jump into the TDRP items.

Okay. I don't see any hands or any comments. We can move on to the TDRP and the first charter question there.

CAITLIN TUBERGEN: Thanks, Roger. So similar to what we did with the TEAC, we thought it might be helpful to just go over a couple overarching points about what the transfer dispute resolution policy is, and then look specifically at what charter questions the group was charged with answering and where they're landing on those questions.

So the first is that the transfer dispute resolution policy is a pretty narrowly tailored dispute resolution mechanism that is designed for cases of alleged invalid interregistrar transfers. And at the beginning of the TDRP, it does note that registrars are encouraged to work together informally to resolve any sort of disputes about transfers. But in the event they're not able to do that, there is the transfer dispute resolution policy.

The statute of limitations for the TDRP is 12 months after the alleged invalid transfer. So registrars need to file a TDRP within 12 months of that alleged invalid transfer. Similar to other dispute resolution mechanisms at ICANN, these cases are decided by an independent panelist that is appointed by the approved TDRP provider. The TDRP works on a loser-pays model. And so if a registrar files a TDRP and is unsuccessful in showing the panelist that a violation of the transfer policy occurred, then the complainant would be responsible for paying the fee. In the event the complainant is able to show a panelist that there was an invalid transfer, then the respondent would be responsible for paying the fee associated with the TDRP.

Another important thing to note is that this is a dispute resolution policy that is only available for registrars to file. So registrants do not have access to this, which we'll discuss a little bit later in today's session. And the filing parties are required to provide documentation of that alleged improper transfer to show or not show that an alleged or a breach of the transfer policy occurred. And so I think now we're going to go into our charter questions. And now it is actually Owen's turn to present the first one. Thank you.

OWEN SMIGELSKI: Thanks, Caitlin. Here's a slide I'm actually prepared to speak about. I was getting scared there for a second. So the question is, do we have enough information available to determine if the TDRP is an effective mechanism for resolving disputes between registrars? So for this end, we looked at some data, very limited. Again, I'll confess, when I worked at ICANN Contractual Compliance, it was a year or two before I actually heard of the TDRP. I was like, what's this complaint about? Just because that's how infrequently it was triggered.

So we looked at published TDRP decisions as well as ICANN compliance data related to the TDRP. My recollection is there's something like four TDRP cases in the last 10 years or something like that, so there's not much information available to look at. And I think one of the reasons for that is because there's a lot of the transfer-related disputes are handled between registrars themselves outside of the formal resolution process of the TDRP. It's also to note that the TDRP is for transfers that violate the transfer policy. And so if it's, say, an unauthorized transfer, but otherwise all of the steps were compliant, then that would not be something subject to the TDRP. But registrars do have a very, I don't want to say robust system, but there is a lot of collaboration between registrars on these types of disputes. And it does go both ways. Obviously, you want to be friendly with your registrar colleagues if you've got a domain that should not have transferred that did.

We also noted that the small number of filings alone does not indicate an issue with the TDRP. It's a very narrow scope, and we believe that it's an effective mechanism in place to address these types of disputes, alleged violations of the transfer policy.

ROGER CARNEY: Great. Thanks, Owen. Yeah, and I think some of the keys, especially coming into this, I think that there was this perception when we started talking that the TDRP wasn't working because it wasn't doing enough. And then I think people started to realize that it was. It was working, and as Owen just noted, that it's a very focused dispute mechanism. And we talk numbers, and we're going to say we're going to make this number up, got to be close to some 90% of disputes actually don't even, all of those disputes actually follow the policy. So it's not that it can be used. So it's one of those where, as Caitlin mentioned and as Owen just mentioned, the very first paragraph of the dispute mechanism talks about registrars handling this outside of it, and that is actually how it gets done most of the time on disputes. But thank you, Owen, and I think we will turn to Prudence, actually, for the next one.

PRUDENCE MALINKI: With regards to additional charter questions that were posed, one of them was whether the existing informational materials relating to the TDRP were sufficient, enough to ensure that registrars can actually understand the process and that the requirements for filing a dispute, including the information that they need to give to the dispute resolution service provider.

So when we were looking at this question, we were kind of, the working group reviewed the text of the TDRP relating to the documentary information required to be provided by both the filing and the responding parties. The working group, or us, we also looked at specific cases that were published on the TDRP provider's websites, as well as looking at existing information that ICANN Org has provided on their webpages related to the transfer disputes and also transfer-related issues.

