

**Locking of the Domain Name Subject to UDRP Proceedings Drafting Team
Meeting
TRANSCRIPTION
Thursday 02 August 2012 at 1400 UTC**

Note: The following is the output of transcribing from an audio recording of Locking of the Domain Name Subject to UDRP Proceedings Drafting Team Meeting on Thursday 02 August 2012 at 1400 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gnso/gnso-locking-domain-name-20120802->

Attendees:

Randy Ferguson, IPC
Alan Greenberg, ALAC (Vice-Chair)
Luc Seufer, RrSG
Laurie Anderson, RrSG
Matt Schneller - IPC
Celia Lerman Friedman, CBUC
Hago Dafalla, NCUC
Brian Beckham, WIPO
Michele Neylon, RrSG (Chair)
Lisa Garono, IPC
Kristine Dorrain, NAF
David Maher, RySG
David Roache-Turner, WIPO
Baudoin Schombe, At-Large
Faisal Shah, individual

Apologies:

Gabriela Szlak, CBUC
Juan Manuel Rojas, At-Large
Volker Greimann, RrSG
Jonathan D. Tenenbaum, RrSG

Staff Support:

Margie Milam
Berry Cobb
Gisella Gruber

Coordinator: The recording is now started. Please go ahead.

Gisella Gruber-White: Much appreciated. Good morning, good afternoon, good evening to everyone on today's looking over domain names subject to UDRP proceedings drafting team call on Thursday, the 2nd of August. We have Michele Neylon, Alan Greenburg, Laurie Anderson, Matt Schneller, Celia Lerman (Friedman), Hago Dafalla, Kristine Dorraine. Baudoin Schombe will be joining us in 15 minutes, Faisal Shah. Apologies noted today from (Gabiella Slot) and (Juan Manuel Rojas). (Akiko) has also just joined the audio bridge.

We have (Luke Sifer) who's on the Adobe Connect who has not yet joined the audio bridge. And if I could, from - sorry, from staff, we have Margie Milam, Berry Cobb and myself, Gisella Gruber. Lisa Garona has also just joined us on the audio bridge and if I could also please remind everyone to state their names when speaking for transcript purpose. Thank you. Over to you, Michele.

Michele Neylon: Thanks. And we also have apologies from Volker Greimann - or Greimann. I don't know how you pronounce that.

Gisella Gruber-White: Thank you. It will be noted. Thank you.

Michele Neylon: He's on holiday in Japan, I believe, for a couple of weeks. Good afternoon, good morning, good - whatever time zone you're in. As per usual, I have to ask, does anybody have any updates to the Statement of Interest or the other thing, the Conflict of Interest? Going once, going twice. No? Okay, no takers. Fine.

Moving on, so we're continuing to look at survey responses and we've got a few there. We also have one comment in - on the public forum. That's in the public comment thing. I will place a link to that into the Adobe Chat. And for - in the interest of transparency, I should let you know that the comment is from our - as in Black Knights external legal counsel. It is not a comment endorsed

by us or anything like that. But I did encourage him to actually submit a comment. So I managed to get one more member of the public to submit a comment. I'm very proud of myself.

Alan Greenburg: Michele, it's Alan. Will you help us translate the comment?

Michele Neylon: Of course. Of course.

Alan Greenburg: There's an expression in it, "on foot," which I've never heard before and he uses it several times. I just put something in the chat about it.

Michele Neylon: Okay, is that a (narratism)?

Alan Greenburg: Oh, well, what is it then?

Michele Neylon: Oh okay. I don't know. I thought it was English. I mean, I could be wrong but a bit like Oscar Wilde. I have to - I'm Irish. People have to tell me when I'm...

Alan Greenburg: Just tell us what it means.

Michele Neylon: On the basis of.

Alan Greenburg: Okay, thank you.

Michele Neylon: As a result of, on the basis of. So one of the things is, it is our experience that many issues arise in relation to the ongoing use of a domain name in relation to a UDRP.

Alan Greenburg: Okay.

Michele Neylon: Well, this would be one translation, unless I'm misunderstanding what is on foot of. Yes, it's usually the basis of something.

Alan Greenburg: Okay, that fits in the other uses. Thank you.

Michele Neylon: Okay. I didn't - I thought we spoke English. I've just been proven wrong. Okay.

Alan Greenburg: (It's our) dialect.

Michele Neylon: I know.

Alan Greenburg: For the transcript, that was Alan speaking when it wasn't Michele.

Michele Neylon: Okay, and for the transcript, Alan was the one with the interesting vowels and Michele was the one with the thick Irish accent. Okay then, so we've had one comment. I know a couple members of the group have been doing their best to promote the comment period via various means. One member of the group, who I won't name, but who is connected onto the call somehow, has been trying to attract attention on Twitter with some very funny tweets to promote it.

