

**ICANN
Transcription
Locking of a Domain Name Subject UDRP Proceedings
Thursday 8 November 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 8 November 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-20121108-en.mp3>

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

Attendees:

Gabriela Szlak, CBUC
Randy Ferguson, IPC
Alan Greenberg, ALAC (Vice-Chair)
Matt Schneller, IPC
Celia Lerman Friedman, CBUC
Hago Dafalla, NCUC
Lisa Garono, IPC
Kristine Dorrain, NAF
Laurie Anderson, RrSG
Volker Greimann, RrSG
Jonathan Tenenbaum, RrSG
Faisal Shah, IPC
Juan Manuel Rojas, At Large

Apologies:

David Maher
Michele Neylon
David Roache-Turner

Staff:

Marika Konings
Berry Cobb
Glen De Saint Gery
Julia Charvolen

Coordinator: Now being recorded.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. This is the Locking of a Domain Name Subject UDRP Proceedings call on the 8th of November.

On the call today we have Gabriella Szlak, Randy Ferguson, Alan Greenberg, Hago Dafalla, Kristine Dorrain, Volker Greinmann, Gabriella Szlak, Juan Manuel Rojas and Celia Lerman. We have apologies from Faisal Shah, David Maher. From the staff we have Marika Konings, Berry Cobb, Glen DeSaintgery 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 for the record we have apologies from Michele Neylon.

Julia Charvolen: Okay.

Alan Greenberg: All right. What is the first item on the agenda? Does anyone have any changes to the agenda before we go ahead? It's posted on the Adobe screen at the upper right. Hearing nothing, seeing nothing.

Recap from activities in Toronto. Marika, do we have anything other than the full transcript? Has anyone - I know I mentioned it to Berry last week but I don't know if anything was done on it. Has anyone attempted to sort of extract the salient points from it? Things that were mentioned there that may not have already been brought up in our discussions that we need to capture?

Certainly my impression was there was some substantive discussion there and perhaps some new issues. Marika, go...

Marika Konings: This is Marika.

Alan Greenberg: Please go ahead.

Marika Konings: Yeah. This is Marika. I took quite detailed notes and what I'm actually in the process of doing is developing the initial report. And basically my idea would be to incorporate those, you know, to comment in the relevant sections relating to the charter questions and integrate them in that way together with, you know, the other discussion items that we have had over the last couple of weeks and also as a result of the responses to the different public comments.

So I'm happy as well to note them down separately. But I think in principle you'll see them back once I'm able to share a first draft.

Alan Greenberg: As long as we're making sure to capture them and address them, you know, at the same level as we are for the public comments because that was one - I thought was one of the more productive panels of its type that I've been to. And I suspect there is stuff that came out there that - perspectives that haven't been aired until now or at least not well.

So I'm not sure we need any further review at this point. If anyone has any comments other than to note that it was a very productive session I thought and with a small number of people but good participation. And hopefully it will add a couple of our things to our discussion points. Any other comments on Toronto? Seeing none, hearing none.

The next item on our agenda is review of the workgroup plan. And clearly if you look at it, we are way behind or it was set unrealistically. And we need - do need some adjustments on this.

I have a specific question. Obviously we need to, you know, we're going to have to take another meeting or two meetings or something like that to finish the review of the public comment review tool or finish the - filling out the review tool. And that pushes everything else back a week or two.

Marika, I have a question though on the initial report. It's my impression that we really have not had substantive discussion trying to come to closure on the various issue. And is it - is your feeling that we should start drafting the report and when faced with (unintelligible) we don't know what to put, do the discussion in that format or try to come to some overall conclusions ahead of time?

Marika Konings: This is Marika. So I have already started working on the initial report and, you know, I've already completed like the more standard parts like, you know, the background and, you know, the process. And now I've started working on the more, you know, substantive issues on the charter questions.

So what I started doing is basically for each of them trying to identify, you know, what is the current situation and then basically highlight, you know, the working group discussions on those items. I think a lot of that will come from the public comment review because I think as they are groups along the charter questions, I think there it will be possible to get a good sense of, you know, the working group's view.

But what I've started doing in parallel to that and I'm hoping it's something that, you know, the working group might find useful is actually developing a straw man proposal. Because I think as we've seen from the face-to-face meeting in Toronto, I think it looks like we just have, you know, there are a couple of options we can consider.

And I think it's just a question of trying to map out what those options are and where there is support for, you know, one or other options to see if, you know, we can come to agreement to some kind of overall process flow, which then would also help answer the different charter questions.

So basically the straw man proposal I'm developing is basically based on the comments or the discussions we've had to date and as well, you know, some

of the discussions resulting from Toronto where I think we had some of those different steps that would be a potential process for, you know, handling the locking of a domain name in a UDRP proceeding.

So if people think that's helpful, I'm, you know, working on a draft. I'm trying as well to get some internal input to make sure that, you know, it's not something crazy I'm coming up with. And then, you know, put that out together with the initial report for, you know, of course the working group is free to completely ignore it or tear it apart or, you know, start from scratch.

I'm hoping that that might give a kind of tool or, you know, kind of starting point from where we can get to the substance of the discussion and come to, you know, recommendations that we don't - (can) include in initial report.