Now, what we found, or what the working group noted, was that the TDRP requirements actually are sufficiently clear, and they don't need any additional adjustments or changes at this time. And also, we noted, or the working group noted, that for requirements that change as a result of new policy recommendations, they need to be drafted in a clear and user-friendly way to assist parties, providers, and panelists. Thanks.

ROGER CARNEY: Thanks, Prudence. And I think we'll turn to Sarah for our last two open discussions here, and then we'll follow it up with our last charter question with a more open discussion on fit-for-perks-based kind of stuff. But Sarah's going to take us through the data ones, so please, Sarah.

SARAH WYLD: Thank you. I'll be a little brief. This is Sarah. So these charter questions, G4 and 5, are about data protection law and how that interacts with these TDRP requirements to retain data for later demonstrating that the transfer was valid, or not, I guess. The working group looked at the TDRP, specifically the parts that require data transfer between involved parties, the provider and the panelist, and the group noted that we do have some requirements from the EPDP Phase 1 Recommendation 27 to update around evidence, as well as some outdated terminology, and then changes also from this Transfer Policy Review Working Group Phase 1, such as removing the gaining FOA.

We haven't yet come to final decisions, but we've been working on just looking at the specific pieces of data that are required, evaluating if each one is necessary, and then figuring out if we're going to remove some or what might be better to have instead. Thank you.

ROGER CARNEY: Great. Thanks, Sarah. And I think one of the keys when we looked at this, we did recognize that REC 27 had some impact, and a lot of that's just the wording changes. But we didn't see a lot, and we're still reviewing them, but we didn't see a lot of issues with the current requirements. So I'm not sure that we'll see a lot of changes in those requirements, but we do have a little more time to make sure that that list is correct. So the working group will have time to make sure of that before we commit to either removing or keeping that list the same. So I think it ends our working group presentations, which thank you, all of you, for that. And I think we'll move on to our last big charter question opening up, and I think Caitlin will take us through this. Thanks.

CAITLIN TUBERGEN: Thanks, Roger. And as Roger noted, we do have one remaining charter question of the TDRP that the working group has spent some time discussing, and that is charter question G3. And it's about if the TDRP is considered to be insufficient, are additional mechanisms needed to supplement the TDRP, and should the approach to the TDRP itself be reconsidered?

So one of the topics that has come up with some of the working group members is that, as we noted at the beginning of our discussions of the TDRP, this is a mechanism that is only available to registrar filers. And if a registrant believes there's been a violation of the transfer policy and its sponsoring registrar or former sponsoring registrar is not – sorry? Theo? Okay. Okay. Sorry.

So what I was saying is essentially registrants do not have access to this mechanism, and the working group was looking at should registrants have access to this mechanism. This was a question that was reviewed by a previous working group charged with reviewing the transfer policy. Specifically, I believe it was the IRTP Working Group Part D. That working group ultimately determined that registrants should not have access to the TDRP at this time. Its main rationale was that the evidence used to file a TDRP is mainly in the hands of registrars, and also it was afraid of or concerned about gaming or abuse of opening up the TDRP to more filing parties.

As you can see on the slide, one thing that some working group members have noted is that if a registrant does believe there's been a violation of the transfer policy, it essentially has three options. It can reach out to its respective registrar and hope that the registrar will be willing to informally engage with the other registrar involved to see if the issue can be resolved informally. It can encourage the registrar to file a TDRP in the event that informal resolution is unsuccessful. But as Owen noted earlier in the presentation, there have been four of these cases filed in the last 10 years, so that doesn't seem to be an option that is pursued very often. And that might be in part because it's a loser-pays model and or the registrar doesn't feel like there's sufficient evidence with which to file a TDRP. And if the registrar is not willing to engage informally or file a TDRP, eventually registrants need to go to court if they believe there's been some sort of issue or violation of the transfer policy.

So some of the working group members here today have noted this is not ideal for registrants and believe that either registrant access to the TDRP needs to be reconsidered or possibly a new mechanism where registrants would be eligible to use in the event of some sort of transfer policy issue.

