

**ICANN  
Transcription  
Locking of a Domain Name Subject to UDRP Proceedings  
Thursday 10 January 2013 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 10 January 2013 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-20130110-en.mp3>

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

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<http://gnso.icann.org/calendar/>

**Attendees:**

Laurie Anderson - RrSG  
Hago Dafalla - NCSG  
Kristine Dorrain - NAF  
Lisa Garono - IPC  
Alan Greenberg - ALAC (Vice-Chair)  
Volker Greimann - RrSG  
Celia Lerman - CBUC  
Michele Neylon - RrSG (Chair)  
David Roache-Turner - WIPO  
Luc Seufer - RrSG  
Matt Schneller - IPC  
Faisal Shah - Individual  
Gabriela Szlak - CBUC

**Apologies :**

David Maher – RySG

**ICANN staff:**

Marika Konings  
Berry Cobb  
Lars Hoffmann

Julia Charvolen

Coordinator: 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 10 January, 2013. On the call today we have Laurie Anderson, Hago Dafalla, Kristine Dorrain, Lisa Garono, Celia Lerman, Michele Neylon, David Roach-Turner, Luc Seufer, Matt Schneller, Faisal Shah, Gabriella Szlak. We have Alan Greenberg who will be joining us later.

We have apologies from David Maher. And from staff we have Marika Konings, Berry Cobb, Lars Hoffmann and myself, Julia Charvolen. I would like to remind all participants to state their name before speaking for transcription purposes. Thank you very much and over to you.

Michele Neylon: All right thank you. Good afternoon everybody and - oh yes, I'm happy, 2013 year of the - I think it's the - is it the rat or snake or something, I don't know.

Alan Greenberg: Snake.

Michele Neylon: Anyway as per normal does anybody have any changes to their statements of interest and all that kind of stuff? Going once, going twice. No, okay, perfect.

Okay then the agenda today we're looking at the updated strawman proposal and rather than work from the most recent circulated version

we're looking at the version with notes from Luc - oh sorry, go ahead, Marika.

Marika Konings: Yes, this is Marika. Just to note that what you see up on the screen is indeed the version that Luc circulated. But I'm having difficulties in converting that into PDF so I had to actually do a copy and paste. So what I've done is the language that you see in red was basically what was changed...

((Crosstalk))

Michele Neylon: Oh, I'll give you - I'll give you a PDF.

Marika Konings: ...all the deletions. So it shows all the comments and all the changes but if you want to see exactly what has changed or what was removed you should look at the version that was circulated by email by Luc.

Michele Neylon: All right did you have the issue that when you tried to print it to a PDF Word exploded?

Marika Konings: Exactly, you're having the same issue I presume?

Michele Neylon: Yes.

Marika Konings: Yes, there must be something with the documents. I'll try to get that fixed for the next version. But I think...

((Crosstalk))

Marika Konings: ...I think should show sufficiently well was changed and Luc's comments as well; I think there's some of mine as well.

Michele Neylon: Okay perfect. It's just a French thing, he's trying to kill us all or something, I don't know. Okay Luc, you're there to answer any - or clarify any questions on your suggestions I assume?

Luc Seufer: Yes of course.

Michele Neylon: Thank you. Merci, Luc. Okay so actually - oh sorry, of course we're crashed because I tried to print that document. Oh and it came back again. Okay then Luc's first note was in relation to - remove the provision from the UDRP rules that specify that upon submission of the complaint the UDRP provider, the complainant, should also state that a copy of the complaint has been (centrally) transmitted to the respondent.

Now Luc's query on this is that he thinks this is outside the working group's charter. And that would constitute some form of UDRP reform, which of course as we know, as been pushed back to after delegation. Does anybody else have any thoughts on this?

Oh well Marika does because she's got her hand up. Marika.

Marika Konings: Yes, this is Marika. I think this is an issue we've already spoken about on some of the previous calls because Luc is correct that the overall reform of the UDRP is foreseen for a later point in time. But at the same time this group has been given a mandate to look at this specific issue.

And I think as we discussed at that time as well if there would be a consensus recommendation from this working group that that narrow targeted change is required to address this specific issue. I don't think it would be considered outside of scope especially if there will be, as well, support from the GNSO Council for such a recommendation.

So - and I think as we've discussed if that would be indeed a very targeted thing combined with the explanations that we're looking at now I don't think it's something that would be considered out of scope.

Michele Neylon: Okay thanks, Marika. Luc, how do you feel about that?

Luc Seufer: (Unintelligible) UDRP were not to be touched and full stops but if, like Marika said, we can do targeted change then let's do them.

Michele Neylon: Okay thank you. Anybody else have any comments at this juncture? Silence means that you're giving me - oh, David has a comment. Go ahead, David or and Kristine. Oh my gosh they've all woken up. Damn, I put that out there and look what happened. David then Kristine.

