

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings
Thursday 13 December 2012 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of Locking of a Domain Name Subject to UDRP Proceedings on the Thursday 13 December 2012 at 15:00 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-20121213-en.mp3>

On page: <http://gnso.icann.org/en/calendar/#dec>

Attendees:

Laurie Anderson – RrSG
Hago Dafalla - NCSG
Kristine Dorrain - NAF
Lisa Garono - IPC
Alan Greenberg - ALAC (Vice-Chair)
Volker Greimann – RrSG
David Roache-Turner - WIPO
Juan Manuel Rojas – ALAC
Matt Schneller - IPC
Gabriela Szlak – CBUC
Melody Agee and Michelle Coon (representing David Maher) – RySG

Apologies:

Celia Lerman – CBUC
David Maher – RySG
Michele Neylon – RrSG

Staff:

Marika Konings
Berry Cobb
Julia Charvolen

Coordinator: Thank you. The call is now being recorded. Please go ahead.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. This is the Locking of a Domain Name Subject to UDRP Proceedings Working Group call on Thursday 13 December.

On the call today we have Laurie Anderson, Hago Dafalla, Kristine Dorrain, Alan Greenberg, Volker Greimann, Juan Manuel Rojas, Matt Schneller, Gabriella Szlak, Melody Agee and Michelle Coon who are representing David Maher

Man: Hello everyone.

Julia Charvolen: ...who is on another meeting. We have apologies from David Maher, Celia Lerman and Michelle Neylon. From staff we have Marika Konings, Berry Cobb and myself Julia Charvolen.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and over to you.

Alan Greenberg: Thank you. And it's Alan Greenberg chairing the meeting today in light of Michele not being able to join us. Are there any changes in statements of interest that we need to log? Not hearing anyone or seeing any hands, we'll go ahead.

The first item on our agenda today was to go over or to identify any problems with the public comment review tool. I will admit I haven't had a chance to do a thorough review of it. Has anyone else - has everyone else done their homework and there are not changes or are there any changes or do we want to defer this to another meeting? Marika.

Marika Konings: Yes. This is Marika. I haven't seen any comments but, you know, I'm happy as well to give people more time if they want to. It's just that at some point

we'll need to include this or, you know, post this on our Wiki so it can be referenced and linked in the initial report. So if we can set some kind of deadline I think that would be helpful at least from my perspective so we can get it up there and included.

Alan Greenberg: Well I feel comfortable saying I'll have my work done by next - by the meeting next week. Do other people want to defer this into the first meeting of the year or are people willing to commit to doing it for next week? Any thoughts? (Unintelligible).

Kristine Dorrain: This is Kristine. I can commit to doing it for next week.

Woman: I can commit to trying to do that for next week. Sorry. December is so crazy. I'm so sorry.

Alan Greenberg: Yes. Let's target it for next week. If we have to defer one more time we will but let's try to get it out of the way. Marika, if you could send a note reminding people perhaps.

Marika Konings: Yes. Will do so.

Alan Greenberg: Okay. All right. Having done that item really well, let's go on the next one. The intent here is to try to address the straw man proposal in light of the various comments that have been made by various people. And barring anything else, Marika yes.

Marika Konings: Yes, this is Marika. Just to explain that the - what you see on your screen now on the left hand side is what I've done. I've listed the comments that were sent by email. Those that Kristine sent and I sent a list of comments. And underneath that you also see the reply from compliance and the suggestion that David made following that on the email list. I've all collated that into one document. So hopefully to help the review of the straw man.

And on the right hand side you see the straw man proposal. I know it's not ideal but from an Adobe Connect it's not easy to resize the document. What I can do is actually move the agenda out of the way and, you know, make the screens a little bit better if that works for people. You do have the option as well at the bottom of each (pod) to increase the font size if that will help you see things better.

And maybe just a note as well because I know in response to Kristine's comments there were some conversations going back and forth I think in relation to registrar practices. I think in the case of settlement if I'm not mistaken. But I didn't capture that here separately but I think it's an issue that we might need to come back to when we get to that specific point.

Alan Greenberg: Okay. Thank you Marika. Certainly you can move the agenda out of the way. I don't know about everyone else. I have a copy of the straw man in a different window that I have large enough. So I don't really need that on the Adobe Connect. Is there anyone who does need it on Adobe Connect? Otherwise we can just keep the comment - make the comment summary larger.

Woman: I think that's a good idea.

Alan Greenberg: (Michelle).

Michelle Coon: Yes. I need a copy of it. Is it possible to print it down so that we can then move it off the screen?

Alan Greenberg: I don't know what you mean.

Michelle Coon: Can we print the document from this? Are we getting our own copy?

Alan Greenberg: No, you can't print - you can't print from Adobe. It was sent in email to members of this list though. But...

Michelle Coon: Okay. All right. So thanks.

Alan Greenberg: ...that doesn't help you right now. All right. Let's keep it as it is right now. I think, you know, especially if people want to get rid of the comments on the side or shrink or make them less visible you can move it around. And hopefully everyone will be able to get things large enough. (Michelle), your hand is still up. Is that a new one or the old one? Down.

Michelle Coon: (About that).

