Locking of the Domain Name Subject to UDRP Proceedings Drafting Team Meeting
TRANSCRIPTION
Tuesday 26 April 2012 at 1400 UTC

Note: The following is the output of transcribing from an audio recording of Locking of the Domain Name Subject to UDRP Proceedings Drafting Team Meeting on Tuesday 26 April 2012 at 1930 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-20120426-en.mp3
On page: http://gnso.icann.org/calendar/#apr

Attendees:
Jonathan D. Tenenbaum, RrSG
Matt Schneller - IPC
Victoria McEvedy, NCSG
Hago DAFALLA, NCSG
John Berryhill, RrSG
Andrii Paziuk, NCSG
Faisal Shah, individual
Lisa Garano, IPC
Laurie Anderson, RrSG
Luc Seufer, CBUC
David Maher, RySG
Brian Beckham, WIPO
Volker Greimann, RrSG
Gabriele Szlak, CBUC
Randy Ferguson, IPC

Apologies:
Ken Stubbs, RySG
Michele Neylon, RrSG
Joy Liddicoat, NCSG

Staff Support:
Gisella Gruber
Margie Milam
Marika Konings

Coordinator: Thank you, the call is now being recorded; please go ahead.

Gisella Gruber: Thank you. Good morning, good afternoon, good evening to everyone. On
                  today's Locking Working Group call on Thursday the 26th of April we have
                  Matt Schneller, Andri Paziuk, Volker Greimann, Randy Ferguson, Gabriella
                  Szlak, John Berryhill, Faisal Shah, David Maher, Lisa Garono, Victoria
                  McEvedy, Brian Beckham. From staff we have Margie Milam, Marika Konings
                  and myself, Gisella Gruber.

                  Apologies noted today from Joy Liddicoat, Ken Stubbs and Michele Neylon.
                  Michele may be able to join us later but if he doesn't he has sent through this
                  apology. If I could also please remind everyone to state their names when
                  speaking for transcript purposes. Thank you, over to you, Marika.

Marika Konings: Thank you very much, Gisella. This is Marika. As you might have seen
                  Michele had a last minute conflict and has actually asked if I could manage
                  the call until he gets on if he's able to join today. So unless there are any
                  objections or anyone else willing to volunteer to take that job, you know, I'm
                  happy to do so.

                  So on the screen I just put as a reminder an update of the membership list.
                  We had one new person joining between the last call and this week's call
                  which is Sheri Falco from the Registry Stakeholder Group.

                  She only just joined today and I did send her the call details but I don't think
                  she's on the call and that might be difficult for her to join on such last minute
                  notice.

                  As you can see as well we do have statements of interest of almost all
                  participants. There are still two missing so if I can just remind those people to
                  please complete them. And if you have any updates to your statement of

interest, you know, please raise your hand and say so now or make updates to the statement of interest as required.

So if there are no further issues on the statements of interest and the memberships we'll move to the Item Number 2 on the agenda which is whether there are any further questions in relation to last week's meeting and then the recommended materials for review.

There was quite a bit of information that we shared on last week's call including, you know, the working group charter, information on how a PDP works, the working group guidelines, some of the background information that, you know, led up to the creation of this working group.

And I hope everyone had a chance - an opportunity to review that material. And I would just like to ask if there are any questions that people would like to ask at this stage. Or if, you know, you still need a bit more time to review that, you know, please feel as well to circulate any questions you may have on the mailing list or, you know, send them to me directly, whatever you'd prefer.

Are there any questions? I don't see any hands being raised. Then with regards to Item 3 I would suggest that we wait there until Michele makes it to the call as he's currently acting as the interim chair and that we move that item to the end of the meeting agenda.

And in case Michele doesn't make it that will be then the first item for next week's meeting because we still do have a need to formalize the leadership for this working group. And as I said also on the email yesterday if there are any volunteers, you know, please feel free either to speak up now or when we get to the item later today or send your interest to the mailing list.

If people have questions as well about what it requires to be a chair or be a vice chair or a co chair I'm also happy to provide more explanation about that.

And there's also further information available on what that role entails in the working group guidelines.

So if we'd then skip to Item Number 4 that's the development of the work plan. It's one of the required elements of a working group. The working group is expected to develop a work plan and submit that to the GNSO Council for its information.

And I'm just pulling up - as you may have seen in the email I sent - the agenda yesterday - I attached a template which the working group might consider using as a basis for developing this work plan. What I've done, as you can see here in the first text bit I've outlined the required elements that the working group needs to consider as it completes its work plan.

Notably the elements that are required as part of the charter but also the elements that are required as part of the policy development process and the different products the working group needs to produce and related comment periods that are linked to that. So that in a way defines how the time - or how the work plan is built.

