

# **Draft Initial Report on the Locking of a Domain Name Subject to UDRP Proceedings Policy Development Process**

## **STATUS OF THIS DOCUMENT**

This is the Initial Report on the Locking of a Domain Name Subject to UDRP Proceedings, prepared by ICANN staff for submission to the GNSO Council on 15 March 2013. A Final Report will be prepared by ICANN staff following review of the public comment received on this Initial Report.

## **SUMMARY**

This report is submitted to the GNSO Council and posted for public comment as a required step in this GNSO Policy Development Process on the Locking of a Domain Name Subject to UDRP Proceedings.

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# 1. Executive Summary

## 1.1 Background

- The “locking” associated with UDRP proceedings is not something that is literally required by the UDRP as written, but is a practice that has developed around it, but as a result, there is no uniform approach, which has resulted in confusion and misunderstandings. This issue was raised in the context of the Inter-Registrar Transfer Policy Part B discussions as well as the Final Issue Report on the Current State of the UDRP.
- The GNSO Council considered the Final Issue Report on the Current State of the UDRP and decided at its meeting on 15 December 2011 to initiate ‘a PDP and the establishment of a Working Group on recommendation #7 of the Inter-Registrar Transfer Policy Part B Working Group concerning the requirement to lock a domain name subject to UDRP proceedings’. The charter for the PDP Working Group was adopted by the GNSO Council on 14 March 2012 and the Working Group convened on 16 April 2012.

## 1.2 Deliberations of the Working Group

- The Locking of a Domain Name Subject to UDRP Proceedings Working Group (“Working Group”) started its deliberations on 16 April 2012 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.
- Section 5 provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads.
- Section 5 also includes a summary of the findings of the survey that the WG carried out amongst registrars and UDRP Providers to gain a better understanding of the current processes, practices and issues encountered.

## 1.3 WG Preliminary Recommendations

- Based on its deliberations and findings as outlined in this report, the Working Group has put the following preliminary recommendations forward for community input:

**Preliminary Recommendation #1:** In this context, the term “lock” means preventing any changes of registrar and registrant [without impairing the resolution of the domain name]<sup>1</sup>.

**Preliminary Recommendation #2:** Modify the provision from the UDRP rules that specifies that upon submission of the complaint to the UDRP provider the complainant should also ‘state that a copy of the complaint [...] has been sent or transmitted to the respondent’ (section 3, b – xii) and recommend that, as a best practice, complainants need not inform respondents that a complaint has been filed to avoid cyberflight. The UDRP Provider will be responsible for informing the respondent once the proceedings have officially commenced.

**Preliminary recommendation #3:** Following receipt of the complaint, the UDRP Provider will, after performing a preliminary deficiency check<sup>2</sup>, send a verification request to the Registrar, including the request to prevent any changes of registrar & registrant for the domain name registration. The registrar is not allowed to notify the registrant of the pending proceeding until such moment that any changes of registrar and registrant have been prevented, but may do so once any changes of registrar and registrant have been prevented. In the case of accredited privacy / proxy providers<sup>3</sup> or a privacy / proxy provider affiliated with the registrar, the registrar may contact the accredited / affiliated privacy / proxy provider to allow for the reveal of the proxy customer data. However, such contact may only be established after an initial lock has been applied preventing any changes of registrar and registrant.

**Preliminary recommendation #3:** Within 2 business days<sup>4</sup> at the latest following receipt of the verification request from the UDRP Provider, the Registrar will modify the status of the registration to prevent any changes of registrar and registrant. These changes must be prevented within 2 business days from the date of receipt of a request for verification through the remaining pendency of the UDRP Proceeding, except in case of the suspension

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<sup>1</sup> The WG is considering adding the bracketed language and would welcome community input on the proposed addition.

<sup>2</sup> This is an initial check the UDRP Provider performs to ensure it does not concern a bogus complaint. This check should not be confused with the administrative compliance check as described in the UDRP which is performed as per step 4 of this proposal.

<sup>3</sup> To apply to accredited privacy / proxy providers following finalization of the privacy / proxy accreditation program by ICANN.

<sup>4</sup> Business days are defined as business days in the jurisdiction of the entity required to undertake the action, in this case the registrar.

of a UDRP proceeding (see recommendation #10). Pendency is defined as from the moment a UDRP complaint, or relevant document initiating a court proceeding or arbitration, regarding your domain name, has been submitted by the Complainant to the UDRP Provider, as the case may be. Any updates<sup>5</sup> as a result of a request by the accredited / affiliated privacy / proxy provider to reveal the underlying proxy customer data need to be made before the 2 business day timeframe ends or before the registrar verifies the information requested and confirms the lock to the UDRP Provider, whichever occurs first.

A registrar may not permit transfer to another registrant<sup>6</sup> or registrar after receipt of a request for verification is received by the Registrar from the UDRP Provider, except in limited situations involving an arbitration not conducted under the Policy or involving litigation as provided by the UDRP Policy Paragraphs 8(a) or 8(b). For the purposes of the UDRP, the Registrant listed in the Whois record at the time of the Lock will be recorded as the Respondent(s). Any changes to Whois information during the pendency of the administrative proceeding under the Policy may be permitted or prohibited based on the Registrar's applicable policies and contracts, however, it is the responsibility of the Registrant (UDRP Rule 2(e) and UDRP Rule 5(b)(ii)) to inform the Provider of any relevant updates that may affect Provider notices and obligations to Respondent under the UDRP. A registrar may opt to reveal underlying data as a result of privacy/proxy services to the Provider or in Whois, or both, if it is aware of such. This will not count as a "transfer" in violation of the above, if it occurs in accordance with draft recommendation #2. If a privacy/proxy service is revealed or proxy customer information released after the Lock is applied and the Provider is notified, the Provider is under no obligation to require the Complainant to amend its complaint accordingly, but may do so in its discretion. It is the responsibility of the Registrant (UDRP Rule 2(e) and UDRP Rule 5(b)(ii)) to inform the Provider of any relevant updates that may affect Provider notices and obligations to Respondent under the UDRP and the Provider shall, in accordance with the UDRP, provide Respondent with case information at the details it prefers once the Provider is aware of the

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<sup>5</sup> The revealed data may only include data held on record by the accredited / affiliated privacy / proxy provider.

<sup>6</sup> For clarity, this includes any transfer to a privacy or proxy service other than reveals of the proxy customer data as provided for in the following paragraph.

update (UDRP 5(b)(iii) requires Provider to send communications to the preferred email address of Respondent, for instance).

**Preliminary recommendation #4:** The registrar must confirm to the UDRP Provider within 2 business day following receipt of the verification<sup>7</sup> request from the UDRP Provider that any changes of registrar and registrant have been prevented and will be prevented during the pendency of the proceeding and verifies the information requested by the UDRP Provider.

**Preliminary Recommendation #5:** If deemed compliant, the UDRP Provider shall forward the complaint to the Registrar and Respondent and notify them of the commencement of the administrative proceeding no later than 3 business days<sup>8</sup> following receipt of the fees paid by the complainant.

**Preliminary Recommendation #6:** If the complaint should remain non-compliant, or fees unpaid, after the period for the administrative deficiency check per UDRP Para 4 has passed, or if the complainant should voluntarily withdraw during that period, the UDRP Provider informs the Registrar that the proceeding is withdrawn. The Registrar shall, within one business day of the transmission of the notice of withdrawal, release the “lock”.

**Preliminary Recommendation #7:** As part of its notification to the Registrant, the UDRP Provider informs the Registrant that any corrections to the Registrant’s contact information during the remaining pendency of the proceedings are also required to be communicated to the UDRP Provider as per UDRP rule 5(ii) and (iii).