So what you'll see on our next slide, and this is really a slide to open it up to the room for discussion as well as the working group members to kind of defend the two positions. Before we go into the discussion, I just wanted to note that in terms of this charter question, if the working group were to agree that more information is needed or more research is needed on if registrants should have access to a TDRP, that would be something that would be the subject of an additional issue report. It wouldn't be necessarily resolved within this working group. So really the question is, is there agreement that the working group should request that the GNSO start the process of an issue report on this specific issue? And again, this specific issue is, is a dispute resolution mechanism needed for registrants specifically around transfer-related issues? So if we can open it up to some of the working group members that are in favor of pursuing this as an option, I think it would be a good time to speak now. And similarly, if we'll open it up later to others who may have concerns about having a new dispute resolution mechanism for registrants. So I'm going to just turn it back over to Roger to manage the queue, and hopefully we have some kind volunteers who will speak to this.

ROGER CARNEY: Great. Thanks, Caitlin. Yeah, and I saw Theo waving earlier, so I'll let Theo go first. So please, Theo.

THEO GEURTS: Thank you very much. So when we sort of created the TDRP back in 2015, 2016 actually, I sort of looked at the process, and back then I sort of never realized the issue that if your registrar is not responsive or doesn't wish to file a TDRP or you have an issue with your registrar as a registrant, I didn't sort of go over these kind of options.

Going back in time and looking in hindsight, which is all 2020, I'm going like, why did we even take that route back then? Because to me it is very clear that if you want to file a dispute, it shouldn't be up to the registrar. It should be up to the registrant who has an issue. If you're talking about disputes, there is always a complaining party, regardless whoever that is, and then you have the other party.

So looking at it now, I'm going like, okay, I think it makes a lot of sense that if we sort of widen the scope of the TDRP to include a registrant who sort of lost his domain name or whatever the dispute is regarding the transfer, that the registrant can file that complaint and not have to rely on a registrar because there's a lot of dependencies there which not make a lot of sense due to whatever reason. So that's my kind of thinking here. So if we can improve this, great.

ROGER CARNEY: Great. Thanks, Theo. And Theo has brought us a lot of good memories from the IRTP days forward for us since he was intimately involved there. But we do have a few people in queue, so I'll go to Steinar. Please go ahead.

STEINAR GRØTTERØD: I would like to say to Theo, hallelujah, thank you. That was a very nice opening. I'm the representative from At Large, and when we discussed that in the very early days in At Large, we had some sort of a mandate to create a simple, safe, and secure transfer process and also a change of registrant updates. That was one of the initial mandates. But we should also have added into that a process for the registrant to actually have a way to dispute when there is a dispute over transfer.

I think I would like to add into that we discussed different ways of securing a transfer in the Phase 1, and we have proposed different processes and so on. The likelihood, I kind of expect that there will be some sort of time where all these processes, when they are put into operation, will be kind of tuned between the registrars to how they should act on the different things and so on.

In that scenario, in my view, it's kind of likely that there will be glitches or errors being made. And for these scenarios, there will also be kind of tough, maybe kind of tough, I'm trying to be diplomatic here, that registrars don't want to admit they have made an error. So maybe then it will create a case where the registrant doesn't have the support from their registrar, which I think is critical in having this transfer dispute process that has to be initiated by the registrar and not by the registrant.

I really don't like the only option for the registrant is to go to court. I think we should have a policy that makes a dispute initiated by the registrant to be handled within the policy and not having the only door, a court. To my understanding, taking a thing to the court may be extremely expensive and it is not necessarily an easy process the worldwide over. There are jurisdictions that maybe not that are familiar with these kind of topics. So I would strongly suggest that we put into this discussion and into this policy a way for the registrant to initiate a transfer dispute.

I do agree we should kind of limit that into the process that we have defined upon in the transfer. I assume there will be argument having also a way of disputing hijacked and illegal transfers and so on. But at least my first goal is to have it in and when there is a breach of the process and the policy that we have agreed upon when that time comes. Thank you.

