

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings
Wednesday 19 December 2012 at 14:00 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 Wednesday 19 December 2012 at 14:00 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-20121219-en.mp3>

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

Attendees:

Alan Greenberg - ALAC (Vice-Chair)
Gabriela Szlak – CBUC
Hago Dafalla – NCUC
Kristine Dorrain – NAF
Celia Lerman Friedman - CBUC
Juan Manuel Rojas - At Large
Luc Seufer – RrSG
Fisal Shah – IPC
Volker Greimann - RrSG

ICANN staff:

Marika Konings
Berry Cobb
Glen de Saint Géry

Absent apologies :

Michele Neylon – RrSG (Chair)
David Roache-Turner – Observer
David Maher – RySG
Ken Stubbs – RySG
Jonathan Tenenbaum

Coordinator: Go ahead, we're now recording.

Glen de Saint Géry: Thank you, (Ricardo). Good morning, good afternoon, good evening, everyone. This is the Locking of a Domain Name Subject to UDRP Proceedings teleconference on the 19th of December. And on the call we have Hago Dafalla, Juan Manuel Rojas, Alan Greenberg, Kristine Dorrain, Gabriella Szlak, Faisal Shah, Luc Seufer, Celia Lerman. And for staff we have Marika Konings and Berry Cobb and myself, Glen de Saint Géry.

We have apologies from David Maher. And I don't know anybody else has given their apologies. But before I hand it over to Alan may I just remind you all please to say your name before speaking because it makes the transcript much more worthwhile and accurate.

Thank you and over to you now, Alan.

Alan Greenberg: Thank you, Glen. Is there anyone with a change in statement of interest? Hearing nothing, seeing nothing I'll note for the record that Michele has not shown up without apologies and I'll take over as chair.

The first item is to review the public comment form and ask if there's any comments on any of the responses. I have a couple but I'll open the floor first.

Celia Lerman: I'm sorry for that; I thought I had one day more so I'm a little off this time.

Alan Greenberg: Oh.

Celia Lerman: But it's okay.

Alan Greenberg: No other comments. Let me raise mine and - as soon as I can find them. My first comment was on 14 and it's not really a comment but a note. Trying to figure out what it meant; hold on. My comment was must the registrar be

notified but that doesn't make any sense so I'm trying to understand what it was about.

Sorry, did I say which comment I'm on? Is anyone still there?

Celia Lerman: You said 14.

((Crosstalk))

Alan Greenberg: I did say 14, okay. I wasn't sure. Oh, okay. It is - I think my comment is do we want to explicitly put in our rules that the registrar should be notified by the complainant when the complaint is filed? I'm not sure is that currently a UDRP rule or a provider rule?

Kristine Dorrain: Hey, Alan, this is Kristine. It is a provider rule. WIPO and NAF require it; I don't believe the Czech Arbitration Court does...

((Crosstalk))

Alan Greenberg: Okay I see that reference. Yeah, that was the reference. So the question is just a note to ourselves do we want to require that the registrar be notified at the time the complaint is filed? And...

((Crosstalk))

Kristine Dorrain: Alan, this is Kristine. Can I respond to that?

Alan Greenberg: Go ahead. Sure.

Kristine Dorrain: I didn't put my hand up in the room, I'm sorry. Say I wanted to mention that - I don't think there's any harm in doing that. However I mean, and NAF does require it and I think it's good. But I wanted to point out that most of the time - maybe not most of the time but in a fairly significant number of times the

registrar doesn't actually get what the complainant sends because the provider has a special email address list of registrars.

So they provide - the registrars are all asked to provide a list of - an email for UDRP and compliance-related issues. And so we are given that list privately and we use that list.

So we don't just go and search for, you know, helpdesk@godaddy or whatever it is that people are using. We have an actual sort of a hotline if you will. So I think it's fine and I don't think that there's going to be any harm in adding that. But I would just caution us to think that that's going to solve a ton of problems because I don't know that that's going to notify the vast majority of registrars.

I still think - in the vast majority of cases the registrar is going to get its first notice from the provider.

Alan Greenberg: Or first notice that they notice.

