Final Issue Report on a Policy Development Process to Review the Transfer Policy

GNSO Council Webinar

ICANN

1 February 2021

Agenda

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- ⊙ Overview of Topics

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- ⊙ Public Comments on Preliminary Issue Report

- ⊙ GAC Quick Look

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Background

About the Transfer Policy

- ⊙ ICANN **consensus policy** governing the procedure and requirements for **registrants to transfer their domain names from one registrar to another**, also referred to as an inter-registrar transfer.

- ⊙ Goal: provide for enhanced **domain name portability**, resulting in greater consumer and business choice and enabling registrants to select the registrar that offers the best services and price for their needs.

- ⊙ Formerly referred to as the **Inter-Registrar Transfer Policy (IRTP)**, went into effect on 12 November 2004.

- ⊙ First review of the policy took place right after implementation. A new PDP would be the second review.

Background on the Issue Report

Apr '19 — ICANN Org delivered the [Transfer Policy Status Report](#) to the GNSO Council, as anticipated by the Inter-Registrar Transfer Policy (IRTP) Part D PDP WG's Final Report.

Sep '19 — Council agreed to launch a call for volunteers for a Transfer Policy Review Scoping Team.

Apr '20 — Scoping Team delivered its [Transfer Policy Review Scoping Paper](#) to the Council.

Jun '20 — Council [requested](#) a Preliminary Issue Report.

Jan '21 — A Final Issue Report was submitted to Council, following a public comment period on the Preliminary Issue Report.

Issue Report Topics

The eight issues addressed in the Final Issue Report are:

- Gaining & Losing Registrar Form of Authorization (FOA)
- AuthInfo Code Management
- Change of Registrant (CoR)
- Transfer Emergency Action Contact (TEAC)
- Transfer Dispute Resolution Policy (TDRP)
- Reversing/NACKing Transfers
- ICANN-Approved Transfers
- EPDP Rec. 27

Structure of Each Issue Report Section

For each issue, the Final Issue Report includes:

⊙ An **overview** of the issue, including any previous policy development work.

⊙ Relevant **inputs and data** on the issue from the following sources:
  ○ Transfer Policy Status Report, including a survey of registrars and registrants, as well as metrics from ICANN org's Global Support Center, Monthly Registry Reports, and Contractual Compliance Department.
  ○ Inputs from the Contracted Party House Tech Ops Group.
  ○ Feedback from ICANN org departments working directly with the Transfer Policy.
  ○ Public comments on the Preliminary Issue Report.

⊙ Proposed **policy questions** for consideration, also included in the draft Charter.

Overview of Topics

Gaining & Losing Registrar Form of Authorization (FOA)

Overview:

- **Prior to the Board's adoption of the Temporary Specification**, the Gaining Registrar in a transfer was **required** to get confirmation of intent to transfer the domain via a Form of Authorization (**Gaining FOA**). A Losing Registrar must also send notice of the pending transfer to the Registered Name Holder (**Losing FOA**).

- Under the **Temp Spec**, if the Gaining Registrar is unable to send the Gaining FOA due to its inability to obtain current registration data via the public Registration Data Directory Services (RDDS):

  - **The Gaining FOA is not required**.

  - Registered Name Holder independently re-enters registration data with the Gaining Registrar.

  - Identity of the Registered Name Holder is verified by providing the AuthInfo Code.

  - Losing FOA is still required.

- **EPDP included this workaround in its recommendations**, which were **adopted by the ICANN Board**.

Gaining & Losing Registrar Form of Authorization (FOA)

Overview (continued):

- o Registrars identified challenges in ICANN org's position that a Gaining Registrar is required to send a Gaining FOA where the email address "is available", as there is no guarantee that the email goes directly to the registrant.

- o ICANN Board passed a resolution to **defer contractual compliance enforcement of the Gaining FOA requirement** pending further work in this area.

- o Contracted Party House Tech Ops Subcommittee has developed a proposal for a proposed transfer process.

Gaining & Losing Registrar Form of Authorization (FOA)

Focus of Charter Questions:

- Is the requirement of the **Gaining FOA still needed**, and if so, are updates necessary? If not, does the AuthInfo Code provide sufficient security and "paper trail"?

- In light of provisions of the Temporary Specification, what secure methods (if any) currently exist to allow for the **secure transmission** of then-current **Registration Data** for a domain name subject to an **inter-registrar transfer request**?