Alan Greenberg: All right. How do you want to work this? Marika, do you want to go through them or should we go to the original requester? You know, in this case Kristine to talk through the points they made. I think it's probably better if we can do that. Kristine, are you willing to talk us through your comments?

Kristine Dorrain: Yes, absolutely. This is Kristine. Do we - I am assuming then just we're not going to start from the beginning. We're just going to talk about the points of things I've discussed.

Alan Greenberg: That's correct.

Kristine Dorrain: Can I jump ahead? I mean I didn't see a lot of - I didn't have a lot of comments up until Number - Recommendation Number 6. So on the second page of the document on the right screen is where Recommendation Number 6 comes up.

And it says should the complaint not be deemed compliant or fees not received, the UDRP provider informs the registrar as soon as possible that the proceeding has been withdrawn following which the registrar will allow changes.

And my only point here was not that we necessarily need to capture the minutia of the UDRP in great detail but that - that statement is not actually correct. And if you have a registrar who's trying to follow along with the document, they may be very confused.

And my suggestion was that we reference the actual process of correcting administrative deficiencies. So if the complaint is not deemed compliant when the provider does the compliance check, the UDRP gives the complainant five days - calendar days to amend the complain accordingly.

And the vast majority of complainants will do that. In some cases where there's a need to translate the document, the complainant will voluntarily withdraw so they have time to translate. Right. And I'm not quite sure how WIPO works that. But that's the process we have in place.

So my only suggestion for Number 6 was - with Recommendation 6 was to sort of fill that in case you have a registrar that is following along with the recommendation and maybe isn't actually looking up the UDRP itself.

I don't know if we - if I should stop there and talk about, you know, we can...

((Crosstalk))

Kristine Dorrain: ...specific comment.

Alan Greenberg: Certainly. Yes. I think we should do them one by one. It's Alan. I have a question. You're talking about what happens if you find it's not compliant and tell the complainant that it's not compliant.

Kristine Dorrain: Yes.

Alan Greenberg: The draft recommendation says that it's deemed - not deemed to be compliant, which I would have assumed it's the step at the end of that

process. That is, if they haven't responded to you or if they haven't fixed the problem, then it's deemed to be not compliant. Because the not compliant that you're talking about where the complainant has five days, it's not really deemed to be not compliant at that point.

You're sort of, you know, having this dance going on to decide whether it's compliant or not. Is that not the case?

Kristine Dorrain: Well we deem it non-compliant. When it first comes in we do what's called a deficiency track and if there are deficiencies that's deemed non-compliant and we send a letter to the registrar or the complainant telling them they have five calendar days to correct the deficiencies or their case will be deemed withdrawn. And then the complainant from there has five days to correct.

Alan Greenberg: Okay. So really the word in Recommendation 6 should be withdraw then, not - assuming the other providers use the same word.

Kristine Dorrain: Well they should put withdraw in there. It says that - it says - it actually says that UDRP provider informs the registrar that the proceeding has been (unintelligible), which is what happens after the deficiency check process.

Alan Greenberg: Okay. So the current draft Recommendation 6 is actually not technically correct. They're implying that deemed compliant and what has been withdrawn are the same thing. And there are in fact two different steps in the process.

Kristine Dorrain: Correct. Yes. There's another step in between. It's not that we deem it non-compliant and then boom it's deemed withdrawn. It's we deem it non-compliant and then the complainant gets a chance to try to bring it into compliance.

And then if they don't do that, then it's deemed withdrawn. And that's my only point. And it seems like splitting hairs except to a registrar who is a (mediate)

not realizing that there's five dates there and is wondering well where are we at with this compliance check. Is it compliant? Is it not compliant? Is it supposed to serve the complaint?

And so my point is if we're going to sort of outline for the registrars, here's where you need to do the lock. Here's what's going to happen. And you're going to get a copy of the complaint when it's served to the respondent. It would be helpful in my opinion to have this step be the most accurate as possible in order to capture that information.

Alan Greenberg: Okay. Noted. Marika, you've had your hand up for a while.

Marika Konings: Yes. This is Marika. Basically just to ask Kristine if she maybe can suggest some wording that we can include in this draft Recommendation 6 to make sure that indeed fits with the practice as it actually happens. I mean I can try to interpret but I'd kind of do better if you can suggest some specific wording, as you know the process of that.

Kristine Dorrain: Well yes. I can absolutely. I don't know if I could do it like on the fly, you know, on the call but I can certainly send something or I can think about it for a second and post it in the chat if you don't mind.

Marika Konings: Yes, no rush. I mean take you time and, you know, if you have something by the next call, it's more that we, you know, following this call we can update this based on the comments and discussions here. So again, if people have other points or wording things (unintelligible) if they can send this to the list and we can, you know, prepare an updated draft of this that we can then go through for the next meeting.

Kristine Dorrain: Okay.

Alan Greenberg: We've also had - we've also had some comments from Matt and David in the chat. Do you want to speak them so we have a comment in the transcript?

David Roache-Turner: Thanks Alan. It's David speaking. Yes I have like one comment, which I mentioned in the chat, which is that in addition to dealing with the question of compliance and the (restated) fees, we should also take account of the complaint being withdrawn for any other reason.