Kristine Dorrain: They are aware of, yes, absolutely.

Alan Greenberg: Yeah. All right good point, thank you. My next comment was on Point Number 20. And this is one of two comments - there was an earlier on, I'm not quite sure where it was - where in the registrar survey there was a reference to the registry providing functions. And our answer was the registry isn't involved.

And on re-reading it the way I took it - and I'm not sure that's the way it was - the comment was meant - was that if we are going to - if we're talking about what might be a registry-defined lock and we want common practices that we have to make sure that all registries offer that same lock. I'm not sure if that makes sense but that's the way I read the comment and the reference to the registry.

And I don't think we discussed that at the time at least there's no reference to it in the working group response. So I took that as a veiled reference to registry locks not that the registry is actively involved because they were talking about registry providing functions under the common rules. Does that make any sense to anyone?

Kristine Dorrain: This is Kristine. I guess I don't understand your concern. Maybe could you try again?

Alan Greenberg: Yeah, no, no this comment and an earlier one talks about registries providing common functions and our answer was the registry isn't involved in the UDRP process. And the way I read it is they're not talking about the registry being involved but the registry providing common functions which I took to be, you know, functions in the terms of offering a lock of some sort which the registrar could use.

So I'm not sure we have to do anything but I think our answer is wrong because I don't think the answer is addressing what they were talking about.

Kristine Dorrain: Okay, Alan, this is Kristine.

Alan Greenberg: Yes.

Kristine Dorrain: So you are suggesting that, for instance, VeriSign and PIR would allow different controls to the registrars such that the registrars may be unable to implement an exact lock in exactly the same way because of the way the registries work.

Alan Greenberg: I think that's what the comment was alluding to, yes.

Kristine Dorrain: Okay are there any registrars on the call that know if that's a correct thought?

Alan Greenberg: Or registries.

Kristine Dorrain: Yeah, or registries, yeah.

Alan Greenberg: I would have thought locks are defined in EPP and they're all uniform but I don't know that for a fact. And since in both cases, 20 and an earlier one, they talk about registrar - registry functions providing functions that's why I thought that that may be what they were alluding to.

Kristine Dorrain: This is Kristine. I think that's a really good question. I'd be very interested to hear from a registrar or registry as far as if there's discrepancy, you know, someone who does allow registration for domain names in DotCom, DotNet, DotOrg, etcetera, you know, is there a difference between the various registries or DotInfo or whatever.

Alan Greenberg: Maybe - is Volker on the line?

Kristine Dorrain: It looks like he just got on.

Volker Greimann: Yeah, I just got on. I didn't get the question.

Alan Greenberg: Okay my comment - we're doing comments on the public comment tool. And in two particular questions, 20 and an earlier one, the answer - and the answer to 20 was a common set of rules would be desirable only if each registry provides the same functions.

And our original response was we don't know what you're talking about because registries aren't involved in the UDRP process. And what their comment was talking about is not the registry being involved but the registry providing uniform functions that is every registry provides the same function.

So I think they're alluding to things like registry locks. And the - Kristine's question and implicitly mine is do all registries offer the same functions or are there in fact differences in what lock capabilities the different registries offer?

Volker Greimann: Well, to my knowledge there's VeriSign that has a very explicit lock feature that even costs money to implement. There is - I don't think this is uniform. Most have the simple EPPs, comments of client transfer prohibited, client delete prohibited and client update prohibited. But this is not always the case I think. I would have to ask some of our tech guys for more detail.

Alan Greenberg: Okay. So I suspect my reading is correct and whoever gave this answer or these answers was alluding to the fact that the locking offerings by different registries are in fact different.

Volker Greimann: Yeah, I think so too.

Alan Greenberg: Yeah. And I had no other specific comments. I do have a question - and I should have asked this at the very beginning being a UDRP novice. How many UDRPs are we talking about concurrently at any given time? You know, I don't have a handle whether it's 1 or 100 and...

Kristine Dorrain: Alan, this is Kristine.

Alan Greenberg: Yeah.