I'm not sure if we're going to get much back but, hey, at least we've tried. Okay, so going back to the survey results and everything else, Berry sent out a couple of spreadsheets with the - where he tried to do some work on the analysis and he also forwarded an email to the list from - I think it was the Czech court Is that correct, Berry?

Berry Cobb: This is Berry. Yes it is.

Michele Neylon: Okay. Okay, with regard to the - what's up on screen, the updated results. I can't move that though. Damn it. Oh, you can move it. Woo-hoo. Right. with regards to the Czech court can you also put that put up on the screen, it's not a very long email.

Berry Cobb: Give me just a second. Actually I'm having a slight technical difficulty. I didn't PDF the email and I can't share my screen at the moment.

Michele Neylon: Okay, well look, let's just - we've had replies from WIPO as well and...

Woman: This is (unintelligible). I had emailed Marika but I realize she's out of the office. We'll send our reply next week. We're still gathering the data.

Michele Neylon: Okay, thank you. Okay, well, Berry has sent to responses to the list. One is from WIPO and the other one is from the Czech court and the most recent one would only have landed in your inboxes probably within the last couple of minutes, in other words, the beginning of this call and can't - since Berry can't share his screen, I will dig up the one from the Czech court.

So a couple of clarifications - so the question - in approximately what percentage of UDRP proceedings that you handle do registrars lock the domain names an issue, taken on a representative sample UDRP that you had experience with? They clarified to say about 90%.

Question five - in approximately what percentage of UDRP proceedings that you handled, were registrars able to confirm lock in the domains, et cetera, et cetera, et cetera? And they said between 25% and 30%. And the question 8, in approximately what percent of UDRP procedures that you've administered are you aware the registrar having confirmed lock of a domain name replied for a request for registrar verification from you but in which there were nonetheless subsequent material changes to the registrant data? And they said they've only ever had one case which in percentages was about 1%.

And the next question - in approximately what percentage of - oh, we have got stuff on screen now. Okay. The next one - approximately what percent of UDRP proceedings that you've administered are you aware of the registrar's confirmed domain name locked, failing to prevent and are currently prohibited transfer to another registrar? And again, it's 1% so I presume this is all the same case.

And basically all the issues they seem to have are with one particular incident that they've had. So it's kind of rare, I think is the upshot of that one. And any comments or other thoughts on this from anybody in relation to the Czech arbitration court? No, okay.

And we have one from WIPO. So the first question with regarding to locking, they said it was about 99%. And, okay, WIPO's obviously dealt with a larger number of disputes so they're saying that in question number five, what percentage do registrars fail to confirm lock? And they came back with approximately 6%.

Then question eight, the modification to the registrant data, again, a low figure, 2%. Percentage of UDRP proceedings, prefer lock prevention (apparent) transfer - zero. Next one was down 1%. And relevant to Whois, registrant contact, again it was 2%. And the last one, in approximately what percent of UDRP proceedings were registrars confirmed mainly to UDRP, yada, yada, yada, and this around the renewals.

Sixteen percent involves an expiration issue. And of the 16% for the administered case, they had approximately 75% of these, the registrar indicated the lock itself will be sufficient to keep the disputed name active without payment pending resolution of the proceedings.

Many also indicated that the domain name would also expire immediately on conclusion of the UDR proceeding without appropriate payment of the applicable fee by the successful party. Is somebody trying to speak there? No. Okay.

Last one -if a UDRP proceeding is decided in favor of the registrant, in what percentage of cases are you aware of where the registrar would not have allotted the domain name once the 15 day wait period has expired? And basically the answer there is none.

So any comments or feedback or thoughts or observations from anybody?

Nothing? (Luke), any observations as a registrar?

(Luke Sifer): No, not really on that.

Michele Neylon: Okay. Anybody else have any observations - (Matt), thoughts - Laurie, Kristine, anybody - Alan.

(David): Michele, hi. It's (David) from WIPO.

Michele Neylon: Hi (David).

(David): Hello. Hey listen, just an additional point to make in respect of the data that we have put in concerning instances of apparent registrant breach of paragraph 8A, so transfers of registration during a pending UDRP proceeding.

Michele Neylon: Sorry, was that registrar breach or registrant breach?

(David): Registrant. Registrant breach. Yes, so these are instances in which a registrant is transferring the domain name during the pendency of a UDRP proceeding in apparent breach of paragraph 8A. Although the instance in which - the sample instances in which we saw this occurring statistically is pretty insignificant at somewhat less than 1%.

You know, there are still cases in which it is occurring, you know, in the dozens rather than the tens of thousands. And in those cases where we have observed it, there have been pretty significant procedural complexities that have tended to result from that. So although there's not a large number of these cases, by overall volume, where they do occur, it can be quite difficult and time consuming then for the provider and for the parties to take the necessary steps to sort it out or to amend the (platings) and then for the panel in due course to render a decision on what has actually happened.