- Should **mandatory domain name locking** be included in the Transfer Policy?

- Is the **Losing FOA still required**, and if so, are updates necessary?

- Is **CPH Proposed Tech Ops Process** a logical starting point for future work on this issue? Other proposals to consider?

AuthInfo Code Management

Overview:

- **Unique code** created by a registrar on a per-domain basis to **identify the registrant** of the domain name.
- AuthInfo Code is **required for the registrant to transfer** its domain name from one registrar to another.
- The losing registrar may provide the AuthInfo Code via control panel, or by other means within 5 calendar days (email, SMS, etc).

Focus of Charter Questions:

- Is the **AuthInfo Code still a secure method** for inter-registrar transfers?
- Should the **registrar remain the authoritative holder** of the AuthInfo Code or should it be the registry?
- Is the current **SLA** for provision of the AuthInfo Code still appropriate?
- Should the AuthInfo Code **expire** after a certain amount of time?
- Should there be additional policy work on **bulk use** of AuthInfo Codes?

Change of Registrant (CoR)

Overview:

- Requirements that seek to prevent domain name hijacking by **ensuring that certain changes to registrant information have been authorized**.

- Registrars must **obtain confirmation from the Prior Registrant and New Registrant before a material change is made** to one or more of the following: the Prior Registrant name, Prior Registrant organization, Prior Registrant email address, and/or Administrative Contact email address, if there is no Prior Registrant email address.

- "**60-day inter-registrar transfer lock**" prevents transfer to another registrar for sixty (60) days following a CoR.

- The Transfer Policy includes provisions for a **Designated Agent**, an individual or entity that the Prior Registrant or New Registrant authorizes to approve a CoR.

- Currently, **compliance enforcement is being deferred** in relation to Change of Registrant as it applies to removal or addition of **privacy/proxy services**, pending further work to clarify implementation of relevant IRTP Part C provisions.

Change of Registrant (CoR)

Focus of Charter Questions:

○ Does the **policy achieve its stated goals**? Is it still relevant in the current domain ownership system?

○ Can **requirements be simplified** to make them less burdensome and confusing, especially regarding the 60-day lock?

○ To what extent **should the Change of Registrant policy, and the 60-day lock, apply** to underlying registrant data when the registrant uses a **privacy/proxy service**?

○ Is the **Designated Agent function operating as intended**? If not, should it be retained and modified? Eliminated?

Transfer Emergency Action Contact (TEAC)

Overview:

- **Registrars are required to designate a TEAC** to facilitate urgent, **real-time communications** relating to transfers in an emergency.

Focus of Charter Questions:

- Is the **time frame (4 hours)** for registrars to respond to communications via the TEAC **fair and appropriate**?
- Should the **timeframe for initial communications** to a TEAC be more clearly defined?
- Is **phone still an appropriate method** of contacting the TEAC, given the difficulty in establishing a "paper trail" of communication?
- Are **additional changes needed to support a Registry Operator** in its obligation to **"undo" a transfer** where the Gaining Registrar has not responded to a message via the TEAC within the specified timeframe?

Transfer Dispute Resolution Policy (TDRP)

Overview:

- Policy detailing the requirements and process for **registrars to file disputes** relating to **inter-registrar domain name transfers**.

Focus of Charter Questions:

- Is the TDRP an **effective** mechanism for resolving disputes?
- If not, are **additional mechanisms needed** to supplement the TDRP or should the approach to the TDRP itself be reconsidered?
- Are TDRP requirements for the **processing of registration data** compliant with **data protection law** and consistent with principles of privacy by design and data processing minimization?

Reversing/NACKing Transfers

Overview:

- Losing Registrar **may deny (NACK)** a registrant's inter-registrar transfer request in **specific instances**.

  - Examples: Evidence of fraud; Reasonable dispute over the identity of the Registered Name Holder or Administrative Contact; Express objection to the transfer by the authorized Transfer Contact.

- Losing Registrar **must deny (NACK)** a registrant's inter-registrar transfer request in **specific instances**.

  - Examples: A pending UDRP or URS proceeding or URS suspension that the Registrar has been informed of; Court order by a court of competent jurisdiction; Pending dispute related to a previous transfer pursuant to the TDRP.

Focus of Charter Questions:

- Are the **current reasons** for denying or NACKing a transfer sufficiently **clear**? Should additional reasons be considered?

