

Transfer Policy Review

Charter Questions on TDRP
Prep for ICANN77



TPR meeting #94 | 6 June 2023

Agenda

1. Welcome and Chair updates
2. Recap Outcomes - Last Week's Call
3. Charter Question g3 - any additional scenarios to add?
4. Charter Question g4
5. Charter Question g5
6. AOB

Recap Outcomes - Last Week's Call

TDRP Charter Questions g3, g4, and g5

To Discuss

If there is evidence to support that there is a problem, is a new dispute resolution process the best solution?

- For example, if the working group believes that domain name hijacking is a significant problem that is not being addressed sufficiently, could the need be met by focusing on protections to prevent improper inter-registrant and inter-registrar transfers from occurring?

As a reminder:

- The IRTP Part D recommended not to develop dispute options for registrants.
- The working group must provide a clear rationale if it believes that further work is needed on this issue.

Use Cases

- Use Cases from IRTP D Final Report, please see pp. 41-42
 - Two registrant claimants dispute to be the Registered Name Holder immediately prior to or directly following an inter-registrar transfer (entirely b/w registrants; no compliance role)
 - Two registrant claimants dispute who is the Registered Name Holder of a domain name without an inter-registrant transfer having taken place. There are a number of reasons for such a situation to occur, including – but not limited to – a contractor registering a domain for a client, two business partners splitting, admin contact leave a company but remains listed in the Whois database. (entirely b/w registrants; no compliance role)
 - Any other use cases from the WG that need to be considered?

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

Status: Processing of Registration Data

Processing of Registration Data: includes the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data.

- Early input notes that some of the processing occurs by parties other than ICANN and Contracted Parties, e.g., TDRP Providers.
- Early input notes that data protection law varies by jurisdiction. (Note: EPDP analyzed data processing under GDPR, the most stringent data law in existence at the time.)
- In answering this question, the WG was asked to review 3.1.2 and 3.1.4

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COMPLAINT (3.1.2)	APPENDED TO COMPLAINT FOR GAINING REGISTRAR (3.1.4)	APPENDED TO COMPLAINT FOR LOSING REGISTRAR (3.1.4)
<ul style="list-style-type: none"> ● Complainant name + contact info of Complainant and authorized representative (postal address, email address, tel. #, fax #) ● Respondent name + contact info of Respondent and authorized rep (postal address, email address, tel. #, fax #) ● Domain Name ● Incident giving rise to dispute ● Remedy sought (transfer, reversal of transfer) ● Relevant legal proceedings ● Certification that complaint was transmitted to Respondent ● Required signature to statement 	<p>If Gaining Registrar:</p> <ul style="list-style-type: none"> ● Completed FOA* ● Copy of the Whois output for the date transfer was initiated* ● Copy of evidence of identity used* ● Copy of a bilateral agreement, final determination of a dispute resolution body or court order in cases when the Registrant of Record is being changed simultaneously with a Registrar Transfer* ● Copies of all relevant communications made to the Losing Registrar 	<p>If Losing Registrar:</p> <ul style="list-style-type: none"> ● Completed FOA from the Losing Registrar ● Copy of the Whois output for the date the transfer was initiated ● Relevant history of Whois* modifications made to the applicable registration* ● Evidence of one of the approved Transfer Policy factors if transfer was denied: ● Copies of all communications made to the Gaining Registrar with regard to the applicable transfer request along with any responses from the Gaining Registrar.

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

DECISION (3.5)

- 3.5.1. The relevant Dispute Resolution Provider shall publish any decision made with respect to a transfer dispute initiated under the TDRP. All decisions under this Policy will be published in full over the Internet except when the Panel, convened by the Dispute Resolution Provider, in an exceptional case, determines to redact portions of its decision. In any event, the portion of any decision determining a complaint to have been brought in bad faith shall be published.
- 3.5.2. Decision reports shall include, at a minimum:
 - The domain name under dispute;
 - The names of parties involved in the dispute;
 - The full decision of the case;
 - The date of the implementation of the decision.

g5) Are requirements for the processing of registration data, as specified in the TDRP, appropriate based on principles of privacy by design and data processing minimization?

- **Privacy by Design:** This generally means that organizations must consider privacy and data protection concerns when designing and building products and services, rather than retroactively implementing these features after the products and services are in use. Privacy protection, according to this concept, should not be viewed as an afterthought, but should be prioritized from the beginning when developing new or updated products/services.
- **Data Minimization:** The principle of “data minimisation” means that a data controller should limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose. They should also retain the data only for as long as is necessary to fulfill that purpose.

What is the purpose for processing data under the TDRP, and is the data that is included in a complaint/response relevant and necessary to accomplish this purpose?

- [Purpose: Enable a registrar to file a complaint/response regarding an alleged violation of the Transfer Policy and enable a panelist to determine, based on recommended documentation submitted, whether a Transfer Policy violation, in fact, occurred]
- [Purpose: Enable transparency in TDRP cases filed]

Planning for ICANN77

CHARTER QUESTION	VOLUNTEER
f1) Is additional data needed to support evaluation of the effectiveness of the TEAC mechanism? If so, what data is needed?	
f2) To what extent should the 4-hour time frame be revisited in light of these concerns? Are there alternative means to address the underlying concerns other than adjusting the time frame?	
f4) Section I.A.4.6.2 of the Transfer Policy states that “Communications to a TEAC must be initiated in a timely manner, within a reasonable period of time following the alleged unauthorized loss of a domain.” The Transfer Policy Review Scoping Team noted that this timeframe should be more clearly defined. Is additional guidance needed to define a “reasonable period of time” after which registrars should be expected to use a standard dispute resolution process?	
f5) Do telephone communications provide a sufficient “paper trail” for registrars who may later wish to request a transfer “undo” based on failure by a TEAC to respond?	
f6/f7 The Transfer Policy Review Scoping Team indicated that there are several factors that make a Registry Operator’s obligation to “undo” a transfer under Section 6.4 of the Transfer Policy challenging:	

CHARTER QUESTION	VOLUNTEER(S)
g1) Is there enough information available to determine if the TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP? If not, what additional information is needed to make this determination?	
g2) Are the existing informational materials about the TDRP sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they need to give to the dispute resolution provider?	
g3) If the TDRP is considered to be insufficient: <ul style="list-style-type: none">• Are additional mechanisms needed to supplement the TDRP?• Should the approach to the TDRP itself be reconsidered?	***
g4) Are requirements for the processing of registration data, as specified in the TDRP, compliant with data protection law?	
g5) Are requirements for the processing of registration data, as specified in the TDRP, appropriate based on principles of privacy by design and data processing minimization?	