

**ICANN  
Transcription  
Locking of a Domain Name Subject to UDRP Proceedings  
Thursday 15 November 2012 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of Locking of a Domain Name Subject to UDRP Proceedings on the Thursday 15 November 2012 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-locking-domain-name-20121115-en.mp3>

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

**Attendees:**

Alan Greenberg, ALAC (Vice-Chair)  
Gabriela Szlak, CBUC  
Randy Ferguson, IPC  
Celia Lerman Friedman, CBUC  
Hago Dafalla, NCUC  
Lisa Garono, IPC  
Kristine Dorrain, NAF  
Laurie Anderson, RrSG  
Volker Greimann, RrSG  
Faisal Shah, IPC  
Juan Manuel Rojas, At Large  
Luc Seufer, RrSG  
David Roache-Turner, Red Cross

**Apologies:**

Matt Schneller, IPC  
Michele Neylon, RrSG

**Staff:**

Marika Konings  
Berry Cobb  
Julia Charvolen

Coordinator: Yes.

Julia Charvolen: Yes, please. Could you start the recordings?

Coordinator: Okay just go ahead; we're now recording.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. This is the Locking of a Domain Name Subject to UDRP Proceedings on Thursday 15 of November.

On the call today we have Alan Greenberg, Hago Dafalla, Lisa Garano, Kristine Dorrain, Laurie Anderson, Volker Greimann, Faisal Shah, Luc Seufer, and David Roache-Turner. We have apologies from Matt Schneller, Michele Neylon. And from the staff we have Marika Konings, Berry Cobb and myself, Julia Charvolen.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and over to you.

Marika Konings: Thanks, Julia. And just for the record I see that Laurie Anderson has just joined the call as well.

So everyone I think waiting a couple of minutes has actually helped to get us the essential number of people joining the call so I think from our perspective it looks like we have sufficient people to go ahead. So unless anyone disagrees I think we should just kick off this meeting. Not seeing any hands.

As you may be aware I'm chairing this meeting even though Alan is on the call. He has indicated that he prefers to be an observer today as he has many other things to do. And Michele is traveling as well. So if there are any other volunteers to lead this call, you know, feel free to speak up; I'm happy to hand over the reins for this meeting. If not we'll just push ahead.

So first...

Alan Greenberg: Marika, we love hearing you talk so...

Marika Konings: Good.

Alan Greenberg: I appreciate it. I've already had a GNSO call today and I'm in the Los Angeles meetings on trademark protection issues for all the rest of the day. And I just have to get a few other things done so I'll listen in but I won't be able to participate too much.

Marika Konings: Thank you, much appreciated. So first item on the agenda is we just did the roll call and just asking if there are any updates to people's statements of interest?

Seeing no hands the next item is basically to continue to review of the comments received. As some of you may be aware at the last meeting we assigned certain sections for people to start drafting working group responses. But I think as we did that it was under the assumption that this working group meeting might not happen and people would have two weeks.

So no submissions have been made yet. And I see some people comment in the chat that they will be working on that. But nevertheless I would maybe just suggest that we start looking at the comments and that will actually lighten the load of some of the people and I think especially the first section is pretty long so maybe I think that was assigned to Kristine. So I think if we maybe just start us off from there we'll actually give Kristine a little bit less work to do ahead of next week's meeting.

Does everyone agree with that approach?

Kristine Dorrain: This is Kristine. I certainly don't disagree.

Marika Konings: Okay good. So if - so basically as you may be aware for some that weren't on the last call or the last couple of calls we've covered some of the comments further down in the document but we haven't gotten around, yet, to reviewing the comments that were made on the first three charter questions so those are still open.

So if we then start off with - at the top of the document on Page 1 basically these comments relate to Charter Question 1. It's - which is 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.

So the first comment there is coming from the Registrar survey saying, "Yes, it would be helpful if the complainant would provide the alternative Whois data along with the complaint to allow faster processing."

Personally I'm not really sure what it exactly meant with the comment. But I don't know if any of the Registrar participants are able to interpret this?

Laurie Anderson: This is Laurie. It doesn't seem to have anything to do with this question.

Kristine Dorrain: I'm sorry, Laurie, what did you say? This is Kristine. I didn't catch that.

Laurie Anderson: I said this comment doesn't really seem to have anything to do with this question.

Kristine Dorrain: Yeah, you know, I think you're right. This is Kristine again. It's not super-related. But I think it's just making a suggestion that says makes it easier at the very end of the process. So at the initial outset when the lock is provided I think the recommendation is that when we make a - when we make a recommended (unintelligible) that the complainant - because there are some registrars who want up front the - what the Whois information should say if the complainant prevails.