David Roach-Turner: Thanks, Michele. It's David speaking. Just a possible alternative course of action could be to consider that if we decide not to make a targeted amendment to the UDRP rules proper to achieve this affect that, you know, perhaps there would be scope for some sort of advisory to be, you know, issued by ICANN somehow or that some sort of guidance could be provided that this sort of approach would be recommended or something to this affect.

Michele Neylon: Okay thank you. Kristine.

Kristine Dorrain: Yes, this is Kristine from NAF. And I just wanted to say - and this is just to echo something that I believe I heard either Alan or you, Michele, in the past and that is was there not somebody who's expressed concern that we throw all of our suggestions on the table and possibly, you know, tell the board hey we're aware that this might be a slight problem or this might - you know, I thought I'd heard somewhere that the idea was to throw kind of, you know, ask for the moon and say well but maybe this piece isn't something we can do right now.

I mean, I'm wondering if we need to put in some fudge language or something that says Yes we know that this might not be approved right now or something like that. Am I - did I mishear something about that?

Michele Neylon: Kristine, this is Michele. I think we did discuss that in the past. And, you know, taking my chair hat off and putting my other hat on - or not wearing at hat all since I really don't like them, my scalp itches, I would tend to think that, you know, if you don't ask for something you can't get it.

So, you know, if it's worded in a way that doesn't upset too many people and they realize that it is narrow enough in scope then I don't see any reason why we can't. Marika then David.

Marika Konings: Yes, this is Marika. Because one thing we did discuss is I think when we started looking at the strawman to say okay let's go through this and go through all the recommendations and once we're clear on the recommendations then maybe we take a more broader look and try to assess okay how are we going to implement these or what would be the proposal indeed would changes need to be made to some of the rules?

Indeed could we do it in the form of an advisory? So I think there's still - I think most of the elements we've looked at are probably more in the style of advisory so there wouldn't need to be any tweaking of the UDRP itself or the rules.

But I think in this specific case even though, you know, I appreciate David's suggestion I think if in the rules it says you have to send a notification or you have to send a copy of the complaint we can't then have an advisory saying you don't have to do it. There would need to be - because then we basically have conflicting rules basically.

So I think one of the things to look at as well is that we're actually - we're not changing the policy. What we're doing is making a tweak to the rules. And again I think as Michele says if there is broad support amongst the working group these recommendations are going to go out for public comment so again there's another opportunity for people to express their views on that or express concerns.

I think then at that stage the working group can have a look again and say okay, you know, we do see serious objections and at that stage maybe make an assessment of whether to proceed down that path or not. But I agree with what Michele said, if you don't put it on the table you'll never get it in any case so that might be a suggestion to look at in that way.

Michele Neylon: Okay and for the record Matt agrees as - or if he doesn't agree his computer agrees and so does Laurie. David and then Matt. Sorry, I'm just doing some of this for the transcript since nobody can - people

obviously can't see what's on the screen if they're reading the transcript. And Celia is giving a plus one. David then Matt.

David Roach-Turner: Thanks, Michele, this is David. Just a small suggestion I suppose which might keep the options a little bit more open could be to consider substituting for the word removed adjusting.

Michele Neylon: Okay. Matt and just for the record Alan Greenberg will be joining the call shortly. Matt, go ahead.

((Crosstalk))

Matt Schneller: ...this is something very, very similar that we could maybe combine a little bit and the suggestion on Number 1 and Number 5 that we're not necessarily removing the service requirement, we're just shifting it from the complainant at the time of the initial submission of the complaint to the provider, which is already our draft recommendation Number 5. That might result in less physical changes to the supplemental rules if we phrase it like that.

Michele Neylon: Okay. Anybody have any other on this or should we move on?

Alan Greenberg: No comment but Alan is here.

Michele Neylon: Welcome, Alan. We welcome you. All hail Alan. Okay I'm - oh Celia's got her hand up. Hello, Celia. Good afternoon.

Celia Lerman: Hi. Good morning here. No I don't know if I - I wanted to clarify my plus one; I think it would be a good idea when we put this document for public comments maybe to put a - you know, like a footnote in the

beginning just clarifying this so that we understand that it is within our mandate so that we don't get a lot of public comments just asking well what are you doing and everything. That's it.

Michele Neylon: Okay. Just for the record, Celia, I will personally be delighted if we get a lot of comments and actually have a problem with the volume of comments.

Celia Lerman: Okay.

Michele Neylon: The unfortunate reality is others will probably confirm is that unless you've got a PDP about something to do with porn the number of comments you're likely to get is quite low.

Alan Greenberg: Well there's an action item we can take out of that then, Michele.

Michele Neylon: Oh definitely, definitely. I mean, Wendy Seltzer gave this wonderful lightening talk on takedown notices and managed to use porn like 25 times within four minutes which kept the audience awake anyway. David, go ahead.

David Roach-Turner: Thanks, Michele. I have a further thought on that draft recommendation. One, it may be simpler if we would consider modifying this to an option that the filing complainant would not be obliged to copy the respondent on the filing of the complaint at that first point.