Alan Greenberg: Okay. Thank you. Yes, I think the straw man proposal is really the crux of this. And from my point of view, I don't know to what extent the work you're doing yields the draft final report and the straw man proposal at the same time.

But certainly if you need to prioritize one over the other, the straw man I think is what we need on a quicker timeline than the draft report if indeed they can be separated in terms of how you're developing them.

Marika Konings: Yeah. And this is Marika. I think they can easily be separated because what I've done now the straw man is just a separated document started in a Word document basically doing a kind of, you know, a process flow basically trying to align the different steps and then trying to determine, you know, what are the options that we have there and making some suggestions based I think on, you know, what we've discussed to date and where, you know, certain areas I think have seen some kind of - maybe we can call them maybe consensus where people seem to be leaning in a certain direction.

And again, I think this is, you know, the straw man proposal is just a starting point so to, you know, help to guide those discussions because I think, you know, based on the discussions we've had, we're looking at several different steps in the process where I think the working group is likely to make certain recommendations.

Alan Greenberg: Right.

Marika Konings: And I think, you know, I think the straw man proposal probably will go first and in the meantime I can just continue working on the initial report as well because some of the discussions probably will into the report eventually. Because I think if we can come to agreement on the kind of straw man or flow chart elements, I think that would be an illustration together with, you know, our individual response to the charter questions.

Alan Greenberg: Right. Yeah, that sounds good. What kind of timeframe are you imagining on this straw man?

Marika Konings: I'm actually hoping to get something to you in time for next week's meeting if possible.

Alan Greenberg: Yeah.

Marika Konings: As said, I'm trying to get some internal feedback, you know, to make sure that, yeah, because as you know, different departments within ICANN are also affected by what happens here and, you know, they might have some views as well on, you know, the different steps I proposed and some of them are more knowledgeable about the UDRP itself than I am.

And as said, what I've done now there was a couple of questions in there which we might not even be able to answer internally so they might have to be turned back to the working group as well. So I'm hoping to, you know, to have something for you by next week's meeting.

Alan Greenberg: Well jumping up to Item Number 5 now, Michele has said he can't be at next week's meeting. I can't be at next week's meeting. So maybe we should agree to cancel that meeting and that will - gives you a bit more breathing time. The only alternative is if someone else wants to volunteer to chair it and we believe there'll be enough people to carry on with the meeting.

Marika Konings: Yeah. The only challenge there is that the week after I think is Thanksgiving in the U.S. and I don't know how many...

Alan Greenberg: Oh.

Marika Konings: ...participants are affected by that.

Alan Greenberg: I'm not sure. We don't have a lot of American sounding names on our list. But I don't know how many are residing in the U.S. Well...

Kristine Dorrain: Well I think me and this is Kristine Dorrain. I think - and that's - I might be the only one so I mean don't hold things out, you know, don't change the schedule on account of me. It might be more important to get, you know, a bigger majority around.

Alan Greenberg: Or you can join us and bring the turkey.

Kristine Dorrain: That's a possibility. It's actually - the meeting is at 9:00 am here and we don't celebrate until much later in the day. So it's not - I actually could possibly call in from home. So...

Alan Greenberg: Okay.

Kristine Dorrain: ...yeah, don't reschedule and if I'm the only U.S. participant - well I guess a lot of ICANN staff are U.S. participants too. So maybe that's an issue too.

Marika Konings: I think there's only - yeah.

Alan Greenberg: Berry's the only one I think.

Kristine Dorrain: Oh, okay. Okay, yeah. So maybe that would be a better choice then, I don't know.

Alan Greenberg: Yeah. Well in any case we'll worry about that meeting next - in terms of next week unless we have a strong desire to go ahead and a volunteer to be chair. I think we are going to have to cancel that one. I have a full day of conference calls starting at 6:00 am. And adding this one in the middle is going to be just a bit much for me. And I don't know where Michel is but he said he can't do it. All right. Marika, let's...

Marika Konings: Yeah.

Alan Greenberg: ...tentatively put that out and then we'll decide on Thanksgiving meeting afterwards. It doesn't sound like there may be a huge overlap with U.S. based people.

Marika Konings: Okay.

Alan Greenberg: Okay. And now on to the substantive part. So in terms of - we never actually came to closure on what you just took off the screen on the work plan. I think we need to adjust it clearly. I'm not particularly concerned with, you know, with doing that this very moment and forecasting when the new end is.

I think we're pushing everything back by it sounds like close to a month given that we're already several meetings behind and we're now talking about canceling one or possibly two meetings.

So if you feel so inclined and you want something more up to date, we can certainly just push things out a bit and see where - see what it looks like. I

think you're going to have - we are going to have to allow a bit more time for the looking at your draft straw man and fleshing that out and coming to closure on that. So we may want to allow that some explicit time in the work plan.

But I'm certainly willing to just leave it be at the moment and just carry on with the work. Marika.

Marika Konings: Yeah. This is Marika. You know, a suggestion might be because I think we - if you look at the public comment review tool there's still quite a number of comments, you know, we need to cover before we can even more to the next level.

A suggestion there might be, and I think it's something that has been done in other working groups as well, is possibly assign some of the comments to different people in the working groups to develop a response.

Have them circulate that to the working group to see if that, you know, would reflect other people's views. Because I think, you know, in some of these issues we've had several discussions already on the working groups. So I think, you know, and some of them, you know, we might be able to predict what the working group perspective might - may be.

