

**ICANN  
Transcription  
Locking of a Domain Name Subject to UDRP Proceedings  
Thursday 6 December 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 6 December 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-20121206-en.mp3>

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

**Attendees:**

Laurie Anderson – RrSG  
Hago Dafalla - NCSG  
Kristine Dorrain - NAF  
Randy Ferguson – IPC  
Lisa Garono - IPC  
Alan Greenberg - ALAC (Vice-Chair)  
Volker Greimann – RrSG  
Yetunde Johnson - Individual  
Celia Lerman – CBUC  
David Maher - RySG  
Michele Neylon – RrSG  
David Roache-Turner - WIPO  
Juan Manuel Rojas – ALAC  
Matt Schneller - IPC  
Faisal Shah – Individual

**Apologies:**

Gabriela Szlak - CBUC  
Luc Seufer – RrSG

**Staff:**

Marika Konings  
Berry Cobb  
Julia Charvolen

Coordinator: Please go ahead. This afternoon's conference is now being recorded.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. This is the Locking of a Domain Name Subject to UDRP Proceedings PDP Working Group call on Thursday, 6 December.

On the call today we have Laurie Anderson, Hago Dafalla, Kristine Dorrain, Alan Greenberg, Volker Greimann, Yetunde Johnson, Celia Lerman, David Maher, Michele Neylon, David Roache-Turner, Faisal Shah. We have apologies from Luc Seufer and Gabriela Szlak. And from 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.

Michele Neylon: All right, thank you. Good afternoon everybody. Sorry for being in - dialing in a little bit late. I'm dealing with stuff and things that I won't bore you with.

Okay as per usual does anybody have any updates to their statement of interest or declaration of interest.

Faisal Shah: Yeah, hey, Michele, this is Faisal.

Michele Neylon: Hello, Faisal, good afternoon.

Faisal Shah: Good afternoon or good morning. Hey, I'm - I think I'm as an individual on this working group - designated myself but I've referenced Mark Monitor as my employer. And that will not be the case as of this month so I...

((Crosstalk))

Michele Neylon: Okay now let's translate that back into something Michele can understand because I didn't quite get that. Are you saying that as of this month you are no longer with Mark Monitor?

Faisal Shah: That's what I'm saying.

Michele Neylon: Okay fine. So you are 100% individual as of this month?

Faisal Shah: Yes.

Michele Neylon: Okay that's fine. That's fine. Perfect, thank you and congratulations on making huge amounts of money.

Faisal Shah: That's not part of the SOI.

Michele Neylon: It's irrelevant whether it's part of the SOI or not. I said congratulations you were making huge amounts of money.

Okay then apart from people who are now multimillionaires are there any other changes to SOIs or DOIs? I'll take that as no, perfect.

Okay then Marika has put up on the thingy the work plan, which of course we are being quite bold about and are a little bit behind on, cough, says he. And I should accept partial if not total responsibility for that.

Marika, tell us how badly behaved we are, please.

Marika Konings: Yes, this is Marika. So initially I think we'd foreseen to finalize a review of our public comments on the 15th of October. And I think we are actually coming to completion at this meeting where we have the final public review tool and, you know, people need to review that and make sure that they're happy with what is in there.

So if you look at, I think, our target, that line, we're almost basically two months behind our initial proposed schedule we had as a target date to publish an initial report by the end of this year. I think we've done a lot of good work and, you know, I think it's for good reasons that we've taken more time because I think it was indeed important to go through those comments. And I think it has given as well a lot of useful information that we'll come back as well in initial report.

I've already started working on an initial report like the basic outline and some of the basic sections and, you know, some of the things can already be filled in. I need to go back now a bit to the public comment review tool so I can insert some of those discussions as well in relation to some of the charter questions.

But I think the most work that we now need to do is really to start drilling down on, you know, what are the actual recommendations that we want to put forward in the initial report for community consideration. And I think to that end, you know, what we put forward is the straw man and hopefully that will help in framing the working group's thinking and eventual recommendations that then can feed into the initial report.

So I don't know if it's worth setting another target deadline or just try to see over the next few meetings how much progress we make on coming to closure or agreement on draft recommendations and from that then will flow of course the publication of the initial report. I don't know how you prefer to go about that.

Michele Neylon: Okay. Does anybody have any thoughts, any comments, anything to say? I'll pick on Alan since I know he has something - he has a thought on this.

Alan Greenberg: I think what Marika is suggesting is reasonable. I'm always cynical that we'll make new deadlines because we're always optimistic. But I'm happy.

Michele Neylon: Okay. I am too. So one last time anybody have any other input or thoughts?

Okay I'll take that silence to mean that you all agree with this and we shall move on.

Marika, could you put up the straw man thing again please?

Marika Konings: Yeah, this is Marika. If we can just go - I actually forgot to put a number in front of that - it's my mistake - on the agenda. Because at one point I did have there is on the public comment review tool so...

((Crosstalk))

Michele Neylon: Oh sorry, sorry, sorry. I - yes.

Marika Konings: Yeah, that's my fault; I didn't put a number in front of it.