I'll send an email. I'll just put an email into the GNSO list that - in which I'll include a couple examples of cases in which there've been some instances of those - these breaches occurring which there've been some procedural complexities that resulted from that just to fill out that response in a little bit more detail.

Michele Neylon: Okay, and just for way of verification because, sorry, I'm not as (Ofay) with the finer points of the UDRP as a lot of other people on this call, do you consider these breaches to have been committed by the registrant or the registrar?

(David): By the registrant because the prohibition under Paragraph 8A of the rules precludes the registrant from transferring the domain name during dependency of a UDRP proceeding. Typically there is a, you know, there is a - I suppose you'd call it a practice under the UDRP, of course, under which registrars, of which we have observed many engaging in this practice lock the domain name during the dependency of a UDRP proceeding to prevent such breaches from occurring.

But where they do occur, of course it's a breach that now there is, you know, occurs on the basis of actions that the registrant has taken.

Michele Neylon: Okay, and just again, another follow up question because I'm a bit thick. Is - now when you say dependency of a UDRP - sorry, I'm really having difficulty with sentences with one or two words today - when you refer to the dependency of a UDRP proceeding, do you mean that the registrar has already formally been informed by WIPO of the UDRP or is this prior to that or - exactly what point in the timeline are we talking about?

(David): Well, in our view it would certainly be the point at which the registrar receives notice from the provider, you know, advising them that a complaint has been filed and asking the registrar to provide certain information about the domain

name and also asking the registrar to confirm that the domain name has been locked.

That would certainly be a point in our view at which the proceeding becomes pending. But there can also be earlier points in time as well. So, for example, when the complainant files the complaint with the provider and the complainant copies the registrar and the registrant on that filed complaint, then the proceedings are also pending as of that point.

Michele Neylon: Okay and again, yet another follow up question. I'm sorry, I'm - some of this - (David), I'm sorry for kind of monopolizing you with questions, but just some of this stuff, it's really - it's not 100% clear to me personally which is why I'm asking you so many questions and I thank you for your patience. And other people in this group, please, if you have a question for - or think that I'm monopolizing (David) or anybody else, please do say so.

Typically, how long does it take between when you in WIPO receive a complaint before you actually send out notification to the registrar? I mean, are we talking about an hour, a day, two days, three days? I mean, what kind of timeline are we talking about?

(David): Well, it would typically be in under 12 hours.

Michele Neylon: Okay, that's all I wanted to know. Laurie, go ahead.

Laurie Anderson: Hi, this is Laurie. This is precisely the reason why we're (locking on) notice from the complainant especially if the provider is copied on the email, because if the domain name - if for some reason, the respondent finds out about it, (higher) and decides to (unintelligible), it's just a nightmare trying to get the domain name back.

Michele Neylon: Okay.

Kristine Dorraine: Yes, Michele, this is (Kristine). One of the - sort of the hang ups of the UDRP is that the complainant, when they serve the complaint on the provider, they have to also copy the respondent at that time which gives the respondent - and then the both - I think WIPO does this too, but most of the providers I think then say also serve the registrar.

And we've done that because we are hoping that maybe we can prevent some cyber flight because what's happening is that as soon as the respondents become aware of the complaint, they try to ditch the domain name. Not everyone, you know, but some do, which causes a problem and the registrars are sort of hunting to try to get it back or do whatever they need to do.

And so that's one of the situations that I think that's sort of (unintelligible) was addressing, is that the respondent, if they find out about it right away, they are going to kind of cause a problem and that's why the registrars - some of them like to lock right away.

Michele Neylon: Okay, thank you for clarification. Anybody else have any comments or thoughts?

Alan Greenburg: Michele, it's Alan. I'm not at my computer right now.

Michele Neylon: That's okay.

Alan Greenburg: Yes. With regard to that last comment, we've heard other things that some registrars do not want to lock it because an email from a complainant, you know, can be spoofed and that could be a way of getting someone's domain locked improperly and some registrars are leery of doing a lock until they hear from the dispute provider. The two seem to be at odds. Can anyone address that?

Michele Neylon: (Kristine) or (David) or Laurie?

Alan Greenburg: Or maybe some people are just more afraid that - more cautious than others, may simply be the (case).

Kristine Dorraine: I don't - I mean, yes, I think you're right. They are at odds. I mean, I think it's different registrars have taken different tacks and perhaps, you know, some registrars respond so fast. So, for instance, we - if we get a complaint filed at 9:00 am, we oftentimes can request a lock as early as 10:00 am.

And some registrars, you know, like GoDaddy, you know, we'll hear back from them within the hour. And so things move relatively quickly. But if a complainant files the complaint at, you know, 8:00 pm, you know, central time and we're not in the office. We're not going to see it until the next day, there are some registrars, I think, who see that email, they see that we were copied, and we talked a little bit about this - and yes, it might be a little bit of a risk but I'm assuming the registrars legal counsel has sort of figured out, like, what's that level of risk that they want to take?