- Should there be **additional guidance around cases subject to a UDRP decision**?

ICANN Approved Transfers

Overview:

- De-Accredited Registrar Transition Procedure governs **circumstances where a registrar's domain names need to be transferred to another ICANN-accredited registrar**, most commonly when a registrar's RAA is terminated or expires without renewal.

Focus of Charter Questions:

- Should the **one-time flat fee** of $50,000 that the gaining registrar is required to pay be **revisited or removed** in certain circumstances?
- Should the **scope of voluntary bulk transfers**, including partial bulk transfers, **be expanded and/or made uniform** across all of ICANN's contracted parties? If so, what types of **policy considerations** should govern voluntary bulk transfers and partial bulk transfers?

EPDP Recommendation 27

Overview:

- Recommendation 27 in the EPDP Team's Phase 1 Final Report recommends **updating existing policies / procedures** to ensure **consistency** with the EPDP's outputs.

- In its Wave 1 Report, **ICANN org performed a detailed analysis** of 15 policies and procedures, including the Transfer Policy and Transfer Dispute Resolution Policy.

Focus of Charter Questions:

- How **should the issues in the Wave 1 report be addressed with respect to the Transfer Policy and TDRP**? Do any need to be resolved urgently rather than waiting for the respective PDP Working Group?

- Can issues in the Wave 1 report related to FOA, Change of Registrant, and TDRP be discussed and reviewed by the PDP Working Group during its review of those topics?

Draft Charter

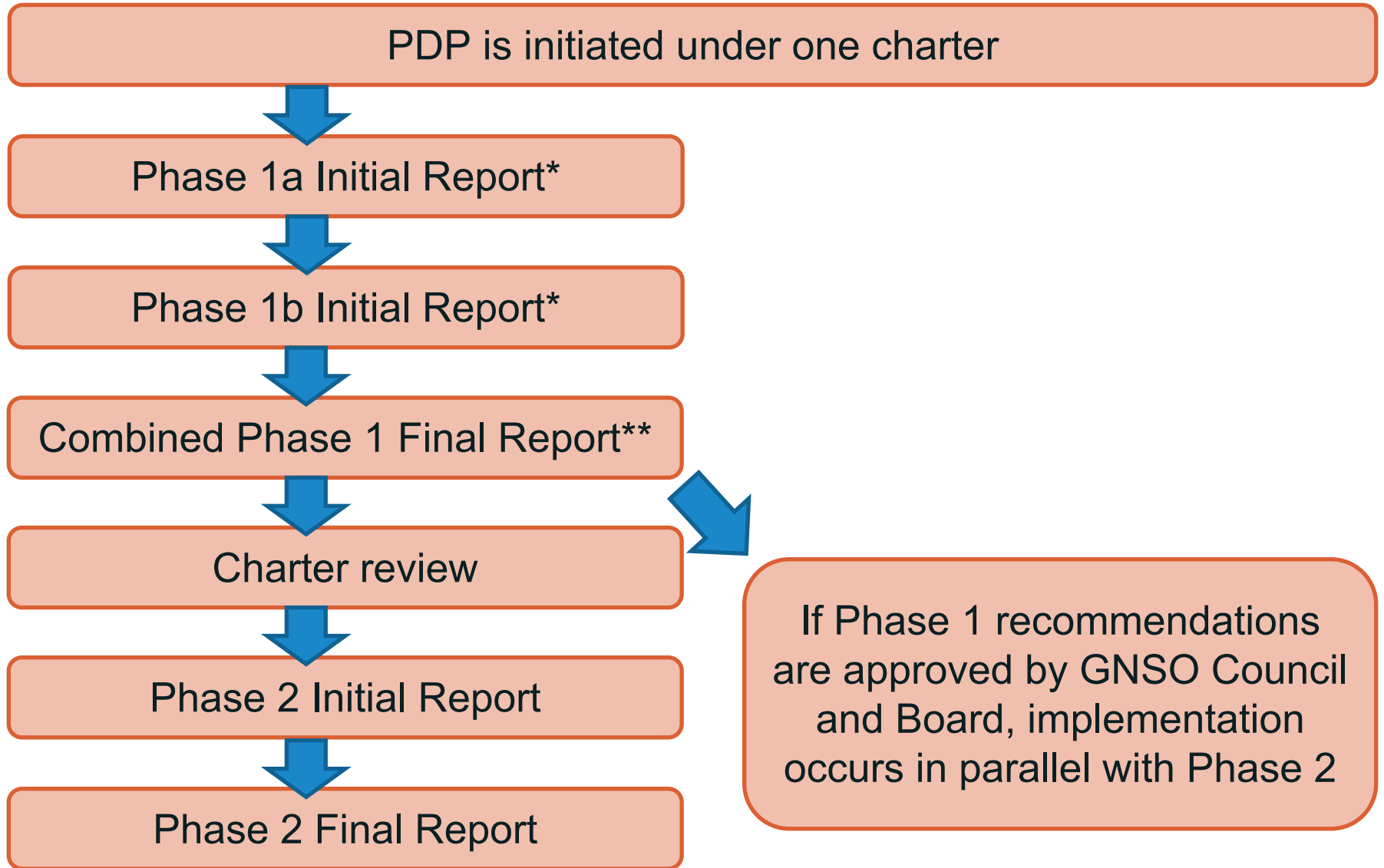# Draft Charter – PDP Scope and Phased Structure