And I think they feel like they want to get that right up front and have that in that initial email. I think - I mean, Laurie, I'm sure you can speak more to this. But I think there are, you know, plenty of registrars that just look at the complaint and, you know, use the information of counsel or use the information of the complainant.

But I think I know there are some registrars that I think don't want to have to make that determination; that want to know right up front, you know, if complainant prevails this is what the Whois information should say.

And so my thought is that because the question goes to the creation of a procedure perhaps the comment is making a suggestion as to what one element of the procedure should be.

Laurie Anderson: Right, I agree. Now that you've explained it I do agree. In our case I know that we will use the information of the authorized rep as contact information, you know, for email and so on. But when we go to implement the decision - and we're always in contact with the authorized rep. So if they want us to put it in a, you know, they create the account; we move the domain name to that account with the information that the authorized rep designates that we add.

Marika Konings: So this is Marika. A question then probably we to Kristine and maybe David. So when there's a decision in the UDRP the decision itself doesn't - it just says, you know, there should be a transfer but that doesn't actually further define, you know, where it should be transferred to and what the information should be? That's something that is sorted out as part of the implementation of the decision?

Kristine Dorrain: Yeah, this is Kristine. That's correct. The decision just says the prevailing party, complainant or respondent. And then the complainant in, you know, the ideal situation would contact the registrar and say hey I prevailed, you know, here's what I want the Whois to say. And, you know, you can transfer it to this

account or, you know, whatever; give me the auth code, whatever the process is that that particular registrar goes through to get the domain name transferred and get the decision implemented.

And then I would say the majority of registrars that, you know, see a fair number of UDRPs or have a process in place don't really struggle too much with this. Where we see the biggest problem - and I know this is sort of a recurring theme in my comments - is the registrars don't see a lot of these cases they have no idea what to do, they have no idea, you know, what they're supposed to do.

And so I think that a few of them are thinking that if they can have this information up front then - and, you know, to jump ahead a little bit also I think sometimes complainants just assume that when it says domain names should be transferred to complainant that they don't have to do anything.

And so I think some of the registrars, you know, not only the ones that don't know what they're doing but even the ones that do are frustrated with that point and, you know, are like well if you just give me the information up front I don't have to try to reach complainant's counsel, you know, after the case is filed and try to educate them on the process either. So I think it kind of goes both ways.

Marika Konings: So this is Marika again. So then the follow up question would be what, from the working group's perspective, if anything, do you think should be clarified in this regard in any kind of procedure? Is it something where indeed there would be a kind of guidance saying, you know, upon a decision, you know, whoever is the party that prevails needs to communicate with the registrar what needs to happen?

Or is it indeed information that should be provided up front? Is there anything that the working group thinks that certain guidance should be provided in regard to this specific issue?

Luc, please go ahead.

Luc Seufer: Yes, Luc for (unintelligible). I thought this would be easier if the communication remained between the UDRP provider and the registrar because the complainant is, most of the time, a third party with whom we have no contact. It would be easier if the UDRP provider provides (unintelligible) to a point if the complainant prevails.

Marika Konings: Anyone have any further comments on that? People agree with Luc, other views?

Kristine Dorrain: Kristine. I have my microphone all the way up but I'm having a hard time hearing people today, I apologize. I couldn't - Luc, could you just repeat?

Luc Seufer: Yeah, is that better now? Okay, so, yeah, I was saying that it would be easier if the UDRP provider was the one providing the details to a point to the domain name if the complainant prevailed and not go to the complainant because the complainant has no relationship with the registrar most of the time.

Kristine Dorrain: Okay, this is Kristine. That's a different - that's a little bit different than what's been suggested I think. So - but I think both are alternative options that we could consider in our final procedure at the end of the day. As a provider I don't particularly much care. I mean, we send a copy of the complaint to the registrar if they say that they don't have a copy yet.

As far as, you know, if the decision's already been issued we hesitate to get too involved in, you know, getting the implementation underway because that adds a whole lot of extra burden to manage, you know, 200, you know, domain name transfers a month, you know, to be the intermediary for that.

So I would say that most of the time the fact that, you know, complainants can work with registrars but I think if there's a consensus or a recommendation that the provider makes sure that the registrar has complainant's accurate contact information at the outset, which I think is suggested in this Number 1 comment. That could be one way to alleviate much of the problem. That's just my personal thought on that.

Marika Konings: Volker.

Volker Greimann: Sorry, I was on mute. Yes, this comment is helpful for us as well because as a registrar we see a couple of cases where we never hear from the complainant after we hear that the domain name has been awarded to them. So we do not know what to do with the domain name that remains in the customer's account locked forever.

We try to reach out to the complainants but some of them never answer. So it would be nice if we were able to already insert the new Whois data into the domain name with the information that we get from the UDRP provider.

Marika Konings: Alan.

