

Transfer Policy Review

Draft Preliminary Recommendations on TEAC



TPR meeting #91 | 16 May 2023

Agenda

1. Welcome and Chair updates
2. Review Draft Preliminary Recommendations on TEAC
3. Consider Outstanding Questions on TEAC
4. Charter Question G1 and G2 on TDRP (time permitting)
5. AOB

Review Draft Preliminary Recommendations on TEAC

*f2) The time frame (4 hours) for registrars to respond to communications via the TEAC channel has been raised as a concern by the Transfer Policy Review Scoping Team and in survey responses. Some have expressed that registries must, in practice, have 24x7 coverage by staff members with the appropriate competency to meet this requirement and the language skills to respond to communications from around the world. **Is there merit to concerns** that the requirement disproportionately impacts certain registrars, namely:*

- i. Registrars located in regions outside of the Americas and Europe, because of significant time zone differences?*
- ii. Small and medium-sized registrars, which may not have a sufficiently large team to have 24x7 staff coverage with the necessary competency?*
- iii. Registrars in countries where English is not the primary language, who may, in practice, need to have English-speaking TEAC contacts to respond to requests in English?*

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

f2/f3 (continued)

Draft Preliminary Recommendation #G2-1: Section I.A.4.6.3 of the Transfer Policy states, “Messages sent via the TEAC communication channel must generate a non-automated response by a human representative of the Gaining Registrar. The person or team responding must be capable and authorized to investigate and address urgent transfer issues. Responses are required within **4 hours** of the initial request, although final resolution of the incident may take longer.” The working group recommends that the policy must be revised to update the required timeframe for initial response from **4 hours** to **24 hours**.

Rationale in brief

Reduce risk of gaming, reduce burden on registrars (especially smaller companies and those in time zones outside of Europe and the Americas), while still providing a reasonable response timeframe. Currently RAA has a 24 hour SLA for Rrs to provide a non-automated initial response to reports of illegal activity. This may be considered an analogous situation.

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?

Note:

The working group has considered **two items related to this charter question**:

1. The timeframe for initial contact to the TEAC following the alleged unauthorized loss of a domain.
2. The timeframe for final resolution of an issue raised through the TEAC channel.

f4 (continued)

Draft Preliminary Recommendation #G2-2: Section I.A.4.6.2 of the Transfer Policy states in part, “. . . 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 working group recommends that the Transfer Policy must be updated to state that the initial communication to a TEAC is expected to occur no more than [30 days] following the alleged unauthorized loss of a domain. If the initial communication to the TEAC occurs more that [30 days] following the alleged unauthorized loss of a domain, the registrar contacting the TEAC must provide a detailed written explanation to the TEAC justifying why this is an emergency situation that must be addressed through the TEAC and providing information about why earlier contact to the TEAC was not possible.

Rationale in brief

Defines “a reasonable period of time” while allowing flexibility for exceptional circumstances that may still constitute an emergency. The 30-day period corresponds to the 30-day post transfer lock period.

Draft Preliminary Recommendation #G2-3: Once a registrar has provided an initial non-automated response to a TEAC communication as described in Section I.A.4.6.3 of the Transfer Policy, that registrar must provide additional, substantive updates by email to the registrar who initiated the TEAC communication. These updates must be sent every [48 hours] [72 hours] until work to resolve the issue is complete and must include specific actions taken to work towards resolution.

Rationale in brief

Introduces additional transparency and accountability without providing strict deadlines that may not be appropriate or feasible to meet, even when both registrars are working diligently towards resolution of the issue.

f5) According to section I.A.4.6.2 of the Transfer Policy, the TEAC may be designated as a telephone number, and therefore some TEAC communications may take place by phone. The Transfer Policy Review Scoping Team flagged this provision as a potential item for further consideration. Do telephone communications provide a sufficient “paper trail” for registrars who may later wish to request a transfer “undo” based on failure by a TEAC to respond? Such a request would require the registrar to provide evidence that a phone call was made and not answered, or a call back was not received within 4 hours. **Noting this requirement, should the option to communicate by phone be eliminated? Is an authoritative “system of record” for TEAC communications warranted? If so, what are the requirements for such a system?**

Draft Preliminary Recommendation #G1-4: Section I.A.4.6.2 states in part that “The TEAC point of contact may be designated as a telephone number or some other real-time communication channel and will be recorded in, and protected by, the ICANN registrar portal.” The working group recommends that the registrar must provide an email address for the TEAC point of contact and may additionally provide a telephone number or other real-time communication channel.

Draft Preliminary Recommendation #G1-5: The working group recommends that initial communication to the TEAC described in Section I.A.4.6.2 of the Transfer Policy must either be in the form of email or be accompanied by an email communication to the TEAC. This email “starts the clock” for the 24-hours response timeframe specified in Preliminary Recommendation #G2-1. The registrar receiving the TEAC communication must respond by email within 24 hours. The registry and ICANN org must be copied on both the initial email to the TEAC and the initial response by the TEAC.

Rationale in brief

Ensures that there is a paper trail associated with each initial TEAC contact without creating complex new requirements for an system of record that may be seldom used.

Outstanding Questions - TEAC

f1) Is additional data needed to support evaluation of the effectiveness of the TEAC mechanism? If so, what data is needed?