This item clearly links as well to the next item, you know, how to tackle the different items on the working - in the working group's charter because that will probably define as well of course how much time needs to be spent on different items.

But I think on a high level what we might want to do now is talk a little bit about, you know, the broad timing the working group would like to set itself to achieve certain outcomes. And I think one of the big milestones is often the publication of an initial report and it often helps if the working group sets itself a certain timeframe or a target for publishing such a report. It helps as well to fill in the other elements of the

So as you can see on the work plan I've basically filled in based - going - assuming that there are going to be weekly meetings of this group. And I filled it in up to the ICANN meeting in Toronto assuming that probably the working group will have to continue beyond that unless we start working on a really tight schedule and are able to complete in a six-month timeframe which is probably unlike based on experience with previous working groups.

But for example the working group might want to consider setting the Toronto meeting as a target to publishing the initial report, for example. Throughout here you see, as well, a couple of highlighting the different ICANN meetings.

As some of you may be aware if there are certain documents that are to be discussed at an ICANN meeting or where community input is requested there are certain publication deadlines that are linked to that that the working group might need to take into account if it is planning to present certain documents at an ICANN meeting.

So with that I would actually like to open it up to the working group and get people's input on what they think are, you know, reasonable target dates and maybe get as well some ideas on how much time people think is required for the different steps of the process.

You know, we're looking first at requesting public input. There needs to be a request for stakeholder group constituency statements, the group needs to foresee as well deliberating on the different charter questions. And then of course as well, you know, developing and publishing the initial report. Are there any comments or suggestions, ideas?

I'm sure that everyone is still - is already awake. Laurie, please go ahead.

Laurie Anderson: Hi, I just wanted to say that I think that getting the public input first would be probably the best approach so that we know, you know, what kind of comments we're going to receive.

Marika Konings: Thank you, Laurie, I think that's a very good point. Matt.

Matt Schneller: Yeah, just sort of building on that all I was going to say is that particularly getting comments from the registrar community to see what the standard practice is I think will be really useful in helping us with all the definitional and other problems that we have just knowing what the standard practice is across the industry.

Marika Konings: Okay good point.

Matt Schneller: By the way is that a 35-day timeline for the - the constituency statements request different than the public comment forum or can those run simultaneously or do those - how do those interrelate? They seem like they could have a lot of overlap.

Marika Konings: Yeah, this is Marika. That really depends on the working group. I mean, nothing prevents stakeholder groups or constituencies to also submit comments to a public comment forum. But as part of the PDP the working group is also required to specifically reach out to stakeholder groups and constituencies to request their input in the form of statements.

                    What other working groups have done for example to really get, you know, specific input is prepare a template with certain questions. So for example those might differ as well as, you know, you mentioned that you, you know, it might be helpful to get specific input from the Registrar Stakeholder Group so you might want to prepare, you know, specific questions that are then sent for the Registrar Stakeholder Group to consider as part of their statements.

                    So that's something the working group can consider how they would like to go about that whether indeed they just say look this working group has gotten started, you know, we want your input or whether you really want to tailor

those questions which probably will help you to get more specific information and might be more helpful in what you're trying to achieve.

The only requirement there is, as it says there, it needs to be a minimum of 35 days to give them enough time, you know, to consult with their membership. But again that can be done in parallel to the public comment forum. It can be done before the public comment forum, you know, it can be done afterwards. That's really up to the working group how you would like to, you know, set the different activities and the according timelines.

David Roache-Turner: Marika?

Marika Konings: Yeah.

David Roache-Turner: Yeah - just David Roache-Turner from WIPO also here with Brian. Listen, just one comment on that suggestion that maybe some comments could be sent around, some questions. One of the questions that could perhaps usefully be included in those might be particularly from the registrar perspective. And we spoke about this in the last discussion.

The extent to which the existing draft registrar best practices document that I think John Berryhill sent around in an email might usefully provide a foundation for further discussion because there was a lot of thinking and work invested in that at the time. And if that's something that many in the Registrar Constituency would already be comfortable with that might save us all some time in further deliberations.

Woman: I would agree with that, David.

Marika Konings: Thanks, David, for that suggestion. I do have a question or maybe a comment there because I did listen to the recording and I've, you know, asked internally as well to see what the, you know, where that draft is that

was discussed in Sydney because the only thing I could find publicly was a - I think a version from 2008.

But looking at the version in 2008 and also the discussion in Sydney it does look like that paper was much broader than just the locking issue. So I don't know, John, as you are, I think, involved in that discussion and then drafting, you know, I don't want to put you on the spot but do you have any insight into, you know, whether the whole paper or just part of that paper might be, you know, relevant as we're specifically focusing on the locking aspects? Or what is your view on that?