And that might be a way of moving a bit quicker through the comments and then only discussing those where people, you know, don't agree with, you know, the position that or the working group response is noted in the review tool or those items where people think that oh, this is really something that, you know, we really need to discuss in further details because these are - it's a very concrete proposal on how to, you know, respond to some of the charter questions or something that hasn't come up at all in any of our discussions before.

Alan Greenberg: I'm certainly happy to do that if we have volunteers to carry out the work. We had a hand up from I think Gabriella but it's not there anymore. So I guess here hand isn't up. Well Marika, let's go through what we have today and before the end of the meeting look at where we are. And if we want to try to do some assignments either here or via the list.

Marika Konings: Okay.

Alan Greenberg: This point we have about a half an hour. Let's see how far we can get. I've got a larger copy of the worksheet. Where are we at this point?

Marika Konings: This is Marika. I think we are at Comment 70 at Page 21. Of course there's still some comments in the beginning that we haven't covered because we I think started further down but that's where we left off last week.

Alan Greenberg: Scroll down. Okay. All right. Do you want to do the readouts?

Marika Konings: Sure. This is Marika. So we're still on comments in relation to Charter Question 5, which relate to whether there should be additional safeguards created for the protection o registrants. So Comment 70 in response to the registrar survey says that what other protections would registrants need?

The domain name is locked preventing any unwanted unauthorized changes to the domain name without explicit instructions from a court. If the domain is using the registrant's DNS, they are still free to manage their Web site and associated services as it pertains to the domain.

Alan Greenberg: So they're really asking us what are the protections.

Kristine Dorrain: This is Kristine. I just want to say that I think - I mean I can understand where this comment is coming from completely because, you know, the UDRP does, you know, the lock that's there typically does provide, you know, some decent protections for the registrant.

But I think one of the reasons - and I wasn't in the, you know, original group that drafted the question is I think this question sort of stems from this idea that not all registrars are consistent.

So while the person who wrote this question has had what appears to be very good experiences with the registrar, you know, knowing what to do, what type of lock is supposed to be applied, what, you know, what the registrant is still allowed to continue to do with that domain name. It may be that there are other registrars out there who aren't, you know, as cognizant of those needs and who may be, you know, completely like we talked about.

You know, some of them actually shut down the domain name and move it into a separate account. You know, we may decide that that's not what we want people to do. That we do want the, you know, domain name to resolve and we do want the, you know, the registrant to still have control of their Web site, you know, throughout the process.

So I think that the - maybe the question is more what, you know, just taking in mind that yes, some registrars are doing it right but some registrars might not be. That's sort of my thought about this question.

Alan Greenberg: Okay. Thank you. Any other thoughts? I have an issue regarding the first sentence. And I don't recall - Marika, was the first sentence what other protections would the registrants need. What that actually out of the questionnaire or is that something the registrar - I'm not sure what question they're answering. Okay.

Marika Konings: Yeah. This is Marika. It's the Charter Question 5, which his whether additional safeguards should be created for...

Alan Greenberg: Okay.

Marika Konings: ...the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding. The charter question there.

Alan Greenberg: Okay. So that is - okay. Sorry. All right. So the suggested answer is the procedures cover it for registrants but not necessarily with any consistency. So some registrars may in fact take procedures, which disadvantage the registrant. Did I summarize that properly?

Kristine Dorrain: Yeah. I think I agree with - yeah, I think I agree with that that we just want to make sure that the ultimate product that we create doesn't assume that every registrar is protecting registrants properly.

Alan Greenberg: Got it. Marika, you're happy with that? You have words?

Marika Konings: Yeah.

Alan Greenberg: Okay. Seventy-one. Yes, the domain should be able to resolve during the period. That means if the registrant is changing hosting provider that a domain name server should be allowed to be change - to change. Again, that just re-echos the conclusion we came out of the previous one. That depending on how the registrar handles it, the registrant may or may not be able to do that kind of change. I think that...

Kristine Dorrain: Yeah Alan, this is Kristine. I put my hand up but I was (unintelligible)...

Alan Greenberg: (Go ahead). Yeah. Oh I'm sorry. Yes, go ahead.

Kristine Dorrain: That's okay. I don't see a long line of people jumping in to speak. So I was going to just mention that - so typically while - when a domain name is locked, the registrant can manage the name. So they can do things to this Web site and that sort of thing.

However, that - this one little point here is kind of a sticking point. And it's probably something that we want to offer advice on. And that is can you actually change a hosting provider and update the DNS for that domain name. Right? You know, the servers and everything because wouldn't that...

Alan Greenberg: Yeah.

Kristine Dorrain: ...so then constitute a Whois update because you're going to change the resolving server?

((Crosstalk))

Alan Greenberg: ...update.

Kristine Dorrain: ...question is a little more nuance than the one before it I think.

Alan Greenberg: Of course, you know, it's one of these things that it's in the semantics. You can't point to a new DNS server. There's nothing prohibiting you from changing the contents of that DNS server if you have access to it.

Kristine Dorrain: Right.

Alan Greenberg: So, you know, if you happen to manage your own DNS server, you can make whatever changes you want to, what the Web site looks like, where it resides or whatever. If you happen to be using somebody else's DNS that you don't have direct access to, then you can't, you know...

