

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]¹.

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 #3a: Following receipt of the complaint, the UDRP Provider will, after performing a preliminary deficiency check², 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 providers³ 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 #3b: Within 2 business days⁴ 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

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

² 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.

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

⁴ 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 updates⁵ 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 registrant⁶ 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

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

⁶ 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 verification⁷ 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 days⁸ 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

⁷ 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.

⁸ 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.