**Preliminary Recommendation #8:** This notification would also include information that any changes as a result of lifting of proxy / privacy services, following the ‘locking’, would need to be discussed / addressed by the UDRP Panel directly. The WG recommends that this issue is further reviewed as part of the privacy / proxy accreditation program.

**Preliminary Recommendation #9:** Upon receipt and communication of a decision from the Provider, the Registrar must within 3 business days communicate to each Party, the

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<sup>7</sup> The UDRP Provider will send a request to the registrar to verify amongst others that the named Respondent is the actual registrant of the domain name(s) in issue, language of the registration agreement as well as checking the Respondent's contact details.

<sup>8</sup> This change to the UDRP Rules (currently it says ‘calendar’ days) is recommended to ensure that this is in line with the 2 business day requirement to lock as otherwise there may be a situation whereby 2 business days are longer than 3 calendar days, not allowing the UDRP Provider to perform the administrative checks within the allocated timeframe.

Provider, and ICANN the date for the implementation of the decision in accordance with the Policy (UDRP Rule 16 and UDRP Paragraphs 4(k) and Paragraph 8(a). If the Complainant has prevailed, the Registrar shall implement the Panel order immediately after 10 business days have elapsed (UDRP Paragraph 4(k)). The Complainant or its Authorized representative is required to provide the Registrar with the required information regarding implementation; this may include the information that should be in the Whois. If the Respondent has prevailed, the Registrar shall prohibit transfer of the domain name to another registrar or registrant for 15 business days from the date the decision is transmitted from the Provider (UDRP Paragraph 8).

**Preliminary Recommendation #10:** In the case of suspension of a proceeding (when the parties have agreed to a settlement), the UDRP Provider informs the Registrar of the Suspension, including the expected duration of the suspension.. Should both parties come to a settlement, which would involve a transfer, cancellation or agreement that the registration will remain with the Respondent, the registrar must remove any lock preventing a transfer or cancellation within 2 Business days of confirmation of the settlement by both Parties.

**Preliminary Recommendation #11:** ICANN, in collaboration with UDRP Providers, Registrars and other interested parties, will develop educational and informational materials that will assist in informing affected parties of these new requirements and recommended best practices following the adoption by the ICANN Board of these recommendations.

- In addition to these recommendations, the Working Group is also considering additional clarifications with regard to the process in case of a settlement. Community input is requested on the options outlined in section 6.
- Preliminary level of consensus for these recommendations: The WG appears to have consensus for all the above recommendations. A formal consensus call will be conducted once the recommendations are finalized following review of the public comments received on this Initial Report.

#### 1.4 Community Input

- The WG opened [a public comment forum](#) on 25 July 2012 and requested input from GNSO Stakeholder Groups and Constituencies, as well as other ICANN Supporting Organizations

and Advisory Committees. Further information on the community input obtained can be found in section 7.

### **1.5 Conclusions and Next Steps**

- The Working Group aims to complete this section of the report in the second phase of the PDP, following review of the public comments received on the Initial Report.



## 2. Objective and Next Steps

This Initial Report on the Locking of a Domain Name Subject to UDRP Proceedings PDP is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws, Annex A (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The Initial Report will be posted for public comment for 30 days, minimum, plus a 21-day reply period. The comments received will be analyzed and used for redrafting of the Initial Report into a Final Report to be considered by the GNSO Council for further action.

## 3. Background

### 3.1 Process background

- The issue of locking of a domain name subject to UDRP Proceedings was raised in the context of the Inter-Registrar Transfer Policy Part B Policy Development Process, and as a result, the IRTP Part B PDP Working Group recommended in its [Final Report](#) that 'if a review of the UDRP is conducted in the near future, the issue of requiring the locking of a domain name subject to UDRP proceedings is taken into consideration'.
- The GNSO Council subsequently acknowledged receipt of this recommendation at its meeting on 22 June 2011 and [noted](#) that it would 'consider this recommendation when it considers the Final Issue Report on the Current State of the UDRP', an Issue Report that had been requested in the meantime.
- Subsequently, the GNSO Council considered the Final Issue Report on the Current State of the UDRP and [decided](#) at its meeting on 15 December 2011 to initiate 'a PDP and the establishment of a Working Group on recommendation #7 of the IRTP Part B Working Group concerning the requirement to lock a domain name subject to UDRP proceedings'. A drafting team was then formed which developed the proposed charter for the PDP Working Group, which was [adopted](#) by the GNSO Council on 14 March 2012.
- Following the adoption of the Charter, a [call for volunteers](#) was launched following which the Working Group formed and held its first meeting on 16 April 2012.

### 3.2 Issue background

The issue was first raised in the context of the Inter-Registrar Transfer Part B PDP discussions on standardizing the use of Registrar Lock Status where it was noted "that locking a domain name registration subject to a UDRP dispute should be a best practice". However, the Working Group "noted that any changes to making this a requirement should be considered in the context of any potential UDRP review" and as a result recommended in its [Final Report](#) that 'if a review of the UDRP is conducted in the near future, the issue of requiring the locking of a domain name subject to UDRP proceedings is taken into consideration'. Subsequently, an Issue Report was requested on the

current state of the Uniform Domain Name Dispute Resolution Policy (UDRP). In the [Final Issue Report](#), this issue was identified, amongst others, in community comments submitted which included: "No requirement to lock names in period between filing complaint and commencement of proceedings"; "Need clarification of domain locking"; "Unclear what is meant by "Status Quo"; "No explanation of 'Legal Lock' mechanisms and when they go into effect or when they should be removed."

At the start of its deliberations the Working Group defined the issue in further detail noting that:

- Neither the UDRP nor the RAA require a "lock" of any sort during a UDRP at least as far as changes within a registrar are concerned. The UDRP and the IRTP both refer to the inter-registrar transfer interaction with the UDRP.
- However, there is the assumption, or implicit consequence, of a "lock" requirement which has developed over time in connection with UDRP Paragraph 7 and 8:

**7. Maintaining the Status Quo.** *We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in [Paragraph 3](#) above.*

**8. Transfers During a Dispute.**

**a. Transfers of a Domain Name to a New Holder.** *You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to [Paragraph 4](#) or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.*

- Even though transfers to another holder during a UDRP are allowed under paragraph 8, if certain conditions are met, most registrars who responded to ICANN's survey (described below) have implemented a lock as an administrative convenience or best practice to avoid any issues

that would result in having to cancel the transfer to another holder should the conditions not have been met.

- Paragraph 7 does require a registrar to maintain “Status Quo”, but the policy does not define at which point this “status quo” should be maintained or how this should be done.
- In short, the “locking” associated with UDRP proceedings is not something that is literally required by the UDRP as written, but is a practice that has developed around it, but as a result, there is no uniform approach, which has resulted in confusion and misunderstandings.

## 4. Approach taken by the Working Group

The Locking of a Domain Name Subject to UDRP Proceedings Working Group started its deliberations on 16 April 2012 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.

The Working Group also prepared a work plan, which was reviewed on a regular basis. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that could be used to provide input in response for the request for constituency and stakeholder group statements (see Annex B). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process.

### 4.1 Members of the Working Group

The members of the Working group are:

Name	Affiliation*	Meetings Attended (Total # of Meetings: 30)
Laurie Anderson	RrSG	22
Brian Beckham	Individual	9
John Berryhill	RrSG	5
Hago Dafalla	NCSG	22
Kristine Dorrain	National Arbitration Forum	17
Sheri Falco	RySG	7
Fred Felman	Individual	1
Randy Ferguson	IPC	17
Lisa Garono	IPC	23
Alan Greenberg	ALAC	27
Volker Greimann	RrSG	23
Zahid Jamil	CBUC	0
Yetunde Johnson	Individual	1

Barbara Knight	RySG	0
Celia Lerman	CBUC	17
Joy Liddicoat (Council Liaison)	NCSG	0
David Maher	RySG	12
Victoria McEvedy	NCSG	4
Michele Neylon (Chair)	RrSG	19
Andrii Paziuk	NCSG	3
David Roach-Turner	WIPO	21
Juan Manuel Rojas	ALAC	14
Luc Seufer	RrSG	23
Matt Schneller	IPC	21
Faisal Shah	Individual	19
Ken Stubbs	RySG	0
Gabriela Szlak	CBUC	16
Jonathan Tenenbaum	RrSG	10
Hong Xue	ALAC	0

The statements of interest of the Working Group members can be found at <https://community.icann.org/display/udrpproceedings/4.+Members>.