John Berryhill: Yeah, well I've been meaning to go back and just tease out the locking portion of it. But it - we may find that having a registrar place and/or removal lock may assume actions taken by other parties. But I think the locking part can come out.

We tried to solve a couple of problems beyond just locking in that document in terms of additionally getting information to the registrar initially with the complaints in the event of a transfer so that, you know, the registrar is informed of the authorized party who are receiving a transfer at the end if there is one. But I think that the locking part can be teased out, yes.

Marika Konings: Okay. Maybe with that then I would suggest that we actually move into Item 5 because I think, you know, discussing the approach and, you know, getting an understanding of how the working group would like to go about these different items and I think we, you know, partly already started that discussion, you know, talking about the work plan I think will help us as well, you know, completing the work plan.

I mean, there's no specific deadline for that. And again I think, you know, the work plan is - most of the time stays in a kind of draft form and working groups regularly go back to it to update it.

But it's merely for the GNSO Council to have an idea of the different milestones that the working group has set itself and being able to check from time to time as well where things stand. And it's also a tool for the working group to, you know, make sure that, you know, you're on track with what you've set yourself out to do.

So if we move then into Item 5 of the discussion what I've done - and some of you might be familiar with the mind maps which have been used for some of the other working groups we've been recently doing.

I've started working on a mind map and trying to outline the different elements that the working group needs to address. So there are different parts to this if you - I hope you can see it on the screen. So, you know, the first part is looking at outreach then really charter questions and then looking as well the requirements for the initial report.

The idea about this mind map is that it allows for the working group now to have a kind of free flowing discussion or brainstorm on these different items what, you know, you think should be considered or should be done that we can then use this as a tool as well to, you know, pull this into the work plan and really be able to outline, you know, for each part, you know, what the working group would like to do and how to approach it.

So if you look at the outreach element here I think these are the three things that, you know, require the working group actively going out and requesting input. And the first item there is requesting public input on the issue. And that's, you know, it directly comes from the charter, you know, in order to have a clear understanding of the exact nature and scope of issues encountered with the locking of a domain name subject to UDRP proceedings.

So I can already create a sub topic here basically saying - because I think I heard already some people saying, well, you know, we should specifically ask questions to the Registrar Stakeholder Group.

Woman: (Unintelligible).

Marika Konings: We said as well looking at the best practices paper. I don't know if that's something that might want to - needs to precede this step. What I suggest as well, I mean, the different ways of looking at, you know, getting public input, I mean, there's a - you know, you can do a public comment forum, you know, reaching out to experts.

There's also the possibility of for example organizing a workshop or a session in Prague to obtain input. I think there are various avenues the working group could explore here. David or Brian? Who wants to speak?

Brian Beckham: Yes, sorry we answered our own question. Thank you.

Marika Konings: Okay. So what are the ideas or suggestions the working group has for, you know, requesting input? What do you think are the most effective ways or what is really needed in order for the working group to get the information it needs to, you know, start looking at the charter questions?

David Roache-Turner: Just as a preliminary question, Marika, as I understand it from the agenda we will be discussing the charter questions after we've developed the work plan, correct?

Marika Konings: This is Marika. Yes, that's probably the best - well I don't know if it's the best approach but I think it's a way of making sure that there's a structured approach to addressing the charter questions. So the idea is to first, you know, and as well in this mind map, you know, try to maybe outline for each of the charter questions what is needed in order to start the discussions or

making sure as well that, you know, maybe some of the questions that need to be asked in relation to the charter questions are addressed.

And then at, you know, the point we get there then we actually start the deliberations. So the idea is indeed here first to try to establish and approach and maybe determine as well like, you know, is there a certain order in which the charter questions should be tackled?

You know, or are there questions missing or sub questions that can be identified that, you know, might help the working group get to answers on each of these items?

David Roache-Turner: Well one possible...

((Crosstalk))

David Roache-Turner: ...I'm not sure if this is the right time but just to mention one possible sub question which might be included in connection with Number 3 of the charter questions is also one of the subjects which was addressed in the best practices discussion as a subset of that.

And there's a - I think as the Charter Question 3 currently reads it's whether the timeframe by which a registrar must lock a domain name after UDRP has been filed should be standardized. And I suppose one suggestion that we would have for that is whether that should be slightly refined to also include a reference to - in addition to has been filed and/or a provider request is received.

Because of course, one, whenever a UDRP proceeding complaint is filed equally certainly in every WIPO UDRP proceeding a registrar request would be sent to the relevant registrar to lock. So that might be a useful clarification in that particular charter question.