Michele Neylon: Well it's not your fault. I should have read all the lines. I was just looking at numbers so I kind of went 2 and 3...

((Crosstalk))

Marika Konings: Right, it's just to remind everyone that I did circulate like the latest version of that in which I was basically trying to capture all the points and comments that were made by the working group, you know, going through the different comments.

So if people can just have a look at that and let me know if there are any elements that have been - that were forgotten or any things that are not correct so we can basically finalize that document because that will be incorporated in the initial report either the whole document or as a reference.

But, you know, one of the obligations the working group has is to review comments and provide responses to those so if there's anything you think

that needs to be updated there, you know, please let me know. And maybe we can set as a deadline, you know, at the latest by the next meeting so people have a chance to look at it until next week.

Michele Neylon: Okay.

Alan Greenberg: Sounds fine.

Michele Neylon: So homework for everybody is - well it's optional homework. Either you look over and give some feedback on the review tool or we will work on the basis that what Marika has attached is what everybody agrees.

Alan Greenberg: It's comment or you can't complain later.

Michele Neylon: Yeah, thank you, Alan. That's pretty much the way to put it as in - it's a bit like voting in an election; you either vote in the election and get to choose your masters or if you don't vote in the election then you can't complain about it afterwards though that doesn't stop people from doing so.

Okay so the straw man - okay I'm just going to zoom in a little bit because I can't read this damn thing. That's a bit better. All right. Okay so we've already got a couple of notes there from last week which Marika has updated. Does anybody else have any thoughts on this at the moment? Is there anything that isn't clear? Marika, go ahead.

Marika Konings: Yeah, this is Marika. Just to note that indeed the only changes I made are on the second page to clarify that, you know, updates to Whois should be seen as corrections so it's not making changes but just to correct information that is existing there.

I also - I recall that I think - Michele made the suggestion that we maybe use the term 'freeze' instead of 'lock' but I, you know, after thinking about it a bit more and as well getting some internal feedback and as well talking to

Michele about it the approach there would be to maybe first try to define what the lock or the freeze actually does so what are the exact features that cannot be changed.

And then maybe to see if those correlate with an EPP status so we can actually be very precise and actually already have something that is defined somewhere else instead of having to define something ourselves. Or, I mean, it's something we've discussed before as well if there is not one specific EPP status or maybe there are more statuses that would apply or if there's no status but we want to come up with a new one that would be another approach to consider.

But I think to - in order for the definitional part we might first need to decide on what elements are required to be locked or frozen at that specific point in time, which you also still need to define at what point in time that would happen so just to clarify that.

Michele Neylon: All right. Thank you, Marika. Then we go to Kristine and then Alan.

Kristine Dorrain: Yeah, this is Kristine from NAF. Yeah, I don't disagree with anything Marika just said. I just wanted to add that in our discussions - and the straw man put the actual lock at the wrong place. Step 4 should actually be between Steps 1 and 2. So the first thing that happens upon the filing of a complaint is that the lock is requested immediately.

And so - and that's in line with the, you know, the vast majority of the comments as well is that the lock be put in place immediately. So I just wanted to make sure that we recorded that as well. And I know that we have some discussion about what immediately means. But we, you know, obviously that's something that we can continue to work out.

Michele Neylon: All right. Thank you. Alan and then - Marika, is that a new hand?

Marika Konings: Yes.

Michele Neylon: Okay, just checking. Alan, go ahead.

Alan Greenberg: Yeah, a question and then maybe a comment. Marika, when you're talking about an EPP lock are you talking about it purely because it may be a convenient definition or because we could conceivably use the EPP lock to enact the lock freeze?

Marika Konings: This is Marika. To answer that, I think it's probably both but especially the second because I think what I understand as well that, you know, by talking about EPP we can be very specific and it will be really clear what needs to happen.

And those statuses are already defined so I think that's a suggestion I got from some colleagues saying if we can be as specific as possible in using EPP that would be, from our perspective, I think the ideal scenario. But again this is of course open to discussion.

Alan Greenberg: Yeah. The implication of using EPP is for registrars who currently address the locking issue by transferring the domain to a private portfolio we're probably forcing them to change their work methods. And so it's something we need to discuss if we're going to go down that path. I'm not saying it's a bad thing but clearly we're suggesting that a registrar who may be doing technically things sufficiently right now might have to change if we require - if the EPP lock in lieu of or in addition to anything else they do. Thank you.

Michele Neylon: Okay I'm going to go to Marika then to Kristine - no, Kristine, that's an old hand. Marika and then to me and then to David.

Marika Konings: Yeah, this is Marika. I just had a clarifying question for Kristine. So the moment you would ask for - upon receipt of a complaint you go immediately to the registrar to ask for locking. Is that the same notice you sent to the



registrar to ask for verification? Is that the same package basically ask for lock and verification at the same time? Or are those two different communications you have with the registrar?

Kristine Dorrain: No, it happens all at the same time. And then once we get the email back from the registrar with the verifying data and having, you know, confirm that the lock is in place then we can actually do the full compliance review and, you know, make the complainant, you know, adjust the registrant information or whatever in the complaint.