The attendance records can be found at <https://community.icann.org/x/thQQAg>.

The email archives can be found at <http://forum.icann.org/lists/gnso-lockpdp-wg/>.

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RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

## 5. Deliberations of the Working Group

This chapter provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads. The points below are just considerations to be seen as background information and do not necessarily constitute any suggestions or recommendations by the Working Group. It should be noted that the Working Group will not make a final decision on which solution(s), if any, to recommend to the GNSO Council before it completes a thorough review of the comments received during the public comment period on the Initial Report.

### 5.1 Initial Fact-Finding and Research

The [Working Group Charter](#) required that the Working Group should ‘as a first step, request public input on this issue 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’. As part of this process, the Working Group developed a survey targeted at registrars and UDRP Providers to gain a better understanding of the current processes, practices and issues encountered. The main findings of the survey can be found hereunder, while the complete results of the registrar survey can be found [here](#) and the complete results of the UDRP provider survey [here](#). In addition to the survey, the Working Group also requested input from GNSO Stakeholder Groups / Constituencies, other ICANN Supporting Organizations and Advisory Committees, as well as public comments (see section 6 for further details).

#### 5.1.1 Main Findings of Registrar Survey

41 registrars participated in the survey. The main findings are:

##### When is the lock applied

- Registrars either lock a domain name pursuant to UDRP proceedings upon receipt of a complaint from the complainant (46%) or upon the provider’s request for verification from the UDRP dispute resolution provider (49%).
- Only a small minority (2%) does not lock a domain name during UDRP proceedings.

### Kind of lock applied

- The majority of survey respondents (69%) indicate that an EPP lock is applied. In a minority of cases (31%) a registrar lock, or an EPP lock + registrar lock is applied.
- Once a lock is applied, in a majority of cases the following changes are not allowed: a transfer to another registrar (95%); change of registrant (88%); transfer to another account at the same registrar (74%); cancellation (71%), and; modification of any Whois data except for where a recognized “privacy” or “proxy” service is the listed registrant and that service substitutes the information that it already has on file for the “actual” registrant (52%).
- In a minority of cases (41%) modification of any Whois data is not allowed<sup>9</sup>.
- Typically the same lock is applied throughout the different stages of the UDRP proceedings.

### Timeframe for applying a lock

- Half of the survey respondents (50%) apply the lock less than 12 hours on a business day following receipt of notice from the complainant or receipt of the provider’s request for verification. In most other cases (46%) the lock is typically applied between 12 hours and 2 business days.

### Removing the lock

- A majority of survey respondents (62%) move the domain name into an account that is accessible only to the complainant if the UDRP proceeding is decided in favor of the complainant, after expiration of the 10 day “wait period”<sup>10</sup> after a decision. Others note that this may not happen as a result of transfer out or cancellation request from the complainant or that the complainant first needs to create an account with the registrar.
- Most survey respondents (45%) unlock the domain name within 1 day after the expiration of the ‘wait period’ if the UDRP proceeding is decided in favor of the complainant. Others remove it

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<sup>9</sup> It was pointed out as part of the WG discussions that some registrars do not consider that a transfer of a registration from a Whois proxy to its customer should be considered a change of Whois data.

<sup>10</sup> From the UDRP: ‘If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel’s decision before implementing that decision.’



between 1 and 5 business days (28%), after more than 5 business days (5%) or until action is taken by the complainant (e.g. new account provided, instructions on where to transfer the domain).

- A majority of survey respondents (51%) unlocks the domain name within 1 business day after the 15 day 'wait period'<sup>11</sup>. Most others (37%) unlock between 1 and 2 business days. A small minority (4%) needs more than 3 business days to unlock.

### 5.1.2 UDRP Provider Survey

Responses were received from all four UDRP Providers. The main findings of this survey are:

#### UDRP PROVIDER SURVEY

##### Is the domain name locked

- The UDRP providers observed that the registrar locks the domain name in over 90% of cases. One provider indicated that this happens in 75% or more cases. Two UDRP providers specified that registrars fail to confirm the lock within 5 days of the verification request in approximately 6% of cases. Another provider expressed that this occurs in fewer than 25% of cases<sup>12</sup>.

##### When is the lock applied

- Half of the UDRP Providers are not aware of the registrar locking the domain name upon receipt of a UDRP complaint from the complainant. The other half are aware of this happening, but only in less than 25% of cases.
- None of the UDRP providers are aware of registrars locking the domain name upon receipt of notice of commencement.

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<sup>11</sup> From the UDRP: 'You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to [Paragraph 4](#) or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded.'

<sup>12</sup> The survey responses initially provided for quartile increments. The Working Group contacted the UDRP Providers that participated in the survey to provide a further detailed breakdown, if possible. Two UDRP Providers were able to provide a further detailed breakdown.

### **Changes after the lock has been applied**

- In less than 25% of cases, UDRP Providers are aware of subsequent material changes to the registrant data, which impacted administration of the UDRP dispute following the registrar having confirmed the locking in response to a verification request.
- In less than 25% of cases UDRP providers are aware of a confirmed domain name lock failing to prevent a transfer to another registrar or registrant, changes to relevant Whois data or expiration, with three UDRP providers further detailing this figure to be close to zero.

### **Issuing of request for verification**

- UDRP Providers typically issue a request for verification<sup>13</sup> in less than 24 hours, and in many cases less than 12 hours.

### **Privacy / Proxy Registrations**

- Half of the UDRP providers find that in less than 25% of cases the registrar transfers a registration from a proxy service to its customer and confirms lock on that basis in response to the registrar verification request<sup>14</sup>. The other half find that this happens in between 25% and 50% of cases.

### **Removing the lock**

- In their responses, 1 UDRP provider estimates that in less than 25% of cases where the UDRP proceeding has been decided in favour of the complainant, the registrar or registrar's lock have hindered transfer of a domain name to the complainant after the 10 day "wait period", while 1 UDRP provider notes that in many cases the domain name is unlocked, but it takes much longer than 10 business days.

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<sup>13</sup> Following the filing of a complaint, the UDRP Provider will send a request to the registrar to verify amongst others that the named Respondent is the actual registrant of the domain name(s) in issue, language of the registration agreement as well as checking the Respondent's contact details. See Annex D for an example of a verification request.

<sup>14</sup> One of the respondents further clarified that in approximately 25% of UDRP cases privacy / proxy registrations are involved of which in 75% of cases the underlying or actual registrant is revealed.

- In less than 25% of cases where the proceeding is decided in favour of the registrant, UDRP providers are aware of the registrar not having unlocked the domain name once the 15 day 'wait' period has expired, with three UDRP Providers further detailing this to be close to zero.

## 5.2 Working Group Deliberations

### 5.2.1 Charter Question 1. Whether the creation of an outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock, would be desirable.