Do they want to have, you know, do they want to sort of have these domain names, you know, constantly be deleted out and, you know, what's the chance? I mean, I suppose until something bad happens, they decide well, that's the easier course to take. If the provider's obviously been copied, this looks like a legitimate complaint, we'll lock it down.

But as you - as the data pointed out and as sort of the conversation went a week or so ago, I mean, it's kind of - I think it's sort of a minority of registrars that are going to lock without hearing from us as providers. You know, most of them are going to wait. And like, I think I said in an email a couple of weeks ago, what happens is that I've even had where people have locked and then in very rare instances in which there really wasn't a complaint filed, I've gotten an email back from the registrar saying, "Hey, you know, we got this yesterday. We haven't heard from you. We know you're pretty quick about this. What's going on?"

So, you know, I'm not keeping domain names unlocked 24 hours later. But yes, I think you're right. I think there's no real, you know, consensus which I think is kind of why we're all here, right?

((Crosstalk))

Alan Greenburg: What I'm trying to understand is, you know, if we made a rule saying registrars must lock as soon as they get an email from the complainant, you know, within some number of hours, is that going to cause legal issues with some registrars and things like that? And that - and well, clearly if we made the rule, it wouldn't cause legal issues. But the question is, is that something we should be doing? So I was trying to understand the implications of it and yes, I think I do now. Thank you.

(David): It's probably - sorry, this is (David) again from WIPO - it's - many (unintelligible) into that that in these sorts of situations, of course, it's not just an email that the registrar and that the provider and the respondent would receive, it would be an email that would also include a copy of the complaint and any necessary supporting annexes and an indication of payment and all of the sort of information that as a registrar, you could take some confidence from in ascertaining that it was likely to be a bona fide filing and not just some sort of, you know, (sperious) request.

And obviously if it would be a (sperious) request then, you know, that the registrar could also check that with the provider it sometimes happens.

Man: Yes, I guess a follow up - given that the providers turn around quickly and tell the registrar to lock, they can't do much checking to make sure it's not a (sperious) request at that point.

(David): Yes, I mean, that's right. Sorry, this is (David) again. Well, at WIPO there are two checks that we do. We do a check on the initial filing of the complaint where we're doing a quick scan basically to ascertain that the complaint has

not been the subject of an earlier refilled complaint and decision in another provider.

You know, we checked to make sure that the contact information is in place and that that the supporting evidence is there and that the complainant has, you know, tried (to make rights) and then if that is all in order, then we would proceed to issue the lock request to the registrar on that basis...

Man: You do check whether the trademark rights seem to be valid?

(David): Well, we don't do a validity check because the assessment of trademark rights in due course is a request for the (panel) to consider under the first element but if there would be no trademark rights at all asserted and no discussion in the complaints about the trademark rights that the complainant would claim, then we would query that and we would probably not accept the complaint at first instance because the rules do require some minimal discussion by the following complainant.

Man: Okay, those - if I filed a complaint claiming I had the rights to the name ICANN - random example - you wouldn't actually check the documents as long as I asserted rights to it? Okay.

(David): As long as a statement was made asserting the trademark rights, then we would not hold the complaint up at that early point.

Man: Thank you. I think I understand completely now.

Kristine Dorraine: Yes, this is (Kristine). I was just going to say we do the same thing. Basically we make sure that it's not fake, fraudulent, made up. You know, if someone sends us an email with six (unintelligible) et cetera, so same thing. You know, we're not going to request a lock unless it's a legitimate complaint.

(David): The other point to know - sorry, (David) here again - as well, is the UDRP will require a filing complainant to swear and to attest as to the truthfulness of all of the claims made in the complaint and to include an electronic signature. So, of course, a registrar can also satisfy themselves from the provider complaint but that would required (unintelligible) included in the complaint on which they would be copied and filed with the provider. So that might be something that a registrar could also look at if it wanted to initiate a slightly earlier lock.

Michele Neylon: Okay, just one second. I've got Matt and Laurie in the queue. So Matt an then Laurie please.

Matt Schneller: I was going to ask if anyone, either on the registrar or provider's side had in an instance of a complaint that was apparently filed but ended up - was just sort of a spoof where both the service provider and the registrar and registrant were all copied on the same email string or on the same email, attaching all the information that (David) mentioned earlier?

Michele Neylon: Who was that speaking?

Matt Schneller: That was Matt. Sorry, just for the record, try to put your name - try to say who you are when you're speaking so - for the transcript, otherwise the transcript is going to look with lots of man speaking, woman speaking, which will add to the confusion. Does anybody have any reply to Matt? No, okay, Laurie.

(Luke Sifer): Yes, Michele, this is (Luke) speaking. Yes, I don't know if Matt, that's what you're asking, if you had a case where the complainant did not pay the fee to the (unintelligible) provider and the whole (thing just stopped).