Then we, in Step 3, would forward the complaint to everybody again, including the registrar and notifying them of the commencement of the process. So that Step 3 is still correct it's just that Step 4 is moved up before Step 2.

Marika Konings: And if I can ask one more question? So when you then confirm the proceedings that's basically to the registrar and the complainant? Do you also send it to the respondent at that stage?

Kristine Dorrain: Yeah, Step 3 - what you have in the straw man in Step 3 is the formal commencement of the process. And that's where we officially serve the complaint on the parties including the respondent. And that's the respondent's first official notification. And that's with the complaint as finalized.

So the first draft of the complaint may have errors in it or something that we have made the complainant go back and correct. So the version that we send out in Step 3 is the actual official commencement version were, you know, supposedly everything is fixed and everything is in order and that's the official notice.

And we've been talking a little bit about whether or not the UDRP should be amended to remove notice of the respondent by the complainant at Step 1 because we perform this notice function at Step 3.

Marika Konings: Okay thanks.

Michele Neylon: Okay. I put myself in there. What was I going to say? Damn. Oh yes, I think one of the things I'm a little bit wary of is being overly prescriptive with respect to which EPP statuses we should use, I mean, specifying them specifically. I think we should focus more on the functionality, in other words, the end result.

As for Alan's comment about how this would impact registrars; while I agree that, yes, obviously if we prescribe a particular process in some way then that would obviously impact them but at the same time the reason why things are being done the way they are being done at the moment is due to the lack of certainty.

David and then Celia.

David Roache-Turner: Thanks, Michele. Yeah, I just wanted to make a couple of points further to the issue that Marika and Kristine were just discussing. And indeed I think it's worth just emphasizing indeed that there are typically those four processes that Kristine described, you know, which is the filing of the complaint with the provider and the filing of the compliant typically goes both to the provider and to the registrar, you know, and typically to the respondent.

And this is the point at which the proceedings become pending. Then the provider issues a verification request to the registrar and this includes the lock request. Then there's an opportunity to correct the complaint. And only after these corrections are made is there the notification of commencement of the proceedings and the commencement of the 20-day response period.

So there are a number of points at which the registrar in effect receives notice. One is on the filing of the complaint, one is in receipt of the registration verification and lock request and another is on the formal notification and commencement of proceedings.

And my second point is just a suggestion which is in the straw man where in Point 3 we currently refer to the UDRP provider forwarding the complaint to the registrar and notifying the registrar of the commencement maybe we should say there to the registrar and parties and notify the respondents of the commencement because the purpose of that third notification is really to put the notice - put the respondent on notice of the commencement of the 20-day response period.

Michele Neylon: Okay, thank you. Celia.

Celia Lerman: Yes, yeah, I wanted to follow up on what Kristine said about - well, you know, eliminating the requirement to notify the respondent. And I will need Marika's help here but I don't want to get too much on what was the scope of the working group because I know we have discussed it.

But after the last call I had an email with Marika saying that - where she clarified to me that this recommendation would still be taking into account for UDRP reform so it's still not that clear to me to what extent we can recommend, you know, eliminating this requirement at this stage.

Sorry to go back on this point but maybe to...

((Crosstalk))

Michele Neylon: So, Celia, just to be clear. Which requirement are you referring to?

Celia Lerman: We suggest - we recommend as a working group to eliminate the requirement to notify the respondent with the filing of the complaint.

Michele Neylon: Okay.

Celia Lerman: Which is where we - in Point Number 1 in the comments in the straw man (unintelligible) this is more or less what we were saying, you know, we're eliminating this requirement...

((Crosstalk))

Michele Neylon: Okay.

Celia Lerman: So that's the first of my questions. I think this would be a really good idea and, yes. And the second point I wanted to - so I would ask Marika if she could, you know, share this with the group to clarify this again.

And then I wanted to make a comment on, you know, after - next to the Box 1 with all the comments to the first step of the process just making it very, you know, just - I would add to that comment that it won't be necessary for the complainant to notify the respondent - saying that expressly so that it's clear for people that (you use) these recommendations later. Because now it's implied but I just think we should make it more clear.

Michele Neylon: Okay. All right thank you. Mr. Greenberg.

Alan Greenberg: Thank you. Regarding whether - and I think the question is whether us saying that the respondent not be notified by the complainant is within our mandate and within our scope I would say it is completely within our scope. If our job is to make sure a lock works and, you know, that's not what the charter said but that's the summary in my mind, and we find it doesn't work because the respondent has advance notice I think that's fully within the scope.

It certainly could come under...

((Crosstalk))

Alan Greenberg: ...form as well but I think...

Michele Neylon: Just one second. Just one second. Marika, or the operator or somebody, could you mute the line where all the noise is coming from please?

((Crosstalk))

Michele Neylon: I don't know what that is but...

Marika Konings: I'll ask the operator to look into this so they will mute that person.

Michele Neylon: All right, thank you.

((Crosstalk))

Michele Neylon: Sorry, Alan, go ahead.

Alan Greenberg: Okay, I've said what I planned to. I think it's completely within scope if we deem that notice to the respondent to be one of the problems with the current locking mechanism or locking process then I think it's within scope even though...