And the reason I say that we could consider making it an option for the complainant rather than removing or modifying the relevant provisions is that there is a general provision under the UDRP rules which

requires that one party copy the other party on all case related communications.

And this is an important provision of course because in general terms it ensures that both parties have relevant notice of what the others are doing. And I think it might be useful to phrase this as a specific exception to that general principle rather than looking at making an adjustment only to the relevant provision in the UDRP rules that says that the complainant has to state that a copy of the complaint has been forwarded to the respondent on filing. So it would be an addition to clarify it rather than a removal.

Michele Neylon: Okay, thank you for that. I think for some of these things - and I love that we're getting the feedback. I think for some of these things it'll probably make more sense when we're actually working on an actual document itself. And maybe we can also - we can also provide rationales for various things which may or may not make things simpler or incredibly more complicated. Alan.

Alan Greenberg: Yes, thank you.

Michele Neylon: Go for it.

Alan Greenberg: I think you're right; I think we need to note that how this is implemented there may be several options and we need to remember all of the possibilities. I'm reminded, however, that our new CEO has said that there will be ICANN staff involvement - not just policy staff - but the actual operational staff involved when we get close to recommendations.

And I think this is one of those that that kind of discussion in the working group not just later on in the implementation group is going to be warranted and needed. So I think we need to annotate our own records to remind us that we have these options of how to specify this and revisit it at that point.

Michele Neylon: Yes and just also as well, I mean, we should also try and get input from compliance and legal since they're the ones who have to implement, I suppose. Marika has her hand up. And if she says she is going to have - I know what she's going to say that she gives them regular updates or maybe she'll say something different. Sorry, Marika, I'm just in a - I'm in a frivolous mood.

Marika Konings: Yes...

Alan Greenberg: And I may have a comment on what Marika says but, Marika, go ahead.

Marika Konings: Yes, this is Marika. So actually to know that they have already been providing input on the strawman and some of the comments that we have already discussed and also some that are still on the list come indeed from colleagues in those departments.

I think I really like the idea that Alan had as an outlining maybe in an initial report some of the options that may be considered in implementing this recommendation, you know, we can basically explain what our intent is and outline some of the different avenues we've explored.

And see as well if there's, you know, comment from the broader community or if there's a preferred way or whether it's indeed one of those issues where people say well as long as it followed the intent we don't actually really care how it's being done as long as it just ensures this really narrow change to the rules. And I'm sure - I'll be sure as well to get input from my colleagues.

But I think in general those kind of things if there's a really specific preference from the working group or the community, you know, it's helpful to include that in the report so it can be considered as part of the implementation discussions.

Michele Neylon: Okay thanks, Marika. I mean, just one - just two things on that. I mean, it would be helpful at least for me - I don't know about other people - but it would be helpful if your colleagues in Compliance and Legal were actually just able to even forward their notes to us so we can see who it was coming from.

And if it was stuff we weren't clear about just going back to them rather than, you know, this kind of - this suggested change came from ICANN staff but you've no idea where it came from, why it came from it or, you know, what the thinking was and you've not recourse it's just suddenly oh ICANN staff said X if you follow me.

And I mean this in the best possible way ever, Marika. And I wouldn't want to start the new year kind of beating up on you or anything like that it's just - it's just I know from past experience that we have had issues where when you go between - kind of move stuff further along that stuff can get - the recommendations that we as a working group thought we had come up with and then when it went to implementation

this kind of rather large gap appeared and it was quite hard for us to reconcile the two.

And then you end up in this rather weird position where Alan and I both end up kind of going backwards and forwards trying to work at how best to kind of diplomatically word things. Alan...

Alan Greenberg: I can't imagine what you're talking about, Michele.

Michele Neylon: No of course you can't Alan. Marika, as I say this is just a general kind of - how do I put this? Just something that we would appreciate if you could let your colleagues know about.

Alan Greenberg: Can I further comment, Michele?

Michele Neylon: Oh please do, please do.

Alan Greenberg: Thank you. Marika is way high up on the list of people I trust to faithfully relay messages back and forth. But the - my interpretation of what Fadi said is that people from Registrar Relations or Registry Relations or Compliance or Legal, as applicable to the specific situation, would actually work with the working group at some point not just relay messages back and forth.

And I think the actual interaction and being part of the discussion we don't want to, you know, draw all their resources sitting in on boring teleconferences but at some point I think we need to make sure that they understand the intent. And I think real interaction is going to be necessary later in the process when we get closer to actually drafting the recommendations.

So it's not a matter of trusting Marika or not I think they really need to participate and I'm hoping that's what the intent was. But in terms of Marika, by the way, thank you, Marika, you interpreted my comment with far more thoughtfulness than I put into it when I made it so thank you. And with that I'll put my hand down.

Michele Neylon: Marika, is that an old hand or a new hand?