Matt Schneller: Hey, this is Matt again. Yes, I guess one of the things that - at least when we're doing UDRPs we tend to send out, is for the systems that have electronic filing, you'll get a filing receipt back that indicates the payment has been made which, at that point, can be attached to the email that's sent out as part of the payment verification documentation.

Michele Neylon: Anybody else? Anything else? Laurie.

Laurie Anderson: Hi. It's Laurie. If we lost (priority) verification requests, we will follow up on a couple of these to make sure it's a valid complaint. But that said, we've only had one case in the last six years since I've been doing this that where the complaint was not actually filed.

If that tells you sort of the volume of - I think we have a pretty high volume of cases that, you know, the danger of locking a domain name unnecessarily seems to be pretty minimal compared to the danger of it getting away if you don't lock it.

Michele Neylon: Lori this is Michele. Just - and roughly how many cases would you guys be dealing with per year? I mean approximately.

Laurie Anderson: Including - are we talking about just arbitration or are we talking about court and arbitration?

Michele Neylon: If we could stick to UDRP as opposed to frivolous lawsuits and every other legal issue that lands on your desk because I'm sure that number is pretty high.

Laurie Anderson: Roughly I would say over 1000.

Michele Neylon: Okay. Thanks. (Luke), roughly how many are you guys dealing with a year? He's deserted me. Okay. He might come back. Are there any other registrars on this call? (Matt), are you - you're a registrar aren't you?

(Matt): No. Not a registrar.

Michele Neylon: Okay, sorry. Well I should not have apologized. It'd (unintelligible) to be a (continent). Okay. I'll shut up. I'm going to get murdered the next time I turn up at an ICANN meeting.

Okay. Thanks Laurie. I mean just in terms of the volumes, okay, speaking for us and the number of UDRP complaints we deal with is tiny by comparison. I think we had six UDRPs I think for gTLDs in the past two years. So we're averaging three a year roughly. But we're just not attractive for a lot of reasons.

((Crosstalk))

Michele Neylon: Sorry.

Woman: I said you're just lucky Michele.

Michele Neylon: I don't know whether it's luck or not. But we're also significantly smaller than most of the other registrars. I mean obviously we're way smaller than Go Daddy. We're also smaller than EuroDNS and Key-Systems and a lot of the other ones who are involved in this working group. We started late.

Okay. Any other comments or thoughts on this - on the feedback - the extra feedback we've had from the providers?

Kristine Dorraine: Michele, this is Kristine from (Nap). I just wanted to mention and I - as I mentioned before, we'll submit our final numbers again next week. We - I was out of the office and was busy. But I wanted to sort of mention in line with what (David) said and I think when we submit our more detailed numbers I think I'm going to include something similar to what (David) mentioned also.

But that is sort of the impact yet the number of actual cases where there's a problem is in, you know, 1%, 2%, 10% range depending on the question that you're asking.

But it's the amount of time and effort that it - risk request in everybody's part, the complainants, the providers when the registrars and registrant - I mean because the registrars have it locked or whatever, that's where the kind of the problem comes in.

Where some of these things are a problem where it's just, you know, hours and hours are spent trying to track this stuff down and make sure that the lock is in place so we can proceed, et cetera.

So that's sort of I think what I - I mean I don't know, maybe it's clear but I just wanted to make sure that it was really clear. It's like we're here specifically (Nap) is here in this conference because the impact of this, you know, 2 to 10% of cases is really burdensome and that's really - I just didn't want people to think well, it's on a few percent; it's not a problem.

Michele Neylon: Okay. Thank you. (Luke) is back so (Luke), can you hear us?

(Luke Sifer): Yes I do.

Michele Neylon: Okay. Because when you dropped off the call the question I - we were answering was how many UDRP cases do you deal with per year. So GO Daddy said about 1000. I said about three. How about yourselves?

(Luke Sifer): Two thousand, you know.

Michele Neylon: Okay. See how much bigger than us. You see we're a small little registrar. I'm looking for sympathy. Okay. Kristine, point taken. So Kristine's point is that even though the percentage might be low, the impact and the burden is high. Would it be fair to say it's disproportionately high or should I just say high Kristine?

Kristine Dorraine: I think just disproportionately high. I mean the amount of time it takes to handle the complex cases where there isn't a lock or somebody's messing with it is far more than it takes to handle all the rest of the cases combined.

Michele Neylon: Sounds a bit - it's that 80-20 rule, isn't it? Okay then. Any other comments on this or should we move on?

(David): This is (David). I would agree that disproportionately high is a fair characterization. The amount of time invested in rectifying vastly outweighs the amount of time we would spend administering a case in which these sorts of problems don't occur.

Michele Neylon: Okay. Thank you. Alan, go ahead.