Michele Neylon: Okay.

Alan Greenberg: ...it may not have been mentioned explicitly in our charter. Thank you.

Michele Neylon: Thank you, Alan. As usual Marika gets preference over David. Nothing personal, David, but you know how things are. Marika and then David.

Marika Konings: Thanks, Michele. This is Marika. Maybe just to clarify as well because I think part of the confusion comes over the fact that we do have this, you know,

pending policy development process on the overall review of the UDRP, which will take place in a, you know, future point of time. I think it's one year after I think new gTLDs come into effect or something like that.

But basically apart from that the Council did decide to initiate a policy development process on this very narrow specific issue. And I think, as Alan said, you know, I think we can, you know, there's a really good justification why that - maybe that specific targeted change would really help in solving the issue that we're trying to address.

So I think you probably need to look as well like if there, you know, there's a consensus from this working group there is no opposition to it. And at the same time as well there's Council support for it. This is a policy development process so changes can be made on that basis, you know, to existing consensus policy.

So again if there is, you know, consensus and no question on that or no opposition and the same level from the Council I think it's definitely within scope to make such a suggestion as it specifically relates to the, you know, the questions we've been given on outlining an overall procedure on what needs to happen in the case of a UDRP proceeding in relation to what needs to lock and what needs to happen and who needs to be notified when. So I think that's just from my perspective.

Michele Neylon: Thanks, Marika. And finally David.

David Roache-Turner: Thanks, Michele. And it's always a pleasure to go after Marika because we get the benefit of her wisdom on these points, which I think is really useful here. And my suggestion is in fact a very modest one although it relates a bit to what Alan had suggested earlier and Kristine and now which we've just heard then from Marika as well.

And that suggestion is a textual one. And it's directed at perhaps helpfully, I hope, removing some of the definitional uncertainty I think we've been wrestling a bit in this group - within this group so far. And it's under the third aspect of the straw man proposal where in the last sentence of that subsection we say preventing changes of a registrar and registrant upon notification/request for verification.

I think it would be useful if we would eliminate the word 'notification' from that sentence and substitute in its place the word pendency. Because the point at which a UDRP proceeding becomes pending is the points at which the prohibition on registrant transfer in fact comes into play.

And the term notification is also synonymous with the points at which the respondent's 20-day response period occurs. And this is something that happens, you know, quite away into the procedure. You know, and it's the point which occurs after the verification has happened and after the lock, etcetera, etcetera. So I think it would be useful if here in this sentence instead of referring to upon notification and slash request we would refer instead to upon pendency, slash request.

Michele Neylon: Anybody have any thoughts on that?

Alan Greenberg: I don't - it's Alan. I don't understand the process well enough to argue with someone who seems to know what he's talking about.

Michele Neylon: Okay. Kristine, go ahead.

Kristine Dorrain: I don't disagree with the substance of what David said; I just wanted to mention that pendency has the potential of being a term that registrars may not understand the definition of. David and I understand it very clearly because we deal with it on a daily basis.

But there may be - I don't object to the use of the world pendency but there maybe in our final product sort of a definition of what pendency means so that everybody is on the same page as to what that is.

And then it would accommodate, as David pointed out, sort of the people who want - the registrars who want to lock, you know, as soon as they get wind of any sort of dispute, you know, people like Go Daddy who have a legal team who can figure out if it's a legitimate dispute and want to lock it right away.

And then people who otherwise have to wait for us to email them and say guess what there's a dispute pending. So I think it covers both so I don't disagree at all with David's suggestion I just worry that we're going to spend just as much time explaining to registrars at what point the complaint or the dispute is actually pendent.

Michele Neylon: Thank you. And actually double thank you because I put myself in the queue. The first language that I speak is English. I would consider myself to be reasonably well educated. The term pendency, to me, is not one that I am immediately familiar with. And I can see a lot of people getting quite confused by it. And thank you for confirming my suspicion.

It would be helpful to get some input maybe from non-English speakers who - it may not be - okay Volker is saying it's not English, it is legal. The problem is that people - not all registrars have legal staff and policies are not meant to be great big legal documents and nothing else. At least that's my understanding.

Over to you, David, go ahead.

David Roache-Turner: Thanks, Michele. And I apologize to all on the call for the legalese. It's tricky I know because we're dealing with a legal instrument and some terms have specific meanings.



But another term that might be synonymous and more useful for registrars seeking to understand what this means in plain English could be if we would use a term which appears under Paragraph 1 of the rules in the definition of a respondent which is the holder of the domain name at the time at which the complaint is initiated.

So initiated might be a better term here to use than pendency. But what it's intended to encapsulate is the time at which the proceeding first becomes pending. It's not the time at which the complaint is formally notified, which is when the respondent's response period runs from. And that's why I'm keen here that we not use the term notification that we use either a term if pendency doesn't work, and initiated I think could be a good substitute. First noticed might be another possible substitute.

But I really think we should try and avoid use of this term notification because it can just as easily be misunderstood as the formal notification of the proceeding being the point from which the respondents, you know, response time runs. Wherein in fact, the proceeding becomes pending; it is initiated in a factual sense and in terms of the operation of the policy from the point at which the complaint is first filed.