*What is the current situation?*

- Currently there is no outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock. The UDRP Rules foresee that the complainant submits the complaint to any UDRP Provider approved by ICANN, and details that a copy of the complaint has to be sent to the respondent. Three of the four UDRP Provider supplemental rules (NAF, WIPO and ADNDRC) also require the complainant to send a copy of the complaint to the respondent at the time of filing of the complaint with the UDRP Provider. Three UDRP Providers (ADNDRC, WIPO, NAF) also require the complainant to submit a copy of the complaint to the registrar at the same time the complaint is submitted to the UDRP Provider.
- There is no formal requirement for a registrar to do anything upon receiving notification from the complainant, although some may argue that article 7 of the UDRP (Maintaining the Status Quo) could be applicable here.
- The Registrar Survey found that 46% of registrars that responded to the survey lock the domain name upon receiving a copy of the complaint from the complainant.

*Working Group Findings*

- The Working Group noted that the charter question seems to imply that a lock should be applied as the result of a complainant action. The Working Group pointed out that even though the UDRP rules require that the complainant notifies the registrant at the time of filing of the

complaint with the UDRP provider, there is no such requirement to notify the registrar (apart from, as pointed out above, the requirement by three UDRP providers to do so under its supplemental rules). At the same time, the Registrar Survey revealed that 46% of registrars do lock the domain name upon receiving a copy of the complaint from the complainant. The Working Group is of the view that a requirement to lock a domain name should only be the result of a formal verification request by the UDRP Provider, although the registrar may decide to lock earlier at its own discretion.

- It was pointed out as part of the public input received (see public comment review tool) that it could be helpful if the complainant at the time of filing the complaint would also provide information on the 'new registrant' should the complainant prevail in the proceeding and a transfer ordered, as this would facilitate the unlocking process and implementation of the decision by the registrar. The Working Group considered whether this could be considered as a best practice recommendation.
- Based on the review of the comments received as well as the survey results, the Working Group does agree that outlining a proposed procedure, which would outline the responsibilities of all parties involved in relation to the locking and unlocking of a domain name subject to UDRP Proceedings, including the complainant, would be desirable. A proposed outline of such a procedure can be found in section 6 of this report for community input.

**5.2.2 CHARTER QUESTION 2. Whether the creation of an outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute would be desirable.**

*What is the current situation?*

- Currently there is no outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute, apart from what has been outlined in the UDRP itself which, as has been outlined above, does not contain any information in relation to locking or unlocking.
- In 2009, discussions were held with regard to registrar best practices regarding the UDRP (see for example, <http://syd.icann.org/node/4051>), but the draft discussed was never adopted.

### *Working Group Findings*

- The Working Group observed that based on the results of the Registrar survey it can be concluded that there is no uniform approach when it comes to how registrars respond following the receipt of a UDRP complaint. In addition, the input received as a result of the public comments as well as the survey, seemed to indicate that many registrars would welcome such an outline as it would clarify their role and responsibility in the case of a UDRP Proceeding. It was also noted that such an outline could be especially helpful for registrars that do not receive a large number of UDRP complaints and may only have to deal with one on an occasional basis.

### **5.2.3 Charter Question 3 - Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized.**

#### *What is the current situation?*

- As noted above, the UDRP does not require the locking of a domain name, but requires the registrar to maintain 'status quo' (the registrar will not 'cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration'). No specific time frame is associated with maintaining the status quo, e.g. from which moment during the course of the UDRP Proceeding this status quo should be maintained.
- As described above, the Registrar Survey found that registrars either lock a domain name pursuant to UDRP proceedings upon receipt of a complaint from the complainant (46%) or upon the provider's request for verification from the UDRP dispute resolution provider (49%). Furthermore half of the respondents (50%) apply the lock less than 12 hours (calculated on a business day) following receipt of notice from the complainant or receipt of the provider's request for verification. In most other cases (46%) the lock is typically applied between 12 hours and 2 business days after receipt.

### *Working Group Findings*

- The Working Group noted that the trigger for the locking of a domain name should not be the filing of a complaint, as noted in the charter question, but the moment at which the registrar receives a request for verification from the UDRP Provider. It was noted, however, that a

registrar should not be prevented from locking a domain name subject to UDRP Proceedings, for example, following notification by the complainant, should it decide to do so.

- The Working Group also discussed the current requirement under the UDRP rules for the complainant to inform the respondent upon filing of the complaint (the complaint has to 'state that a copy of the complaint, including any annexes, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent' – UDRP Rules<sup>15</sup> section 3, art b (xii)). The WG observed that informing the respondent prior to the locking of a domain name could result in cyberflight as the domain name registration may not have been locked by the registrar. It was also noted that under the Uniform Rapid Suspension System (URS) the respondent is only notified after the domain name registration has been locked by the registry ('Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint'<sup>16</sup>). As a result, the WG is recommending a targeted change to the UDRP rules to modify this requirement and instead make it optional for the complainant to inform the respondent at the time of filing the complaint with the UDRP Provider.
- The Working Group discussed the process following the filing of the complaint. Following the filing of the complaint, the UDRP Provider conducts an initial administrative check (i.e., to make sure it is valid) following which it sends a request for verification to the registrar including a request to prevent any changes of registrar and registrant. Following confirmation from the registrar, the UDRP Provider will complete the administrative check and confirms that payment has been received, following which the registrar, the complainant and ICANN will be informed of the commencement of the administrative proceedings. It was pointed out that the UDRP requires that a transfer of registrant or registrar are not allowed 'during a pending administrative proceeding' which implies that a formal commencement is not a requirement for preventing such changes.
- The Working Group agreed that there should be a set timeframe within which a registrar should be required to prevent any changes of registrar and registrant of a domain name subject to UDRP proceedings. The Working Group agreed that such a timeframe should be set in business

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<sup>15</sup> <http://www.icann.org/en/help/dndr/udrp/rules>

<sup>16</sup> <http://newgtlds.icann.org/en/applicants/agb/urs-04jun12-en.pdf>

days<sup>17</sup> instead of hours or calendar days to accommodate different time zones and parts of the world as the registrar and UDRP Provider are not necessarily in the same time zone.

#### **5.2.4 Charter Question 4a - Whether what constitutes a “locked” domain name should be defined.**

*What is the current situation?*

- Currently there is no definition of “lock” and the term does not even appear in the UDRP. As noted before, the “locking” associated with UDRP proceedings is not something that is literally required by the UDRP as written, but is a practice that has developed around it. The UDRP does require that “status quo” is maintained (no cancellation, transfer, activation, deactivation or otherwise change the status of the domain name registration).
- As described above, the Registrar survey found that in a majority of cases the following changes are not allowed: a transfer to another registrar (95%); change of registrant (88%); transfer to another account at the same registrar (74%); cancellation (71%), and; modification of any Whois data except for where a recognized “privacy” or “proxy” service is the listed registrant and that service substitutes the information that it already has on file for the proxy customer (52%). In a minority of cases (41%) modification of any Whois data is not allowed<sup>18</sup>.

*Working Group Findings*

- The Working Group noted that the term “locked” has been used extensively in relation to this topic without a clear definition. The Working Group considers it imperative that any recommendations in relation to this issue are accompanied by a clear definition of what the term “locked” means in the context of UDRP proceedings, that do not leave any room for (mis)interpretation. As a result, the Working Group started working on a possible definition of the term “locked” at an early stage of its deliberations, but realized that a shared understanding of the requirements for locking of a domain name registration would need to be developed first

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<sup>17</sup> Business days would be defined as business days in the jurisdiction of the entity required to undertake the action.

<sup>18</sup> It was pointed out as part of the Working Group discussions that some registrars do not consider revealing the actual registrant in cases where proxy/privacy services are used a change of Whois.

before the definitional work could be finalized. Based on the shared understanding that has developed since, the Working Group would propose the following definition of a lock in the context of UDRP Proceedings: term “lock” means preventing any changes of registrar and registrant.

- The Working Group also recognized the importance of defining when and how the unlocking of a domain name subject to UDRP Proceedings should take place, either in the case a settlement between the parties has been achieved or when the proceeding is completed.