Kristine Dorrain: We have around 300 currently open and pending at any given time. WIPO has slightly more than we do; they also have more country codes so I'm not quite sure where they're at on straight up UDRPs. But I would - and then if you give a - you know, Czech Arbitration Court a handful as well, I don't think we'd be too far off in saying we got about 750 or so open at any given time.

Alan Greenberg: Okay and that implies for a moderately large registrar they also have a good number open at any given time.

Kristine Dorrain: I think you're correct, yes.

Alan Greenberg: Okay. The reason I'm asking is as we, you know, we've been talking about making sure that the rules allow changing some functions during lock, you know, whether it's your own phone number or whatever it is.

And I was just wondering if, you know, that kind of thing might well involve manual operations because if you are generically taking the domain out of the user's control, as some registrars do, or implement other changes - changes that we want to allow may well have to be handled manually.

And I was just wondering what the implication is. And it sounds like it's - potentially for a large registrar might be a heavy load. Although I don't know how many people actually want to make changes so that softens it a little bit. So just something to think about as we go forward. Volker, you know, Marika.

Volker Greimann: Yes, I was just looking at my UDRPs that I currently have open that 31 that all processes from receiving the first report until waiting for the complainant to provide the data that we can use to transfer the domain name to them. So active UDRPs I would guess about half so 15...

Alan Greenberg: Okay.

Volker Greimann: ...currently pending.

Alan Greenberg: Marika.

Marika Konings: Yeah, this is Marika. Just to clarify based on the comments you made are you suggesting any changes to the comment - public comment review tool or those were just more clarifying questions?

Alan Greenberg: Yeah, no, no for 20 and the earlier one that also references registry functions I think our answer is wrong. I think, you know, our answer was a bit glib in saying registries aren't involved. And I think they were alluding to different functions offered by registries. And I think the right is noted, that is if we end

up defining something we need to do some homework and make sure that whatever we're defining is implemented or implementable by all registries.

Marika Konings: Okay this is Marika. I'll update then. So that was Comment 20 and which was the other one? I think we said it somewhere else, right?

Alan Greenberg: It was somewhere earlier, I don't remember the exact number but...

((Crosstalk))

Alan Greenberg: ...it shouldn't be hard to find. The word registry isn't used very often in these answers.

Marika Konings: I'll check.

Alan Greenberg: And I had one other question before we go on to anyone else not regarding the public comment tool but a general question that came up yesterday in the thick Whois PDP and there is a possibility for a thin Whois - for a thick Whois rather than the registry and registrar data in Whois do not match.

And I'm just wondering if a provider would find that - for the UDRP providers would you notice that and what action would you take? I suspect I know the answer to the latter part but I'm just asking.

So if you find that the registry and the registrar claim that there are two different registrants or something or the contact information is different...

((Crosstalk))

Alan Greenberg: ...would you even notice it and what action would you take?

Kristine Dorrain: Yeah, this is Kristine. We would like really not notice it because the UDRP requires us to gain that information - the Whois information from the registrar.

So our first option is to go for the registrar's data and particularly when it comes to DotCom and DotNet of course we need the thick data so we're not looking at VeriSign for any reason at all.

Alan Greenberg: Yeah.

Kristine Dorrain: Because they're not going to provide us anything useful. So we go first to the registrar. We only go to the registry if the registrar and all other sort of domain tools like options are not working because we find that the registries are pretty notoriously inaccurate. So, you know, at least for, you know, DotCom and DotNet.

So, yeah, we would not notice and we would not likely do anything. We would stick with what the registrar told us.

Alan Greenberg: Okay even though the general feeling among registrars seems to be that for a thick registry the registry is authoritative because registries on occasion make changes and don't bother telling the registrar.

Kristine Dorrain: Okay well the UDRP - this is Kristine again. The UDRP tells us to look for that information from the registrar.

Alan Greenberg: Okay.

Kristine Dorrain: That's where we go.

Alan Greenberg: Okay and that's nothing we're going to change within our scope but I was moderately curious because we were talking about authoritative and there seems to be a belief that if nothing else because registries on occasion will change something on a court order and it may or may not be reflected in the registrar's data.

Kristine Dorrain: That's very interesting and thank you for passing that on.

Alan Greenberg: I'm not sure how common an occurrence this is but apparently it does happen.