That doesn't mean that we, as a working group, need to make a recommendation or a decision that that's the point from which of the lock needs to be implemented. But it is the factual point in time from which the registrars - sorry, the registrant's obligation not to transfer the domain name begins to run. It's the first point from which we can potentially have a side-of-flight issue.

But we're talking about ways in which we can most effectively manage the side-of-flight problem. There is a number of points in which we can manage that through the application of a lock.

You know, you could say the most efficient point could be, well when the complaint is first filed, when the proceeding is initiated, you know, we've discussed this and of course that's going to present some problems, you know, for a number of participants in this group. So it may be that we end up with a compromised solution which is that the lock occurs from the point of first request from the provider or from the registrar verification or whatever it is.

But I just think we need to be quite precise about the terms that we're using in this straw man here so as to avoid use of the term notification where I think what we mean is in fact initiated or pending or first notice or one of those terms I mentioned...

Michele Neylon: Okay David, I'm just going to interrupt you there just one second just so that we're quite clear. You hate the term notification, you love the term pendency, but you are willing to accept the term initiated. Is that correct?

David Roache-Turner: Good summary.

Michele Neylon: Okay, thank you. No, I was just trying to summarize this for, you know, just so we can get the concise bits out of it; okay.

Just going before I take other people in the queue, something from Kristine which I think is important that she put on the Chat. "It should be part of the scope of this group to provide a plain English translation of what the registrars are expected to do." Kristine, thank you.

As a registrar, my view would be I thought that was the entire point of this Working Group was to make it clearer and easier for registrars to comply and not have massive headaches. Matt seems to be happy enough with the term initiated and so is Laurie.

So now, Alan, Yetunde - and apologies for the pronunciation, and then Marika.

Alan Greenberg: Yes, thank you. I'll agree or even strengthen the need to define terms. And I think that becomes even more important when we're using common English words. You know, the benefit of legalese that most people don't understand is they have to go look at the definition.

A common word is sometimes worse because, you know, and I know within documents, certainly we capitalize it if it's a defined term. But I think we have to be really careful.

I'll point out in the last version of the PDP Rules, I believe a PDP was initiated at three different times because it's a word that makes sense in English. And various different steps were called initiation though - although I'm not objecting to that term, let's make sure that it can't be misunderstood.

((Crosstalk))

Alan Greenberg: And I thank all those people in the background for agreeing with me.

Michele Neylon: I thank them too. I have no idea who they are, but they sound like they are having fun.

Yetunde? Sorry about the pronunciation, I'm not sure what's correct. Go ahead.

Yetunde Johnson: Yes, good afternoon. Yes, it is indeed, you pronounced it very well.

I was going to comment on the pendency notification and then the initiated. I was going to say that yes, I like the idea of initiated because it is probably easier to understand.

But I also kind of agree with the previous speaker about there being some kind of specification of time or stage. Because initiated at what stage, at what time, at what period to make it clearer.

Michele Neylon: Okay, thank you. Marika?

Marika Konings: Yes, this is Marika. I'm actually a bit torn here because I think pendency is the word that is used is in the UDRP itself. I think at the same time it's even important that we clarify when that happens.

And I recall, and I think it was Kristine saying on last week's meeting, that term had been clarified I think she said by Compliance to indicate indeed that pendency means, you know, from the moment that the complaint has been filed.

And if that is so, we might be able to find that language and basically use that as the definition so that we can use the term pendency, but at the same time provide the definition of what pendency means, you know, reference that even back to, you know, that's something that registrars have to be compliant within this stage and has been clarified in this or that document.

I don't know if I got that correct, but maybe, you know, Kristine can clarify that.

Michele Neylon: Kristine?

Kristine Dorrain: Yes, and that is correct, but I just noted in the Chat that it was a verbal; it's been done in phone calls to me or, you know, where we've discussed it. And then the Compliance have called the registrar and said, you know, yes, it's pending at the time of filing.

But I don't believe, and maybe David knows, but I don't believe anyone from Compliance has ever actually written that any place. But like I said, David may have been documentation than I do on that.

Michele Neylon: David, a very simple question; has this been written anywhere? Yes or no.

David Roache-Turner: To my knowledge - this is David, it hasn't.

Michele Neylon: Okay, that's fine. Just as side note, as Chair, we've had an issue in the past - Alan I think will know exactly what I'm referring to, where Compliance has informed other staff that they have issues implementing policies due to the choice of wording. So it might not be a bad idea if we were to reach out to Compliance now maybe.

I don't know Marika, what you think?

Marika Konings: This is Marika. I'm happy to go back to Compliance and ask them if, you know, they are willing to put up in writing how they interpret pendency and, you know, as Kristine said, if they've used it all ready in telephone conversations, and presumably then as well, in their dealings with their registrars. You know, hopefully this is something they will be willing to put into writing.

So I can go back to them and ask if they're willing to use the definitions that they're handling so we can use it then as well I think in our clarification, what we mean with either pendency or notification, whatever the term we decide to use.