Some support has been expressed for the idea that more data is needed to evaluate the effectiveness of the TEAC mechanism. Some working group members indicated that registrars should be required to track and report on specific data points related to the TEAC going forward. Types of information the BC, RySG, and NCSG identified as potentially useful:

- Number of times TEAC channel is used
- Modes of contact to TEAC, and whether these are satisfactory
- Steps taken before contacting TEAC
- Quality of initial response by TEAC
- Whether the timeframe for response is satisfactory
- Circumstances prompting use of TEAC
- Number of cases where there are problems associated with use of the TEAC, including abuse of the channel
- Circumstances of issues experienced with the TEAC
- Type of resolution of case raised through TEAC
- Level of satisfaction with final resolution

In addition the WG charter identifies the following metrics that could be used to measure whether policy goals are achieved:

- Number of TEAC requests responded to within the required timeframe vs. number of TEAC requests NOT responded to within the required timeframe
- Number of TEAC requests resulting in a “transfer undo”

f1) *Is additional data needed to support evaluation of the effectiveness of the TEAC mechanism? If so, what data is needed?*

To Discuss

- The working group appears to be converging on recommendation that initial contact and response via the TEAC includes an email “paper trail.”
- At this time, the working group is not recommending a centralized system of record. Such a system would potentially be able to provide aggregated data about number of contacts, timeframe for response, etc.
- An email paper trail is a source of information, but turning that information into data requires manual work.
- Some data points might be fairly easy to collect and aggregate, for example number of times TEAC channel is used, amount of time it takes for a registrar to respond when the TEAC channel is used, and number of times registries undo a transfer as a result of a registrar missing the TEAC SLA.
- Other data points require recording narrative responses and analyzing the fact patterns of cases.
- What are the cost/benefit tradeoffs of recommending that these metrics are collected and analyzed?
- Who will be responsible for the data collection/analysis?
- Are there alternatives that the group wants to consider beyond requirements for data collection/reporting?

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:

- i. Registry Operators do not have access to the designated TEACs for each Registrar, making validation of an undo request nearly impossible.*
- ii. There is no way for Registry Operators to independently verify that a Registrar did not respond within the required time frame or at all since Registry Operators are not a party to, or copied on, communications between the Registrar TEACs.*
- iii. Transfer "undo" requests associated with the failure of a TEAC to respond are unilateral so there is no validation required prior to a Registry Operator taking action. This has, on occasion, led to a "he said", "she said" scenario.*
- iv. Follow on to f6 iii., if the policy were to be updated to allow for some level of validation by the Registry Operator prior to taking action, the requirement to "undo" a transfer within 5 calendar days of receiving an TEAC undo request leaves little to no time to attempt to validate the request prior to taking the action.*

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

f6/f7 (continued)

Issue i Status:

- **RySG** suggests “that ICANN Org include the Rr TEAC in the list of Rr contacts that it regularly supplies to the ROs.”

Status

Policy staff is investigating the history of this issue and any other relevant information to be shared for the working group’s consideration.

Issue ii, iii, iv Status:

- At this time, no additional policy recommendations have been proposed.
- Registries have noted that a more robust paper trail will assist with addressing and resolving “he said, she said” scenarios.
- Registries may provide a list of what they believe needs to be included with per Section I.A.6.4.4 – “Documentation provided by the Registrar of Record prior to transfer that the Gaining Registrar has not responded to a message via the TEAC within the timeframe specified in Section I.A.4.6.”

Charter Questions G1 and G2 on TDRP

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

Status:

- Working group requested and obtained contractual compliance data – no valid cases related to TDRP reported from 1 September 2020 to 31 December 2022.
- Written early input and early deliberations focus on the fact that it is difficult to look at information about existing TDPR cases in isolation to determine if the TDRP is effective, noting that 1. The TDRP must be viewed in the broader context of whether the Transfer Policy itself and the other available methods of resolution are effective (informal resolution, courts, etc), as well as the volume of problem transfers, which is currently unknown. 2. The small number of cases make it difficult to draw conclusions about how effectively the TDRP is resolving disputes handled through that process.

To Discuss

As a reminder, this question focuses specifically on whether there is enough information to evaluate if TDRP is an effective mechanism for resolving disputes between registrars in cases of alleged violations of the IRTP. We will discuss proposed recommendation to improve dispute resolution options as part of a different charter question (g3).

Is it sufficient to answer this charter question but summarizing the information/data that the WG used to support its deliberations on the TDRP, while noting that there are limitations to the available information about the broader context of how issues are resolved (or not) using the available mechanisms?

g1) The ADNDRC reported to the IRTP Part D Working Group that in some of the cases it processed, appellees and appellants failed to provide sufficient information to support arbitration. Is this an issue that needs to be examined further in the context of the policy?

i. Are the existing informational materials about the TDRP sufficient to ensure that registrars understand the process and the requirements for filing a dispute, including the information they need to give to the dispute resolution provider?

Status:

- RySG suggested that ICANN org could review informational materials available about the TDRP as part of TPR implementation.
- RrSG suggested that there may be a lack of awareness about the TDRP and its requirements.
- NSCG noted that a review of existing materials may be needed.
- The BC stated that the TDRP does not itself contain much to guide the evidentiary requirements and as such additional material would be helpful.

To Discuss

- WG review of requirements in Section 3.1 and 3.2.1 in the Transfer Dispute Resolution Policy.