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ALAC INPUT ON TRANSFER POLICY PDP CHARTER RECOMMENDATIONS PHASE 2 G3

[The TDRP Phase 1 Charter question G3:](#)

g3) If the TDRP is considered to be insufficient: i. Are additional mechanisms needed to supplement the TDRP? ii. Should the approach to the TDRP itself be reconsidered?

Draft Preliminary Recommendation:

The Working Group recommends the GNSO request an Issues Report or other suitable mechanism to further research and explore the pros and cons of (i) expanding the TDRP to registrant filers and (ii) creating a new standalone dispute resolution mechanism for registrants who wish to challenge improper transfers, including compromised and stolen domain names. In making this recommendation, the Working Group recognizes that if such an effort were ultimately adopted by the GNSO Council, this request could be resource-intensive and will require the Council to consider the appropriate timing and priority against other policy efforts.

ALAC Comment to the Draft Preliminary Recommendation

The ALAC fully supports the efforts of the Transfer Policy Working Group to facilitate the prompt and secure transfer of domain names to a registrar/reseller of their choice. This is clearly within ICANN's Core Mission "to promote and sustain a competitive environment in the DNS market."

However, the ALAC respectfully disagrees with the preliminary draft recommendation as it presupposes an outcome that is detrimental to the interests of individual internet users.. Notwithstanding, the ALAC believes it is important to document the perceived injustice to individual Internet users so that they may be able to seek recourse through other fora if ICANN elects not to address this issue in a timely manner.

The view of the ALAC is that the Registrant should be given the opportunity to initiate a TDRP. Furthermore, this should be included in the recommendations given by the Working Group.

At the same time, the ALAC finds it unreasonable that the only option for a Registrant is to take an Inter-registrar transfer dispute to court.

The ALAC acknowledges that the TDRP is connected to the transfer process only and not any other scenarios where the Registrant has “lost his/her domain name”. The ALAC is therefore in favor of asking the GNSO to *further research and explore the pros and cons of (i) expanding the TDRP to registrant filers and (ii) creating a new standalone dispute resolution mechanism for registrants who wish to challenge improper transfers, including compromised and stolen domain names.*

Rationale for the ALAC Comment to the Draft Resolution

1. The GNSO-TPR recommendations given in Phase 1 will set a complete new set of processes to the Losing and Gaining Registrars. Based on experience, the accredited Registrars will interpret the new policy differently. This may create a situation where the Registrars are not willing to admit their error and thereby not willing to initiate a TDRP.
2. It has been argued that it is only the Registrars that can update the Transfer Dispute Panel with relevant data. In our view, the panel appointed in a TDRP process, will have the authority to collect data from the Losing and Gaining Registrars. Adopting a similar process as with UDRP proceedings will assure the Transfer Dispute Panel gets required data.
3. The Registrant may submit a dispute to ICANN Compliance. According to information given by ICANN Compliance, ICANN Compliance *will have no contractual authority to return the domain name or instruct the registrar to return the domain name to the previous registrant.*¹
4. The majority of all transfer disputes are being sorted by the Registrars involved and not with use of the TDRP. Based on the very low volume of TDRP cases, At-Large does not expect a significant increase of TDRP cases with the new proposed policy, hence allowing a Registrant to initiate a TDRP will not create additional and unnecessary work.

¹ [Chat message ICANN77 Holida Yanik - ICANN Org 03:15:44](#)

ICANN's authority extends to the enforcement of the requirements outlined in the agreements it has with contracted parties and ICANN consensus policies. If a failure to comply with the agreement or policy is found, Compliance addresses the identified noncompliance with the registrar, but will have no contractual authority to return the domain name or instruct the registrar to return the domain name to (the) previous registrant.