Kristine Dorrain: Yeah. I think - and I...

Alan Greenberg: ...such as the registrars.

Kristine Dorrain: Yeah. And I think that that's - I think that's sort of the point because this question specifically says what if the registrant changes hosting provider.

Alan Greenberg: Right.

Kristine Dorrain: So I think that maybe we want to make it - when we come up with our recommendation, we may want to say, you know, when we - because we talked about, you know, sort of what are the allowed changes, right. I submitted that initial draft and we sort of talked about it and we didn't really discuss it more, which I know we'll get back to.

But, you know, what are allowed changes? And I think this raises kind of a good question.

Alan Greenberg: And indeed it doesn't sound fair if what we're saying is if you're a professional, you know, Web site runner and you have your own DNS, you can change whatever you want.

Kristine Dorrain: Right.

Alan Greenberg: And so if you happen to be more of an amateur or relying on someone - on someone else - on the registrar's services, then your hands are tied and you can't make any changes.

Kristine Dorrain: Right.

Alan Greenberg: That doesn't sound a particularly equitable set of rules. So I think we either need rules saying even if you can change the DNS you're not allowed to. We can't enforce it necessarily but we can make the rule or take off the restriction.

Kristine Dorrain: Correct. Yeah. I think it needs - yeah. I think our recommendation needs to be broad enough that it covers both situations. I agree.

Alan Greenberg: Right. Okay. Any other comments on this one? Okay.

Celia Lerman: This is Celia. So...

Alan Greenberg: Yes Celia, go ahead.

Celia Lerman: Yeah. Yeah. This is Celia. So for the - if we allow people to change their DNS, how would it affect the UDRP process? Let's say we do accept people to change their hosting service, would that affect in any (unintelligible) of the people, you know, if there's two parts involved in the UDRP?

Alan Greenberg: I think we need to hear from UDRP for (unintelligible).

Celia Lerman: Maybe for one of those (unintelligible).

Kristine Dorrain: Yeah. This is Kristine. I can't - offhand I can't think of any way that that would really be affected. You know, so at the moment of commencement we serve everyone who's listed in the Whois. As long as the Whois contact information doesn't change and all you do is change, you know, which server your site points to, it's really irrelevant.

I mean remember the UDRP doesn't permit even - doesn't even disallow content changes. So you could be, you know, the registrant could be hosting, you know, hosting a site for counterfeit Louis Vuitton bags but once the UDRP is filed - switched to some paper click, you know, page or something, you know, I mean that happens all the time.

And that, you know, that doesn't matter. The complainants are responsible at the beginning to provide the content of the Web site. So if the registrant is going to update the Web site content or even the hosting provider, just sitting here right now thinking about it, I can't think how that would matter.

Alan Greenberg: Okay. So you're saying you capture - any relevant content has to be captured ahead of time. You can't resume it's going to be there throughout the process.

Kristine Dorrain: Correct. And complainants who do presume that take a huge gamble that something's going to change. Yeah.

Alan Greenberg: As I pointed out, if the person doing it is a professional, they will be able to change the content no matter what the registrar does to lock a domain.

Kristine Dorrain: That's correct, yeah.

Alan Greenberg: All right. I think we have something coming out of this but I'm not quite sure what it is. But there certainly sounds like little reason to prevent some registrants from doing things when others can do - can do it and we can't stop them. So that does lead us to what we want to say in the outcome. And the concept of locking is getting more complex, not easier, as we go along.

Okay 72.

Celia Lerman: There is one comment - I'm sorry. There's one comment in the chat we might want to address.

Alan Greenberg: Oh. I'm not watching the chat. Thank you. I'm not sure changes to the DNS are transfers that need to be under - no. I don't know if it's (Matt) or (Lisa) making that comment. But I think that's the conclusion we're coming to. So the simplistic concept that you cannot change anything in Whois I think is quickly disappearing.

Any other comments before we go on to 72? Not seeing any unless the typing is relevant.

Woman: (Unintelligible).

Alan Greenberg: I think it was good enough English. All right. Marika, 72.

Marika Konings: Yeah. So this is Marika. Seventy-two again a comment from the registrar survey. I do think that there should be a stronger penalty for the complainant should there be - should they be found guilty of attempted reverse domain name hijacking.

There's an interesting scenario though where the registrant may have to process urgent changes on a locked domain name, i.e., name servers in order to keep a Web site operational, et cetera.

Alan Greenberg: Can someone tell me what reverse domain name hijacking is because in my current mental state it does that. That's not something that I understand.

Kristine Dorrain: Yeah, Alan, this is Kristine. Reverse domain name hijacking is a finding that the panel can make in the UDRP that says the complainant brought the complaint in (bad space) simply to harass the respondent. So complainant knew that they were unlikely to prevail or they're just trying to go after maybe a generic name or some complainants use the UDRP as a way to - they want to start a company and somebody has the domain name they want.

So they can approach them and ask to buy it and of course the registrant says well no, this is in my portfolio, I'm a domainer, I'll sell it to you for five grand. You know, because that's what I do. And the complainant says no, that's horrible. I'm going to file a UDRP and try to just yank it from you.