ROGER CARNEY: Great. Thanks. And it's a good call out on the possible differences there. And something you brought up and kind of touched on that got me thinking, obviously we made quite a few changes in our, I can't remember what we're calling it now, in the phase 1A stuff. The hopes of this group is that the number of disputes probably will go down because of the security measures that we put into 1A. So again, it's not going to eliminate them for sure and there are still going to be issues that need to be resolved somehow. But it's a good call back to all the work that we did earlier and it should provide some effect here. But I do like the Steinar that you separated the fact that this should be, and possibly it's the same one or whatever, but there's two considerations of breaking something that's in the policy versus something that still fits, which again today is most of the disputes that it fits the policy but it still is a bad transfer. But there's that idea that yes, it still fits the transfer or it is broken the transfer. So it's a good call out to that. Thanks, Steinar. Owen, please go ahead.

OWEN SMIGELSKI: Thanks, Roger. Before I continue down my path here, just preface it, this is just me throwing out ideas and points like this is not necessarily my position or my registrar's position. I don't want to get [inaudible] here. I'm just trying to add to the discussion more here. So I think to the one point Steinar was saying is if there are these new processes we're putting in place through Phase 1A, if there are violations, I think that there already are existing ways to address those through either ICANN Compliance or discussions between a registrar. If, say, a domain name was not locked during the proper period, I think a registrar would follow up with that registrar or ICANN to make sure that there was an issue or the registry or something along those lines. So I think those mechanisms are already built in there.

So I think my concern is, and this isn't saying that I don't think that registrants should have this option to pursue this, but a lot of the things that they would be bringing into these disputes are things that might be outside of ICANN's remit. So quite often, if there's a concern with a transfer, it's not because a person accidentally transferred their domain name. It's somebody probably hacked into their email account or their registrar account or some other thing, and that's kind of outside of what a registrar or a registry or ICANN can deal with. So there's some complexities that are involved with having to consider things outside of the ICANN arena for that.

And also, I've heard that going to court is not an option for people or the costs associated with that. If there were to be some sort of registrant TDRP equivalent, it's not a free process. Somebody has to pay for it. And if you look at the UDRP as an analogous type of scenario, we're talking thousands of dollars in fees for preparation as well as having the arbitrators, etc. So it's not a free process, even if a registrant were to initiate it. So it needs to be some considerations about who, where, and how that's all going to be taken care of and the price. Thanks.

ROGER CARNEY: Great. Thanks, Owen. And, Owen, you brought something up that I'm not sure that the working group talked about in the slide prior to this. You know, we listed the three possible paths a registrant has, and we didn't really pursue that idea of a registrant going to ICANN and making a direct complaint and pursuing that that way. And I don't think the working group really got to talk about that a lot. So thanks for bringing that up, because it is something that we should probably talk about and work through. Go ahead, Owen.

OWEN SMIGELSKI: Just to jump back in here, I know ICANN Compliance does handle a lot of transfer complaints. I don't know the exact statistics, but that was one of the really big buckets when I was there, and I suspect it probably is even today now. Thanks.

ROGER CARNEY: Thanks, Owen. Yeah, and I think that you're right. I think that, and if compliance is here, I think it has been and still is the number one issue. WHOIS is probably close to that, or was anyway, WHOIS complaints. But thank you. Zak, please go ahead.

ZAK MUSCOVITCH: Thank you. I've enjoyed listening to the comments by Caitlin and Steinar and Theo and Owen, all very important, good comments, and you as well, of course, Roger. My remarks are probably nothing new to the working group, because I've said them at least on several occasions over the past, what is it now, two years of the working group? And it's a very hardworking group.

I think I'll just make one initial observation from a big-picture perspective about the transfer dispute policy itself. It's almost as if the policy's clear limitation in its scope, which is arguably a fault of the policy in what it's limited to covering, the nature of the transfer disputes itself, has kind of enabled a more successful mechanism to emerge. And that more successful mechanism is, of course, the informal resolution, registrar to registrar. So it's almost kind of strange in that if the policy was more successful, we might find ourselves with less resolution. I'll put it that way.

You know, I represent the BC, and the BC's interest in domain names, in this context at least, is from the registrant's perspective. And so from a registrant's perspective, there's clearly a flaw or an absence in the policy, because registrants aren't able to initiate a transfer dispute. And I take Owen's point, and it's a good one, that Compliance is potentially there to assist in certain kinds of transfer disputes. But it's undeniable, I think, from a registrant's perspective, that they would like to be able to initiate disputes, plain and simple. It's something that you would hear near universal unanimous interest in from registrants. It's something they've said for a long time.