Marika Konings: No that's a new hand.

Michele Neylon: It's a new on is it?

Marika Konings: Yes.

Alan Greenberg: I would call on her, Michele.

Michele Neylon: You'd what? Sorry?

Alan Greenberg: I would call on her and let the speak then.

Michele Neylon: All right go on then. Marika, speak or forever hold your peace or whatever the word is.

Marika Konings: So this is Marika. So I think I probably need to discuss a bit further internally indeed - exactly indeed get feedback from Fadi on how he envisions that because personally we know - I know we had those discussions and I don't think it was the vision of having indeed people sit on the calls.

Because most of them have, you know, full time jobs on the side that they're also doing. And, you know, we're trying as much as possible to involve them but also serve as a bit of a filter so it's - it's not that they then suddenly get dragged into working group discussions and email debates but it's definitely our intention on keeping a close alignment between what the working group is doing and, you know, how it would fit eventually into possible implementation.

And I think that's what we've already been doing here with the strawman where I've been sending that back and forth and comments and feedback coming in. You'll also have seen that, for example, in the session that we had in Toronto several people from Legal were in the meeting and participating as well from Compliance.

So it's definitely something we envision going forward but I'm not really sure if there's going to be any kind of formal that people assign to working groups although there might be a kind of - I don't know a kind of coordinator from that side, again, that serves that kind of purpose of gathering information and serving as a contact point to make sure that someone is indeed from, you know, maybe the other side as such that will be involved in implementation involved in the discussions basically from the start so they're able in a position as well together with, you know, the policy support providing that kind of information to colleagues that will be involved in implementation of the policies.

And again to note there as well that of course even though we try as much as possible to get input and foresee all kinds of possible scenarios it doesn't mean that when we get an implementation state that there never will be situations that we'll go like oh actually we forgot

to consider that or oh we didn't really think that this would happen if we were going down that route.

And I think again there we currently have the mechanism of the implementation review teams as well again as a kind of mechanism where staff can liaise with community members that were involved in developing the policy to address those kind of questions or clarification.

So I think we're really trying to improve that and hopefully with your help we'll get to a stage where, you know, we have less occurrences where we come to a realization that there may be recommendations that are actually not implementable or questions that should have been addressed at an earlier stage.

Michele Neylon: Thank you, Marika. Alan.

Alan Greenberg: Yes. Thank you, Marika. I don't think we're talking at odds. I certainly wasn't suggesting that we have, you know, people from all three groups participating in the workgroup from the beginning. But as we get to the end it may well be useful.

I also think we need to refine the implementation review group. In the case Michele was talking about those people worked for nine months without any input and then tossed something over the wall without really, you know, sufficient explanation. And, you know, we're going to have to make the process better on all the - on all the levels. But, you know, we'll play it by ear as we go ahead. Thank you.

Michele Neylon: Thanks, Alan. And, you know, again, Marika just, you know, it's not - if there's any kind of comments coming from myself or Alan I think they're more in general to do with PDPs and policy development in general and not this working group or any other working group specifically and not aimed at you or any other member of ICANN staff in particular though we could start naming former members of ICANN staff who aren't around to defend themselves.

Right, let's move on before we get too far bogged down in trying to be diplomatic with Marika. Okay then Luc's next comment - I'm trying to read this - actually I'm going to actually move to working from the document because I can't read that green thing.

Alan Greenberg: Can someone tell me where we are?

Michele Neylon: We're looking at the draft strawman proposal, Draft Recommendation 2. Following receipt of the complaint the UDRP provider will have to perform (unintelligible) check, yada, yada, yada. And Luc has highlighted this bit, "The registrar is not allowed to notify the registrant of the pending proceeding and until such moment that any changes of registrar and registrar - I'm sorry - registrar and registrant have been prevented. See Draft Recommendation 3."

Luc's comment, "From experience a great percentage of the disputes we have to deal with in our capacity as a registrar are being solved - are solved by transfer when we, the registrar, notify the registrant as opposed to a cease and desist letter sent to the email address in Whois, which could get caught by spam filters, etcetera, etcetera, etcetera. The registrar's email address is known by the registrant."

"Registrants often claim that they're unaware of the infringement on a third party's rights and that they would be ready to transfer or delete the disputed litigious domain." He is therefore very doubtful about the positive impact of this recommendation. Sorry, Luc, I'm just paraphrasing your comment a small bit.

Kristine, go ahead.

Kristine Dorrain: Thanks, this is Kristine from NAF. I would say that this suggestion under Draft Recommendation Number 2 would not prevent what Luc is talking about. Absolutely the registrar can notify its client and pass along information or whatever it needs to do. I mean, that's its job.

I think the recommendation was really clear that you'd only hold off on doing that until the registrars implemented the lock. So once the complaint has been, you know, the verification request is sent to the registrar the registrar locks the domain name and that information should be transmitted to the registrant if they want.