But I think I agree with the comments before that we need to be able to pin down, you know, when - because notification, you know, I'm not an English speaker. I could notification as well as the notification of commencement for example; it's not difficult to make the jump to that sort of thing.

The more precise we can be, the better it's going to be at the end of the day for everyone to understand what the requirements are.

Michele Neylon: Okay, thanks Marika.

Just as a note, I mean one of the things we don't want to end up with is something where we spend months on this; we produce a final report and then it goes to implementation. And Compliance tells other ICANN staff that we've got it completely wrong and there's no way that they can do X, Y or Z or something equally helpful.

Alan, go ahead.

Alan Greenberg: Thank you. I just wondered if Marika has any insight. Our new CEO has said that in the future, the people involved in implementing the policy, and presumably which maybe in this case registrar relations or legal staff and/or compliance, will be more involved in the policy process to make sure that we do not end up with situations such as Michele is referring to.

Is that something that is embodied in any way now, or is that just a future hope?

Marika Konings: And this is Marika. On that note, yes that's definitely the idea. And you know, to reassure you of that for example, the straw man, before I send it to all of you, I first circulated it as well internally because I don't consider myself an expert on UDRP or maybe slow at becoming one.

But I circulated it to colleagues to get their input. And the idea is, you know, we had a call for example with - we have regular calls with Compliance where we brief them on the issues we're working on. And we actually had a call with them yesterday.

So I specifically briefed them on where we are without discussions and I've alerted them as well that I'll be standing over, you know, some of the drafts we're looking at so we're ready to get their input at this stage. So it's really the idea to make sure that as well, they'll have an important part to play, you know, when we finalize our recommendations to really make sure what we come up with at the end of the day is indeed implementable and enforceable.

So that's definitely the plan, and I think, you know, going back to the concrete question will really help as well to establish that going forward.

Alan Greenberg: So hopefully we will not have a rerun of the situation Michele is referring to.

Michele Neylon: Without referring to it by name.

Alan Greenberg: I'll refer to it by name if you'd like.

Michele Neylon: Well I was just going to have fun kind of doing it in (unintelligible) wild on us.

Alan Greenberg: I was going to point people to a common period.

Michele Neylon: Well one could have done that, but I just do as I am Irish, use the (unintelligible) wild reference would have been musing for me anyway.

Let's not beat up on people. Oh dear, sorry; I've seemed to have swallowed half the dust in the office by accident.

Okay then, so the entire kind of pendency, initiation, and all that, we're going to see if ICANN Compliance can come back to Marika with and categorically define something for us so that we know that we're no longer - we know what we're doing with.

Alan Greenberg: Or Michele, or tell us we need to define it.

Michele Neylon: Well that too. Either works, but as long as we have something from them so we don't get in a situation in six to - actually, no; I'm going to stop beating around the bush.

For those of the rest of you on this call who don't know what myself and Alan are talking about, we spent 18 months working on a particular Working Group in relation to post-expired domain name recovery. In other words, what happens to domains when they expire.

The output of that Working Group was a report, and the report specifically did not specify certain things because the Working Group had discussed this at length and it was decided that it was not appropriate to mention...

((Crosstalk))

Michele Neylon: Not necessary. There's a philosophical difference between ALAC and the registrars on this, but we both agree that we had discussed this at length and we were not going to mention this.

Unfortunately, we were informed by Compliance that the lack of mention of this meant that it rendered the entire thing completely unenforceable which is the first we'd heard of this since we spent months on the damn thing and had multiple common periods.

And so ultimately, as Chairs of this group, myself and Alan don't particularly want to have the same problem arise. Will that summarize it neatly Alan?

Alan Greenberg: That's the vision.

Michele Neylon: Thank you. So Marika, if you do not get a clearer response from Compliance in a short time, then I will have to write to them as Chair. And if that doesn't work, we'll have to get the GNSO person to do it or somebody else, because ultimately we need to have clarity.



Marika, you have your hand up.

Marika Konings: This is Marika. Just note as well on the discussion on the previous project, I think sometimes the issue as well is that, you know, we discuss certain things but prefer not to spell them out because there's no agreement. And indeed that - and then hope that it will resolve itself at the stage of implementation.

And I think there - again, it's just more work. And the more specific we can be, the easier it will become for staff as well to do the implementation. And then let interpretation we try to do and when it will come to forefront on certain issues that people had a different idea of what something meant. And we, you know, as a Working Group, people like to be a bit vague because they know if we drilled onto the details, it's not easy to come to agreement.

So we would like to encourage everyone that we need as much detail as we can put in here, the easier it will be at the end of the day for us to go to an implementation plan that will actually match exactly what the Working Group was trying to achieve.

Michele Neylon: Okay, thank you Marika. And David is pulling up a bunch of hypo cases with discussions of both this famous pendency and cyber flight. So these will be referenced in the email that goes after this call referencing stuff. You see, I love the word stuff; it's so usable.

Okay then, right. To steal you with the straw man, let's move past this entire pendency and initiation thing. And does anybody have any other faults on any other aspects of this at the moment?

Marika, go ahead.