Alan Greenberg: Yeah, I think these are all valid comments but I'm not sure they're within scope for this PDP. In the procedures that are being talked about on the question are procedures directly related to lock not the other things that happen, you know, as the PDP proceeds. So I think, you know, I don't feel very strongly about it but it sounds like we're drifting off into an area that's outside of our domain.

Kristine Dorrain: Alan, this is Kristine. I only - I only disagree to the extent that we have talked, you know, maybe not extensively but in some detail about the unlock process. And this goes to the unlock process.

Alan Greenberg: Okay, point taken.

Marika Konings: Yeah, and this is Marika. I think this could be, as well, the kind of more - maybe a best practice recommendation. And if there's, indeed, agreement where you say when, you know, when there is a request for locking whether that's from the UDRP provider or, you know, complaint, whatever the working group comes up with it's recommended that, you know, this kind of information is provided at that same time or something like that.

I think it's something where we can debate. And as Kristine said it's also closely linked to the locking so I think there's probably some flexibility there if there would be, indeed, agreement from the working group to take a specific approach.

David.

David Roache-Turner: Thanks, Marika. I think it's worth noting, as I think was mentioned earlier, that of course the decision when it's issued does contain the name of both parties, the complainant and also the respondent, and the order that's made in the decision is clearly for the transfer.

And just to note as well that in Paragraph 16a of the rules after the decision has been communicated by the provider the concerned registrar is then required to communicate to the parties and to the provider the date for the implementation of the decision in accordance with the policy.

So that - the issuance of that communication can also provide an avenue for the registrar to get in contact with the complainant. I think under the UDRP - at a design level at least - the idea has always been that implementation of the decision is a matter for the parties and the registrar rather than for the provider, which is responsible for the issuance of the decision itself.

Marika Konings: Thanks, David. Volker.

Volker Greimann: I just wanted to comment on the - the earlier comment on the scope of the - of this working group. The thing is that we wouldn't be changing policies; we would be allowing policy to be implemented correctly. By providing that data we would not require registrars to act in a certain way, we would just allow them to act in compliance with the decision that has been made, which we are not always able to at this current stage.

Marika Konings: David, you still have your hand up?

David Roache-Turner: Sorry, that was...

((Crosstalk))

Marika Konings: Okay thanks. So I think I have enough to put in a working group response here. It seems to be an issue that people feel is currently and potentially - could potentially be clarified or changes suggested that might make this process easier. So I'll draft a response to that end and people can review that then.

So if we move on then to Question Number 2 or Comment Number 2 I should say - which is also from the Registrar survey and which says, "No, registrars should only react to notices from dispute providers not complainants. A complainant should not have - should have no ability to place a registrar lock on a domain name. Only a resolution provider should have that ability after a complaint has been filed."

Any responses to that comment?

Kristine Dorrain: This is Kristine. I'm reasonably certain that we answered this question several times below. I don't know if that's just a shortcut lazy answer but, I mean, we spend a lot of time talking about whether or not the lock should be placed before the provider actually notified the registrar or at the time of that - at the time that the registrar - provider notified the registrar.

And I don't know that we've actually come to a consensus because I think - correct me if I'm wrong, Marika, but one of the points that we debated was when is the right timing? But - so I think this question - I think this comment has come up multiple times.

Marika Konings: Yeah, and this is Marika. I think we have debated it before. But it might be helpful to get a sense, indeed, if people agree that, indeed, on the principle should a domain name only be locked at the request of the UDRP provider or should there also be instances or the possibility for the complainant to request such a lock?

If I recall well I think there seemed to be more support for, indeed, having a formal confirmation by the UDRP provider before the registrar applies a lock. I don't know if that's a correct assessment or if anyone would disagree with that notion.

Kristine Dorrain: This is Kristine. I would suggest that any recommendation we come out with, you know, as a rule or a best practice I would recommend that it says that the lock needs to be applied when the provider requests it. But there's a possibility - and we can talk more about this and I'd be interested to hear what other people say - is if there's some latitude in there.

So the lock has to be placed so, you know, at some point whatever - however many days we decide or hours we decide from the provider request. But it could be up to the registrar's discretion as to whether it wants to lock sooner based on its internal practices.

And if, you know, interpretation of the legal risk that that does or does not impose for that particular registrar. I know there are some registrars that were concerned about legal risk and some registrar aren't. So maybe having a firm - at this point it shall be locked but if you want to go above and beyond and lock it sooner then that's up to you. Just a thought. Anyone else?

Marika Konings: I'm not seeing any other hands. I'm taking that as agreement unless someone quickly raises their hand with Kristine's point of view. Not seeing any. Just seeing a checkmark from Laurie. Moving on then to Comment Number 3.