Kristine Dorrain: That's good to know. I always like to know about the exceptions.

Alan Greenberg: All right any other comments on the comment tool or is there anyone who didn't do it and wants to - wants us to keep it on the agenda for the next meeting? I think I heard Gabby say something to that effect.

Gabriella Szlak: I think it's okay.

Alan Greenberg: Okay.

Gabriella Szlak: If it has something in particular I will say something next call.

Alan Greenberg: Okay. All right I think then we're on to the straw man. And I honestly do not remember how far we got. Maybe Marika can remind us.

Marika Konings: This is Marika (unintelligible) so basically what I did I updated the comments and took out all the ones that we addressed which were all the ones I think that Kristine had submitted. So basically what is on the screen now, the comments, is where I think we left off.

I did note that Kristine sent something to the list just at the start of this call which of course hasn't been incorporated there so I don't know if that's something where you want to start or just leave that open on the mailing list now for people to review that and respond to it.

Alan Greenberg: I think so. Let's leave that one since I haven't looked at it either. All right since last time I asked Kristine to take us through her comments. I'll ask you to take us through yours.

Marika Konings: Yeah, and this is Marika. Maybe just to clarify these are not my comments but these are the comments I got from colleagues so if they're not clear don't blame me. But basically...

Alan Greenberg: Marika, I'm just taking advantage of the fact that you label it from Marika.

Marika Konings: Right. So the first comment is in relation to the Draft Recommendation 1. And there the suggestion is that, you know, we talk about changing the requirement to notify the respondent at the time of filing of the complaint but we're actually not being specific about whether that means that we want to require that complainants no longer send a copy of the complaint to the respondent or whether it's just no longer a requirement to do so and possibly a best practice - or recommendation not to do so so that the complainant can opt themselves to actually send a copy there.

So I think it's just a question of clarifying what we actually mean here.

Alan Greenberg: Well I put my hand up but I'll let Kristine go first.

Kristine Dorrain: Thanks. This is Kristine. I am trying to follow protocol with saying my name and raising my hand. I'm sorry. So I would say that I think that this is a really good suggestion. I'm not sure who made it. But I think that, yeah, if we say the complainants may not send a copy I think that that really is going to provoke a headache for the providers because for starters the penalty only goes to complainant if they do send a copy.

If there's cyber flight and the complainant caused it by notifying the respondent that's, you know, that's the complainant's fault. And then secondly there are many complainants who are so locked into the process they still send us hard copies and the UDRP was modified in like 2009 to get rid of hard copies.

So I think that it would be very hard to make it an absolute requirement that nobody notifies the respondent. But I think that it's excellent to say that it is not - there's not a requirement to do so but certainly the complainant can send a copy to kind of whoever the heck they want.

Alan Greenberg: Well thank you, Kristine, it's Alan. Moreover I - right now if I remember correctly two of the providers require that the complainant be - that the complainant notify the registrant and one does not.

Kristine Dorrain: But, Alan, I'm going to interrupt you right there because the registrant has to be notified via the UDRP; that's in the UDRP. The optional part is that we notify the registrar. Notifying the registrar is optional. And that's what the providers have encoded. Notifying the registrant is written into the UDRP.

Alan Greenberg: Okay now I'm confused.

Kristine Dorrain: And this - the draft recommendation says we think that the UDRP should be modified so that the registrant is no longer notified at the moment that the complainant sends a complaint to the provider. That gives the provider a chance to contact the registrar, tell them that the domain name is - that there's a case pending. It's not, in fact, frivolous, you know, at this point. Please lock.

Do the deficiency check. Collect the money and then notify the respondent or the registrant after all of that is done, which is, you know, roughly five or so - seven or so business days depending on how fast the registrar and everybody else does their job.

So the requirement under the UDRP is that the complainant serve the registrant at the time it serves the provider. But WIPO and NAF require that the complainant also send a copy to the registrar just in case that registrar is on top of things and wants to get that domain name locked and prevent some cyber flight.

Alan Greenberg: Oh okay.