And the panel says well no, you don't get to do that unless, you know, the respondent was actually targeting your mark. And because you didn't have a mark until yesterday, that can't be possible.

So those are the typical...

Alan Greenberg: Okay.

Kristine Dorrain: ...domain name hijacking cases. This first sentence in this comment is completely irrelevant to anything we're doing. It's just somebody being crabby about something. So really the second sentence I think is the exact same thing we talked about in 71 in my opinion.

Alan Greenberg: Okay. Thank you. Anybody else? (Jonathan).

(Jonathan): Yeah. This is (Jonathan). Yeah. I would just echo what Kristine was saying that I think that we touched on the issue in 71. It's almost like they're talking about two separate things in the statement. You know, the first end of it being the - just the concern about a complainant using the process, you know, unfairly or improperly and then the second piece about the lock having the impact on the name servers or something while it's locked.

So just throwing my two cents out there just to echo what she said.

Alan Greenberg: Okay. Thank you. I think we need to capture - one of the implications of the concept of capricious UDRPs is a potential -- I think it was something brought up in Toronto and I assume we're going to capture it out of that discussion but we want to make sure that it's somewhere -- of capricious UDRPs that are filed simply to get the privacy proxy information revealed. Because under current practices a capricious UDRP may be the cheapest way to find out who's running a Web site.

Seventy-three - I'll read that one out. No. I think we already have counterarguments to that so I don't know if we need a lot - to spend a lot of time on addressing their belief. Seeing - not seeing a rush of hands to elaborate on the no, 74. Marika.

Marika Konings: Yes this is Marika. So 74 and the - again the comments from the Registrar survey which says that, "Domains should be moved into a holding account of the Registrar under the - I guess it should be until the case is sorted."

Alan Greenberg: Which creates a problem that we've already identified in 71 and 70. So I think this is one of those that all we can say is it's noted, but we're probably not going to suggest that that's the answer unless there are other protections at the same time which allow Registrants to make some changes.

Getting to be a hairy model we're coming up with. Any other comments on 74? I also think it's a business practice issue that I don't think we're going to be able to enforce. Seventy-five.

Marika Konings: This is Marika. So 75 - we - again comments from the Registrar survey. "We are uncertain what safeguards are being referred to in this case. Placing a domain name on Registrar lock does not prevent the name from resolving, nor does it prevent changes to the content of the site.

Therefore no harm would be done in preventing the name from changes to the WHOIS and would prevent the Registrant from engaging in cyber flight."

Alan Greenberg: A statement which I believe we said we've proven - we've indicated as false in the case of a Registrar need to change DNS servers at the very least.

Kristine Dorrain: Yes I think - it's Kristine. I think this again is like that first question I responded to which is, "The Registrar who wrote this comment's probably doing it right and is wondering - scratching their head wondering what the problem is," because these people appears - in 75 are probably not, you know, preventing changes.

Alan Greenberg: I'm not quite sure I agree with you because the last sentence says, "There's no harm in preventing name from changes to the WHOIS." What's that? Hold it.

Kristine Dorrain: Right. I guess, I mean, I guess that the only things is what would you change in the WHOIS? Just the name servers, right, the server name - the name servers?

Alan Greenberg: Yes that may be, you know...

Kristine Dorrain: Yes, but for UDRP purposes we don't - like I said we don't care what the name servers are. We only look at the contact information.

Alan Greenberg: Yes but this answer seems to be implying that since we're not stopping the Registrant from changing the content of the Web site, we are not restricting them in any way and that of course is not the case if, you know, if your Web provider goes out of business then you must change the DNS pointers.

So I - we've already captured that - the concept. I don't think it's any - and it's, you know, I think we're disagreeing a little bit with this answer but it's not adding any new information to us.

Kristine Dorrain: Yes I agree. I think we're just interpreting the question differently. I agree.

Alan Greenberg: Seventy-six.

Marika Konings: This is Marika. Again a comment from the Registrar survey. "Privacy and personal information protection - use services such as Web and email until the decision unless seizure or court order."

Alan Greenberg: I'm not quite sure I know what this is saying. Can someone interpret?
Jonathan.

Jonathan Tenenbaum: Yes this is Jonathan again. I think what they're saying is that they just don't want the Web and email services to be impacted while the case is pending.

The - and maybe to - and I guess the way I'm reading it is that - and to the extent that those services would involve privacy and personal info I think because, I mean, if they're talking about the disclosure of the identity and just - and all that stuff, I mean, that's just - that's a whole separate, you know, it's a separate topic.

But I think they're saying that their Web and email services wouldn't be disrupted by a lock during the - while the case is pending. So at least that's how I read it.

Alan Greenberg: Yes I'm not sure the relevance of the lead in "privacy and personal information protection" though.

Jonathan Tenenbaum: Yes I agree. I think if anything it's maybe as to the extent that that stuff isn't - applies to their Web and email maybe because their, you know, people, I mean, obviously in your email you have all sorts of stuff, that that wouldn't be compromised, either disrupted or otherwise provided to the complaining party or something. I - it's definitely confusing so...

Alan Greenberg: Yes I was reading it as revealing who the Registrant is in WHOIS, if it was done through a privacy proxy service that that is not taking responsibility for the overall name.

And I read it as - that this particular Registrar was saying that it shouldn't be revealed unless seizure or a court order. Marika do we know who answered these questions, and can we go back and ask for clarification if we really want it?