"This would be a great idea as we often seek - often seek - I think often see complaints with no IP trademark knowledge as it pertains to domain names. Seeking guidance and arbitration by the registrars - registrars in general do not arbitrate over disputes that may arise from the registration of a domain name as I understand it. Clear delineation of the dispute process would alleviate some of the work straight from the registrar standpoint."

Any comments there?

Kristine Dorrain: This is Kristine. It just sounds like a yes to me.

Marika Konings: Exactly. I think we can take that as a notice. And I think we - I think we probably have consensus from the working group that indeed it would be good to have some kind of outline procedure. Whatever it may look but at least some clear steps that would need to be taken by the different parties.

However, the next comment actually seems to disagree or they (might) be saying that the current process is adequate and they don't seem to have a need for the creation of an outline of a process. I think there we can probably just note that. The working group actually has seen that there is confusion and no clarity and probably a need to have some kind of outline.

I see Gabrielle also is saying the same thing; she doesn't agree with Comment 4. There are no further comments on that one? We'll move on to Comment Number 5; also from the registrar survey.

"No, it's sufficient to lock the domain as soon as arbitration informs the registrar of the UDRP procedure."

Any particular views on that? I think this is probably a registrar that indeed approaches in a way as soon as they get a communication from the UDRP provider they lock it. But as we, I think, have seen from the survey that is not the standard approach or at least it seems to be a mix between people that lock upon receiving the complaint and the other half basically locking upon the - receiving the notification from the UDRP provider. So...

Kristine Dorrain: Right, this is Kristine. And so I think, you know, besides even just the timing of the lock the way it's applied and the timing in which the registrar responds, I mean, there's a lot of pieces. The question number - or the answer - or the survey response on Number 5 it doesn't go to the question in my opinion because it says it's sufficient to lock the domain.

Well we're trying to decide what lock the domain constitutes. So I think that doesn't - it's not very responsive to the - should there be a procedure around the lock - question. I guess if that makes any sense. It's sort of a chicken and an egg thing, right? The question is should we have a procedure around the lock and the answer is no we should just lock. So I think noted is sufficient.

Marika Konings: Thanks for saying that; I think that's fair to say. I'm not seeing any further hands. We'll just push ahead to Comment 6.

"Of course, but I think the best way is that the first notification of dispute should be made by ICANN by the contact which is already known to the registrar. In the notification the main (contact) of complaint dispute provider should be included."

And it's my personal observation as far as I know I think ICANN doesn't play any role in a UDRP proceeding as such so I'm not really sure how ICANN would come in here. But I don't know if anyone can help me out here.

Kristine Dorrain: Marika, this is Kristine. You're right; ICANN doesn't really play any role until compliance at the end. So there's really no - there's no process. It would add additional - entire additional steps and probably an additional hire on behalf of ICANN to handle it.

Marika Konings: Thanks, Kristine. We'll note that in our response and that it's not something we're currently, I think, exploring.

And then the next comment also from the registrar survey. "An outline will be helpful although it can give registrars an excuse not to lock a domain if the registrant has not followed the exact procedure. So please do not make the procedure mandatory."

((Crosstalk))

Marika Konings: ...views on that. I think we've discussed this before whether, you know, it should be best practices or whether it should be a requirement. I think some have noted, indeed, there should be flexibility while others have said, you know, if we give flexibility it might basically mean that nothing really changes.

What are people's views there? Luc is saying in the chat that he doesn't really understand the logic between - or behind Comment 7 and neither does Gabriella.

So I think we can note that and I think it's probably a question we'll come back to at a later stage I think once we've agreed or there's consensus around the different steps that need to be taken. I think the working group can then start looking at how these recommendations should be implemented as requirements, best practices, suggestions and see how to deal with that.

So moving on to Comment Number 8 also from the registrar survey. Yes, I think it will be fundamental to have a reference procedure and documentation in order to apply - to apply it but moreover to inform some registrars of the

need to follow it." I think that's probably a bit contrary to the previous one where it said it should actually have some flexibility. But I think this is an issue that's been discussed already before as well so I don't know if we need to say more than notice.

Moving on then to Comment 9, which I think is a bit of a similar nature saying - also from the registrar survey. "It could be helpful but unsure if it is necessary."

Taking us back from, I think, the comments before. I think the working group is of the view that something like this is necessary as there is still confusion and clarity on how things should be done. So - and I think the working group necessarily agrees that it's not necessary.

See no hands, let's move along to Comment Number 10. Also from the registrar survey, "It would be desirable to create an outline of the process followed during a UDRP procedure to lock a domain name including the timeframe expected. Most registrars do not receive enough disputes to be all that familiar with the process. An outline would be valuable to most."

And I think this is exactly the point that Kristine was making before so I think we can probably just note here that the working group agrees.

Seeing no hands moving on to Comment 11. Also from the registrar survey, "Desirable only if each registry will provide the same functions under the common rules." And I'm assuming here that registry should have said registrar. So I think that's probably...