**5.2.5 Charter Question 4b - Whether, once a domain name is 'locked' pursuant to a UDRP proceeding, the registrant information for that domain name may be changed or modified.**

*What is the current situation?*

- The UDRP defines that ‘status quo’ needs to be maintained which includes no transfer or other change to the status of the domain name registration. In relation to ‘no transfer’ it seems obvious that this would include no changes to the registered name holder. However, other changes to the status of the domain name registration are not defined and open to interpretation. The Registrar Survey found that for 52% of respondents modification is not allowed of any Whois data except for where a recognized “privacy” or “proxy” service is the listed registrant and that service substitutes the information that it already has on file for the proxy customer. In a minority of cases (41% of respondents) modification of any Whois data is not allowed. The question would need to be asked though whether preventing changes to Whois contact information intended to ensure that Whois data is accurate would be in conflict with the Whois accuracy requirements as defined in the Registrar Accreditation Agreement (see for example <http://www.icann.org/en/news/announcements/advisory-10may02-en.htm>).

*Working Group Findings*

- As part of the deliberations, UDRP Providers pointed out that information from Whois is generally only noted down at the commencement of the proceedings. Changes made to Whois



information at a later point in time typically go unnoticed by the Provider, unless the UDRP Provider is informed separately.

- It was also pointed out that in certain circumstances changes would have to be allowed, for example in compliance with section 8a of the UDRP ('unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator').
- The Working Group extensively discussed how privacy / proxy registrations should be factored in: should a reveal of the proxy customer be allowed after the locking of the domain name registrations? Some pointed out that one of the practical issues that currently exists is that there are no accredited privacy / proxy providers, which makes it difficult for a registrar to determine whether they are dealing with such a provider. Others noted that as part of the negotiations of the RAA, there has been discussion of developing an accreditation programme for privacy / proxy providers which may address this issue. UDRP Providers pointed out that changes as a result of the lifting of a privacy / proxy service, after the locking of domain name registration, may be communicated to the UDRP Panel who would decide whether to consider the proxy customer or the privacy / proxy provider as the respondent in its decision.
- UDRP Providers also pointed out that any changes to the registrant details after the commencement of proceedings could have an impact on the jurisdiction of the case, which would create unnecessary complications.
- The Working Group also discussed whether there should be a requirement to reveal the proxy customer, but it was noted out that such a requirement could be abused by parties interested in obtaining information about the underlying registrant, who could then just file a UDRP Proceeding to obtain that information.
- As a result of these discussions, the Working Group is proposing (see also section 6) that in the case of accredited privacy / proxy providers or a privacy / proxy provider affiliated with the registrar, the registrar may contact the accredited / affiliated privacy / proxy provider to allow for the reveal of the underlying registrant data. However, such contact may only be established after an initial lock has been applied preventing any changes of registrar and registrant. Any

updates<sup>19</sup> as a result of a request by the accredited / affiliated privacy / proxy provider to reveal the underlying registrant data need to be made before the 2 business day timeframe ends or before the registrar verifies the information requested and confirms the lock to the UDRP Provider, whichever occurs first. It was pointed out that this issue is likely to be further considered in the context of the discussions on the accreditation of privacy / proxy providers.

- Most agreed that any changes to the registrant information as a result of the lifting of privacy / proxy services should be done prior to the confirmation of the lock to the UDRP Provider. Further consideration to this issue should be given as part of the discussions on privacy / proxy provider accreditation as it may be appropriate to provide additional time to accredited privacy / proxy providers to reveal the underlying registrant information in case of a UDRP proceeding.

#### **5.2.6 Charter Question 5 - Whether additional safeguards should be created for the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding.**

*What is the current situation?*

- The UDRP rules require that 'a copy of the complaint, including any annexes, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder)' by the complainant at the time of filing. In addition, the UDRP Provider is required to inform the Respondent of the commencement of the proceedings.

*Working Group Findings*

- The Working Group noted that currently it is the responsibility of the complainant as well as the UDRP Provider to inform the registrant of the filing of a UDRP proceeding. It was also noted that it is the registrant's responsibility to ensure that the information in Whois is up to date and accurate. In addition, other policies, such as the Expired Domain Deletion Policy (EDDP) allow for the renewal of a domain name subject to UDRP proceedings.
- The Working Group discussed that one of the areas where additional safeguards might be appropriate is in relation to the registrant's control of the name server. It was noted that there

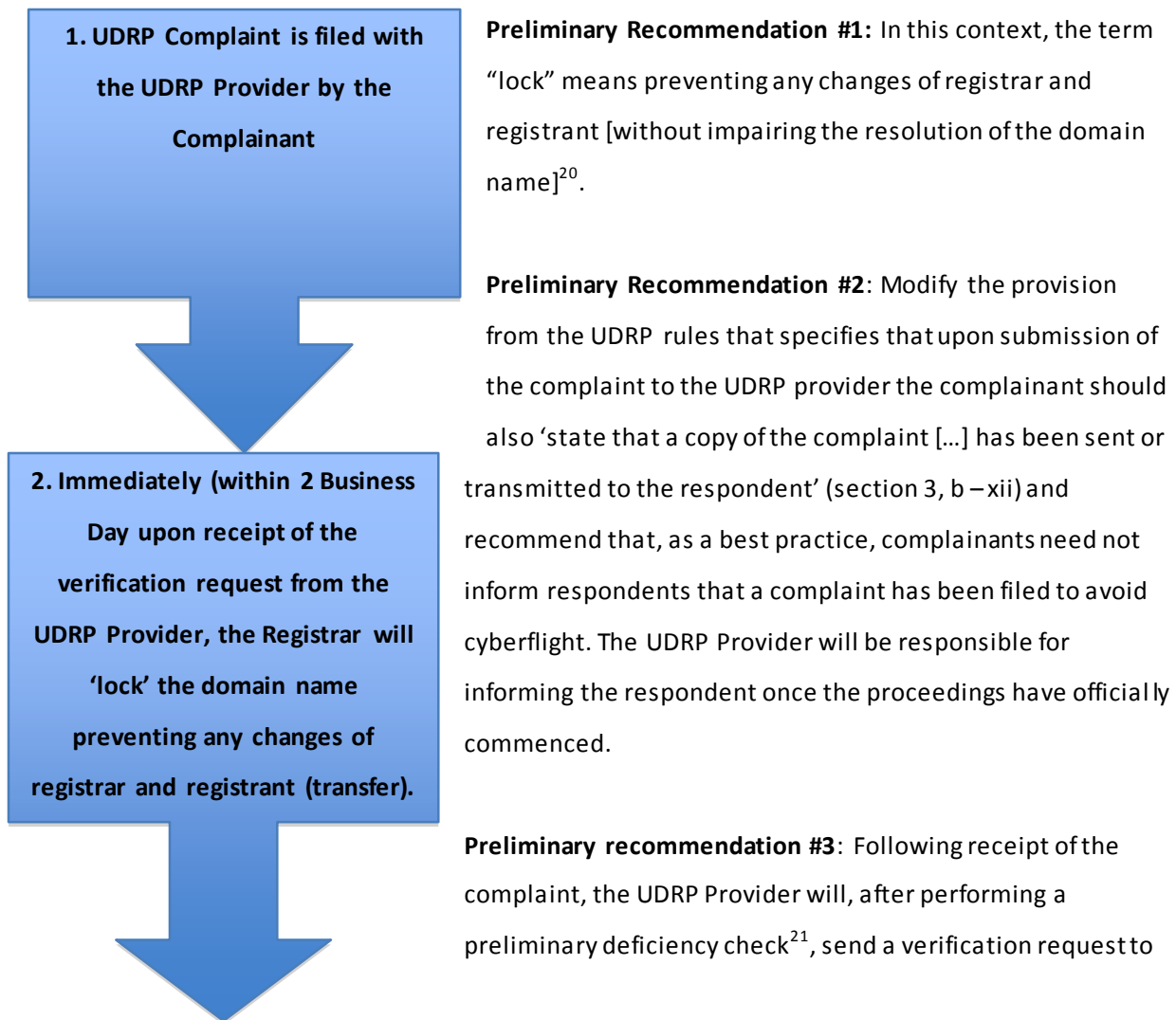
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<sup>19</sup> The revealed data may only include data held on record by the accredited / affiliated privacy / proxy provider.

are cases known in which the registrar moves the domain name subject to UDRP Proceedings to a different account, which means the registrant does not have any control anymore over its domain name registration. It was pointed out that changes to the DNS are not considered 'transfers' as defined in the UDRP and any changes to the DNS would therefore not need to be prevented. The Working Group suggested that clarifying that changes to the DNS are allowed, may ensure sufficient safeguards as per the charter question.