Marika Konings: Well this is Marika. And another thing we might want to discuss is a timeframe. I think we've - at least I haven't heard any objections that it seems

at least from those on the call, there seems to be no agreement to consider taking out the notification of the respondent at the time of filing. I think there seems to be, at least I haven't heard any position yet on, you know, upon - whatever you say - upon the notification by the European provider to (unintelligible) or to verification requests. The registrar will lock, provide the details to be either be provided, and upon commencement is when the respondent will be informed. And at that point the domain name is all ready locked.

So I think about the questions that we still need to discuss is, okay, so what is exactly locks, which changes are prevented at that stage? The timeframe; what kind of timeframe are we looking at and how to reflect in any kind of recommendations?

There's also this notion of, you know, I think the recommendations on their Step 5, I believe, where we talk about allowing changes or corrections to contact information. And inquiring at that stage, if that happens, that also the UDRP panel is informed. And that way as well addressing any reveal situation, so basically, leaving that up between the proxy and privacy provider and the UDRP panel.

So I think those are some elements that would be good to get some further input on whether, you know, what does in the straw man (unintelligible) is, what is supported by people on the call or whether there are - and I think on the 24 hours I think we've all ready said that we need to talk about business days; I think that's one where we are ready to make a change. But I think those are the elements where it would be helpful to get some further input and feedback from the Working Group.

Michele Neylon: Okay, thanks Marika. And obviously Kristine as well is mentioning timeframes and suggested processes for removing the lock from domains.

So anybody - just to reiterate what Marika said, I'd also support the working days or business days concept as opposed to speaking flatly in terms of day or 24 hours.

And nobody...

Alan Greenberg: I think there was all ready general agreement on that one.

Michele Neylon: Well okay, we'll work on the basis that we're all happy with that.

Marika Konings: This is Marika again. So there is support for having it as within one business day? Is that what registrars feel is an appropriate timeframe or should it be longer, shorter? Should there be more of a range?

Alan Greenberg: Marika, it's Alan. I would suggest putting in one day. We may get flack on it and during the review of the draft and if so we may consider changing it.

But it's, you know, given that a business day is defined in your local business rules, I find it hard to argue with that. We may want to clarify whose business day it is of course. The provider and the registrar may be in very different parts of the world following their different calendars.

Michele Neylon: (Matt) has his hand up. Just one thing just to come back to you Alan, very, very quickly, if we were to advent just to say excluding weekends, i.e. Saturday and Sunday, then I wouldn't be upset about the concept of day. But I would be very upset without that.

Matt, go ahead.

Matt Schneller: I was just going to say that one thing that we may want to do is even be a little bit more specific. So, you know, if you get a request after 1:00 pm on a business day, you have to do it before 1:00 pm the next business day. Or if it

comes in later than that, it just have to be by five o'clock the next business day.

Just so we're kind of built in as close as we can to the 24 hour requirement that we started with and keep that flowing through to the next business day as we much as we can.

Michele Neylon: Celia has just pointed out on the Chat, weekends are not Saturday and Sunday in several parts of the world; those are working days.

And somebody else is saying, "If we remove the (unintelligible) the complaint, notify the respondent, then there's not that much urgency to lock as there is now." That's a fair point as well.

Anybody else have any other thoughts on this?

Matt Schneller: Hey, this Matt Schneller. I'll take my hand down now.

One additional thing, I think the assumption is that the registrar is not supposed to be informing the registrant's part who is imposing the lock. So that maybe something that's worth just being very specific about, otherwise the 24 hours doesn't really solve anything if the registrar immediately says, "Hey."

A person who's using our service, we got an UDRP complaint, "Would you like to make any changes to UDRP or to your WHOIS data before we impose the lock?" So I think that's something that means you need to spell out.

Michele Neylon: Okay, thank you. And Matt, you have a disagree as opposed to your hand down, just so you're aware.

Okay, we've got about eight minutes left just so people are aware.

Alan Greenberg: Michele, it's Alan. If Matt is really disagreeing, I'd like to know or hear it.

Michele Neylon: I don't think he is.

Alan Greenberg: Well he...

Michele Neylon: I could be wrong; I think he's just trying to take his hand down and put the disagree up instead. He just said he's not; the poor computer used by him. So yes, okay. He's having issues with - fine. He's not disagreeing.

Okay then. Thoughts on removing locks? Anything there, does anybody have any thoughts on (unintelligible)? No?

Kristine?

Kristine Dorrain: Hey again, this is Kristine. I just wanted to say as far as removing the lock goes, there might not be a lot of sort of, you know, necessarily issues with it, with the way the people who interpret it are interpreting it.

But again, I go back and sort of circle back to the record - to the sort of the explanation or the explanatory of this process which is sort of defining for registrars who don't understand what the ten business day hold means of the complaint and prevails, and what the 15 day prohibition on transfer means, in either case.

So I think that even if there's not a lot of disagreement on this point, spelling out in a sort of a plain text document of best practices for what that looks like for the individual registrar I think is going to be very helpful.

Again, the people participating on this call don't have any problems because they know what they're doing. But I think we're writing this document for the people who don't know what they're doing. And I would like to see a little bit

of best practice clarification for those people. It would definitely I think help, you know, people trying to be in compliance.