((Crosstalk))

Kristine Dorrain: This is...

Marika Konings: Oh, yeah, go ahead, Kristine.

Kristine Dorrain: I'm sorry, I didn't raise my hand. This is Kristine. So my - this one's a little bit confusing not just on the registry - like that might be a typo part but the same functions under the common rules.

I mean, if we're talking just about how the UDRP lock will be applied the same - we're talking about the same rules I don't know if they're complaining about the providers doing it differently or I'm not really sure. So unless someone else can come up with a better understanding of the question I don't know that we have enough information to even (bond).

Marika Konings: Yeah, this is Marika. I'm wondering if this goes back to the, you know, should it be best practices or a requirement. I'm wonder...

((Crosstalk))

Marika Konings: ...if this is implying that, you know, there should be rules but only if they apply to everyone and not, you know, some people are doing it and others aren't. But that's just me trying to interpret it. I don't know if people have other views on this one. Not seeing any hands.

I think there we just say noted and noting that, you know, we don't completely understand what the commenter means but that probably goes back to the question of, you know, mandatory or optional. And that is something that the working group will consider further as they continue their deliberations. Alan.

Alan Greenberg: Yeah, the way I read this one it sort of implied that different registries have different process. And we should write specific rules only if we can make sure all registries follow the same processes. Now whether they're talking the gTLDs or ccTLDs I don't know. But I would have presumed that all registries operating as gTLDs follow the same process but maybe that's not the case, I don't know. But it looks like they really do mean registries there.

Marika Konings: Okay but then I'm probably confused as how would a registry come in here.

Alan Greenberg: If registries provide different facilities. I don't know.

Marika Konings: Just more a general kind of comment, okay.

Alan Greenberg: Well, I mean, you know, one may provide a lock that applies and others don't. I'm hypothesizing not talking about fact.

Marika Konings: Okay, thanks Alan.

Kristine Dorrain: I was just going to say in response to that, Alan. This is Kristine. The registries don't even know about the disputes unless the registrar tells them.

Laurie Anderson: This is Laurie. If a registrar isn't responsive complainants have been known to go to the registry to get a decision implemented or a domain locked. Because we see it occasionally where a domain name has been at another registrar who didn't respond. The complainant goes to the registry. They lock it and then they'll get a decision to transfer and then they'll get the registry to transfer over to us. So that's the only time I've seen the registry being involved.

Marika Konings: Volker.

Volker Greimann:

Gabriella Szlak: This is Gabby. Can you please repeat that? Because I couldn't hear it and I think it was important.

Volker Greimann: Yes, I would agree that this question is misleading because the registry is not part of the normal process of the UDRP. I also, from handling the UDRP cases that we get, we have never seen anything where registry would - where the policy of a registry would impact in any way the ability of the

registrars to implement (unintelligible) of the UDRP. So I think the question is not relevant to our review.

Marika Konings: And this is Marika. I think just to repeat what Laurie was saying for Gabriella's benefit. I think she was saying that in certain cases where complainants have gone to registrars and did not get a response from the registrars they actually went to the registry to get the domain name locked.

And I think she was saying that they have seen that in cases where in the end the dispute was won by the complainant and the domain name gets transferred to a new registrar that the registrar actually has to deal with the registry to get the domain name unlocked. I think that's what I understood.

Laurie Anderson: That's correct, Marika.

Marika Konings: Alan, do you still have your hand up? Is that an old hand?

Alan Greenberg: No, sorry, I'll put it down when I get back to my computer.

Marika Konings: Oh okay, that's fine. And I think Volker's hand is presumably also still old hand. Yeah.

So I think here we just note that we're indeed confused over the term registry and basically clarify that, you know, the registry typically doesn't play a role in the process.

So next is comment from the UDRP provider survey and the comment reads, "I do not think this will be helpful. The complainants do not request the lock and many are not as sophisticated as their frequent-filer counterparts. The providers may be asked to follow a specific format, etcetera. We currently use a specified list of email addresses provided by ICANN. But requiring complainants to jump through more hoops will not be helpful."

Kristine, go ahead.

Kristine Dorrain: Okay that was my comment. And since I've been on this working group and I know understand where the scope of the working group is I, you know, I was answering the question from the perspective of where the question said should the complainants be required to, you know, should a procedure be designed for complainants?

But I believe now the scope, you know, maybe is should a procedure be designed; not necessarily that the complainants need to jump through but that providers need to do or that registrars need to do. And so I amend my comments here for - to state that yes I am in favor of a procedure although it may not really involve complainants much at all.

Marika Konings: Thanks, Kristine, for the clarification. Seeing any further hands we'll move on to - the next one also from the UDRP provider survey which says, "Yes, it would be helpful if such an outline or procedure is simple and can be easily followed by a complainant."