I mean, I don't have any objection to the registrar doing that optionally or not if that's their business practice to not do it. The problem is to prevent cyber flight. In the UDRP there's no - and we send this pack to registrars all the time when we request verification we sometimes get an email back from the registrar without providing the information we asked for that simply says hey my client wants to transfer this name to the complainant so just hold on while we do that.

Well we can't do that. The UDRP doesn't say well the provider is just going to sit around and wait for the parties to try to negotiate something. So you need to lock - the registrar needs to lock the

domain name. If the parties decide they want to transfer the domain name amongst themselves they can request a stay, they can stop the process, they can do that or not.

They can, you know, in many cases the registrant does come back and say oh wait, wait, wait I do want to transfer it and the complainant says no I don't want to negotiate with you; I want to proceed with the UDRP. It doesn't really matter what all happens there.

The point of this particular recommendation is to keep the UDRP process moving and not hold it up just in case somebody (unintelligible) to try to work out a deal. And so I think that both Luc's comment of trying to get the registrar, you know, letting the registrar talk to its client and maybe, you know, helping, you know, smooth out the process that can still happen.

Just need to wait until - just get the lock on first so that the process can continue. And then if the parties want to negotiate during the UDRP they can.

Michele Neylon: Okay thank you. Luc, rebuttal or something.

Luc Seufer: Yes, just let me find recommendation that is linked to that - recommendation - I can't remember the number. But is a recommendation basically saying that it will be the registrar task and mission to ensure that the transfer or the deletion is operate whereas there is no UDRP decision. So this is relating to that. I'm not sure that registrar are willing to take this responsibility.

Kristine Dorrain: I'm sorry, I don't understand your comment, Luc. It seems like you just said something about not allowing transfer or deletion but that's actually the requirement under the UDRP is to - for the registrar the notice of the UDRP is to prevent transfer. As far as deletion goes there's a whole separate policy that deals with that. So maybe you could clarify your point?

((Crosstalk))

Michele Neylon: Okay, Luc.

Luc Seufer: ...me a second. Yes, I'm looking for the recommendation.

Michele Neylon: Okay, Luc, look originally the question I was asking you was in relation to your second comment which Kristine didn't agree with you about. And I was asking if you had anything to add or anything to come back to her with.

Luc Seufer: No not at the moment.

Michele Neylon: Okay thank you.

Alan Greenberg: I think Luc is talking about his Comment 13 which I don't think we've gotten to yet.

Michele Neylon: No we haven't; that's what I was trying to sort out. Okay does anybody else have any thoughts on Luc's second comment? Okay I will put in something - I'm going to take my chair hat off and put my registrar hat on.

I also - I would - I understand that Luc's talking about. I mean, we have seen similar type of behavior...

((Crosstalk))

Michele Neylon: Sorry? Hello? Okay moving on, next one. Draft Recommendation 3, "The registrar will prevent any change to the registrar and registrant within one business day." Oh sorry, I have to read from this. Sorry, I have to go back to reading from the Word document.

"The registrar will prevent any changes to the registrar and registrant within one business day (unintelligible) following receipt of verification." Then Luc's comment on this entire section here - if - his question is a simple one. "As pointed out by Marika if no one notifies the registrant how can the lift happen?"

This is the lifting of the privacy proxy service. Marika, go ahead.

Marika Konings: Yes, this is Marika. Because it links a bit together with my comment - the previous one here. And we touched upon it a little bit on the last meeting. But I don't think - or at least I didn't get any clear guidance on what we need to do with that because basically the question is that does the lifting of privacy and proxy services require communications with the registrant or is that an automatic action that the registrar would take basically it's automatically lifted without any need for communication.

But if there is a need to communicate with the registrant to say hey your, you know, privacy proxy is now going to be lifted and your real identity is going to be revealed that obviously requires a

communication and a potential, as well, notification or alert to the registrant that there is a UDRP proceeding.

So just trying to figure out whether there needs to be any kind of exception in this case or whether, you know, the agreements that are currently in place foresee a kind of automatic like if we get a UDRP proceeding we automatically lift without a need to tell you, that's just the way it is.

Or - so I'm trying to get some clarification on whether there needs to be any kind of exception or specific provision on how to deal with communications in relation to privacy and proxy services.

Michele Neylon: Okay thank you, Marika. Alan and then Volker and could somebody tell me which line is the one with the weird background noises because it's not mine.

((Crosstalk))

Michele Neylon: Alan, go ahead.

Alan Greenberg: I think we're confusing issues of, you know, when the privacy service is the registrar itself. Typically the privacy service is, by definition, the registrant as far as the registrar is concerned until it's lifted. And our rule - our new implication is that we cannot notify the registrant until it's locked.

So if the registrant is the privacy service they're still the registrant and they can't be notified at that point. So the sequence has to be the lock is put on and the registrant is notified. The registrant may well be a

privacy service who may choose to, based on their agreement with the real beneficial registrant, to lift privacy at that point or not. That's not our problem.