Marika Konings: This is Marika. Yes I could probably go back into the survey and try to figure out - only if they actually left their name and details and I think...

Alan Greenberg: Okay that was...

Marika Konings: We did allow people not to fill it in but if they did I could.

Alan Greenberg: Yes. I think we've already captured the concept if they did mean that, so I don't think we need to worry about it in this case. But other than concern over revealing who the true Registrant of record - or who the true Registrant is, I don't really see and we've already captured that concept.

I'm not sure I know what else they're talking about here, but I don't think it adds anything. No other thoughts? Then let's just put a comment saying, "We presume this is talking about revealing who the Registrant is," and let's just go on. Seventy-seven. Cannot answer...

Marika Konings: This is Marika. Number...

Alan Greenberg: Yes go ahead.

Marika Konings: Seventy-seven - that's from the responses that the UDRP providers provided. So the first one there is, "Cannot answer that as I'm not sure what the dangers from which Registrants must be protected are."

Alan Greenberg: Okay.

Kristine Dorrain: Just raise my hand and say that was me. But (Rolf) and I - yes, so I was looking at it from the, you know, sort of good acting, you know, provider or lock, you know, Registrar way.

Now that we've had these conversations I have a little bit better idea of a couple of the problems, like we talked about not being able to change your name servers and that sort of thing. So you don't really - we don't really need to address that if we don't want to.

Alan Greenberg: Okay I don't - yes. I don't think - it doesn't add anything we need to address that - other than what we already know we have to talk about. Seventy-eight.

Marika Konings: This is Marika. And again it comes from the UDRP provider survey. "If the domain name may be locked upon the notification by the complainant to the Registrar and without confirmation by a UDRP provider that the complaint has been filed properly under the UDRP, the rules and supplemental rules, i.e., it's an applicable dispute and the fees have been paid accordingly, additional safeguards may need to be created to protect the Registrant."

Alan Greenberg: All right. I guess that says that if we were to come out with a rule saying, "The domain must be locked prior to instruction from the UDRP provider," that we would have to consider other safeguards. Am I summarizing Marika or Jonathan?

Marika Konings: This is Marika. Because I actually have a question about this specific item because it is one of there as I'm looking at for the straw man proposal. And my question is that I've seen indeed that the UDRP requires or the supplemental rules require the complainant to notify the Registrant.

I think at the same time that's probably one of the main causes of having cyber flight where, you know, the domain name is not locked yet before, you know, the UDRP provider contacts the Registrar.

So I'm wondering is there any other reason why the complainant has to notify the Registrant at the time it files a complaint with the UDRP provider, or is that something that could be considered as being changed?

I think, okay, the notification actually to the Registrant comes from the UDRP provider at the time the complaint is verified, and it's sent at the same time to the Registrar and the Registrant.

Is that something that would be feasible or are there other reasons why you would want the complainant to notify the Registrant at the same time it's filing the complaint with the UDRP provider?

Alan Greenberg: Not having been one of the people who wrote this, in a very short period of time I'll point out in somewhere around 1999, I don't know the rationale behind it. Jonathan?

Jonathan Tenenbaum: Yes and I was going to say I was actually just going to answer your other question when you were saying if that was how everyone else, you know, we read the question or the comment and then I did, you know, I was in - my thinking was in line with yours.

But to speak to the other piece yes, and I don't know the rationale behind it either but I don't know. And we were - this was a lot of the dialog we were having prior to Toronto when we were talking about the concerns about cyber flight and the notification of the Registrant and just that process in general.

And yes I agree. I don't know that - what the rationale would be for the notification of the Registrant by the complainant. I think, you know, my view is that, you know, when you talk about cyber flight, I mean, there is a much better chance that if you don't give the Registrars a head start on locking the name and you give the Registrant who is a potential bad guy the heads up that the complaint is filed and is in process, it does give them a head start ahead of the Registrar to get the name transferred, you know, to get out before the lock.

So, you know, I think - and then again that is a lot of what we were touching on prior to Toronto. So, you know, I, you know, I'm not sure what the rationale would be for that notification so...

Alan Greenberg: Yes. Kristine?

Kristine Dorrain: Yes. So if you read the way the UDRP is sort of generally written, there are several places throughout the UDRP where I think the drafters in '98 and '99 had sort of a, you know, they didn't anticipate some of the bad actions that exist today.

So they're, you know, obviously we didn't think about cyber flight. I think a lot of times people were thinking, you know, I think people didn't realize there would be as many defaults as there are.

And I think people didn't really realize that there could be bad actor Registrars or bad actor Registrants who would be, you know, trying to avoid the process.

I think they were thinking, "Well this should be a great dispute resolution process for people who, you know, might want to respond or that sort of thing."

So there are - there's more than one place in the UDRP but the service of respondents, you know, before the case is commenced is one of them where it seems like there was sort of this basis of trust and like, "Well, you know, no one's really going to game the system."

But now we've learned over years that they are, so I think that - and I know we've seen that the URS changed that, right, so they're not serving respondents until the lock.

So it unfortunately is there in the UDRP and, you know, unless the UDRP itself is amended this is something that we, you know, can't - you can't really change at this point.