I think there we can just respond noted and probably agreed even. Not seeing any further hands. Moving on to the next comment also from the UDRP provider survey.

"It is, first of all, questionable if it is indeed the complainant who should take the steps. Currently it's the UDRP provider who asks for the locking of the domain name. Most UDRP providers require the complainants to provide the registrar with a copy of the complaint. However the Czech Arbitration Court does not have such a requirement in its supplemental rules."

"So it is the provider from whom the registrar learns, for the first time, that administrative proceedings has been initiated. We believe that the current system where the providers notify registrars of filed complaints and ask them

for a verification and locking the domain name works well. And in addition the registrars are thereby required to communicate with four providers only."

"If the locking of a domain name is to become an obligation of the complainant registrar might be facing a lot of various notices, which might not necessarily follow the same pattern and structure. Moreover the providers will need to address the registrar anyway in order to verify contact details of the respondents - the domain name holder."

"Therefore the registrars would have to react to two different requests. To sum up creating a procedure to be followed by the complainant could constitute an additional burden not only for the complainant but also for the registrars. It is recommendable that any procedure that will be developed regarding locking of the domain name should be as simple as possible so that the risk of noncompliance of the registrars is minimized."

So I'm thinking that's probably - this is along the same lines as Kristine just explained that the respondent here, which is I think the Czech Arbitration Court, has basically interpreted it as meaning that we're - the question implied that it would be complainants asking for the locking, which I don't think was necessarily the intent of the specific question.

So maybe we can just note that in our response and also, you know, reflect what Kristine said that I think in the end you'll see that, you know, they do agree that there should be a straightforward procedure. So I think with that respect that they agree.

And I think now we go into the comments that were received in response to the public comment forum. So the - Number 15, the first comment here is from William Clarke. He says, "There should be formal specific rules governing the lock down of domains. This will benefit both the registrar and the registrant in that it gives clarity to everyone's position."

And I'm not sure whether there are any specific views here but I guess this is another noted. I think it's in line with some of the other comments we've already seen. Not seeing any hands.

Moving on to the next one from FICPI. "There are existing and well functional UDRP procedures and instructions on how the Complainant shall prepare and file a formally accepted UDRP case application, and there is no need to amend the existing procedure or create a new procedure. What is important is that the UDRP Provider acts promptly in making the initial formal Request for Registrar Verification and at the same time initiating the lock."

Kristine, please go ahead.

Kristine Dorrain: My suspicion here is that the first part of it, again, addresses this issue of what is the complainant's responsibility versus what is the responsibility of the provider and the registrar. So I don't think we need to hammer that anymore.

But I think there's a sort of a misunderstanding at the end and that is, you know, there are a lot of parties that believe that when they file a complaint that the - and this is sort of almost goes to Alan's suggestion of several weeks ago - but that the provider magically pushes a button and the domain name magically gets locked down at that instant.

And - or the mere sending of an email by the provider magically locks the domain name when in reality the email can be ignored for days or weeks or months. And so the whole point of the procedure is so that the provider knows, you know, what they need to do and the registrar knows what they need to do.

And as the last part, at the same time initiating the lock, again, it talks about if you read - parse the sentence the way it's written the - it appears that the person who wrote this believes that the provider itself initiates the lock rather than just requesting it and then the registrar initiates.

So I would suggest that the comment a little - doesn't completely understand the process but I suspect that we've addressed pretty much everything in it already.

Marika Konings: Thanks, Kristine. We'll note that in the response. Not seeing any other hands. We move to the next one, to a comment from the IHA.

"We trust that the continuing efforts of the PDP Working Group will lay out the specific conditions for the locking procedure to be contained in the UDRP Provider communications." And I think here we probably can just say as well noted.

And I think that we've already done Kristina's homework so she can be very pleased. So let's see if we can help...

Kristine Dorrain: I felt the call to participate extra heavily in this section. So thanks everyone.

Marika Konings: Good. So we still have 15 minutes left so I think we'll just push on to the comments that were received in response to Charter Question 2, which is 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.

And the first one from the registrar survey says, "This would be great to have as well. Often employees within registrars transition and not all have notes on every aspect of the role the former agent held; this would be one less document that Registrars would need to create outlining what required involvement of the Registrar at each and every step of the dispute would be great. Outlining the steps of a UDRP dispute and the best practices for each step would serve to educate registrar in this area and provide easily accessible guidelines."

Any comments or can we just say noted and probably agreed. Not seeing any hands.

Laurie Anderson: This is Laurie. I would definitely agree.

Marika Konings: Thanks, Laurie. I've noted that. Oh I think we probably can say for the next one as well that we probably don't agree because there the comment was, "No, not necessary." And I think there we can point to the different information that we received that it is a - it's not a uniform approach that's taken by registrars so the working group does view this as an important area.