But from the point of view of the formal complaint the privacy service is the respondent until it's changed if I understand correctly.

Michele Neylon: So what's the formal respondent, Alan?

Alan Greenberg: If I file a UDRP I'm filing it against whoever is in Whois as the owner of the domain name which...

Michele Neylon: Yes.

Alan Greenberg: ...shows the privacy service - well it depends on whether it's privacy or proxy. You know, it may show the real person's name or it may show the front. But in any case that's the only registrant we know about until after the lock is done under our new - under what we're recommending in 2.

Michele Neylon: Okay. I'm just going to read, for the record, a couple things from Laurie on the chat - Laurie from Go Daddy. "Lifting a privacy and implementation of the lock occurs almost simultaneously at Go Daddy domains by proxy. The domains by proxy customer is notified when the domain is already locked."

Matt, question about contracts. Kristine, the lock is distinct from the Whois. Luc points out Go Daddy is acting as both the registrar and the proxy provider. Luc's point also points out that as they're not providing the service no email is sent to the proxy provider they'll never know

about the proceedings. So there's a bit more on that. Volker and then Kristine.

Volker Greimann: Sorry, on mute there. If I remember correctly the UDRP provides for an ability to update the ownership record of the domain name during a dispute if the new owner accepts to be bound by that dispute as well.

Now this is usually the transfer we do allow when we have a lock under consultation with the provider. And I think in this case it might be helpful to make it - to make the lock placed by the registrar a qualified lock as in no updates may be progressed by anybody else but the registrar.

And the registrar may, in certain circumstances, such as the lifting of Whois privacy services and the notification of the provider in - within a certain time remove the privacy service (unintelligible) the real registrant if it's informed about the data if the real registrant abides by the UDRP rules I think is Section 8a of the UDRP policy (unintelligible).

So basically what I'm saying make it qualified lock nobody else but the registrar in the communication with the provider can change it but allow a change in certain circumstances such as the reviewing of the underlying registrant.

Michele Neylon: Okay, thank you, Volker. Kristine and then Matt.

Kristine Dorrain: Yes, this is Kristine from NAF. I just - I sort of wanted to echo some of what Volker just said which is the need to put the lock first and then, you know, if the Whois or privacy information has to update then that happens. But the point I think that the providers are making - and I

don't mean to speak for David out of turn - is that if there's going to be a lifting of the privacy service it does need to happen, you know, in that same sort of period.

So the provider sends an email saying please lock the domain name; provide us with the underlying registrant, in that order. Lock a domain name, let us know who's registered the domain name. If you have to go like solicit that information from somebody because you don't happen to have it on hand, you know, you've got to do that quickly.

Also within that same business day you've got to, you know, get that information back to us quickly. You know, Go Daddy or domains (in a proxy are usually able to do that simultaneously because they're all, you know, they're linked. Some places aren't but most of the time we do get that information back, you know, relatively quickly and make a decision.

The big problem just is, you know, the dragging of the feet between when we request the notice, you know, and then, you know, the registrar has to wait, you know, five days or 10 days for their proxy provider to get back to them so the UDRP process isn't set up to wait for that. And I think that's really just the concern not that you can't lift the proxy or privacy service but that that needs to, you know, kind of happen in a relatively, you know, expeditious manner.

Michele Neylon: Okay thank you. Matt and then Marika.

Matt Schneller: Just wanted to revisit a question that David had raised a little while ago. At some point earlier he made the comment that 8a and 8b, the provisions of the UDRP that talk about transfers during a dispute

specifically refer to - actually never mind. We've gone over this before.  
There's no point. Sorry. Hand withdrawn.

Michele Neylon: Okay well you can always come back via the mailing list as well. And also, people, if you wake up in the middle of the night and you have a burning desire to share your latest thoughts and ruminations on the wonderful world of UDRP lock don't be afraid, there's a mailing list available to you 24/7/365 just waiting for your input. Translation: Use the mailing list please.

Marika, go ahead.

Marika Konings: Yes, this is Marika. One thing we've discussed before and one of the challenges is if there would be any kind of exceptions for changes done by privacy or proxy services. The challenge again is how do we identify which are valid or, you know, authorized privacy and proxy services?

Because as we currently don't have an accreditation program there's no way of - for registrars at least to identify whether they're dealing with, you know, a legitimate privacy proxy service or whether it's just someone saying I'm a privacy proxy service but actually just changing, you know, or transferring out - or changing the registrant details.

So I think one of the reasons why initial strawman went on the line to saying well the domain is locked, no changes are made if indeed there is a lifting that communication should go directly to the UDRP panel was basically for those reasons.

And basically maybe there should be an accompanying recommendation that says as part of the discussions on privacy proxy services accreditation this issue should also be considered. So that's one of the - because I know - I think Volker was talking about making a - possibly a kind of exception to where even after the lock changes could be made based on privacy proxy reveal.