Alan Greenberg: Yeah. I wonder to what extent is it possible to really quantify that - those statements of disproportionately high. When I listen to it, what I'm hearing is if 2% of the cases take five times as much time, that's 10% of your overall time and it's not a problem. If they take 100% of your time, if we could fix that, it would cost - it would reduce the cost of the UDRP by a half.

So I'm trying to understand - get an order of magnitude for these - the impact of these problems. I'm not sure if that was blathering or that was clear what I was asking.

Michele Neylon: Okay. Thank you Alan. (David) or Kristine, that's aimed at you so if one of you would like to react. And Sheri Falco has joined, (RC) as well.

Kristine Dorraine: You know, I'll see what I can do Alan when I put my numbers together. What I'll try to do is dig up a couple of cases and figure out sort of how much time I've spent handling the problem and maybe just let you know. I mean it would just be a representative couple. But I could sort of let you know how much time was spent on some of those things. I'll try to do that when I submit my numbers next week. Would that be helpful?

Alan Greenberg: Yes. Certainly. But my gut feeling is that the amount of time you've spent is onerous in regard to a single case. But it is not a significant part of your overall workload addressing those cases.

Kristine Dorraine: This is Kris, it can vary.

Alan Greenberg: But if the answer - if my gut feeling is wrong, it's really important.

Kristine Dorraine: You're probably right. Again, this is Kristine. You're probably right because when I consider, you know, the 40 hour week, you know, you know, 52 weeks a year, yeah, it's probably not 100% or 50% of my time. But I know that three are weeks where two whole days is spent dealing. Three whole days, which seems like this massive proportion because it's just chewed up most of my week.

Although you're probably right if you stretch it out over the whole year, yeah, it's not taking 50% of my year. You see what I'm saying?

Alan Greenberg: Even if it's 20% it would be a really important issue. Anyway, I've asked the question. If you can come up with any quantification that might be useful for us, thank you.

(David): This is (David) from WIPO. I'd just add to that that one of the things that we do at WIPO to help us deal with the volume of time that can be required to solve these problems is we've set up a unit that we have some lawyers working in which we basically do, you know, registrar liaison in situations where these sorts of problems had occurred.

And, you know, these are staff members who are kept very busy rectifying these sorts of situations or trying to ascertain what has happened. And it can be useful I think to think about the number of people outside of the provider

and the parties and the panel who can also need to be involved in in sorting these sorts of situations out.

So you have a situation where for example, you know, there's a change in the registrant data that comes to the attention of the provider. Then provider then has to try and figure out what has happened involving an examination of the Whois and, you know, the records that came in with the complaint at the time that the complaint was filed and the Whois that existed at the time of the apparent change.

The provider then has to go back to the registrar and explain what they think has happened. They need to then wait for the registrar to examine the situation and come to a view themselves.

That information then needs to be collated and looked at again by the provider who then typically needs to go back out to the registrar either to ask them what they can be - they can do to rectify the problem, which might involve some consideration by the registrar of whether or not it's appropriate to invoke the Inter-Registrar Transfer Policy, which then triggers the setting up of a separate and subsequent process to resolve that question.

Or that the registrar might be able to resolve it directly by reverting to the original contact data or they might not in which case the provider then needs to go back to the complainant and ask the complainant to amend its complaint accordingly.

The complainant typically is pretty annoyed about this and so usually they'll dispute the change that a registrar has reported. And so sometimes the provider then has to go back to the registrar again and to ask them to reconfirm in light of anything the complainant may have had to say about it, often at length.

And, you know, and maybe then the registrar has some views about some of the things that the complainant has had to say and it goes on and on. And eventually you get to the point where the proceeding gets notified, you know, to both the new registrant and the previous registrant from which the domain name had been transferred.

And eventually you have a panel that gets appointed. And all of this material and all of those communications in that whole history then (seats) before the panel who has to figure out what's happened and the panel might need to issue some more orders to the parties and the registrar to try and get a clear angle on it all.

And then in due course they have to, you know, author and render their decision. And, you know, when you weigh that all up and you total up all of the hours of all of the people, you know, involved in even just dozens of cases, I mean it's a very significant amount of time and money and effort, which, you know, when you think that all you're really talking about is putting a lock on a domain name for an extra 12 hours at the front end to try and offset that sort of an issue. It seems like a pretty small price to pay.

Michele Neylon: Okay.

(David): We'll also have a look at the numbers.

Michele Neylon: Look (David). (David), (David), let's slow down for a second please because I'm trying to process what you've been saying and you said a huge amount of things in a short period. And I'm still having difficulty processing everything. So just please slow down for a second.

Okay. So let's see if I can actually try to summarize what you said. You're basically saying that the timing of the lock down of the domain has very broad ramifications on the entire dispute process.