The next comment, then, I think is the same one we had before and I'm not really sure whether we need to go into again because it's, again, the, "Only if each registry will provide the same function under the common rules." So I think we just repeat there what we said above that we're not really sure how this applies as a registry is not involved in the process.

The next one I think we can cover quickly as well, Comment 21 says, "Yes." So I think we can say there as well noted and agreed.

Comment 22 then from the - the previous one was as well just a note from the UDRP provider survey.

So the next one is also from the UDRP provider survey and it says, "That would be a good step in our view as it is probable that a lot of instances of registrars' misconduct that occurs in relation to UDRP are not caused by bad faith but simply as a result of a lack of information about the procedure."

"In addition, ICANN staff did work on the creation of the registrar best practices regarding UDRP in the past, discussed on Sydney ICANN meeting back in 2009. This document could possibly serve as a starting point for this process."

And this is Marika. Just to note, because I think we did have a look at that document and I think there were some helpful parts in there but it did go at the same time much broader than just the locking issue. And Gabriela is asking if we can circulate that document.

I can - I think - I'll post the link again to the mailing list because there's a link to a workshop that was held in Sydney so you can also listen to - I think the recording or review the transcript of that meeting. And it also has the latest draft that was shared there publicly. But I think I said before I think there's certain parts that relate to a lock but there were also some broader issues that were captured in that document. I'll just make a note of that.

So I don't know if there any further comments on this one or we just say noted. I mean, we can just note as well that indeed the document from Sydney went further than the locking but it will definitely - that we have reviewed the elements related to the locking specifically.

The next one from - this comes from the public comment forum, the FICPI. "There's an obvious need for such an outline, which the FICIP strongly supports." I think there we can just say as well noted.

The next one, Number 24, comes from eInstituto. "eInstituto supports the creation of a standard and transparent procedure for registrars and UDRP providers, in order to successfully lock domain names subject to UDRP proceedings and unlock domain names when it is proper to do so."

I think this falls in the same ones as the previous one then I guess noted and agreed is probably sufficient here. Not seeing any hands.

Moving on to the last one in this section from Go Daddy. "For registrars that do not receive a high volume of UDRP cases, we believe it would be helpful to provide guidelines that they can follow, best practices, during a dispute."

"In this way, registrars can effectively know what to expect, and what actions to take. This would provide consistency across the registrar community so all parties involved can expect uniform treatment during a UDRP dispute."

I think we've basically (unintelligible) before as well that, you know, there's agreement with having that notion. And then I think Kristine already remarked as well before that, indeed, some instances it's just the question that registrars that don't have a lot of UDRP cases might be confused and not exactly know what to do. So what I've noted and agreed here be sufficient? Anyone else want to contribute anything else?

Laurie Anderson: This is Laurie. I'll definitely agree with my own comment.

Marika Konings: Thanks, Laurie. So we have - I think we made quite a lot of progress. We still have a couple of minutes left so are people happy to continue do a couple more for the last section or the last charter question section because we still do have another couple of other comments that are completely at the end of the document. Volker's saying let's go on so we just push ahead.

So Charter Question 3 relates to whether the timeframe by which a registrar must lock a domain name after UDRP has been filed should be standardized.

And then the first comment there from the registrar survey said, "Not necessary unless abuse is a problem." People agree that abuse is a not a problem for this one?

Kristine Dorrain: Well this is Kristine. And I would say that our experience - and I think the experience of the data that I know WIPO (unintelligible) we provided indicates that there is not an insignificant number of cases where the registrar takes more than 24 or 48 hours to respond thereby sort of holding up the entire process.

So I don't know, it depends on what you call abuse. But I don't think there can be any harm in standardizing, you know, what a best practice timeframe should be. Because I think it's hard to define abuse unless you define what the standard is.

Marika Konings: Volker.

Volker Greimann: Well I agree with the sentiment of the question. If we want to regulate something then we would have to have some problem that we want to regulate against. If the problem is merely a hold up in the time - the process takes then I don't think that's really necessary to implement a timeline because if you implement a timeline in which the response is necessary than that also incurs costs for the registrars who will have to staff their UDRP processes even better which it might be a problem for smaller registrars.

Marika Konings: Kristine.

Kristine Dorrain: The biggest problem with the delay - sorry, this is Kristine. The biggest problem with a delay that's more than 24 or 48 hours isn't just the time period for the UDRP process, which is supposed to be a quick process. But the biggest problem is the cyber flight that occurs during that window.

So the registrar gets notified, the respondent gets notified; the longer the registrar sits and doesn't lock the domain name and doesn't respond to the provider the greater the likelihood that cyber flight will occur.