But then we're into the situation how do we indeed verify that those are legitimate services that are requesting those changes?

Michele Neylon: Okay thank you, Marika. And who's up next? Matt, that's an old hand I assume.

Matt Schneller: It's a new one, actually.

Michele Neylon: Oh, sorry go ahead.

((Crosstalk))

Matt Schneller: I think one of the pluses maybe of the way it's currently structured with simply a number of days or however we end up describing the business day or whatever is that we don't have to make that decision about what a legitimate privacy service is or isn't or whatever.

The lock simply has to be applied to whatever the current information is at that point. And it keeps us from having to get into the details of privacy proxy whatever other sort of changes. You just don't have to deal with it if we take this approach.

Michele Neylon: Okay. Volker and happy New Year, Volker, I'm sorry for not saying so to you earlier.

Volker Greimann: Thank you - thanks, Michele, same to you. I'm just thinking about something that came - that we came across during the RAA negotiations and that's still very much on topic for those negotiations and is going to be processed probably after we reach conclusion on that is the program for accreditation of privacy services.

A lot of the issues and questions that I hear here would likely go away once privacy proxy services are accredited. And at that point the question will no longer be - have to be raised if a privacy proxy service is a legitimate service or it's just trying to find a way around.

So we might just want to prepare whatever we are - what we are drafting to allow by referencing, for example, to accredited or legitimate privacy services and allowing, in those cases, for a lock to be removed just to make this policy that we're creating future-proof.

Michele Neylon: Okay thank you. Marika and then Alan.

Marika Konings: Yes, this is Marika. Basically commenting on what Matt said because I think that's basically where my question and I think also Luc's question relate to because if you indeed leave it for that, you know, those communications or that lifting to be done before the domain name is locked the question is still does that require communication with the registrant?

If it doesn't I think it's fine and nothing we need to worry about here. But if it does require communication with the registrant before the lock

is applied we need to build in some kind of exception in relation to the recommendation on the Draft Recommendation 2 because there we're saying the registrar is not allowed to communicate with the registrant or maybe we interpret it - interpreting it the registrar will communicate with the privacy proxy service and what they do is up to them.

So basically, I mean, I guess that's a way of reading it as well...

((Crosstalk))

Michele Neylon: Hold on, hold on, hold on, slow down a second. Sorry, Marika, just - I'm trying to process all that and my brain is failing and English is my first language. You just...

Marika Konings: Want me to try again?

Michele Neylon: Yes please because I was - I got lost somewhere after like the second or the third exchange and was getting completely confused. Go ahead.

Marika Konings: Okay so basically in Draft Recommendation 2 we're saying the registrar cannot communicate with the registrant until the lock is (upside). In Draft Recommendation 3 we're saying if there are changes to privacy proxy services, if there's any lifting that needs to be done that needs to happen before the lock is applied.

So the question is does the lifting of privacy proxy services require communication between the registrar and the registrant, which would mean that it violates our recommendation in Number 2 or it doesn't violate that communication. Because, as I said, maybe it's only a communication then from the registrar to the privacy and proxy service

and it's up to the privacy proxy service whether they need to contact the registrant or not.

And that's - at this stage without our remit. And, you know, again it might be something that's considered as part of the accreditation program. So I think I'm just trying to get clarification on that whether we're recommending something that's actually conflicting and we need to provide for some kind of exception or whether, as it's currently written, it's fine and in that case there wouldn't be any violation of the rules we're prescribing under Draft Recommendation 2. Is that clear?

Kristine Dorrain: This is Kristine. Can I ask a clarifying question before we go on?

Michele Neylon: Please do, please do.

Kristine Dorrain: Okay I really thought that we've discussed at great lengths over the past few weeks that the - and I know we still have to define lock so that may be part of the problem. But I thought that updating the Whois data had - was a step apart from the lock.

So once - so the registrar can apply a lock and if they then want to call up the proxy service or whoever is listed as the respondent and say are you really a proxy service, whatever it is they need to do there, that they can do that with having a lock so that once that registrar calls the registrant and says hey I want to know if you want to release the privacy service or, you know, reveal that then they can't transfer the domain away but they can still update the Whois record.

And so I'm very confused if we - did I misunderstand for the past several weeks?

Marika Konings: This is Marika. If I can respond because I understand - because I think the way we've written it - and I'm trying to find that exact language - I think what we said that the only changes that could be made are corrections to contact data. And if we're indeed interpreting that as broad as being it could mean changing the name of the registrant I think we need to clarify that.

I had understood it only as in updating oh, you know, my phone number is not right or, oh, it's my old address that is there and needs to be corrected. I didn't interpret that discussion as meaning that could also be the lifting of privacy and proxy so having completely new details. So if that is the intention of the working group I think we need to clarify that in the relevant section.

Alan Greenberg: It's Alan; can I get in because I think I can perhaps help.