And there might be a number of circumstances in which that could occur, one of which could be because the complainant settles the dispute with the respondent before any formal commencement of the proceedings and requests a withdrawal of the complaint or for any other reason and the rules make provision for this it becomes unnecessary for the proceedings to continue.

So my suggestion at the textual level is that in the current draft Recommendation 6 after the words or fees not be received, we also add in the words or for any other reason the proceeding is withdrawn comma.

And I also have one other comment or a suggestion, which concerns the last bit of this draft recommendation where it currently says as soon as possible that the proceeding has been withdrawn following which the registrar will allow changes of registrant or registrar within one business day after receipt of notice of the withdrawal of the proceeding.

My query is whether we would want to time that from the point of receipt or from the perhaps rather more objective point of transmission. So my query is whether we want to consider substituting for the words after receipt of the words after transmission of notice of the withdrawal.

Alan Greenberg: It's Alan speaking. My comment on that is given that business days vary from place to place, one business day after transmission we would have to make it clear then that it's the business day of the receiver.

David Roache-Turner: True.

Alan Greenberg: Gets a bit awkward.

David Roache-Turner: True. True. It's just that - and I think that's a fair point Alan. But it's just that the concept of receipt is...

Alan Greenberg: On email...

David Roache-Turner: ...let's say it's a difficult one to measure.

Alan Greenberg: True. But we - I presume we're talking about email here.

David Roache-Turner: Right. Typically yes.

Alan Greenberg: Yes. Well we have the generic problem that we never quite know for sure it's been received unless the person tells us. You also had a comment at the beginning that you - that WIPO doesn't call it a deemed compliant. You said your - use the term the complied - compliant deficiency notice. So...

David Roache-Turner: Yes. So the way that it works is that the compliant is filed. And if the complaint is assessed and it's found to be compliant with the rules, then typically we would proceed to formally commence and notify the respondent of the proceeding.

And if there would be some identified deficiency with the filed complaint, we would issue what we call a complaint deficiency notice to the complainant copying the respondent, which then gives the complainant a period of five days in which to correct any deficiencies.

We would then look at the amended complaint and if the complaint would be found to be compliant, I suppose we would confirm its compliance with the complaint - with the rules and then we would proceed to notify. But the document that we - and I'm not sure if I understood the question correctly but

if I've understood the question correctly, the document that we use to notify the (fact) of an identified deficiency, we call a complaint deficiency notice.

Alan Greenberg: Yes. Okay. But the draft recommendation does not refer to the name of the document. It says it is deemed to be non-compliant. And you - effectively you do deem it to be non-compliant. So I don't think that - I don't think the wording is incorrect for you.

David Roache-Turner: Yes. I think we would probably say identified rather than deemed but it's not a strong preference.

Alan Greenberg: Okay. Any other comments on - or Matt, did you have something to add? No. Okay. Marika, do you have enough to go on or I guess Kristine is going to give you some text and you'll come back to us if you feel you need more.

Marika Konings: Yes. This is Marika. I just have a question on the last sentence on the suggestion that David made. So is the suggestion to change that to the registrar will allow changes or registrant or registrar within one business day after receiving or after receipt of transmission? Or...

David Roache-Turner: My suggestion...

Marika Konings: ...is it after transmission?

David Roache-Turner: My suggestion, which is - which was followed by the comment that Alan made. My suggestion was that we consider changing the language from within one business day after receipt of notice to within one business day after transmission of notice.

But as Alan subsequently indicated in his comments, that does I think raise a question about how to deal with notices that are transmitted on a non-business day. Because if you would transmit a notice on a Saturday, it may

very well not be possible for the registrar to act on that within one business day I suppose of that transmission.

Although you could also read it as not requiring any action until the next working day had commenced.

Alan Greenberg: Well the situation I was worried about is if you transmitted at the beginning of Saturday because you are - you work Saturdays but the registrar doesn't, the one - your one business day has elapsed by the time the registrar sees the notice on Monday.

David Roache-Turner: Yes that's right. But I suppose...

Alan Greenberg: You know, the implication is we're talking about one business day after transmission. It's the business day of the transmitter presumably. That starts the clock going.

Kristine Dorrain: Can I just interrupt. This is Kristine.

Alan Greenberg: Sure.

Kristine Dorrain: I think one of - I mean David, correct me if I'm wrong. I think the concern here and maybe I missed it when I was looking at a document here. But the concern is that in some cases we get an email from a registrar that says oh, I just opened your email now and you sent it two weeks ago and you don't want the registrant to have its domain name locked for two weeks because the registrar didn't open the email.

David Roache-Turner: Yes. That's exactly right Kristine. Receipts are very subjective concepts.

Alan Greenberg: Oh I will - okay. I have no problem. I - do any registrars on this call have a problem if we put one business day after transmission?

Laurie Anderson: This is Laurie. I don't - we don't have any problem with that.

Alan Greenberg: Okay. Let's put that in the draft and we'll see if any - there's any flack from it. I guess I'm a little bit concerned about how one defines that. But I'm not part of the process. So if none of the players are worried about it, then I won't be.

Let's go on to the second one. Kristine, your comment on draft Recommendation Number 7.