Now, there is a good point about why they were excluded from this policy to begin with, and we can see that on the slide, that the nature of the dispute pursuant to the policy requires documentary evidence, and that would typically involve logs and IP addresses and stuff like that, which is material that typically a registrant wouldn't directly have access to.

That is, however, fairly easily solvable, in that if a registrant were able to initiate a dispute itself, and that would have to be, of course, predicated on a refusal of their registrar to advocate for them. And unfortunately, we don't have a lot of data about how often this occurs, how often a registrar fails to advocate for its customer, its registrant. And so we're in a little bit of a dark area here.

Nevertheless, if a registrant were able to initiate a dispute, it could, as part of the procedure, demand that documentary disclosure from its registrar and possibly also the gaining registrar. So that's a fix that's easily available to that problem. Now, of course, a registrar may not cooperate in providing that disclosure. Then again, there is compliance mechanisms for addressing it. So I think it is an issue, but it's not an insurmountable issue. If there was interest and commitment to enabling registrants to initiate disputes, it's feasible and practical to achieve.

Now, there's two different kinds of disputes that are really being discussed and on the table here. The first one is a registrant-initiable transfer dispute procedure under the TDRP, and that is, I believe, at a minimum, what should occur. The more usual situation where a registrant would feel aggrieved, however, is not necessarily in a violation of the transfer policy itself, which led to an unauthorized transfer. Typically, it would be more of a hijacking, a domain name theft.

And domain name thefts, if the registrar is not willing to go to bat for the registrant, which usually I would believe they do, but if it were not, and not all registrars are created equal. Some are large and professional. Some are medium professional, small and professional. Some just aren't professional. And so there could be a situation where a registrar is just not responsive to the registrant who's had his or her domain stolen.

In that situation, suing the registrar may not be feasible due to jurisdiction reasons or there may be a limitation on damages, which is very typically included in a registrar-registrant agreement. And the TDRP wouldn't even be available because it's beyond the scope of the TDRP. So really, in that situation, a registrant would need to go to court.

And going to court in Virginia, for example, where Verisign, the .com root, is located, and that would afford jurisdiction for most .com-related disputes, that is a very expensive exercise. I'm a lawyer. Unfortunately, I don't practice in Virginia, but I know from colleagues that it would not be uncommon for a client to have to write a check for $25,000 to $50,000 just to get the ball rolling for a procedure like that. It's extraordinarily expensive.

What that means is that typically a domain name that's only of high value would even warrant the consideration of that expense. That would exclude people who lost domain names that are of much lower value, maybe $500 value or only sentimental value. Then again, most domain names that are stolen tend to be higher value for obvious reasons. It's more worth stealing something if it's going to be higher value, I suppose.

But going to court is something that is not a great option for registrants at all. There really ought to be an alternative means of resolving the dispute. And we see alternative dispute resolution policies throughout ICANN. We have the UDRP, which has been extraordinarily successful in resolving trademark-related cybersquatting disputes.

And so it is a far more ambitious proposal to create a dispute resolution policy that would enable a registrant to seek recovery of a stolen domain name beyond the limited scope of the TDRP. It would be certainly more ambitious, but it is possible nonetheless. Some of the criticisms of such a proposal, for example, the differing laws about bona fide purchasers, there's no question that those issues exist. But on the other hand, as we've seen with the UDRP for 23 years, it is possible, and the UDRP has become very adept at dealing with cross-border legal issues. And it's created a body of law that's independent of national law. So it is practical and achievable.

Then again, I think the greatest criticism of this proposal, the one with the most merit, is that this is a working group. It's not supposed to be a work-creation group. And so I do take very seriously the view that, listen, this is certainly something that's beyond the mandate of this working group, and it's not something we could even ask an IRT to take over and create such a policy. It's too ambitious and too complex for that.

So my view is that, at a minimum, we should have a registrant-initiable TDRP, which is as Steinar has described. At a maximum, we should include in the report a reference to that there's a discussion took place regarding a new dispute resolution mechanism for registrants, that we recognize it's beyond the scope of this working group, we recognize that it's potentially complex and ambitious, but it's something that we wanted to inform the GNSO of should it one day be equipped to address it. Thank you.

ROGER CARNEY: Great. Thanks, Zak. And I appreciate that. And, yes, I think at least the working group members have heard you state a lot of that, so it's good to get out to others that are listening. So thank you for that. Luc, please go ahead.