Michele Neylon: Go ahead, Alan.

Alan Greenberg: Yes, Volker alluded to one of the problems that we're in a transition mode at this point that we think we're going to have accredited privacy and proxy services. We don't know for sure and we don't know when. And I think how we're going to word these recommendations are going to be different depending on whether it's before or after accreditation exists as a formal process.

And I think we almost need a bifurcated - a double path of having different rules depending on which, you know, which set of rules we're working under. Because if we're working under the rules where the registrar knows and can tell by a flag or something that the registrant of

record is a proxy service their process will be different or may be able to be different than if they don't know that right now.

And right now they, you know, obviously if it's, you know, domains by proxy and Go Daddy they know. And in many of the other cases if it's a captive or a, you know, a subcontracted proxy service then you know. But in other cases you cannot tell that this is a lawyer who is, you know, pretending to be the registrant.

And I think for clarity we may want to have two sets of recommendations. Now if we knew for sure what the timing of proxy privacy certification was in relation to when this PDP is going to work its way through the system we only need one of those paths. We may only need one of those paths.

But I think we almost want to have two different sets of rules because the rules will be different if a registrar knows for sure it is a proxy service. And if the registrar knows for sure this is not a proxy service then one would not change the registrant of record. By not being accredited you are taking responsibilities for any domain you apply for.

Michele Neylon: Okay.

Alan Greenberg: And so I think we need to think of the two modes and not try to have a single set of words which are going to apply to both scenarios because right now the registrar cannot know for sure that it's a proxy service and...

((Crosstalk))

Michele Neylon: Unless they run the proxy service.

Alan Greenberg: ...cannot notify the registrant to reveal the proxy service...

((Crosstalk))

Alan Greenberg: So...

Michele Neylon: Okay this is Michele speaking as your chair, aka, cat herder, aka whatever, we've got about four minutes left. I have four people in the queue. Alan has spoken so that means three so I'll do Marika, Volker and Matt and bearing in mind how little time we have could you please keep it to the point as possible please.

Marika Konings: Yes, this is Marika and I can even speak faster than I did before but I won't.

Michele Neylon: No please don't.

Marika Konings: Just a note that on the point of changes after the lock is applied people may want to look as well to Draft Recommendation 8 because there we specifically talk about the fact that if there are any changes as a result of lifting of privacy proxy services following the locking that that would need to be discussed - addressed by the UDRP panel directly.

And we say also there that that should be further reviewed as part of the privacy and proxy accreditation program. So again if there's misunderstanding, you know, it looks like we need to make some changes although I saw on the chat as well that some people have interpreted it in the same way as I did.

On the privacy and proxy accreditation program I do understand but, you know, maybe Volker can clarify who is next in the queue, I think that does need to go or will go through a PDP eventually. I think they're working on a kind of draft proposal but I think in order for it to become binding at the end of the day it will require a PDP so it is likely that it would come after his group concludes its work.

So I don't know if it's indeed then something that this working group will - can just refer to that PDP and say hey when you're doing that look at what we did and make sure that you either address or any other issues that need to be resolved as part of your work do that as well. So - but again maybe Volker has more information on that.

Michele Neylon: Volker, you're up. Two minutes, everyone.

Volker Greimann: Yes, Marika's correct. We're providing a strawman that will be a basis for a later PDP. Just to quote from our current procedures or describing our current procedures when we receive a UDRP we look at the domain name, does it have our own Whois privacy service? If it does we turn that off and then we lock.

If it doesn't have our own privacy service but we know that there is a privacy service under there we lock then inform WIPO or NAF that there is a privacy service but the lock remains but we will only inform them if we get information from the registrant. So the lock stays on there.

Actually it would be helpful if we would have a way to update which we do not have today in cases where the privacy service is not ours. But it

is well known privacy services, for example, of one of our resellers. Because the difference between our own privacy services in operations and privacy service by a third party does not really make sense.

We have - we react to the email that says there's a complaint. We lock as soon as we've taken the necessary steps. And then we inform either parties and the provider about the information that we have on record.

Because we have other information on record we think it's viable to turn off the service in our own cases. But we cannot do that with third party Whois privacy (provides) at this time which would be helpful for the results of the UDRP and for attributing blame if (unintelligible) so for registrations that does not necessarily belong to the Whois privacy provider that end up being the party of record in the UDRP proceedings.

((Crosstalk))

Volker Greimann: The complainant party, Yes.

Michele Neylon: If I had a bell or a horn I would use it at this juncture. It is four o'clock. It is the top of the hour so Matt, if you have any comments or anything could you please send them to the list and we can all look at them there. Thanks, everybody, for your time today. And if you haven't had a look over the latest version of the document with Luc's notes would you please do so. And hopefully speak to you all next week. Thank you, everybody.

Alan Greenberg: Thank you, Michele.

Marika Konings: Thanks.

Kristine Dorrain: Good-bye, everyone.

((Crosstalk))

END