Kristine Dorrain: Yes, thank you. This is Kristine with (NAFC). My draft Recommendation Number 7 only is that possibly we bolster draft Recommendation Number 7. The draft Recommendation Number 7 says as part of its notification to the registrant, the UDRP provider informs the registrant that any corrections to contact information are also required to be communicated to the UDRP provider.

Corrections to contact information and Whois are allowed as it otherwise would contradict Whois accuracy policy. And my only suggestion there was the - to actually reference UDRP Rules 5-2 and 5-3 where the respondent is required to provide his contact information to the provider. And that is because (yes), this document is going to be an awesome document when we're all done with it and have some great recommendations.

But I think in places where we can actually reference the actual policy and rules of the UDRP, the actual sort of consensus policy that we've all been following for a dozen or more years here, I think it'll just bolster it a little bit more. And that's my only suggestion. It wasn't even designed to be sort of controversial or anything.

Alan Greenberg: Yes. I think I support that. Having currently being in the middle of the process where the recommendations of a PDP are being translated into text for the formal policy, the more we can do to make sure that those who've drafted - ICANN staff who have drafted final text cannot misunderstand what we're

talking about the better. So I support that concept. I don't think - I don't see any hands up. I don't think we need to debate it.

Number 8.

Kristine Dorrain: Okay. Number 8 says this notification would also include - this - and I think the notification here - I'm just going to look up really quick. The notification of respondent - notification to respond and so this is when we actually commence the case.

So this notification would also include information that any changes of the result of lifting a proxy and privacy services would need to be discussed/addressed by the UDRP (unintelligible). And then we talk about our recommendation of the issues for the review.

But the - I believe the language here is very vague and this is no offense meant to Marika because I think we've had a lot of very contentious or not even contentious but a lot of varying discussion around this issue. But any changes as a result of lifting proxy or privacy services doesn't specify whether such would be allowed or disallowed or frowned upon or preferred.

And then it says would need to be discussed to address for the UDRP panel directly. And again, the issue at - the moment at which proxy and privacy services become a problem is at the moment when we're doing that compliance check. We're trying to actually determine who the complainant and the respondent in the case are and getting those names properly in the complaint and then getting the proper parties served.

Once that happens, as I've pointed out before, there sort of isn't a lot of need - I mean if you lifted a proxy service halfway through the response period and you guys note it, you know, and a respondent notified us, we would, you know, send a courtesy copy but we wouldn't start the time over or anything.

And so really there's - the only thing the panel's going to decide at the end of the day is, you know, do they want to change the caption of the decision, you know, different from the way provider listed it? Do we want to toss out some domain names as maybe being registered to another entity? But that doesn't really address the initial problem of proxy and privacy services.

And we may decide at the end of the day that we - there's nothing we can do about that. But I just want to make sure that we've thought about it. But this doesn't address the issue. This doesn't say whether or not we can life proxy or privacy services, how it should be done and where the lock happens in the process. And if you're going to life a proxy service, do you have to do it within one business day or two?

And so that's sort of my question. This is my - sort of my most, you know, I guess contentious point as far as like having a discussion as far as how, you know, what we think about this particular recommendation. Anyone?

Alan Greenberg: I - listening to you I can only agree that we need more clarity. I'm not quite sure I know what the right wording should be. Matt has his hand up. Let's go to Matt. That sounds like an easy way out for me.

Matt Schneller: I just wanted to agree with Kristine's point that the key is really to make sure that if this happens, it has to happen within that period prior to the, you know, within that one business day before the lock is too (dead) for it to be useful.

I guess it may also be worth clarifying that the privacy or proxy service should only be able to substitute the data they have in their system - in their records as the ownership agreement or as the owner of the domain name at the time they get the request from - whether it comes from the registrar or from the provider prior to institution of the lock.

Otherwise they'll have a big gaping hole where, you know, less scrupulous privacy/proxy service instead of just substituting out the information they have

in their file; can simply send an email to their client and say hey, you got a UDRP filed against you. Why don't you change your name to something different now? Like there's nothing...

((Crosstalk))

Alan Greenberg: You're saying we should try to avoid a virtual transfer done at the level of the privacy service.

Matt Schneller: Right. Or at least say that - at least include something that would limit the ability of that to happen. Otherwise we're going to have a pretty big loophole where privacy and proxy users are going to have more ability just because they're using their privacy and proxy service to change their information in a way that's equivalent to the sort of (cyberfi) problem that we have now that a user that doesn't have a privacy or proxy service won't have. (Unintelligible).

Alan Greenberg: I'm not sure we have - I'm not sure we have any way to enforce that but we certainly should say it in my mind.

Matt Schneller: Yes, no. I think we have it and, you know, if we say it and we say that you can't do it or include some sort of like limitation, at least it's there. And if a party is not being - doing what they're supposed to, at least there's something for compliance to deal with. But if we don't have any restriction, we're - there's no reason (we can't do that).

Alan Greenberg: Marika.

Marika Konings: Yes. This is Marika. I think the issue there, as you already said, we currently don't have contracts or agreements with privacy and proxy services. So we would have no way to enforce that even if we would put it here in the recommendation.