Kristine Dorrain: And immediately the provider, you know, like I said in some cases if you file with us at 9:00 am our time or 7:00 am our time by 8:30 we've already emailed the registrar saying please lock this domain name. And by the way if you don't have a copy of the complaint yet we'll send it to you, just let us know if you don't have it.

Alan Greenberg: Okay.

Kristine Dorrain: And so we get the ball rolling right away. As soon as the registrar gets back to us we can proceed on our merry way. Then we notify the respondent, the UDRP requires the provider to actually perform the service. And that's when the registrant/respondent gets an official copy of the complaint with all of the annexes and they get told all their deadlines and they get told, yes, the complainant is paid. And that's where the case sort of officially commences.

But that beginning step is where we talked about not notifying the registrant in order to avoid cyber flight.

Alan Greenberg: Right, no I got it right I just got - I got wrong which of the registrar or registrant is not required to be notified by the UDRP. But I think - I understood the intent. The question that I was raising was - and I think what this comment is alluding to is do we say the registrant must not be notified by the complainant or need not be notified by the complainant.

Kristine Dorrain: And my response to that, Alan, this is Kristine - was I think we say the complainant need not be notified by the - the registrant need not be notified by the complainant.

Alan Greenberg: Okay.

Kristine Dorrain: Because some complainants have already sent cease and desist letters, they've already been in contact...

Alan Greenberg: Sure.

Kristine Dorrain: ...with the respondent. I don't think there's really any way to say you can never telegraph to a respondent that you're going to file a UDRP.

Alan Greenberg: Okay.

Kristine Dorrain: I think that's up to the complainant.

Alan Greenberg: Okay but that wording would imply that the UDRP provider must not have a rule saying that the registrant be notified also.

Kristine Dorrain: That's correct. And no provider has that rule. Well I shouldn't say that; we might have that rule but we'd be very willing to strike that.

Alan Greenberg: Well let's - right now if you say it's in the UDRP the provider doesn't need to have the rule.

Kristine Dorrain: That's correct but some of the rules are redundant.

Alan Greenberg: Okay. Gabriela.

Gabriela Szlak: Oh hello, this is Gabriela Szlak. My question is more maybe about implementation but I was wondering if maybe we can also recommend something for providers to have like a form online that would suggest exactly what to send and what not to send and that will have some kind of a message to the complainant that if he does tell - send a copy to the respondent it's more like something that he is doing on his own responsibility that that is not a requirement.

So if you fill a form and there's no place where to put the copy to be sent to someone else it won't be sent. At least from the provider's perspective. Then if the complainant then does something else outside of the system or of the form that is filled then it's something else. But at least to have something standardized from the providers like a form online that would be easier and so (unintelligible) easier to the whole public on how to implement these changes.

I'm not sure if this is useful or not. Maybe Kristine would be able to answer my questions. Thank you.

Alan Greenberg: Thank you, Gabriela. It sounds like you're suggesting that we might want to have a best practice or a suggested implementation to the providers to make sure that they're educating new complainants in the process.

Gabriela Szlak: Yes because it's going to make some change and some people are used to the things...

Alan Greenberg: Yeah.

((Crosstalk))

Gabriela Szlak: ...some certain way. Then they will (really) know about the change and some of them will never get the information. And so if you have a form online (unintelligible) technology that will exactly like you fill the form and then the technology is the one that takes care about how to do this and who to send this so it would be easier for everyone I think maybe.

Alan Greenberg: Okay, thank you. And Kristine in the Chat says yes I agree, user education is critical. Any other comments? Kristine, do you want to come in on this one or are you happy? And Marika has her hand up.

Kristine Dorrain: I'm great, thank you.

Marika Konings: Yeah, this is Marika. And maybe that can be a kind of overarching recommendation where we say something that, you know, UDRP providers work together with ICANN as part of the implementation to develop educational and informational materials for, you know, respondents, complainants.

And as well registrars because in the end they are of course in this well with the registrants on this end but - so we have a kind of overarching recommendation that talks about this element of making sure that there is indeed sufficient information and education about these changes in general not only this specific one but all of them.