Michele Neylon: Okay, thank you. Marika, then me, then Alan - sorry.

Marika Konings: Yes, this is Marika. Just a question because we're talking about arm locking, but I found this good corrective from our previous call.

I think the process that was described for (unintelligible), I think by Volker, is that actually the unlocking only happens after the transfer has taken place. And in most cases, the registrar will get the notification from the UDRP provider that the proceeding has been suspended.

And at that point they wait for the instructions on where the domain name should be transferred and data care of the transfer and only when they receive notification that the proceeding has been terminated. That is the moment when they unlock.

I don't know if I misunderstood that, but maybe that's something as well we need to clarify whether we actually talk about unlocking or what happens indeed when a proceeding is terminated and what step happens proceeding that.

So a just a point of clarification from my perspective. Volker puts an X so I probably got it wrong.

Michele Neylon: Okay, I'm just going to make one very, very quick comment. Kristine, I'm on this call. It does not mean that I know exactly what I'm doing.

One of the reasons I'm part of this Working Group is because I would like to know exactly what I'm meant to do. And I don't have a massive legal team.

Alan and then Volker.

Alan Greenberg: Thank you. Just a warning, again based on sad experience. Anything we put in a recommendation as a best practice may well never see the light of day in terms of anyone remembering it's there except for archivists who read historic documents.

We really need a mechanism. If we want something to do our best practice, we need to somehow to disseminate it and make sure as part of our recommendation that it's going to live on past this Working Group.

Again, talking about the same PDP that Michele was talking about, there were best practices in there. And I know of no, absolutely no action, which will remind people that they're there or attempt to making them actually live.

So let's make sure that if we think something's important that we disseminate some things so people are at least aware of it. We propose a mechanism to do that, not just write it in the recommendations and hope someone will take it upon themselves to carry forward. Thank you.

Michele Neylon: Thanks Alan. Volker, good afternoon.

Volker Greimann: Just to clarify maybe that point that I was making last week, in the case of a suspension that usually arises when the complainant requests a suspension. And the purpose of the suspension is to allow the transfer of the domain name from the respondent to the complainant.

And so at that point we need to remove the lock once we have the agreement from both parties in place. So if both parties confirm to us that they want the transfer, then we unlock the domain and put it into the account of the complainant. The complainant can then modify the domain to his needs and requirements and transfer the domain name out.

And after that the complainant informs - well usually, if the suspension is not removed, then the process is terminated automatically.

But to affect the purpose of the suspension, the removal of the lock at that point is required. And I think the UDRP also covers that because the transfer from the respondent to the complainant is one of the circumstances where the removal of the lock is permitted.

Michele Neylon: Is that it Volker? Hello?

Volker Greimann: Yes.

Michele Neylon: Okay, sorry. I thought you said you'd be finished at (unintelligible) and I was wondering.

Alan, is that an old or new hand?

Alan Greenberg: Sorry, old hand.

Michele Neylon: Okay, it's not old, it's slightly more mature, but (unintelligible) - sorry, I'll behave.

Okay, we've got two minutes left.

Alan Greenberg: Michele, the term we're using in another group is vestigial hand.

Michele Neylon: I'm going to have to Google that as I have no idea what that means.

Marika.

Marika Konings: Yes, this is Marika. Just to note and then I'll probably need to update as well the public or common review tool because I didn't catch it the way you've all described it on the last call. So I'll make sure as well to update it there to



reflect that when a proceeding is suspended, at that point the lock is also removed and not at a later stage.

Michele Neylon: Okay, thank you.

Marika Konings: And if I can maybe make another note on the next agenda item before we close the call, for the meeting on the 20th of December, we actually have a conflict with the GNSO Council Meeting that takes place at the same time. So we'll be sending out a (dutipole) to try to see if we can find another time or day for only that week to make sure that we can have a call but avoiding the conflict with the GNSO Council Meeting.

Michele Neylon: Okay, perfect.

Marika Konings: I forgot to put a (dutipole).

Michele Neylon: Volker, go on, go on.

Volker Greimann: Yes, I just want to clarify again, the suspension notice does not immediately remove the lock. The lock is removed then when we receive agreement from both parties that the lock can be removed.

At that point where the complainant has all ready taken over all ownership by having the domain name put into his account. So suspension itself is not the removal of the lock but allowing the transfer from the respondent to the complainant. That's the time when we remove the lock for that to happen.

Michele Neylon: Okay.

Marika Konings: Okay, fine.

Michele Neylon: And also as well for next week's call, I will not be here. Alan will be then looking after you. And if he can't make us, Marika will be here. And if Marika

can't make it, I'm sure somebody will manage; maybe Julie or Berry or whoever.

Hope you all have a nice week, and if anybody has any thoughts or anything on the straw man, would you please share it with the list. And if you have any comments, feedback, positive or negative on the review tool thingy that Marika circulated, please send it in or we will consider your silence to be agreement.

Thanks everyone.

Man: Thanks Michele, see you next week.

Woman: Good night.

Woman: Thanks Michele.

Man: Bye.

Woman: Thank you, good day.

END