And I agree. I think it's important to clarify whether the (this thing) can happen within that one business day. And maybe the place to clarify that would be Recommendation 3 where I think we talk about the one business day, what changes need to be prevented. And maybe there is where we want to clarify then that, you know, within that one business day there can be a lifting of a privacy/proxy or not depending on what the group decides.

But I think this has probably been an issue that we want to specifically reference or forward to the effort that's going to look at accreditation of privacy and proxy service to make sure that it's taken into account there that indeed those rules then should include that the privacy/proxy service cannot inform or (mill out), however we want to word it.

But I think it's - I just want to make sure that, you know, it's clear that just because we put it in here doesn't necessarily mean that we can enforce it if there's no contract in place with the parties we're trying to enforce something.

Alan Greenberg: No. Marika, I agree with you. We can't enforce it. But without the words here, it's not clear as part of the UDRP. So since we can't synchronize the two processes exactly, we better put it in here and they will then have to follow suit because the contracts that they may end up with - the people talking with privacy/proxy services need to agree with the other - with all the policies in place.

So we need to put it in place here. Obviously without an ability to enforce but nevertheless, make sure it's part of the process, otherwise as was implied, the concept of saying you can't change the, you know, who owns the domain name is rather farcical.

It is a chick- a cart and horse issue but I think we need to put it in here. No disagreement. No agreement either on the other hand. I'm assuming the rest of you are still on the line. I have a question before we go on to the next one and it was mentioned briefly, and I'm not quite sure it's in this

recommendation, but we've talked a lot about whether Whois needs to change when the proxy privacy - when privacy is listed.

And the comment has been made that once the provider is notified, it doesn't really matter if Whois changes or not. Is it within our scope to say that Whois need not change? Or should we be completely silent on it which is what we are right now? My inclination is to explicitly say that it need not change. I'm not sure I want to say it must not change.

Kristine Dorrain: Yes, Alan, this is Kristin. I think that there're a variety of practices between registrars, some, even if there's a proxy service change or whatever, they won't release the privacy shield to - in the Whois. The Whois information will change at that moment so, like, for instance, GoDaddy does it pretty much instantaneously.

Some registrars tell us who the other line registrant is but don't release it in the public Whois data. And I think I'm answering your question when I say I don't know that either one is, per se, wrong. I mean, because the way that (unintelligible) that maybe David can weigh in if he wants to, but the way we do it, is if we get different data from the registrar than is in the Whois, we just serve both.

But you're correct. At the moment we serve everybody, we're done looking at the Whois. We're not going to go back and check and see if something changes and send a new notice out or do anything like that. So whatever happens in that one business day happens, we're content to serve all the addresses that we have on hand and all the email addresses and everybody and that's fine. But after that moment, you're right, as - well, you know, you can change it or not. We kind of don't care.

Alan Greenberg: Yes, I guess from a registrant point of view, I object to Whois - I have a problem with Whois changing when it hadn't been demonstrated that the registrant hasn't done anything wrong yet. And I understand that's currently a

problem with the fact that you're obliged to report after the fact who the registrant was you were dealing with. But I - you know, maybe that needs to be fixed one day but I have a problem if registrars feel that they must change the Whois to reflect who the owner is or who the beneficial owner is.

Kristine Dorrain: Right, yes. I would be supportive of allowing the registrars to continue that practice, whichever the case may be because they've got their own agreements with their customers. You know, some of them say we're going to reveal it so if you do something wrong, look out, and some say we're not going to reveal it and that's - I don't have a problem with that as long as it's - if you're going to reveal it, you're doing it within the time period that we prescribe or recommend.

Alan Greenberg: Okay, Marika, and then Volker.

Marika Konings: Yes, this is Marika. I have a different point to make. Let Volker go first if this is in relation to the conversation you're having.

Alan Greenberg: Okay, Volker. We can't hear you. You might be muted.

Volker Greimann: I was muted, sorry. Yes, in the - if the registrar - we do not want to unblock the privacy service, i.e., show the world the registrant who's privacy services because he might not have done anything wrong. On the other hand, it's something that we feel that we're forced to do in case we receive a UDFP decision because there is no guarantee that if we only privately inform the complainant and the provider about the underlying registrant that the complaint will be amended.

And in the end, we do not want any complaints or UDP decisions against our privacy providers. We do not want to see those privacy providers as - seen as bad actors and therefore, we reveal by remove the privacy function which is not something that we want to do and that we feel very uncomfortable doing but something that we feel we're forced to.

Alan Greenberg: Yes, I'll note that even if the request is found for the registrant, they're still revealed in the final report that's published by the provider under the current rules.

Volker Greimann: Exactly.

Alan Greenberg: So all you have to do to find out who owns a domain is file a frivolous UDRP. In other words, anyone with money can undo a privacy service. But I tend to agree with you that it would be better if it wasn't changed in the Whois which is a much more public, you know, public and long living document. Can we hear from the providers? This is the first I heard from - the comment that Volker just made that they're worried that if they don't change Whois, the provider might not have gotten the information and the privacy service may be held liable. That sounds like a communication problem.

