

Transfer Policy Review

Charter Questions F1-F7 (TEAC)



TPR meeting #90 | 9 May 2023

Agenda

1. Welcome and Chair updates
2. New proposals for policy requirements - non-emergency informal resolution (if any are received)
3. Status and next steps on Charter Questions F1-F7
4. AOB

New proposals for policy requirements - non-emergency informal resolution (if any are received)

Considerations When Reviewing New Proposals

- What specific policy requirement is being proposed?
- What problem does it seek to solve?
- Has this concept been considered before by the working group or a previous working group?

Charter Questions F1-F7 (TEAC)

Where are we now on TEAC Charter Questions?

Steps completed:

Completed review of available data and survey inputs

Conducted initial deliberations and temperature-taking exercise in the WG

Obtained written input from SO/AC/SG/Cs

Current focus:

Agree to direction for each Charter Questions and any associated recommendations

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

Status:

In written input RySG, NCSG, and BC have stated that it would be helpful to have additional metrics from registrars to support policymaking. In WG discussion, some support was expressed for requiring registrars to track and report on TEAC activity.

Possible Path	Recommendation to require registrars to track and report on specific data points related to the TEAC going forward, leveraging lists from RySG, NCSG, and BC.
Rationale	Metrics will support understanding of how well the TEAC functions and any pain points, which will support future data-driven policy making.
To Discuss	Specific metrics that would be required.

*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)

Status: In initial deliberations, some support was expressed for extending the timeframe for initial contact from 4 hours to 24 hours.

Early written input does not seem to contradict this path forward:

- **RySG:** “. . . as a practical matter, the 4-hour timeframe and the telephone-driven nature of the TEAC mechanism can lead to suboptimal outcomes. . . Research of prior RySG comments on the IRTP Part B (March 2011) indicates (at that time) most voicing an opinion within the RySG supported a timeframe of **24 hours**.”
- **RrSG:** “While 4 hours may be too short, there should be a minimum response deadline (**perhaps 48 hours**) to ensure that emergency transfer disputes are addressed in a timely manner.”
- **NCSG:** “The 4-hour time frame should be revisited to, **at least, 24 hours**.”
- **BC:** depending on the frequency and effectiveness of use, the **four-hour time frame seems generally appropriate** for emergency situations, though it can **perhaps be expanded somewhat to 12 or 24 hours**.

Possible Path	Recommendation to extend the TEAC deadline to 24 hours.
Rationale	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)

f4, Item 1: The timeframe for initial contact to the TEAC following the alleged unauthorized loss of a domain.

Status: Comments from the RySG, RrSG, NCSG, and BC support providing **more guidance around “a reasonable period of time.”** While some working group members have favored providing a precise deadline, others have noted that there may be circumstances that require more flexibility. RrSG suggested that the timeframe should be aligned with when the registrar is made aware of the unauthorized transfer. BC suggested the period could be 5 days from the alleged unauthorized loss of a domain.

Possible Path	Initial contact to a TEAC should generally occur no more than [x days] following the alleged unauthorized loss of a domain. If the initial contact to the TEAC channel occurs more that [x days] following the alleged unauthorized loss of a domain, the registrar must provide a detailed explanation of why this is an emergency situation that must be addressed through the TEAC channel, including why earlier contact to the TEAC was not possible.
Rationale	The suggested approach puts additional definition around “a reasonable period of time,” while allowing flexibility for exceptional circumstances that may still constitute an emergency.
To Discuss	Would 30 days be an appropriate time frame, corresponding to the post-transfer lock period?

f4 (continued)

f4, Item 2: The timeframe for final resolution of an issue raised through the TEAC channel.

Status: Some working group members noted that it would be **helpful to have defined timeframes**, but others raised that **each case is different** and some cases may take longer to resolve than others. Absent data about the types of cases and resolutions handled through the TEAC channel, it is **difficult to define requirements**.

Possible Path	If an issue is raised through the TEAC channel, the registrar receiving the communication must provide updates about the status of the resolution to the party who initiated the TEAC contact no less than every [x period of time], including specific actions taken to work towards resolution.
Rationale	Introduces additional transparency and accountability without providing strict deadlines that may not be appropriate or feasible to meet, depending on circumstances.
To Discuss	Time period for periodic updates.

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?**

Status: There are different views on this question:

- **RySG** supports “**exploring integrating a TEAC-like function into the ICANN nSP**”, but is “not prepared to recommend that the option for phone communication be eliminated without understanding the proposed option(s) for replacement.”
- **RrSG** does not have a unified position and suggests that It “may be ideal to **allow each registrar to choose which form of contact** they would prefer.”
- **NCSG** suggests that the use of telephone communication for TEAC may “raise concerns about the ability to provide a sufficient “paper trail”” and suggests that **email may be a suitable system of record**.
- **BC** notes that “the **telephone contact appears to remain an effective means** of communications for the initial contact, however there should perhaps be an **additional logging mechanism** via a written report to ICANN, for example, or even via email correspondence which would have a paper trail.”

f5 (continued)

Possible Path	Require that registrars provide an email address for TEAC. First attempt to contact the TEAC must be by email, but can be followed by other forms of communication (for example, phone). The TEAC must respond to that initial email within 24 hours.
Rationale	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.

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.”

Possible Path	Recommendation that ICANN Org include the registrar TEAC in the list of registrar contacts that it regularly supplies to the ROs.
Rationale	Helps to ensure that registries are aware of updates to TEAC information.

Issue ii, iii, iv Status:

- **RySG** early input reiterated concerns stated in the charter question. In working group discussion, RySG members have held that the process should work in such a way that the RO doesn't need to make a decision or conduct any verification. Registries should also not be liable in cases where they undo a transfer because a TEAC did not respond in time.
- **RrSG** early input noted that “some Registrars suggest that the **registry should be required to contact both registrars** before taking action that could impact the domain in determining whether there is noncompliance.” Further, “Transfer undoes should only occur for TEAC noncompliance when a **registry can conclude that the TEAC obligations of the gaining registrar were noncompliant**, not in a scenario where evidence from the two registrars is conflicting. The group may benefit from considering requiring the creation of a **communication path to pass these TEAC requests back and forth** and ensure that the registry and ICANN also have visibility into them.”
- **NCSG** suggested that “one possible solution could be to require Registrar TEACs to copy Registry Operators on all TEAC communications” and noted that an authoritative system is an alternative.
- **BC** notes that in the “. . . absence of much data concerning dissatisfaction with a very infrequently used procedure, would seem to mitigate in favour little change to the current approach.”

Question for Input

According to Transfer Policy Section I.A.6.4, “*The Registry Operator shall undo a transfer if, after a transfer has occurred, the Registry Operator receives one of the notices as set forth below. . .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.*” Would a requirement that first contact occurs by email sufficiently mitigate registry concerns about “he said, she said” scenarios?