And I think, you know, not, you know, the forum's not really in favor of amending the UDRP generally but this is the first thing on our list if we do.

Alan Greenberg: Yes. I would tend to differ that if this is something we've come up with that essentially makes locking moot because the course - the respondent is notified ahead of time, then I think this is within our scope or certainly something we can claim with - is within our scope.

So I would not shy away from that. My personal position - I'm not speaking on behalf of Council obviously or on behalf of Michele.

Kristine Dorrain: Okay yes, and if you're correct then, you know, hallelujah.

Alan Greenberg: Yes. I really can't see us saying we're allowed to change the time at which it's locked, but it's still going to be irrelevant anyway because it allows cyber flight.

And the whole purpose of locking is to stop bad things from happening. And so I think we have to look at the overall environment around locking, not just lock - not just locking.

And I think you're right. I think this whole thing was written on the presumption that this is indeed a dispute resolution mechanism where two parties will come and argue why they think each of them is right, whereas that's not what's happening in a fair number of the cases right now.

Kristine are you - do you want back in or is your hand up from before? I think it's from before.

Kristine Dorrain: Yes my apologies. It's from before.

Alan Greenberg: That's okay. I've left mine up too by mistake. I'm not quite sure where we are at this point. Marika your suggestion I think doesn't fix it because if the Registrar is notified at the same time as the complainant by the UDRP provider, you still have a - it's a smaller window but you still have a window in which case, you know, flight is possible.

The presumption is that if we want to lock - if we want to close that window altogether, that the complainant shouldn't be notified till after the lock is in place. That may cause another set of problems but...

Kristine Dorrain: Just to clarify Alan you mean the respondent shouldn't be notified, correct?

Alan Greenberg: Did I not say that?

Kristine Dorrain: Said complainant.

Alan Greenberg: Oh well. No difference, right?

Kristine Dorrain: Yes.

Alan Greenberg: Sorry. Sorry about that. Let's try to do one more and then we'll look at how we're going to proceed in the future. Marika.

Marika Konings: Yes this is Marika. So Comment 79 also from the UDRP providers survey. "It would be good to have an example so as to better understand what kind of safeguards the drafter of the questionnaire had in mind.

We suppose that the question is if the Registrants could possibly face under - ungrounded locking, example given in instances of reverse domain name hijacking, and if there is a way how to prevent such situations.

Unfortunately it's a highly difficult - it's highly difficult as the question of whether the locking is grounded or not is resolved only in the UDRP decision.

If anyone, the Registrant, the provider or the panel, would be required to address it earlier, it would be necessary to estimate the result of the dispute in advance, which is not only impossible but inappropriate as well."

Alan Greenberg: Yes, I tend to agree. I mean, the URS has provisioned for multiple abuse of URS proceedings, but I think that clearly is out of our scope to suggest that we do something similar here.

That very much is not locking but treating - but, you know, a much more core part of the UDRP. So I'm not sure what else we could - we can do on - in terms of that.

I think the only issue is the revealing of privacy proxy information. Other than that we have no way of determining ahead of time that it is reverse hijacking.

Again that's very out of our scope I think. No hands up? Then let's look. How - what more do we have? We have from 82...

Marika Konings: This is Marika. If we do one more at least we finish this section for the...

Alan Greenberg: Okay. Then you sold me. Go ahead.

Marika Konings: So the last comment in - on this specific charter question is from the FICPI. "This question should be further studied. On possible way to balance the need for accurate WHOIS Registrant information and privacy rights would be to make the identity of the underlying Registrant details known only to the Registrar, parties of the UDRP proceeding as well as the panelists in such cases where a need to keep information private has been demonstrated."

Alan Greenberg: I think that captures some of what we've been talking about in a more concise way than what we've been saying before. So I think that's to be considered. Kristine.

Kristine Dorrain: Yes this is Kristine. I would say that the - this specific issue is - seems to be addressed more toward what happens to that information once the privacy service is lifted?

It doesn't really go toward the lock itself. I think it's dealing more with a public policy issue as far as, you know, keeping accurate WHOIS information and balancing privacy rights.

Currently at least for forum cases a panel is presented. If the privacy shield is not lifted in the WHOIS but the Registrant information is provided to us, we send that information to the panel.

And then we allow the panel to make a determination as to whether or not the privacy service should be the respondent or whether they should, you know, name the actual respondent in the complaint and sort of out them if you will.

And so that's done on a case-by-case basis in front of each individual panelist who has the opportunity to hear from both parties as to why or why not that information should be lifted.

And I don't think in my opinion that this is really relevant to our lock group. However it's more relevant generally to the discussion of WHOIS and WHOIS privacy and ways to sort of balance people's privacy right with that, you know, with the need to figure out who owns the domain name.

So in my opinion it's not really related to the changing of the WHOIS or the locking of the WHOIS at that moment. It's dealt farther downstream.

Alan Greenberg: I - it's Alan speaking. I tend to agree except depending on how we define lock it may or may not become relevant to us. If we define lock saying that you must not change any of the information in WHOIS, including the names of the Registrant and clearly you have to reveal them to the UDRP provider but you must not change it in WHOIS, we're implicitly addressing this issue, at least part of it.

Kristine Dorrain: Oh I see. So we - you're - we could actually go and make a recommendation that the privacy service has to reveal to the provider because again - because I guess I'm assuming currently it's...