Kristine Dorrain: Yes, I would ask Volker - this is Kristin - that had that situation happened, I mean, not that we're perfect and infallible, I mean, certainly I'm sure we've made our mistakes but we are - our practice personally here is that when we receive the verification from the registrar, we serve that information and we serve the information in the privacy - in the Whois and then we - and in our case, caption will name whoever's in the Whois.

So if the privacy service remains in the Whois, that's what the caption of the case will say. So we will serve every single address, email address and fax number that the registrar emails us. And that's part of our standard process. Again, I mean, we may have made a mistake at some point but I would wonder if that's just a generic concern or if you've actually seen this happen and you're concerned about preventing a recurrence because I would be very concerned and I would want to hear if someone reported that that happened. I would personally want a phone call if someone thought that that happened.

Man: Well, I've seen the case personally where we had not uncovered the Whois (unintelligible). Hello?

Alan Greenberg: Sorry, can you try that again? You were (masked).

Man: Yes. The - I've personally seen a case where we had not immediately revealed the registrant by uncovering the - by removing the privacy function. In that case, (unintelligible) to amend the complaint while - and while the provider has continued providing the complaint and forwarding everything to the address we provided for the underlying registrant, it still said - it still had our privacy function, our privacy provider as the respondent of the case in the headline and...

Kristine Dorrain: Yes, and that's our practice. Whatever's in the public Whois will also be published in the caption of the decision unless a panel wants to change it, a panel - that's where we kind of talked for a minute ago in Proposal 7 I think about that. If the panel wants to change it, they are - or maybe this is still at Number 8 - but if a panel wants to change it to the underlying registrant, they certainly can.

But if the privacy service remains in the public Whois, then that's who is going to be publicly listed in the decision as well. And that's our internal practice. But we have served and notified everybody that you would've emailed to us.

Alan Greenberg: Okay, Kristine let me ask - it's Alan. Let me ask a question. If the Whois is changed, you still list the privacy service, who was there originally?

Kristine Dorrain: If the Whois is changed at the time of the lock, you know, so we get the verification email back from the registrar that says here's the underlying registrant and by the way, the Whois is changed, and we go look and look again, if the Whois is changed then the - whoever was listed originally in the Whois, whether that was a privacy service or whatever, that person just appears in the complaint altogether unless for some reason the complaint...

((Crosstalk))

Alan Greenberg: Yes, the strong...

Kristine Dorrain: Unless for some reason the complainant makes some certain argument in his complaint, that they think it should go against the privacy service and then it'll be up to the panel to buy that argument or not. But our policy in that case would be to name the case after the actual registrant. And it would be the panel would trump that if they chose to later on when they got the case.

Alan Greenberg: So that's a strong reason why Whois, why a registrar or the privacy service may want the Whois changed.

Kristine Dorrain: Correct.

Alan Greenberg: Okay, we have a long list of speakers. Marika first.

Marika Konings: Yes, this is Marika. My question is more trying to get clarification on what we want to put into draft recommendation Number 3 but I think Matt made a very valid point in the chat saying that the listing and, you know, whether to change Whois or not, that's something between the privacy and proxy servers and the registrants.

But it may be something that we don't need to say anything about and we can just - I mean, we'd need to clarify in Recommendation 3, I think, whether indeed within that one business day before the lock is actually applied, whether that listing is still allowed as, you know, (unintelligible) happens and possibly to clarify that between (Garret) and say, I guess, something like, you know, as per the agreement between the (unintelligible) servers and the registrant and just leave it as that. That might be one option.

Alan Greenberg: Okay. Matt.

Matt Schneller: Just actually a question for you, Alan. If the concern is that a party should file a UDRP that was not a winner but was invalid enough to get by an initial compliance check for efficiencies, you know, that very basic initial check that the provider does to make sure that there's an actual claim under the elements of the UDRP, that person's going to get, even if the public Whois information isn't changed, the complainant would still get access to the domain name owner's information even if public Whois wasn't changed. So I don't know that...

Alan Greenberg: No, no, we're not going to fix that problem by this. I think that's somewhat out of the scope of a locking PDP. I was just, you know, wondering if we could ameliorate it or make it less public.

Matt Schneller: Oh, got it. Okay.

Alan Greenberg: But I think we're getting too deep into a swamp if we go there.

Matt Schneller: Okay.

Alan Greenberg: Anyone else on this issue? Marika, are you comfortable wherever you're going with this from the next draft or do you want to talk more?

Marika Konings: Yes, I mean, I'm happy to write something up but again, you know, if people are not happy with what I write, please feel free to suggest, you know, edit or ways to write it differently because, you know, I'm not a lawyer here and I'm just trying my best to capture what is being discussed here.

Alan Greenberg: Okay. Kristin, you're back up.

Kristine Dorrain: Okay, my suggestions with respect to draft recommendation Number 9, the recommendation says upon receipt of a decision from the panel, the registrar must and then there's a question - within two business days - communicate to

each party, the provider and ICANN, the date for the implementation of the decision in accordance with the policy.

And then there's a highlighted section that says further consideration may need to be given to the current discrepancy between 10 and 15 days, waiting days, depending on whether the complainant or respondent prevails. So I just attempted to provide a little clarity there which is that the communication of a decision date under UDRP Rule 16 says three calendar days so I was just providing a little clarification there.