And then I think the different parties hopefully can come to some kind of mechanism of what would work best that certain communications come through the UDRP provider, some might be available through registrars. I guess some will be, as well, on the ICANN Website. So maybe that's something how we can capture that for I think the whole package that we hopefully will come up with at the end of the day.

Alan Greenberg: Yeah, I think that's a good idea. I'll note that in other PDP discussions it was noted that if you call something a best practice then you're almost implying that everyone has to implement it, you know, otherwise, you know, they could be found negligent at some later time.

So I think - I'm not sure to what extent that interpretation is universally held. But we may want to think about that as we're wording our final results. Kristine. Gabriela is that a new hand or an old one?

Gabriela Szlak: An old one, sorry.

Alan Greenberg: Okay, Kristine.

Kristine Dorrain: Yeah, this is Kristine from NAF. I just want to make a - just want to make one observation as well that many registrars - again, I know this document I'm particularly mindful of the fact that this document is going to educate or supposed to be educating the registrars that really don't know what they're doing in this process, not the ones who currently do know what they're doing.

We're not trying to fix, you know, the Go Daddys of the world here or Volker's registrar - the people who know what they're doing - but the observation I want to make is that there are some registrars who get a UDRP complaint from the provider and they think that their job is to immediately go talk to the respondent and say hey we have this UDRP filed against you, what do you want me to do with it?

So I'm wondering if there's an education piece as well in there to the registrar saying - and by the way we're not going to - the complainant is not going to notify the registrant. You should not notify your registrant until you've locked the domain. Then if you want to notify them immediately have it it, I mean, it's your client, you have a lot of, you know, obligations with respect to your client. You certainly have a relationship with that client.

But I really think that perhaps part of that education is telling the registrars, you know, you don't go consult with your client about what they should do next. The registrar is the one supposed to take action. If you want to notify your client after you've taken action you feel free to do that.

Alan Greenberg: Kristine, that brings up a question. Do we want a rule saying you must not?

Kristine Dorrain: Well I would like to see that, yes. I was trying to be gentle.

Alan Greenberg: There aren't many times in life we get to write our own rule so this is a time to mention it if we think - I'm not sure how well that would be received. But it is something we may want to consider.

Gabriela Szlak: Can I say something? This is Gabby.

Alan Greenberg: Please.

Gabriela Szlak: Of course I'm not a registrar so my comment might be out of place. But I think that maybe for them it will be useful to have a rule because they have a relationship with their clients so if this is something that they must do maybe it's easier for them.

Alan Greenberg: That's a good point.

Kristine Dorrain: And this is Kristine. I agree with Gabby. And I think that - my understanding is that what this recommendation list when we're done is going to a public comment period so it would be interesting to include that and see if that gets a lot of flack or if most people do actually think that's reasonable.

Alan Greenberg: Okay that's good. I don't think we've discussed that before so that's a good outcome of this. Any o there comments on this one?

Marika Konings: Yeah, this is Marika. Can you just...

Alan Greenberg: Go ahead.

Marika Konings: ...for my notes clarify which rule we're talking about that we want to...

((Crosstalk))

Alan Greenberg: We're talking about a new rule saying since - presuming we say that the registrant need not be - need not be notified by the complainant we should then have a rule saying that on receiving the notice - the notice about UDRP - and I guess that is either from the complainant or the provider - the registrar must not notify the registrant prior to locking. Kristine, did I get that right and Gabriela?

Gabriela Szlak: Yeah, I think so.

Kristine Dorrain: This is - this is Kristine.

Alan Greenberg: Okay.

Kristine Dorrain: I would say the only thing is is we have not yet determined whether or not the registrar is acting at the time it receives something from complainant so your comment that the registrar should not - or should not notify the registrant that it has received a complaint and it's going to do something with it I'm not - I'm not convinced because - well I think it was just the way it was worded.

If the complainant sends a copy of the complaint to the registrar before the provider gets it we haven't yet decided whether the registrar is supposed to take any action at that point or whether they're going to officially wait for the provider to notify them that the case is not frivolous and is actually in the system. So that's my only comment I guess.

Alan Greenberg: But given - it's Alan speaking. But given that the provider is in the process of evaluating it would we not want to prevent notification at that point anyway?