(David): I'm just saying that when we talk about the disproportionate impact of a failure to timely lock we need to be thinking both about the relative ease of getting a slightly earlier lock in place and the relative lack of prejudice to a registrant that's affected by a slightly earlier lock and weighing that against the amount of time that needs to be invested in sorting out and solving those situations where, you know, a lock doesn't come in and a registrant is able to, you know, to act in breach of Paragraph 8. And the...

Michele Neylon: Okay.

(David): ...steps that then need to be taken by all involved parties to try and figure out and resolve...

Michele Neylon: Okay.

(David): ...(unintelligible).

Michele Neylon: Okay. Just breaking this up a little bit more. So in your personal view would it be - would it be preferable that the registrars lock - all registrars lock the domains as early as possible as Go Daddy say that they do.

(David): From our perspective, I mean not just mine personally, but from our perspective as a provider I mean it's enormously helpful where a registrar can lock the disputed domain name as early as possible after their receipt of a...

Michele Neylon: Okay.

(David): ...filed complaint.

Michele Neylon: Right. But okay, that's not - okay (David). I'm just going to push you a little bit on this. One of the issues that we're trying to address with this PDP is what constitutes a filed complaint. Okay. So the question I'm asking you is whether - okay. If the registrar receives a notice of the complaint from the provider, in

other words, yourselves, (now for) the Czech Arbitration Court or whoever, I think that's pretty clear.

In other words, you know, you have - you are formally - you - one of you - one of the providers is formally notifying the registrar of the UDRP. I think that's perfectly clear. If anybody disagrees with me on that, please say so. But I think that's pretty clear.

The issue from my understanding - the area where there is a gray area is if the registrar is - or the registrant, as somebody else has pointed out, is aware of the complaint and early or earlier let's just say in the entire process.

So the question I had for you was would you personally be happier if the registrar were to lock as early as possible based on some kind - on any notice they had from whatever source of a UDRP dispute?

(David): Well, certainly it would work for us if a registrar would lock a domain name that was the subject of a dispute on receipt of notification from a filing complainant, which included a copy of the complaint and had been appropriately copied to the respondent and (unintelligible).

Michele Neylon: So before - so in other words, on it's way to yourselves.

(David): I mean what usually happens when a complainant files a complaint is that they send an email, you know, to us at WIPO and they copy the respondent and they copy the registrar on that email. The email includes a copy of the complaint.

Some registrars lock at that point. And that's a helpful thing to do from our perspective because it also means that in that period of time for whatever that period of time is between the filing of the complaint and the issuing of the verification request to the registrar there is no risk of the domain name being transferred in breach of Paragraph 8 of the UDRP. That's helpful.

Michele Neylon: Okay.

((Crosstalk))

Michele Neylon: Alan, you have - you've had your hand up for a couple of minutes. Go ahead Alan.

Alan Greenberg: Indeed. I want to bring something up and I don't think I really want to discuss it now. But I want to get it on the table because as I've been listening to this discussion, it dawns on me that a possible solution to a lot of these problems is to completely take the registrar out of the loop. And that is the number of providers - dispute providers we have is a small number and they're accredited. They can be trusted.

If we can provide - if a mechanism can be provided that they can enact the lock, either an automated process through the registrar or preferably directly to the registry to turn on some perhaps new lock that the registrar will recognize if it's there, we're avoiding this complete problem.

We're taking a whole bunch of work off of a registrar and taking a whole lot of discretion out of the registrar to have to read the dispute, the complaint and see whether it looks valid or not. And that may address an awful lot of our problems.

Anyway, I said I'm not sure I want to discuss how good an idea it is right now but I wanted to put it on the table so I didn't forget it. Thank you.

Michele Neylon: All right. Thank you Alan. Kristine and (Matt) are both typing furiously on the chat and just because I - I can, I will. Kristine puts to me, Michele in other words, I would otherwise (unintelligible) the domain names should be locked at least as early as provider notified the registrar. The codifying in the

recommendation would be helpful for new or reluctant registrars who aren't currently doing so. Okay. Noted.

And then from (Matt) to the providers. I wonder if the new e-filing system would allow providers to somehow automatically send a confirmation email akin to the filing (received).

Filing received at (Nap) online filing system sends out immediately upon e-filing to the registrar, registrant and registrar email addresses submitted by the complainant to provide an independent verification basically immediately after filing. That would provide something from the provider in advance of the notice of commencement.

And then from Kristine from our perspective that would be easy but would only work for e-filers as you noted. And again, this is Michele asking a really, really dumb question because I honestly do not know the answer. Kristine, what percentage of complaints are e-filed or e-filers or whatever the correct term is?

Kristine Dorraine: Well I'd have to look it up but it is rising every day. This is Kristine, sorry. I would say over 50% of filers are now using our electronic submission system. And then, you know, of course the remaining just are emailing in the complaint.

Michele Neylon: Okay. Thank you. And...

Alan Greenberg: But (unintelligible).

Michele Neylon: (David) and (Brian). Do you have an e-filing (equipment)?