So the biggest problem here is the cyber flight. The problem of the great time delay is, you know, secondary to a lot of people. To the complainants those extra 5 or 10 days might be a really big deal. You know, but even if you discount that there's still the issue of cyber flight.

Marika Konings: And this is Marika. I think it's something we, you know, we discussed on the last meeting as well. And then, you know, I'm thinking now as well working on

the straw man proposal I think some suggested as well, you know, would a potential solution here be that the registrant is only notified after or by the registrar once a domain name has been locked.

I mean, there you would take out part of that, you know, the timeframe during which both know and if the registrar doesn't act quickly indeed the registrant has an opportunity to make changes. And then you might have more flexibility on the side of, you know, the timeframe that the registrar has to lock the domain name. Would that be something that would be workable? Volker.

Volker Greimann: Well the way I see the process working currently is that the registrar gets the notification, locks the domain name as soon as possible and then - only then the registrant is informed. So the problem of cyber flight due to a delay, in my view, it does not really come into play here because the registrant does not know at that time.

Marika Konings: Yes but the complainant is required to also notify the registrant when they filed the complaint with the UDRP provider. So they don't get the information from the registrant but they actually get it from the complainant according to current rules as I understand.

Volker Greimann: And the second question would be is there really such a big cyber flight problem? With all the UDRP complaints we get, and we get quite a number, we've never seen a domain name - well never really often seen the domain name haven't been transferred in just a few days since the complaint has been filed. Mostly the - if the domain had been transferred it had been transferred well before the complaint has been filed or similar.

So the question would be, from my side, to the UDRP providers, do you see a lot of cyber flight that really regulation in this would be necessary because of the costs involved?

Marika Konings: David, do you want to respond to that? You're in the queue.

David Roache-Turner: Thanks, Marika. This is David. In response to that question from our perspective the number of instances statistically where we observe cyber flight is relatively small. But the degree of resultant complexity where it occurs is very, very large.

And it typically involves a fairly significant investment of time both on the parts of the provider and usually the involved complainant and the registrar and then the panel as well who has to rule on it in due course to sort of out. So it's very, very inefficient where it does occur.

In terms of the possible solution that was mentioned earlier indeed the UDRP, as it's currently structured, does require, in effect, a complainant that is filing a complaint to copy their respondent or at least to state that they've copied the respondent on the filed complaint.

So one possible option to mitigate the risk could be to modify the UDRP rules in a small way. It would need to be a fairly targeted change, I think. There are precedents for this approach. So for example in some of the ccTLDs the DotAU policy is one set of rules that has been slightly tweaked in this way so that the registrants of the domain name gets notice of the complaint only after the domain name has been confirmed as locked.

What we sometimes see in some cases as well, some complainants under the UDRP attempt to manage these riskier bits for themselves by filing a complaint with the provider and saying that they're not copying the respondent until they've received confirmation of lock.

Of course that's not technically in compliance with the rules so it's necessary to go back out to those complainants in that case and confirm with them that they've - they've sent a copy in order for that complaint to be compliant with the rules, which is not very efficient either. But there is that precedent there in

the AU space that might be worth looking into further if this is a route we go down.

Marika Konings: Thanks, David. Kristine - it's going to be brief because we're running up to the top of the hour.

Kristine Dorrain: Yeah, absolutely. And this maybe goes to how to end things today. But I think that we have to remember that the question is asking should there be a standardized period that we recommend in the procedure, right?

So - and I don't know that we have to decide at this exact moment if that needs to be two days or three days of our days or one day or however many days. The question is should there be a recommended best practice, I think, for how long the lock should take?

And I think it seems like, from everybody from on the call, we're saying yeah, it's important. There should be an end date. There should be a point at which everybody who's doing a reasonable job should have complied.

Now we may disagree a little bit as to how many days that is. And I think that's maybe the subject of another call. But I would just like to suggest that, you know, maybe we can agree that there is an actual date that everybody should have complied by and maybe that's how we end it today; I don't know.

Marika Konings: Thanks, Kristine. That's very helpful. And I think we've made a lot of progress on this call. And I think I got some useful information as well because I think as I told you on the last call I'm trying to put together a straw man proposal, you know, based on our discussions here and trying to help move forward the discussions when we actually start moving towards more concrete recommendations on how we want to tackle, you know, the different steps of the process. And I hope to be able to share that with you ahead of next week's call.

I think basically as we covered so much we've only left some homework I think for Jonathan who's not on the call today but who agreed to take the questions and - the remaining questions in this section so I'll send him a reminder on that. And as I said before as we only received I think notice from two people who wouldn't be able to make next week's call I would propose that we just go ahead and schedule the call for next week as per usual.

And with that I just would like to thank everyone and hope to see you next week.

Alan Greenberg: Thank you, Marika.

Kristine Dorrain: Thank you.

((Crosstalk))

Volker Greimann: Bye.

END