Marika Konings: Okay thanks. I've noted that here so that's something that, you know, the working group can debate further.

David Roache-Turner: Thanks.

Marika Konings: Matt, please go ahead.

Matt Schneller: Sure I was just going to ask if there's a way to sort of request targeted input from third parties that aren't necessarily preexisting stakeholder groups? I was thinking the - in addition to the registrars there may be - it may be useful to get some preliminary input from the UDRP service providers.

We obviously have two guys from WIPO on the call but also the check arbitration forum, the National Arbitration Forum. They may have some internal tracking steps as well that might be useful to bring into this discussion.

But I didn't know if we sort of had to get - like what the mechanism was to get input from folks who aren't formally part of one of the defined communities.

David Roache-Turner: Matt, just to answer that question briefly from WIPO's perspective we're certainly very happy to feed whatever data we have into this process directly. We can do that in whatever way is most useful for the working group in phone calls or in documents. We have some stats that we can put together no problem.

I think we represent about - about 56%-odd percent of the cases so I think that should give a pretty clear representative indication as to how the providers go about it. I'm not sure what the answer to that would be. I guess Marika may know more.

Marika Konings: This is Marika. I think what was done, for example, in the review of the UDRP discussion was, for example, send out a survey to the different service

providers and asking them, you know, specific questions. And that was a way that input was received.

And I think they also organized a workshop at one of the ICANN meetings where there was a panel session where as well different parties participated, you know, through a moderator, you know, trying to tease out some of the information that, you know, was helpful in that discussion.

So there I think again, you know, it's really up to the working group and as well the flexibility on how to do that. You know, it probably depends as well what is deemed the most effective.

And, you know, for example organizing a session at an ICANN meeting only works if, you know, certain parties are present there. So I guess, you know, presumably in Prague you might have, you know, someone from the check forum there and, you know, I guess WIPO will be represented. But, you know, it might be as well a way to reach out to some of the others to see if they're actually going to be present and if it makes sense to have a discussion there for example.

Are there any other ideas or suggestions on how to go about the outreach elements? Do people think, for example and, you know, I think the obvious one is opening a public comment forum. Do people think it's sufficient to just, you know, put out the charter questions or do people think that, you know, there might be more useful input obtained if specific questions are being asked or if that's done as well in the form of a survey? What are people's views?

David Roache-Turner: I would tend to think that it's an issue that is of interest to people, you know, who are affected by it. So it may be that a call for public comments would be one of the more useful options in the sense that you're putting it out there for those people who want to be involved to comment and see what we get back.

Marika Konings: And this is Marika. I mean, and I think the public comment forum is a good complement as well to any other activities that the working group might want to undertake. So I think looking concretely, you know, one of the pressing issues is that in order to organize a session in Prague there is an internal deadline that staff has to request a meeting by Thursday of next week.

You know, my suggestion to the working group would be that, you know, I do request a slot for the working group and that, you know, closer to the date the working group can define then whether indeed the meeting is needed, whether it's, you know, it should take the form of an internal working group session, whether it should be a workshop, whether it should be, you know, another kind of meeting and, you know, define it closer to the date.

But at least in that way there, you know, there will be a slot available should the working group decide to have a meeting there. Is there anyone that objects to that approach? I think the idea would be then to request a time for Thursday morning which is a - you know, a Wednesday or Thursday morning that are usually the slots for workshops and a working group meeting.

Then maybe looking at some of the other items here that are on the mind map, you know, we also need to seek the opinion of other ICANN ACs and SOs. Are there any ideas? Are there, in your view, any specific supporting organizations or advisory committees that might have an interest in this issue that we should approach or should this be done as well just sending them a link, for example, to the public comment forum?

Do people have any ideas on whether we need to do anything specific there? Whether any other parts of the ICANN organization that might have a view on this or would like to contribute to the discussion?

I don't see any hands. Maybe people want to talk then about how to approach the different charter questions? Laurie, please go ahead.

Laurie Anderson: Sorry, I was on mute. I just wondered if we should perhaps ask the registries for their input because they sometimes receive UDRP decisions as well if the registrars won't cooperate.

Marika Konings: Thanks, Laurie. I've noted that in the requesting the public input. And I think there, you know, the working group might start thinking a bit, you know, what are the kind of questions you would like to put forward because I think it would be helpful there (unintelligible) start working on either a kind of questionnaire or a survey or whatever the working group thinks is most useful to get that kind of input.

So maybe people already can start thinking about, you know, some of the questions that would need to be put forward to the registrars as well as the registries.