Kristine Dorrain: And this is Kristine. Yes assuming the provider actually is in the process of evaluating it. I think there is a very small minority - and Go Daddy's pointed out it's only happened twice to them and they get a lot of these. But there's a very small minority of people who are concerned about frivolous complaints that a complainant would simply send a complaint written on UDRP forms to a registrar but not actually file with the provider itself.

And so there - I know there is a small group of people who are concerned about that happening...

Alan Greenberg: Okay...

((Crosstalk))

Kristine Dorrain: ...registrars or...

Alan Greenberg: But what is the downside of, in those small number of cases, not making sure that the registrar does not pass that on to the registrant since it's frivolous anyway?

Kristine Dorrain: Okay I see so we're, yeah, okay. The point isn't that they're locking at that point it's just that they're not passing it on at that point.

Alan Greenberg: That's right.

Kristine Dorrain: Okay, yeah, then I can agree with that. I'm sorry if I've made that way more complicated than it had to be.

Alan Greenberg: Marika.

Marika Konings: Yeah, this is Marika. I think that takes us immediately as well to the second comment - I mean, this question on whether the registrar may contact the registrant when the domain name has not been locked. And one of the comments made there is that in certain cases part of the verification I think is to request the registrations been in contact and that something - where the registrar sometimes might need to go back to the registrant for, as I understand.

So, indeed, this is the question of, you know, is there no communication at all allowed between the registrar and the registrant once a UDRP notice has been filed or are there certain circumstances whereby there may be a need for the registrar to reach out to the registrant basically telling them that there is indeed - they've been asked to provide certain details or so basically if

indeed it's around this question on what are we trying to restrict and how strict is that intended to be.

Alan Greenberg: Good points. Gabriela.

Gabriela Szlak: Okay (unintelligible) Marika so I'm not sure if what I'm going to say is right. But I was wondering if maybe there would be like a general rule but this is actually what Marika just said, maybe not, like a general rule about a registrars not contacting registrants until the lock is done and then maybe if there's something to change definitely like the exception.

Alan Greenberg: Okay thank you. Kristine - I have a question but - and the question is - Kristine may know the answer so I'll ask it first. At what point if it is privacy proxy is - might the reveal be done under the current rules? Is it done sort of prior to the lock or after the lock?

Kristine Dorrain: This is Kristine. From our perspective it comes after the lock. So what happens is we notify the - I'm sorry, I'm getting my people all mixed up. We notify the registrar of the pendency of the complaint and we ask for certain details including the name, contact information of the registrant.

At that point - at some point the registrar gives us the answer to our questions including the name of the registrant. Now that could say privacy proxy service or it could say Joe Smith. And maybe it was a privacy proxy service and it got lifted. But then the email is back.

By the time we get the email back the domain name is locked and the privacy proxy service if it's going to be lifted should be lifted. So theoretically - and I don't know the exact order in which things happen at the registrar but from our perspective it's the lifting that happens and then the lock.

But I wanted to just sort of walk through the steps really quickly here for my comment which is if the complainant files a complaint with the provider and

sends a copy to the registrar I think it should be up to the registrar if it wants to lock at that moment. There are registrars that do it, they take that legal risk that they feel like there's a very low probability of problem in that situation. I don't think our rule should prevent that.

However if they do not choose to lock at that moment, I agree with Alan, that the registrar should not notify the registrant that the complainant sent them a complaint. Then once the provider has done their initial quick look at the complaint then they send a formal notice to the registrar. At that point the registrar is obligated to lock the domain name if they have not already done so and provide the information back that the provider needs to carry on.

At that point once the domain name is locked again the registrar can notify the registrant we have locked this domain name, you may notice, whatever it is you want to tell your client.

And I think that - I think that solves both problems. It solves the problem of when the respondent gets notice but it also gives the registrar freedom to lock the domain name before the provider requests a lock but it requires the registrar to lock at the time that the provider notifies them at a minimum. And I think that covers all of the possible options.

Alan Greenberg: Okay that means that for an arms length privacy proxy service, not an in-house one, the domain must be locked before the privacy proxy service is contacted because they are the registrant of record from the registrar's point of view.