## 6. Working Group Preliminary Recommendations

Based on its deliberations and findings as outlined in the previous section, the Working Group would like to put forward the preliminary recommendations outlined below for community input.



<sup>20</sup> The WG is considering adding the bracketed language and would welcome community input on the proposed addition.

<sup>21</sup> This is an initial check the UDRP Provider performs to ensure it does not concern a bogus complaint. This check should not be confused with the administrative compliance check as described in the UDRP which is performed as per step 4 of this proposal.

the Registrar, including the request to prevent any changes of registrar & registrant for the domain name registration. The registrar is not allowed to notify the registrant of the pending proceeding until such moment that any changes of registrar and registrant have been prevented, but may do so once any changes of registrar and registrant have been prevented. In the case of accredited privacy / proxy providers<sup>22</sup> or a privacy / proxy provider affiliated with the registrar, the registrar may contact the accredited / affiliated privacy / proxy provider to allow for the reveal of the proxy customer data. However, such contact may only be established after an initial lock has been applied preventing any changes of registrar and registrant.

**Preliminary recommendation #3:** Within 2 business days<sup>23</sup> at the latest following receipt of the verification request from the UDRP Provider, the Registrar will modify the status of the registration to prevent any changes of registrar and registrant. These changes must be prevented within 2 business days from the date of receipt of a request for verification through the remaining pendency of the UDRP Proceeding, except in case of the suspension of a UDRP proceeding (see recommendation #10). Pendency is defined as from the moment a UDRP complaint, or relevant document initiating a court proceeding or arbitration, regarding your domain name, has been submitted by the Complainant to the UDRP Provider, as the case may be. Any updates<sup>24</sup> as a result of a request by the accredited / affiliated privacy / proxy provider to reveal the underlying proxy customer data need to be made before the 2 business day timeframe ends or before the registrar verifies the information requested and confirms the lock to the UDRP Provider, whichever occurs first.

A registrar may not permit transfer to another registrant<sup>25</sup> or registrar after receipt of a request for verification is received by the Registrar from the UDRP Provider, except in limited situations

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<sup>22</sup> To apply to accredited privacy / proxy providers following finalization of the privacy / proxy accreditation program by ICANN.

<sup>23</sup> Business days are defined as business days in the jurisdiction of the entity required to undertake the action, in this case the registrar.

<sup>24</sup> The revealed data may only include data held on record by the accredited / affiliated privacy / proxy provider.

<sup>25</sup> For clarity, this includes any transfer to a privacy or proxy service other than reveals of the proxy customer data as provided for in the following paragraph.

involving an arbitration not conducted under the Policy or involving litigation as provided by the UDRP Policy Paragraphs 8(a) or 8(b). For the purposes of the UDRP, the Registrant listed in the Whois record at the time of the Lock will be recorded as the Respondent(s). Any changes to Whois information during the pendency of the administrative proceeding under the Policy may be permitted or prohibited based on the Registrar's applicable policies and contracts, however, it is the responsibility of the Registrant (UDRP Rule 2(e) and UDRP Rule 5(b)(ii) to inform the Provider of any relevant updates that may affect Provider notices and obligations to Respondent under the UDRP.

A registrar may opt to reveal underlying data as a result of privacy/proxy services to the Provider or in Whois, or both, if it is aware of such. This will not count as a "transfer" in violation of the above, if it occurs in accordance with draft recommendation #2. If a privacy/proxy service is revealed or proxy customer information released after the Lock is applied and the Provider is notified, the Provider is under no obligation to require the Complainant to amend its complaint accordingly, but may do so in its discretion. It is the responsibility of the Registrant (UDRP Rule 2(e) and UDRP Rule 5(b)(ii) to inform the Provider of any relevant updates that may affect Provider notices and obligations to Respondent under the UDRP and the Provider shall, in accordance with the UDRP, provide Respondent with case information at the details it prefers once the Provider is aware of the update (UDRP 5(b)(iii) requires Provider to send communications to the preferred email address of Respondent, for instance).

**3. Within 2 business days, the Registrar must confirm to the UDRP Provider that the lock has been placed and verify the information requested by the UDRP Provider in its verification request.**

**Preliminary recommendation #4:** The registrar must confirm to the UDRP Provider within 2 business day following receipt of the verification<sup>26</sup> request from the UDRP Provider that any changes of registrar and registrant have been prevented and will be prevented during the pendency of the proceeding and verifies the information requested by the UDRP Provider.

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<sup>26</sup> The UDRP Provider will send a request to the registrar to verify amongst others that the named Respondent is the actual registrant of the domain name(s) in issue, language of the registration agreement as well as checking the Respondent's contact details.

**4. Following the receipt of the confirmation from the Registrar, the UDRP Provider will review the complaint for administrative compliance with the Policy and the Rules.**

As per the [UDRP Rules](#).

**5. If deemed compliant per step 4, the UDRP Provider shall forward the complaint to the Registrar and Respondent and notify the Registrar, Complainant and the Respondent of the commencement of the administrative proceeding within 3 calendar days following receipt of the fees to be paid by the complainant.**

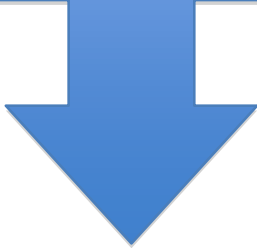
**Preliminary Recommendation #5:** If deemed compliant, the UDRP Provider shall forward the complaint to the Registrar and Respondent and notify them of the commencement of the administrative proceeding no later than 3 business days<sup>27</sup> following receipt of the fees paid by the complainant.

**Preliminary Recommendation #6:** If the complaint should remain non-compliant, or fees unpaid, after the period for the administrative deficiency check per UDRP Para 4 has passed, or if the complainant should voluntarily withdraw during that period, the UDRP Provider informs the Registrar that the proceeding is withdrawn. The Registrar shall, within one business day of the transmission of the notice of withdrawal, release the “lock”.

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<sup>27</sup> This change to the UDRP Rules (currently it says ‘calendar’ days) is recommended to ensure that this is in line with the 2 business day requirement to lock as otherwise there may be a situation whereby 2 business days are longer than 3 calendar days, not allowing the UDRP Provider to perform the administrative checks within the allocated timeframe.

**6. As part of its notification to the Respondent, the UDRP Provider informs the Respondent that any corrections to contact information are also required to be communicated to the UDRP Provider.**



**Preliminary Recommendation #7:** As part of its notification to the Registrant, the UDRP Provider informs the Registrant that any corrections to the Registrant's contact information during the remaining pendency of the proceedings are also required to be communicated to the UDRP Provider as per UDRP rule 5(ii) and (iii).

**Preliminary Recommendation #8:** This notification would also include information that any changes as a result of lifting of proxy / privacy services, following the 'locking', would need to be discussed / addressed by the UDRP Panel directly. The WG recommends that this issue is further reviewed as part of the privacy / proxy accreditation program.