David Roache-Turner: One of the potential questions there could be where you have a transfer in breach either of Paragraph 8(a) or 8(b) of the UDRP where - or particularly 8(b) where the disputed domain name moves from one registrar to another whether there should be a procedure for either returning the domain name to the original registrar or a mechanism which describes what the gaining registrar should then do in respect of its lock obligations and notifying the UDRP parties, etcetera, etcetera, so any necessary amendment and pleadings can occur.

And perhaps also what the registry's role in that sort of situation might be when the registrars are unable to sort the matter out with the provider or panel directly or parties.

Marika Konings: Thanks. Was that David?

David Roache-Turner: Yeah, sorry, Marika, David.

Marika Konings: No, no, sorry just trying to make sure we got it right. So, yeah, David, that sounds really good. So, you know, if you maybe would be willing to, you know, put those questions already, you know, either on the email so people can start thinking about as well additional questions to that. But I think that would be really helpful. So if you would be so kind to put that in an email I think that would be really helpful.

David Roache-Turner: Sure.

Marika Konings: So if there are no further, you know, comments or suggestions on the outreach part I think we have now, you know, specifically asking the Registrar and the Registry Stakeholder Groups for input probably using specific questions. I think there then we need to consider are, you know, the questions different for the registrars or registries or could there be one kind of a questionnaire?

I would suggest as well having a look at the best practices paper as that might also be part of the question that, you know, goes out to registrars or registries to see whether - what was in the best practices paper in relation to locking whether that could serve as any, you know, basis from which this working group could continue its discussions.

We've spoken about requesting input from third parties, you know, such as UDRP providers also looking at internal tracking steps they might have. The working group still might need to discuss, you know, what kind of mechanism we want to use for that.

You know, do we look at sending them as well a questionnaire or a survey or, you know, are we going to set up some specific discussions with them either, you know, as part of one of our meetings or possibly at the Prague meeting.

And then I think everyone there was agreement as well to have a call for public comments that would just go out to the broader public to request for

input. And I think again there, you know, we might want to discuss a little bit in further detail whether that's going to be just a general call for public comments or whether, you know, at this stage we really want to add in some more specific questions or specific items that we would look for for public comment on.

Then also the request for stakeholder group and constituency statements. I think there the working group will need to discuss a bit more whether, you know, again that goes in the form of specific questions. I think we already agreed that for the registrar and the registry stakeholder group that would be the case.

The question is then should there be as well for the other communities - for the other constituencies are there - is there a need to ask specific questions or, you know, do we just ask them for input or provide them, for example, as well, you know, highlight the public comment forum is open, that they're requested as well to put their comments in there.

And then still if, you know, people have further views on whether other ICANN ACs and SOs should be approached, you know, have - people can think about that and, you know, come back to that later.

I think as a general note what we've done in other working groups is basically send a note out to the different ACs and SOs and just highlight to them that this work has started. And if they have an interest in either participating or providing input, you know, they're encouraged to do so. And, you know, from a staff perspective we follow up if there is indeed an interest in further dialogue and participation.

So if we then maybe start looking at the charter questions. And again, the idea here is not to, you know, answer the charter, the questions necessarily but maybe start looking at, you know, what kind of approach we would need to take to try to, you know, address the different charter questions.

So maybe you can start with the first charter question which is whether the creation of an outline or proposed procedure which a complainant must follow in order for a registrar to place domain name or register lock would be desirable.

So the question is there what do you - does the working group think is, you know, is any additional information that's required to answer this question?

Is it just, you know, discussions or polling the working group whether this would be a desirable approach? Are there any views on that?

No comments? Matt please go ahead.

Matt Schneller: Hey just a quick comment. Maybe it makes sense to divide up the questions that we send out to you like to registry registrar groups for input into two batches.

The first group for sort of background information about what current practices are and then the second group sort of tracking the sorts of issues raised in the charter questions as to what their preferences are in going forward.

Now they give us sort of two different types of data that might be useful to guide our working group and discussion going forward.

Marika Konings: Thanks Matt. I think it's a very useful suggestion. I've noted that up in the request for public input part.

I saw Laurie can go up and down again. Laurie please go ahead. Laurie I think you might be on mute?

Sorry we can't...

((Crosstalk))

Marika Konings: Yes, yes we're hearing you know.

Laurie Anderson: I was just going to see that I think that an outline would be beneficial for
                    complainants because they often are unaware of what's necessary for a
                    registrar to place a domain name on - or a domain name on a lock.

                    So if we were to provide an outline for complainant and then they would be
                    clear about, you know, what we need as registrars in order to do, you know,
                    place the (lock on) the domain.

Marika Konings: Any further comments or questions on number one? And if I maybe ask
                    people to mute their lines, we're getting a bit of background noise and echo.