Alan Greenberg: And that it cannot change the WHOIS though.

Kristine Dorrain: Yes right. Okay so that - yes that is definitely one way of approaching it. Okay.

Alan Greenberg: Yes. We may fix the problem even though it wasn't a problem in our domain, depending on how we define lock...

Kristine Dorrain: Right.

Alan Greenberg: ...and go ahead so...

Kristine Dorrain: That's interesting for Marika then to know it under straw man.

Alan Greenberg: Whether we want to do that or not is a different issue.

Kristine Dorrain: Right.

Alan Greenberg: You know, it's sort of a back alley way of changing something which is probably out of our scope by intent. But it may end up being something that we have control over.

Kristine Dorrain: Right. And, you know, and I've thrown this out there a few times and I think it may be just maybe a subtle disagreement or difference or, you know, different understanding of our, you know, mission.

But I think there's also a possibility to have best practices come out of it as well. Even things that may be aren't mandates and within the true scope of

what we're here to do, we could make a list of suggested best practices. It might help.

Alan Greenberg: Oh indeed. Yes that's an - and that's an outcome of any PDP. Of course no way to enforce but we can say the words and perhaps people will listen. Okay Marika we have finished your section.

We have a total of 81 through 83 at the end that we haven't done yet. And how many - where do we start at the beginning?

Marika Konings: One to - let me see where we started - 1 to 43. No sorry, 1 to 39 we haven't done. So basically the first three charter questions. We haven't addressed specifically the comments there.

Alan Greenberg: Do we have any volunteers who are willing to take one of the charter - are they sort of easy - evilly - equally divided among those three charter questions? Or are there - is there a predominant number? One...

Marika Konings: The first one has 17 comments in it. The next one is from 18 to 25 and the third one is from 26 to 39.

Alan Greenberg: So they're not equal but they're not completely unbalanced. Do we have anyone who's willing to do a pass of them and draft things for our consideration? I would...

Kristine Dorrain: This is Kristine. Just to clarify are you asking to fill in a suggested response to each comment in the box as we have been doing, or summarize all of the questions and do something else with that? I may have...

Alan Greenberg: No. I believe what I'm suggesting and I think what Marika was suggesting was draft for each question what the Working Group believes the right

answer is, or what you believe the Working Group should give as the answer.
You know...

Marika Konings: And this is Marika. And in some comments it might be as easy as noted or needs to be further discussed. I think you see as well it depends a bit on, you know, the level of detail in the comment the kind of responses we provided so...

Kristine Dorrain: Right. So for each question, you know, 15, 16, so, you know, those - we - you want something filled in for each one, right?

Alan Greenberg: That's what we're looking for.

Kristine Dorrain: Okay, and what's the deadline we're looking at?

Alan Greenberg: If - well if we don't have a meeting next week and we cancel the following one, we're talking prior to the meeting three weeks from now.

Kristine Dorrain: Okay, I can volunteer - section. I don't really care which one.

Alan Greenberg: All right. We'll take you up on that and how about Section 1?

Kristine Dorrain: Sure. That's fine.

Alan Greenberg: Or Charter Question 1 rather. Anyone else willing to do 2 and 3, 2 or 3? Two is a smaller one. Three is slightly longer. Kristine has taken the longest one already.

No volunteers here. Let's do it out in the list Marika if we can look for volunteers to do that.

Marika Konings: Okay.

Laurie Anderson: This is Laurie. I'll do 2.

Alan Greenberg: Oh, thank you. Have we embarrassed anyone into taking 3?

Jonathan Tenenbaum: This is Jonathan. I'll take 3.

Alan Greenberg: Thank you sir. Thank you all. Okay. Marika should we just - should we - do you want to do a - just send out a quick note asking how many people will not be able to attend the Thanksgiving meeting?

Marika Konings: Yes this is Marika. I'll do - and I think everybody noted in the chat, you know, from our perspective I think it would be really good if we could still have a meeting next week, even if it would just be to review some of the responses that were received.

And I think that Berry or myself will be happy to lead the call if no one else is willing and, you know, unless of course we have really a few members on the call only.

Alan Greenberg: Yes I might even be able to participate. I'm just not in the position to take a lead on it, because I'm going to be doing other things in parallel. So I can probably listen in if you or Berry can lead it.

Marika Konings: Yes and I think, you know, if it's just a question of going through the comments and I think, you know, either of us would be perfectly happy to do so.

Alan Greenberg: Okay, then everyone's agreed. Then we will have a meeting next week. We will not cancel. And that pushes the - that - well Marika that presumes that the people who are going to be drafting answers will be doing it for next week, which was not what we just said when we asked for volunteers.

Marika Konings: Well hopefully some of you will be able to do so. At least we have something to look at.

Alan Greenberg: Okay. All right. Marika I'll leave it to you to decide to cancel on short notice if indeed nothing has been turned in in terms of draft answers. And other than that I will possibly see you on a meeting next week or in two weeks. That sound okay to everyone?

Man: Yes perfect.

Alan Greenberg: Okay thank you all for being here today. Bye-bye.

Kristine Dorrain: Bye-bye.

Alan Greenberg: Thank you Marika.

Man: Bye-bye.

Marika Konings: Thanks.

END