Final Issue Report includes a Draft Charter for Council to consider

Mission and Scope: PDP to conduct a **holistic review of the Transfer Policy** and determine if changes to the policy are needed to improve the ease, security, and efficacy of inter-registrar and inter-registrant transfers.

Conducted in **Phases under a single charter**:

- Phase 1(a): Form of Authorization (including Rec. 27, Wave 1 FOA issues) and AuthInfo Codes
- Phase 1(b): Change of Registrant (including Rec. 27, Wave 1 Change of Registrant issues)
- Phase 2: Transfer Emergency Action Contact and reversing inter-registrar transfers, Transfer Dispute Resolution Policy (including Rec. 27, Wave 1 TDRP issues), NACKing transfers, ICANN-approved transfers

Draft Charter – Sequence of Milestones

PDP is initiated under one charter

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Phase 1a Initial Report*

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Phase 1b Initial Report*

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Combined Phase 1 Final Report**

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Charter review

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Phase 2 Initial Report

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Phase 2 Final Report

If Phase 1 recommendations are approved by GNSO Council and Board, implementation occurs in parallel with Phase 2

* Phase 1a and Phase 1b Initial Reports will each have their own public comment period
** Combined Phase 1 Final Report helps to ensure coherence/consistency between 1a and 1b recs

Draft Charter – Working Group Composition

- ⊙ Working group with limited membership following a representative model.

- ⊙ Membership structure:
  - ○ **Members**, who are responsible for active participation, preliminary deliberations, and consensus;
  - ○ **Alternates**, who only participate if a Member is not available, but will be responsible for keeping up with Working Group;
  - ○ **Observers**, who may follow the work but do not have posting or speaking rights during WG meetings.

- ⊙ Membership is not limited to GNSO Stakeholder Groups and Constituencies, noting that some groups in the ICANN community may be more interested in this topic than others.

Draft Charter – Open Items

- ⊙ Confirmation that a representative model is appropriate.

- ⊙ Precise composition of the Working Group (number of members from the different Stakeholder Groups/Constituencies/Supporting Organizations/Advisory Committees).

Public Comments on Preliminary Issue Report

Overview of Public Comments

- **Three community submissions** were received on the Preliminary Issue Report:
  - Hosting Concepts B.V. d/b/a Openprovider
  - Tucows
  - Registrar Stakeholder Group

- All three comments mentioned the issue of **voluntary and partial bulk transfers**. Staff added language to the Report on this issue.

- Substantive answers in response to the draft charter questions will be provided to the working group for its consideration.

GAC Quick Look

GAC Response – Quick Look Mechanism

- ⊙ In accordance with the Quick Look Mechanism, the GNSO informed that GAC of its request for a Preliminary Issue Report and asked the GAC to consider if the issue has potential public policy implications.

- ⊙ On September 2, 2020, the **GAC responded that the topic should be considered to have potential public policy implications and expressed support** for considering the launch of a standard PDP or a series of PDPs.

Next Steps

Next Steps

- ⊙ GNSO Council to vote on whether to initiate policy development work, as recommended in the Final Issue Report.
  - ○ This item is on the February 2021 Council meeting agenda.

- ⊙ Finalization of charter.
  - ○ Council to identify any additional work that it believes must be completed on the charter and decide how this work should be done.

- ⊙ GNSO Council to adopt charter.