                    And so charter question two asks, you know, whether the creation of an
                    island are discussed as the process of the registrar can reasonably be expect
                    to take during a UDRP dispute would be desirable.

                    And like I say there's probably one of the questions as (unintelligible) that
                    would be helpful to ask this specifically to registrars.

                    And Laurie do you still have your hand up?

Laurie Anderson: No that's an old hand. Sorry.

Marika Konings: Okay another comments or suggestions? We'll move on to the question three
                    what are the timeframe in which a registrar must lock a domain name after a
                    UDRP has been filed should be standardized?

                    And there's already one possible sub topic that has been suggested by
                    (David) earlier. And are there any other possible subtopics or any, you know,

what will be required to determine indeed what the appropriate timeframe might be?

Any ideas, suggestions?

Man: Just to note again that the - I think the timeframe that had been contemplated in that earlier draft best practices outline was 48 hours.

And I think it was calculated in that context from the receipt of the provider verification request.

But I would imagine that we could also discuss having it run from the receipt of notice of the filing of a complaint by the complaint pursuant to Charter Item Number 1.

Marika Konings: Noted. I mean again if there are any, you know, specific items people want to add here I'm trying to take notes and, you know, look at the Adobe Connect at the same time.

So if I'm missing anything, you know, feel free to either pipe in in the Chat or send me an email afterwards.

This document will also be circulated to the mailing list so everyone will have an opportunity to, you know, provide input and add suggestions as we move forward.

So I may be looking at item or Question Number 4A whether what constitutes a locked domain name should be defined, anything that the working group should specifically consider in that context?

Or 4B which is closely linked to whether once a domain is locked pursuant to a UDRP proceeding the registrant information for the domain name may be changed or modified?

Man: Just one general point that might come up here if the answer to that charter question is yes whether there should be and then what these would be whether there should be some form of exception to enable updating of certain aspects of the registrant data, for example contact information or billing information or something of this nature.

I hesitate to write it but I will do it anyway which is also the question of how the lock definition would then relate where you would have a privacy or a proxy registration service and there would be a modification in the Whois data consequence to the following UDRP proceeding. In that situation these might be two issues that we could also think a bit further about.

Marika Konings: Thanks. And then there's another question from Laurie I think that relates to the definition here which is whether DNS would be affected by the lock?

Any other items that people think we should be adding here? I mean again I mean people have an opportunity to add more items. And I'm sure as we start discussing other ideas what will come up so we can, you know, build this is just a starting framework.

And so and there's a last question whether additional safeguards should be created for the protection of registrant in cases where the domain name is locked subject to UDRP proceedings.

Man: I just had one more suggestion in connection with Charter Item 4B which would be in the event that there would be a process for registrant information change or modification what if any notification obligations should apply for example to the changing registrar in respect of UDRP proceedings, providers and parties thereto?

That is to say advising them that change has occurred that would then enable the provider for example to go back to the parties and advise them in the

event that any modification to the file (depletings) would arise from that change.

Marika Konings: I hope that I noted that down correctly. And if not, you know, please by all means send me a note. So as well someone I think in the chat's making another suggestion.

I see Matt saying we should also maybe consider whether the definition should expressly allow for an exception for privacy related changes.

I think that relates partly to the exception so...

Man: I think that's a good suggestion.

((Crosstalk))

Marika Konings: So let me see, consider...

Matt Schneller: This is Matt. And just to clarify we can also consider whether kind of like whether there should be a timeline for - there should be a lock put in place and what that timeline should be.

Maybe we simply consider whether there should also be a timeline by which any substitutions on the privacy or proxy front need to be made by in order for - sort of this sort of stability concern that WIPO raised.

Man: And I think that question might be tied back in a little bit as well to the issue under the 3.773 in the registration agreement which calls for, you know, so called disclosure within a reasonable period of time.

Because I think it is useful to be thinking about limiting the timeframe perhaps in the same way that we would limit the duration in which the registrar would then be obliged to put on the locks.

So for example the 48 hour period after which the relevant information in the Whois is deemed to be correct for purposes of the UDRP proceeding or something of this nature.

Marika Konings: And sorry (David) did I capture right? Are you talking about limiting the - the timeframe for disclosure of information?

(David):   Limiting the timeframe in which any disclosure of information could occur.

Marika Konings: I see people chatting (rapidly). But if people want to speak about the issues they're raising as well because having difficulty keeping up with people typing in the chat.

So I see I think Laurie. Laurie are there any other items that should be added based on what you're putting in the chat or is it just agreeing with what has already been put up on the screen (so far)?

((Crosstalk))

Laurie Anderson: Well I just I was going to say that, you know, in our case if we receive a verification request and the domain name has privacy, it's built into domain by proxies in terms of service that if there's a dispute over the domain name that the privacy is canceled.