[LUC SEUFER:] That's the end of the week, so I am even slower than usual. And I missed the train when we were talking about phone versus e-mail. Can I—you can take the question and comment here? I'm wary that a smaller registrar like we are, we won't be able to provide a 24-7 e-mail monitoring service. So if for phone is fine, I suppose every registrar, even in the smallest one, they will have a phone for a [TRC.] But e-mail, if it's not during business hours or during the working day, we will have a problem. So if you can take that into account.

ROGER CARNEY: Great. Thanks for that, Luc. Good input on that. And I don't think that we were recommending the removal, but the use of e-mail just for documentation, but still having that flexibility of registrar to pick their contact, but if they're using a phone, they have to follow it up with e-mail.

[LUC SEUFER]: My issue was it's not the phone that is starting the clock. It's the e-mail. So you can send the e-mail before, like 24 hours before, and then you finally phone the registrar, which will be able to address the issue, but not before because they did not look at their e-mail. That was the starting of the clock. That's my problem.

ROGER CARNEY: Yes, good point, and we'll have to look at that. Thanks, Luc. Sarah, you want to follow up on that? Thank you.

SARAH WYLD: Thank you. This is Sarah. I just want to thank Luc for raising that because I was definitely thinking about it from the opposite perspective of, like, the phone call doesn't create a paper trail, so it makes it harder, but that is a really good point. Thank you.

ROGER CARNEY: Great. Thank you. Theo, please go ahead.

THEO GEURTS: I think we got some really progress here. Listening to Zak and Steinar and myself—and I'm not sure how my other registrar colleagues are, if we are on the same page, but I think if we are dealing with a TDRP and if we can sort of come to the position that a registrant can start a TDRP, I think we're having progress here. And also listening to Zak's comments, and he was touching on a couple of points, like starting a court case in certain jurisdictions costs a lot of money, that will never go away, though. I mean, the TDRP is just like the UDRP. It's a low-cost barrier, if you will, to get something resolved where registrars will comply with the result of a dispute provider. And, of course, again, with the UDRP, there's always the option to go to court. We cannot ignore that. And there will be cases like that a dispute resolution provider will not be able to come to a determination or it will be challenged. Anyways, because there are a couple of sort of grey areas where it could be sort of difficult for a dispute resolution provider to come to a determination. But that's why we have courts. Thanks.

ROGER CARNEY: Great. Thanks, Theo. And, again, really great input. And actually, on the last discussion we're having, that's great. And thanks to Luc for that. I think we definitely have a couple of action items that we can take back to the working group as we're trying to close up our discussions on TEAC and TDRP. So I think for the working group members, think about what Luc brought up for the phone and email issue and how that can get resolved. And on the point of a registrant mechanism, think about—and, again, I think both Steinar and Zak mentioned the two concepts of a registrant dispute being against policy, a dispute, and then something that's outside policy. And I think Holida dropped into chat. It flew by, but I know that she mentioned it, and I think Owen actually mentioned it too. You know, obviously there's issues around things that are outside of policy and can ICANN do anything about it? So it's one of those that—again, we don't have to solve it because I don't think anyone in the group is trying to add that to our work because we're not going to take it on. But it's something that we can at least provide in our communication to council so that it's something we've talked about and let them know that we understand that that could be an issue and it needs to be addressed. But I'll turn this back to Steinar for some comments. Thanks.

STEINAR GRØTTERØD: Hi, this is Steinar for The Record. I saw some posting from, what's her name? Sorry, I'm just going to, from ICANN Compliance here. And the last sentence here is that ICANN Compliance doesn't have the contractual authority to return the domain name or instruct the registrar to return the domain name to the previous registrar, even though there is breach of processes. If my understanding is then that the compliance track, the path, is not a good way because it doesn't solve the registrant at all. It makes some sort of a notice to the registrar that was not in compliance with the process, but it doesn't help the registered name holder. So I was thinking the compliance path is not working for, with my eyes at least. Thank you.

ROGER CARNEY: Great. Thanks, Steinar. Any other comments on our discussion here of a registrant mechanism? And again, I think the group needs to think about those two paths within scope of the transfer policy and then as others identified outside of that, which again probably is the more disputes that we see. So it's an important thing to look at is those that happen outside and how that can be effective. Okay. Great. Anyone have comments on Luc's additional bomb he tossed in on us that messes everything up? No. Thanks, Luc, for that. No, and again, I know everybody is just hearing it, but I didn't know if anyone had thoughts on it because it is something that we will definitely have to resolve.