And then I was attempting to explain the - what I believe is a lack of discrepancy between the 10 and 15 days, between Points 2 and 3. And I am not sure if anyone wants to disagree with any of that, but my point was just UDRP Paragraph (4K) just says that the registrar is going to hold off on giving a prevailing complainant the domain name for ten business days to allow the - basically it's to allow the respondent to the registrant to file a lawsuit.

The transfer in that case is done by the registrar at the order of the panel and pursuant to - I want to say UDRP Paragraph 3 but I didn't - don't have the rule right in front of me. And then the UDRP Paragraph 8 is specifically directed to the registrant. You shall not transfer the domain name away and that sort of thing.

And so by keeping the lock for that additional 15 days, it's just the registrar enforcing UDRP Paragraph 8 which says to the registrar or the registrant, you may not transfer the domain name subsequent to a decision even if you prevail. My only thought there is that, you know, the only limitation there is not transferring it in a way to a new registrar or registrant, so our best practices document may wish to suggest that the registrar, especially a registrar we've talked about who may have moved the domain name into a holding account or otherwise made a domain name inaccessible to the respondent, to their registrant.

You know, if the registrant prevails, the only thing that happens is the domain name can't transfer to a new registrar for 15 days. That doesn't say that the registrant can't have its domain back in those 15 days. So my suggestion is if we're going to allow people to kind of have these varying modes of locking, that they be very aware that they shouldn't be depriving their client of their rights during those 15 days, any - other than their rights of transfer.

Alan Greenberg: Okay, so when we define lock or freeze or whatever we call it, we may need a different one for this period.

Kristine Dorrain: Yes, or just further clarification. This whole process is a little - this whole point of draft recommendation Number 9 is very muddled. I would say that draft recommendation Number 9 is the least understood by registrars and even complainants to some degree. So I think that for - and registrants for sure. So I think that the most clarification we can provide, you know, specifically regarding how this pertains to the lock obviously because that's our scope. I think that's going to be very helpful to people, especially people who are trying really hard to follow the rules but just don't know what they are.

Alan Greenberg: Marika.

Marika Konings: Yes, this is Marika. If I can maybe ask Kristine again to maybe suggest some language here because I agree. I struggle with this one and want to make sure where we haven't really discussed in great detail, I think there's an issue that was raised in the early discussions we had in the working group that there is a discrepancy and I said I'm not even sure how it works. I think it would be really helpful if you explained this to us now, if that is something you would be able to put in writing as well so we can actually include it here and really have it clear for everyone.

Kristine Dorrain: Yes, absolutely. I'll put my suggestions for both down and then I will - I'll send them around the same way I send my other comments. And then if people

want to weigh in sort of like they did before, maybe we can even accomplish some business before we meet next week.

Alan Greenberg: It dawns on me as we're having this discussion that we may want, as one of the outcomes of this, a table showing, you know, going down the left side, the various stages of the UDRP process. And then columns for various items in Whois that need to be locked or where changes are allowed or not allowed during that time period.

Kristine Dorrain: That's a very fascinating point.

Alan Greenberg: I think that may bring some clarity both to the final people involved using it and to us to help define the lock freeze periods because, you know, as you think about it, it gets more and more complex. You know, the technical contact for instance, you know, there's probably no reason that can't change at various points along the way just as we say the phone number or email address of someone, if it changes, we want to keep that up to date. That's a requirement of keeping Whois current. So I think we may actually want some detailed clarity for us to understand it and perhaps it'll be used as a follow on process. Marika.

Marika Konings: Yes, this is Marika. I think that would definitely be the idea. I mean, at least that's what I had in my mind once we, indeed, have these recommendations and possibly wouldn't be something we can accomplish by initial report but similar to what we did, for example, I think with the - in one of the other PDP working groups where we basically made one of the recommendations that as part of the implementation, a detailed flow chart would be developed that would really make it clear and someone like me putting some arrows and some boxes but actually the kind of professional graphic artist that really would put that all in the kind of flowchart where it would really become clear and match, indeed, the recommendations.

So I think that is definitely - there's the intent behind, you know, the flowchart that I have here, the very basic one and going for these recommendations that what we have at the end of the day can be translated again into a kind of flowchart or a table or whatever works best to make sure that it's clear, what needs to be done every step of the way.

Alan Greenberg: Yes, I think that's a good idea. I guess I was suggesting something earlier that is as a working document for us to, you know, have along one axis, the stages and along every axis, as I'm listening and talking about it, I suspect we probably want every element of Whois to make it really clear what is allowed to change, what is not allowed to change. You know, that would then be summarized or processed into a form that we're proud to distribute to the public but as a working tool, it may be useful.

Kristine Dorrain: Well, the beauty of a table is that it does, you know, this is the former teacher in me coming out but it helps other learners, you know, helps other people who see walls of text or pages of text and panic. You know, I can't read all this. I can't digest it. I can't understand it. But I think a table's nice because it allows, you know, people to look at it and feel like they can understand the information presented better.

Alan Greenberg: Yes, I - it's Alan speaking. I tend to agree and, you know, when we came into this, I who was not at all familiar with UDRP, presumed that when we said lock Whois, we meant nothing can change in Whois. And what we have today is a very different picture. And I'm sure I'm not the only one who was naïve. David.