So then when we receive the verification request we notify domains by proxy they cancel the privacy.

And then we verify that registrant is who the registrant is, not the domain by proxy although we do receive - UDRP complaints where domains by proxy is named.

But then we always follow up and say, you know, domains by proxy is not the registrant. It's privacy service. And, you know, and then verify the actual registrant.

It works really well so far. Since, you know, since I've been doing dispute since 2006 and it said it's always been that way. So it's worked out pretty well.

Man: From our perspective at WIPO it's also a system that I think insofar as our communications with Laurie and (Co) have been concerned have been really workable.

I am conscious that it can be sometimes a bit irritating for UDRP complainants to then receive from WIPO the notification that we would then send on to the complaint indicating to them that there has been a modification and disclosure of the underlying registrant.

But typically the required amendment to the complaint is very brief and it's a system I think that for the most part works well.

It's not always the case of course that all registrants (on top of the) services are as prompt. And so perhaps it can be useful to think about fixing the timeline in a way that is a bit clearer so everybody's able to aspire to the same sort of turnaround time.

Woman: Right if this is made - it's made clear up front, you know, and before the complainants are filing the complaints then, you know, they could approach the privacy providers and, you know, maybe get disclosure before they even file the complaint.

Marika Konings: And this is Marika. I just took note as well of a comment that (Luke) made in relation to Item 3. And I don't know will (Luke) is able to maybe provide a little bit more background to it.

It basically says if a registrant has to launch a domain upon filing and before the provider review the complainant (unintelligible) is compliance and should we hold harmless from complainant to the benefit of a registrar shall be given. (Luke) is there anything further you want to explain about that?

(Luke): Yes we've seen several cases where we received - we've been informed of a filing of a complaint but afterwards the complaint was rejected for compliance issue by the provider and complainant did not go further.

So basically we - if we would have locked the domain we'd have - we'd have (unintelligible) on our customers from his rights on the domain for nothing.

Marika Konings: Gosh I guess it's actually probably an item that might fall under Item 5 as well as additional safeguards.

(Luke): Yes indeed.

Marika Konings: Right? Oh maybe (should put it) there. Victoria?

Victoria McEvedy: Yes I wonder this may or may not be the appropriate time and it also may not - it may be a tangent. But I was wondering if it was possible, I mean I don't have enough background and I haven't written anything on the subject.

But could someone talk to the justification for lifting the privacy shield in this situation?

John Berryhill: Yes the registrar accreditation agreement and one of the things going forward is, you know, we have to look at how this interfaces with other requirements.

Sometimes when we look at, you know, one policy in isolation from others you end up with contradictions.

For example there is always a registrant obligation to have correct contact information.

So, you know, if at the filing of a dispute they find oh well we moved our office five months ago and haven't updated our Whois yet, you know, you have an affirmative obligation to have correct Whois information, you know, by one policy and then another policy saying oh well you can't change Whois information.

So where the privacy list comes in is in the registrar accreditation agreement Section 3.7.7.3 which more or less has understood to govern legal disputes arising in connection with a domain that is held either in trust or on behalf of another party and the obligation to disclose the identity of that party in order to avoid liability in the event of a legal dispute of some kind.

So the general notion of lifting the Whois privacy has flowed from there.

You know, as well as, you know, identification of serial that (unintelligible) factors. It really it doesn't do the world any good to see, you know, 500 disputes against XYZ privacy service, you know, without some indication of who that party is.

And that for example has significance relative to the new gTLD application process where a TLD applicant can be disqualified upon having three adverse UDRP decisions within a certain timeframe.

Now granted Go Daddy for example is associated, allied with a very popular Whois privacy service.

But, you know, holding Go Daddy, you know, responsible as it impacts for example the new TLD policy or domains that were in fact registered for the benefit of someone else is unfairly penalizing a innocent party.

Woman: Oh thank you for that.

Marika Konings: Was it (John)?

Man: Yes.

Marika Konings: Was it (John)? Just - right if you can please just - everyone to remind everyone to state your name before you start speaking because that will help getting the transcript right for those not on the call and reviewing it afterwards so we can just, you know, assign the right quotes to everyone.

John Berryhill: Yes.

Marika Konings: Victoria...

Man: And...

Marika Konings: ...did you want to this one?

((Crosstalk))

Woman: Oh...

Victoria McEvedy: Well just quickly I just - like so if I understand from that very - that excellent explanation the default rule is that the privacy is already (unintelligible) automatically on the - at some stage on the filing of a complaint that - and that there - and there's no real inroad into that, there's no exceptions.