**7. Upon conclusion of the UDRP Proceeding, the Registrar must unlock the domain name as soon as possible following 10 business days.**

**Preliminary Recommendation #9:** Upon receipt and communication of a decision from the Provider, the Registrar must within 3 business days communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy (UDRP Rule 16 and UDRP Paragraphs 4(k) and Paragraph 8(a)). If the Complainant has prevailed, the Registrar shall implement the Panel order immediately after 10 business days have elapsed (UDRP Paragraph 4(k)). The Complainant or its Authorized representative is required to provide the Registrar with the required information regarding implementation; this may include the information that should be in the Whois. If the

Respondent has prevailed, the Registrar shall prohibit transfer of the domain name to another



registrar or registrant for 15 business days from the date the decision is transmitted from the Provider (UDRP Paragraph 8).

#### ADDITIONAL REQUIREMENTS

**8. Should both parties (Complainant and Respondent) come to a settlement during the course of the proceedings, which would involve a transfer, cancellation or agreement that the registration will remain with the Respondent, the registrar must remove any lock preventing a transfer or cancellation within 2**

**Preliminary Recommendation #10:** In the case of suspension of a proceeding (when the parties have agreed to a settlement), the UDRP Provider informs the Registrar of the Suspension, including the expected duration of the suspension.. Should both parties come to a settlement, which would involve a transfer, cancellation or agreement that the registration will remain with the Respondent, the registrar must remove any lock preventing a transfer or cancellation within 2 Business days of confirmation of the settlement by both Parties.

In relation to the settlement of a UDRP Proceeding, the Working Group has discussed the following two options to further clarify the steps involved. However, the Working Group has not come to a conclusion yet which of these two options, or a possible alternative, to recommend. As a result, the Working Group is requesting community input on these options, and suggestions for possible alternatives so that these can be reviewed as part of the discussions on the Final Report. The two options are:

**Option A:** - (1) parties ask for suspension, (2) parties settle, (3) parties inform provider, (4) provider issues order to registrar to change the holder details or delete the domain name (5) that change or deletion happens, (6) complainant confirms change or deletion is complete, and (7) provider dismisses case

**Option B** - (1) parties ask for suspension (suspension request includes automatic dismissal when the suspension period is up), (2) provider issues order allowing registrar to unlock for the sole purpose of (whatever the settlement is), (2) parties settle, (3) parties request the registrar to unlock (not to manage anything further, like terms, just unlock to allow transfer), and (4) provider dismisses case

automatically with no further action needed (if settlement discussions break down, either party can request that the case be reinstated before automatic dismissal).

**Preliminary Recommendation #11:** ICANN, in collaboration with UDRP Providers, Registrars and other interested parties, will develop educational and informational materials that will assist in informing affected parties of these new requirements and recommended best practices following the adoption by the ICANN Board of these recommendations.

**Preliminary level of consensus for these recommendations:** The Working Group appears to have consensus on all the above recommendations. A formal consensus call will be conducted once the recommendations are finalized following review of the public comments received on this Initial Report.

**Expected impact of the proposed recommendations:**

- The Working Group expects that adopting these recommendations will usefully clarify and standardize how a domain name is locked and unlocked during the course of a UDRP Proceeding for all parties involved.
- The Working Group expects that in certain cases registrars, complainants and UDRP Providers may have to adjust their practices.
- The Working Group expects that enhanced education and information will be required in order to make all stakeholders familiar with this process.
- The Working Group expects, that if the recommendations will be adopted in their current form, minor updates will need to be made to the UDRP rules to reflect some of the recommendations, however, most of the recommendations are expected to be implemented in the form of an advisory as they are in line with the existing UDRP policy and rules.
- The Working Group would welcome any additional input as part of the public comment forum on the expected impact of the proposed recommendation that should be considered as part of the Working Group's deliberations going forward.

## 7. Community Input

### 7.1 Initial Public Comment Period and Request for Input

As required by its [charter](#), the PDP WG was required as ‘as a first step, [to] request public input on this issue 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’. As a result, the WG conducted a survey amongst registrar as well as UDRP Providers as outlined in section 5.1. In addition to specific questions concerning the practices and experiences of registrars and UDRP Providers, respondents were also asked to provide input on the charter questions. Furthermore, the WG opened [a public comment forum](#) on 25 July 2012. The input received as part of the survey as well as the public comment forum were closely reviewed by the WG, details of which can be found in the [public comment review tool](#) used by the WG.

### 7.2 Request for input from GNSO Stakeholder Groups and Constituencies

As required by the GNSO PDP, a request for input was sent to all GNSO Stakeholder Groups and Constituencies at the end of July 2012 (see Annex B). No input was received.

### 7.3 Request for input from other ICANN Supporting Organizations and Advisory Committees

A request for input was sent to all ICANN Supporting Organizations and Advisory Committees on 27 August (see Annex C). No input was received. The Chair of the PDP Working Group did meet with the ccNSO at the ICANN meeting in Prague for an exchange of views on this topic (see <http://ccnso.icann.org/meetings/toronto/summary.htm#neylon-greenberg> for further details).

## 8. Conclusions and Next Steps

The Working Group aims to complete this section of the report in the second phase of the PDP, following a public comment period on this Initial Report.

## Annex A – PDP WG Charter

<b>WG Name:</b>		<b>Locking of a Domain Name Subject to UDRP Proceedings PDP Working Group</b>
<b>Section I: Working Group Identification</b>		
<b>Chartering Organization(s):</b>	GNSO Council	
<b>Charter Approval Date:</b>	14 March 2012	
<b>Name of WG Chair:</b>	Michele Neylon (Chair), Alan Greenberg (Vice-Chair)	
<b>Name(s) of Appointed Liaison(s):</b>	Joy Liddicoat	
<b>WG Workspace URL:</b>	<a href="https://community.icann.org/display/udrp proceedings/Home">https://community.icann.org/display/udrp proceedings/Home</a>	
<b>WG Mailing List:</b>	<a href="http://forum.icann.org/lists/gnso-lockpdp-wg/">http://forum.icann.org/lists/gnso-lockpdp-wg/</a>	
<b>GNSO Council Resolution:</b>	<b>Title:</b>	Motion to approve the Charter for the Locking of a Domain Name Subject to UDRP Proceedings PDP Working Group
	<b>Ref # &amp; Link:</b>	<a href="http://gnso.icann.org/en/council/resolutions#20120314-2">http://gnso.icann.org/en/council/resolutions#20120314-2</a>
<b>Important Document Links:</b>	<ul style="list-style-type: none"> <li>• {Doc1}</li> <li>• {Doc2}</li> <li>• {Doc3}</li> <li>• {Doc4}</li> </ul>	
<b>Section II: Mission, Purpose, and Deliverables</b>		
<b>Mission &amp; Scope:</b>		
<p>The Policy Development Process (PDP) Working Group (WG) is tasked to address the issue of locking of a domain name subject to Uniform Dispute Resolution Policy (UDRP) proceedings as outlined in the Inter-Registrar Transfer Policy (IRTP) Part B Final Report as well as the Final Issue Report on the Current State of the UDRP. The PDP Working Group should, as a first step, request public input on this issue 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. Based on this information, and its own views, and any additional information gathering the Working Group deems necessary, the PDP Working Group is expected to make recommendations to the GNSO Council to address the issues identified with the locking of a domain name subject to UDRP Proceedings.</p> <p>As part of the WG deliberations, it is suggested that the WG considers, amongst other, the following:</p> <ol style="list-style-type: none"> <li>1. Whether the creation of an outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock, would be desirable.</li> <li>2. Whether the creation of an outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute would be desirable.</li> <li>3. Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized.</li> <li>4a. Whether what constitutes a "locked" domain name should be defined.</li> <li>4b. Whether, once a domain name is 'locked' pursuant to a UDRP proceeding, the registrant information for</li> </ol>		

that domain name may be changed or modified.