Alan Greenberg: If I may have a follow up. It's Alan.

Man: No.

Michele Neylon: Sorry, who's that?

Alan Greenberg: It's Alan. I want to follow up.

Michele Neylon: Okay.

Alan Greenberg: When you're finished this (screen).

Michele Neylon: Okay. Just very, very quickly. (David) and (Brian), do you have any filing system of some kind?

(David): Yeah. We have an automated filing system, which parties can use. And it's something that technically is feasible to do. It's a bit more difficult if you're talking about email filing of course. And the majority of our complaints at the moment would come in by email.

Michele Neylon: Okay. So for you the percentage of e-filing is low at this stage.

(David): I'd have to look at the numbers again but I think it's probably around 90% based on email for us at the moment (about that).

Michele Neylon: Okay. So 10% are using other methods.

(David): (Yes, roughly).

Michele Neylon: Okay. We're running out of time here. So I'm going to go back to Alan very quickly.

Alan Greenberg: Yeah. I just want to clarify. I'm not sure - I haven't read the chat messages carefully but what I was saying was not to get a quicker confirmation to the registrar but to take them out of the loop altogether and say that the dispute

resolution provider can through some mechanism to be defined maybe - can enact the lock themselves.

And therefore as soon as, you know, the people who are professionally able to look at a complaint and say is this a - doesn't seem like a legitimate complaint, they could put the lock in without waiting for another message to go to the registrar and then the registrar to pick it up and take some action on it.

And so that doesn't really alter whether it's done electronically or via email. It's as soon as the dispute resolution provider sees some action, you know, it may happen to be microseconds in the form of e-filing and email might take hours.

But again, as soon as there is reasonable knowledge that a complaint is being filled, the domain would be locked. And that's the concept that I think I'd like to explore later on.

Michele Neylon: Okay. Thank you Alan. We're - the clock is ticking fast here, so I think we're going to really pretty much run out of time here. Just one thing. So Alan, you're talking about something where the dispute resolution providers would notify the registry instead of the registrar, is that correct?

Alan Greenberg: Well, I don't know what the mechanism would be. It could be that since there are fewer registries than registrars today, that may not be the case next week or next year.

Michele Neylon: Try two years but anyway.

Alan Greenberg: Yeah, where we may well have more registries than registrars. But ignoring the fact it could be with either, you know, we would have to invent the methods. If it was the registry, the registry would have to send some - set

some lock which registrars would then have to check to make sure whether they're allowed to make certain changes or not.

If it was done through the registrar, that may be more onerous because all the registrars would have to build the interface to talk to the dispute resolution providers. So - but it could be either one. The bottom line is as soon as the dispute resolution provider gets a complaint and takes whatever, you know, pushes the red button on their computer, the domain is locked without...

((Crosstalk))

Alan Greenberg: That's the concept I was talking about. And I'm not sure. You know, there are probably many ways to implement it and perhaps it's not doable, but thank you.

Michele Neylon: Okay. Go ahead (David) or (Brian) or whoever it was.

(David): Yeah. This is (David). Just a note that the - one of the contemplated right to protection mechanisms that intended to operate in the new gTLD space, the so-called uniform rapid suspension system, does contemplate a lock mechanism that would be administered by the registry.

Alan Greenberg: Okay. So that may be in line with what I'm suggesting.

((Crosstalk))

Alan Greenberg: If that was in the original spec, I forgot that but thank you.

Kristine Dorraine: And this is Kristine. Additionally with the URS the respondent isn't notified until the lock is maintained I believe, which it will also help prevent (cyber swipe).

Michele Neylon: Actually hold on a second. I'm a bit confused by - I thought the URS - I thought the URS was only for Sunrise.

Alan Greenberg: No.

Woman: No.

Alan Greenberg: No, no.

Michele Neylon: Oh, okay. Sorry. As I said, there's a lot of this - some parts of this...

Alan Greenberg: The Trademark clearing house Clearinghouse originally was only going to be for Sunrise although it's now extended for 60 days into the registration - into the live period. The URS was always live.

Michele Neylon: Well, okay. Sorry that's - I've been getting a lot of emails backwards and forward to do with Trademark Clearinghouse is another thing. So it just confused me.

Okay. It's about - we've got about two minutes left till the top of the hour so rather than trying to proceed further with this and get complete bogged down, I'm going to thank you all for the very energetic discourse.

ICANN staff people, Margie who's been terribly quiet maybe wasn't even - was just logged in, said hello and hasn't been back since. We don't know. She's been very quiet. I know Gisella was. Berry is definitely there. If you could possibly send the chat transcript to the list because there's some interesting points backwards and forwards between various people on this - on subjects we were discussing.

And if anybody has any issue, please raise them at the list and we'll speak again in two weeks time. Thank you.

Man: Thank you.

Man: Thank you.

Man: Bye.

END