There's no question about this. This is standard of practice. This happens already. There are no issues around it except as it interacts with the timing of this policy or something.

John Berryhill: Yes provided...

Victoria McEvedy: Would that be fair?

John Berryhill: Yes provided that the privacy service is in fact, you know, a bona fide privacy service.

And this process also a has the side effect of flushing out what are and what are not bona fide privacy services.

I mean there are cyber squatters who simply say, you know, it's registered to XYZ privacy service and they never change it or update it when a dispute is filed or they, you know, change it and update it to identify some fictitious party.

But for those privacy services which are associated with a registrar and thus are under RAA3.7.73 they, you know, that is their typical protocol.

Victoria McEvedy: Okay but if you didn't use a registrar privacy service could you use - are there people that use other - I'm sorry to be ignorant here. Are there people in these situations where there non-registry services where 3773 doesn't apply and privacy shields don't come off? No.

John Berryhill: Well it gets into an odd question about what that paragraph means. And unfortunately that paragraph is one that if you look at it too long and to closely it does tend to lose meaning.

But for example I, you know, anyone can be a privacy service. I'm an attorney. I sometimes hold domain names under, you know, the registrant John Berryhill, Attorney Trust on behalf of, you know, clients who may be engaging in a domain transaction but don't want either - want the domain held by a third party or information security reasons don't want to have domain names be used for corporate intelligence to determine, you know,

what their plans are, whether or not a company is planning on buying a piece of land to build a hotel somewhere.

So, you know, in those instances, you know, the way that the RAA seems to read is that one can avoid liability if one, you know, produces a living breathing registrant as opposed to a proxy party now.

It's kind of unusual in that well, you know, quite frankly this is an ICANN contract that really can't assign civil liability to any other party.

But it - as far as its interaction with other ICANN policies goes the, you know, it's up to the privacy service what they consider to be the standard for revealing the registrant information.

And there is a parallel working group that I believe - well actually there's a parallel study being done by the ICANN compliance department now and during the next few months on just what the standard practices are with Whois privacy services.

So some of what we're doing if we're going to get into the Whois privacy reveal will be informed by a study that the compliance department is intending to complete over the next couple of months.

Marika Konings: Matt go ahead.

Matt Schneller: Just a short addendum to our very first item on this list. We may want to specifically ask registrars if they are providing privacy services to speak specifically to sort of their current practices for swapping out registrant information in the case of the UDRP or other dispute as well.

John Berryhill: Yes and just one other thing. The substantive impact on the policy is typically somewhat tangential.

I mean in a cybersquatting situation of the site for which the UDRP was designed, you know, the identity of the registrant is not always of tremendous importance unless they are for example a serial cyber squatter that could be a useful information.

But, you know, typically you have, you know, a trademark being abused by a third party. And who is doing that abuse is not of, you know, critical substantive importance.

So where (David) had mentioned inviting complainants to amend the complaint the - there is some differences among the dispute resolution providers in how they do that.

But, you know, if your trademark's being abused it really doesn't matter whether it's, you know, John Smith or Jane, you know, Jane Doe who is doing the abuse.

The only minor other impact is in the selection of the UDRP mutual jurisdiction. If for example the complainant had chosen the jurisdiction of the privacy service purported location and the registrant turns up in some other location then there's some question as to what the mutual jurisdiction would be.

But I mean that kind of comes down to, you know, the complainant having made a choice that might be subject to some change in information.

But, you know, it is something of a nuisance to complainants when that happens if they are told by a provider oh, in order for the case to proceed you must amend your papers because, you know, you've got practitioners who have probably already billed the client being asked to perform some nuisance test with no substantive impact.

You know, the policy assumes that the panelists have a certain degree of intelligence and knowledge of, you know, how the overall domain registration process works.

And, you know, whether or not a panelist wants to take into account, you know, events that occurred with respect to Whois changes after the complaint was filed most panelists are able to deal with that in a rational intelligent manner.

Marika Konings: Thanks (John) for that explanation. And we're actually, you know, running at the end of this call. So I would just like to encourage everyone to, you know, think further about, you know, the different questions that would need to be asked or any further information that would need to be obtained.

I'll circulate this document to the list so people have a chance to review it and then send additional suggestions. And I would suggest that we continue our deliberations during next week's call.

The other items still outstanding as well election of working group leadership. So, you know, please think about, you know, whether you'll be interested in sharing or serving as a co-chair. It'll be much appreciated.

So if there are no further pressing issues at this stage I would just say thank you all for joining and I'll speak to all of you next week same time 1400 UTC.

Woman: Thank you.

Marika Konings: Thank you very much.

Man: Thank you.

Woman: Thank you.

END