5. Whether additional safeguards should be created for the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding.

As outlined in the PDP Manual, such recommendations may take different forms including, for example, recommendations for consensus policies, best practices and/or implementation guidelines. The PDP WG is required to follow the steps and processes as outlined in Annex A of the ICANN Bylaws and the PDP Manual. It should also be noted that if the WG proposes any recommendations on the issue of locking of a domain name subject to UDRP proceedings which are considered consensus policy recommendations, these should not amend, change or otherwise alter the UDRP or its substantive parts as any recommendations developed by the WG are not meant to introduce a new UDRP remedy.

**Objectives & Goals:**

To develop an Initial Report and a Final Report addressing the issue of locking of a domain name subject to UDRP proceedings to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the PDP Manual.

**Deliverables & Timeframes:**

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and the PDP Manual. As per the GNSO Working Group Guidelines, the WG shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in Annex A of the ICANN Bylaws and the PDP Manual and submit this to the GNSO Council.

**Section III: Formation, Staffing, and Organization**

**Membership Criteria:**

The Working Group will be open to all interested in participating. New members who join after work has been completed will need to review previous documents and meeting transcripts.

**Group Formation, Dependencies, & Dissolution:**

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees

**Working Group Roles, Functions, & Duties:**

The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.

Staff assignments to the Working Group:

- GNSO Secretariat
- 1 ICANN policy staff member (Marika Konings)

The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group

Guidelines.

#### Statements of Interest (SOI) Guidelines:

Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

### Section IV: Rules of Engagement

#### Decision-Making Methodologies:

*{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.*

The Chair will be responsible for designating each position as having one of the following designations:

- **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus**.
- **Consensus** - a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*
- **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.

- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - o A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - o It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

**Note 1:** Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that that a single member demonstrates a sufficient amount of support before a formal appeal process



can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

**Status Reporting:**

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

**Problem/Issue Escalation & Resolution Processes:**

*{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}*

The WG will adhere to [ICANN's Expected Standards of Behavior](#) as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN's Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

**Closure & Working Group Self-Assessment:**

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

**Staff Contact:**

Marika Konings

**Email:**

Policy-Staff@icann.org

## Annex B – Template for Constituency & Stakeholder Group

### Statement

#### Stakeholder Group / Constituency / Expert Input Template

#### Locking of a Domain Name Subject to UDRP Proceedings Working Group

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PLEASE SUBMIT YOUR RESPONSE AT THE LATEST **BY 1 September 2012** TO THE GNSO SECRETARIAT ([gnso.secretariat@gnso.icann.org](mailto:gnso.secretariat@gnso.icann.org)), which will forward your statement to the Working Group.

The GNSO Council has formed a Working Group of interested stakeholders and Stakeholder Group / Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, in order to consider recommendations in relation to the Locking of a Domain Name Subject to UDRP Proceedings.

Part of the working group's effort will be to incorporate ideas and suggestions gathered from Stakeholder Groups and Constituencies and experts through this template Statement. Inserting your response in this form will make it much easier for the Working Group to summarize the responses. This information is helpful to the community in understanding the points of view of various stakeholders. However, you should feel free to add any information you deem important to inform the working group's deliberations, even if this does not fit into any of the questions listed below.

For further information, please visit the WG Workspace (<https://community.icann.org/display/udrpproceedings/Home>).

#### Process

- Please identify the member(s) of your stakeholder group / constituency / organization who is (are) participating in this working group
- Please identify the members of your stakeholder group / constituency who participated in developing the perspective(s) set forth below

- Please describe the process by which your stakeholder group / constituency arrived at the perspective(s) set forth below

## Questions

Please provide your stakeholder group's / constituency's views on the WG Charter Questions:

1. Whether the creation of an outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock, would be desirable. [*Note from the WG: only the UDRP Provider can notify a Registrar that a complaint has been officially filed and in the vast majority of cases, Registrars will only implement a lock based on the request by the UDRP Provider*]
2. Whether the creation of an outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute would be desirable.
3. Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized.
- 4a. Whether what constitutes a "locked" domain name should be defined.
- 4b. Whether, once a domain name is 'locked' pursuant to a UDRP proceeding, the registrant information for that domain name may be changed or modified.
5. Whether additional safeguards should be created for the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding.

In addition, if there is any other information or data that you think may be of interest as the WG considers these charter questions, please feel free to provide that as part of your submission.

## Annex C – Request for SO / AC Input

Dear SO/AC Chair,

As you may be aware, the GNSO Council recently initiated a Policy Development Process (PDP) on the Locking of a Domain Name Subject to UDRP Proceedings. As part of its efforts to obtain input from the broader ICANN Community at an early stage of its deliberations, the Working Group that has been tasked with addressing this issue is looking for any input or information that may help inform its deliberations. To this end a public comment forum has been opened (see <http://www.icann.org/en/news/public-comment/udrp-locking-25jul12-en.htm>). You are strongly encouraged to provide any input your respective communities may have either as part of the public comment forum or by providing it to the GNSO Secretariat ([gnso.secretariat@gnso.icann.org](mailto:gnso.secretariat@gnso.icann.org)).

For further background information on the WG's activities to date, please see <https://community.icann.org/x/xq3bAQ>. You may also want to review the results of the survey that the WG conducted amongst registrars and UDRP providers to get further insight into the current practices and issues experienced (see <https://community.icann.org/x/l6-bAQ>). Below you'll find the charter questions that the WG's has been tasked to address.

If possible, the WG would greatly appreciate if it could receive your input by 1 September at the latest. Your input will be very much appreciated.

With best regards,

Michele Neylon, Chair of the WG and Alan Greenberg, Vice Chair of the WG

## Charter Questions

1. Whether the creation of an outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock, would be desirable. *[Note from the WG: only the UDRP Provider can notify a Registrar that a complaint has been officially filed and in the vast majority of cases, Registrars will only implement a lock based on the request by the UDRP Provider]*
2. Whether the creation of an outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute would be desirable.
3. Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized.
- 4a. Whether what constitutes a "locked" domain name should be defined.
- 4b. Whether, once a domain name is 'locked' pursuant to a UDRP proceeding, the registrant information for that domain name may be changed or modified.
5. Whether additional safeguards should be created for the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding.

## Annex D - Verification Request Example

RE: <case name>  
<FA number>  
<domains>

Dear Registrar,

The National Arbitration Forum, an ICANN-accredited Dispute Resolution Provider, has received a complaint under the Uniform Domain Name Dispute Resolution Policy (UDRP—an ICANN consensus policy) for which <registrar> is listed as the Registrar. Please confirm and supply us with the following:

1. Confirmation that you are the Registrar for:  
<domain names>
2. Registrant contact information for each of the domain names listed in #1, including billing information (we will assume that whatever you provide us for Registrant contact information includes billing information if you do not specify).
3. Confirmation that each domain name in #1 is on a Registrar LOCK, or its equivalent, preventing the domain names from being transferred.
4. The language of the Registration Agreement for each domain name (we will assume it is English unless you advise us otherwise).
5. Confirmation that the domain name is NOT expired or deleted and that you will not allow the domain to expire or be deleted pending this proceeding.
6. The current expiration date.

Pursuant to the Forum's Supplemental Rules, effective July 1, 2010, the entity named in the Whois is the Respondent. Therefore, if you wish to lift any privacy services, please do so promptly.

Please provide us with this information within 48 hours so we can continue to process this case. The Complainant was required to send you a copy of the Complaint, if you have not received a copy yet, please note that you will receive a copy of the complaint from us at commencement. We will notify you upon the conclusion of the administrative proceeding and provide you with a copy of the Panel's decision in this matter at that time.

If you have any questions, please do not hesitate to contact me.

Sincerely,

<coordinator signature block>