I think that is all we needed to discuss today. Again, I think the key is we have pretty good agreement and general direction on most of our stuff here. Again, two of the items I think we definitely need to take back is the issue Luc brought up on email and how you can get that in the proper order for tracking and things like that and also this continued discussion on registrant mechanism.

And it does sound like I think the group, I know Theo just left, but I think the group sounds like they're leaning toward providing something to council to take a look at this further. So I think that that's the path that we'll work down and try to get some language built up around a discussion on that so council can have it. And again, this group is not going to solve anything, but we'll provide as much information as we've gone through for council to look at. Okay. Any last comments from anyone? Zak, please go ahead.

ZAK MUSCOVITCH: Thank you. I just wanted to take a moment to say given that this working group has been around for two years, I know that Berry must have some charts and Caitlin is probably well aware of what the future lies in terms of how long it will go on for. So I'd like to just be reminded of that. And the second thing is we are blessed to have such great staff supporting this effort, Caitlin and Berry and others and Rogers, the chair. And so I just want to express my appreciation for all that you've done to get us this far. Thank you.

ROGER CARNEY: Great. Thanks, Zak. Yeah, and I can't say it enough. I mean, staff does a great job and makes my job as chair easy. It's one of those that it does work well. And I'll turn this maybe to Berry and Caitlin to talk about our future, our short-term future because we're almost done, I think Berry told me. I'll let Berry talk.

BERRY COBB: Yes, we're going to public comment tomorrow for the final report and we'll be done. No. Seriously, I think over the next couple of weeks we'll try to bring closure to these transfer dispute components that clears out what used to be our Phase 2 items. Then we traverse back to what used to be called the Phase 1B, which is the core, the change of registrant items, which we've already had pretty extensive discussion, and hopefully what we've extracted out of the Phase 2 items will better inform that. Then that starts to bring us to a close and to the second initial report on all items. We'll have time for a cursory overview of what we did on Phase 1A, the old Phase 1A, to bring it as to a full initial report for public comment.

When we did our last project change request, I believe, I don't have it open in front of me, but I believe it was something scheduled to, like, February 2025 for submission to the council. I never classify myself as an optimistic person, but definitely a realist person. But I am cautiously optimistic that we could actually bring this home even earlier, to your point. Anything going over four years is a bit excessive, so hopefully we can try to close this out maybe by Q3 of next year and get it done.

ROGER CARNEY: Great. Thanks, Berry. Again, I think that each meeting we do go through the work plan and everything. One of the things that we worked out over the last few weeks was generally August is slow for ICANN meetings and everything, but it did look like we were going to have good participation in August, so we're going to continue working on through and I hope, as the optimist, that we can even beat Berry's optimistic timeline. But I think Sarah had her hand up. I don't know if she still has anything.

SARAH WYLD: Thank you. This is Sarah. I just wanted to thank you all, leadership and staff team. This has been a really delightful and productive working group and I appreciate all your hard work. Thank you.

ROGER CARNEY: Great. Thank you, Sarah. Volker, please go ahead.

VOLKER GREIMANN: Yes, even though we're now closing out, I have something in the back of my head that when we started this discussion of transfers, we had this one topic that we put a pin in and decided to come back to at a later point, which was bulk transfers on behalf of multiple registrants. And I don't think we've touched upon that at this point and we might want to come to that, even though we might not resolve it. I think we should at least discuss it at some point.

BERRY COBB: And that's my bad. My cautious optimism allowed me to forget that when we conclude on the DRP stuff, then yes, that is the one last topic for the Phase 2 that we'll touch. Then we go back to core. Thank you for that.

ROGER CARNEY: Great. Thanks, Volker. And thanks, Berry. Yes. Okay. Any other comments, questions? Okay. Great. Again, thank you, everyone. It was great to see everyone here. And we'll get to work in a couple weeks on finalizing, as Berry says, our discussions on the TEAC and TDRP so we can move on to bulk and then on to change of registrant. So thank you and enjoy the rest of your time here. We can conclude the meeting.

[END OF TRANSCRIPTION]