David Roache-Turner: Thanks Alan. Just I have a comment and a suggestion, one of which I'm about to drop into the - just have dropped into the chat box. And the first is just with respect to draft recommendation Number 7 in which we're speaking about this idea of introducing into the notification process, the UDRP provider informing the respondent with any corrections for the contact information are also required to be communicated to the UDRP provider.

And I just wonder, if as a (unintelligible) to that, we would also want to identify a recommendation that there'd be such a requirement on the registrant because I'm not sure if there is and having the provider inform the registrant that there is such a requirement without first bringing it into existence, might not actually solve the problem that we're trying to address here which is that if there is a change in contact information and the registrant makes that change or request that it be made to the Whois that they should, as a result, be obliged to let the provider know about that.

Alan Greenberg: They, being the registrant, or they, being the registrar?

David Roache-Turner: They being the - well, either I suppose. It's the entity that makes the change.

Alan Greenberg: The registrar is the vehicle. They may not have originated the change or they may have.

David Roache-Turner: Well, that's right but I suppose if there's no change that results for the purpose of the UDRP proceeding, from - I'm talking here only from a provider perspective, but it doesn't really matter too much. If there is some sort of change in contact information, you want to know about it if possible so that you can make adjustments for purposes of notifying the proceeding. But from the provider's perspective, you simply need to hear about it either from the registrant that's requesting the changes or the registrar if the change is being made.

It doesn't matter too much who it is that provides the information. I just note that there is a provision in the UDRP rules that exist currently in Paragraph 2E that said that either party, my update contact details by notifying the provider and the registrar. So this implicitly permits us both such modifications to contact information and (unintelligible) the way for that to be done by duly notifying the provider.

Kristine Dorrain: Right, and David, Rule 5, 2 and 3 also says the respondent needs to tell the provider their most current and correct contact information. So I think there's a lot of basis for that.

David Roache- Turner: Right.

Alan Greenberg: Okay, Marika. Marika.

Marika Konings: Yes, this is Marika. My question actually is in relation - because I thought that, you know, Kristine, indeed already clarified that it is a requirement so I think I'm basically missing something because what is not required, David, that you want to see required, as part of your suggestion? Or you just want to clarify that that is a requirement, that they need to require...

David Roache-Turner: Yes, to clarify also the basis for the requirement.

Marika Konings: Okay, yes, and I think - yes, and I think Kristine suggested certainly to reference the rules so I can definitely look at that and make the more specific.

David Roache-Turner: The other one - the other comment that I have - this is David again - is just to note that we make a comment in parentheses in the draft Recommendation 7 where we state in those parentheses that corrections to contact information in Whois are allowed as it would otherwise contract the Whois accuracy policy.

And I just wonder if we need to make such a definitive statement for purposes of this recommendation. It seems to me that the illustrative purpose of including the comment would be equally well served by simply noting that it may contradict Whois accuracy policy.

Alan Greenberg: Yes, I'll - Marika, if I can answer. I know another recommenda- in other PDPs we've included with each recommendation or with some recommendation, a

rationale for why we figure - why we made it. And, you know, so that's - it's not part of the recommendation but it explains to someone who may not be up on the details exactly why it was done or who, you know, hasn't been part of these discussions.

So if that kind of parenthetical comment is needed, I think it would belong in a rationale not in the recommendation itself. And by the way, Marika, you're missing the closing bracket on that.

David Roache-Turner: Right, right. And I agree with the general principle of including some form or rationale maybe by moving it to a slightly different point. But my general comment would still stand which is that I'm not sure that we necessarily need to take so firm a view even in an expressed rationale that changes to contact information would, in all cases, contradict Whois accuracy policy. I mean, I think the purpose of the rationale is equally well served by noting that it might.

Alan Greenberg: Okay, thank you. Marika, you have your hand up but I note we have a minute left and we need to talk about when the next meeting is. Is that (why) your hand was up or you want substance?

Marika Konings: Both. On the point that David made, I agree and I think it's maybe something that we can - in building the initial report, I'm trying to explain for each of the charter questions, the working group discussions and I think this is all partly rationale so I think it would make sense to move that there and I don't think it makes a difference to say would or may so I can definitely change that and take that out.

And then I need to note on the next meeting, based on the Doodle poll that will be scheduled for next Wednesday, the 19th of December for our 1400 UDC.

Alan Greenberg: And thank you Marika. David, does that hand still need to be up?

David Roache-Turner: That's a (vestigial) hand.

Alan Greenberg: A (vestigial) hand. An expression which is only invited a week or two ago but it's finding common usage. We didn't go nearly as far as I thought we were going to today but we've had some really productive discussion I think. So we'll meet again next Wednesday and continue from here and I think Michelle will be in the chair seat. But regardless, have a good week all. Bye-bye.

Woman: Thanks everyone. Thanks Alan.

Man: Bye-bye.

Woman: Bye-bye. Thank you.

Man: All right.

Woman: Bye.

Man: Bye-bye (unintelligible).

Woman: Bye-bye (unintelligible).

END