Kristine Dorrain: Yeah and that very well could be what we see now. We have - I don't know, maybe 40% of cases or something, I don't remember what the numbers are, going actually against a privacy service now.

Alan Greenberg: Okay. Volker. Marika, do you want in first?

Marika Konings: No - well one comment on the one that Kristine said because that's exactly one of the questions I had as well in the updated straw man whether, indeed, the lifting requires communication with the registrant and a proxy privacy service or whether this would be an automatic action that's taken by the registrar.

As soon as they get a UDRP complaint - notified that there's just an automatic lifting of privacy if that is part of the agreement - part of the agreement that the privacy proxy service has with its customer or does that require indeed communication between the two parties?

Alan Greenberg: Well...

Marika Konings: And maybe Volker can actually answer the question at the same...

((Crosstalk))

Alan Greenberg: I guess that would depend on whether it's an in-house proxy service or not.

Kristine Dorrain: Yeah, this is Kristine. I've seen both and I'm sure Volker has a lot more on that.

Alan Greenberg: Volker.

Volker Greimann: Yes, Kristine, I would disagree with the general (tone) that we wouldn't be allowed to change the Whois record before responding or locking down when we receive a complaint exactly for the reason that some of us registrars do provide our own privacy services and that we can look up the actual registrant of record on a minute's notice after we received the complaint.

Because of the different tie-ins that there are for the having a sufficient number of UDRP decisions against an entity because once there is a - it is established that a Whois privacy proxy is in some way affiliated with the

registrar that would, for example, exclude the registrar or affiliate entities from applying for new gTLDs under the current rule or be found as a habitual or regular cyber squatter whereas in fact the customers of the registrant - or the registrar or the privacy proxy provider that are engaging in some illicit behavior.

So I think there should be allowance for removal of the complaint - the privacy proxy once we receive the complaint if that is one within reasonable time.

Alan Greenberg: Kristine, can you comment on that? Because I don't think I heard you say that wasn't allowed. Maybe I missed it though.

Kristine Dorrain: Yeah, this is Kristine. I think - Volker, you can correct me if I'm wrong, I mean, I agree with you that the privacy proxy service should be allowed to be lifted once the provider notifies the registrant and says hey who is the registrant. Absolutely if that's the agreement and you want to lift it go ahead and lift it.

The problem for us is if you have this sort of - the privacy proxy service is the secondary party, somebody that you have to go back to and wait for and it takes them a week to get back to you that's where it becomes unacceptable in my opinion.

If you, as a registrar, are running a privacy proxy shield and you've had an agreement with your client that you're going to lift that then I think that's perfectly acceptable. I think the problem is if the registrant has contracted with some other third party then that's none of our business, I mean, that's fine what they've decided to do amongst themselves.

But then that doesn't necessarily require the registrar to go, you know, seeking out that third party and saying hey do you want to release your client's information. I think that's where the UDRP gets bogged down and

where we wait, 5, 10, 15, 20 days to commence a case because everybody is trying to contact everybody else in the process.

But I absolutely agree that if the registrar has an agreement with the registrant that says hey we're going to release that then absolutely you do that during the lock period and I agree with that.

Alan Greenberg: Yeah, I - Volker, I don't think I heard anything other than that so when we come up with the final rules if we're - if we missed it please let us know. But I think we're okay on that.

I'm just - I'll wonder out loud are we doing something which will essentially disadvantage arm's length proxy services? And, you know, can be found that we are doing something to impact their business because of it? I'm not sure who I'm asking the question to I'm just wondering out loud do we have any requirement that we not treat the two kinds of proxy services similarly?

Kristine Dorrain: Well, this is Kristine.

Alan Greenberg: Yeah.

Kristine Dorrain: I have just a question. Is this - is the second kind of proxy service the one that's third party? I know we've talked about doing accreditation but do they have any sort of contractual relationship with ICANN?

Alan Greenberg: No.

Kristine Dorrain: I mean, the UDRP is a ICANN consensus policy that the registrar is bound to comply with as far as providing certain information. Now the registrant - and the proxy service who is itself a registrant who is just a beneficial owner for another person, they're contracted by virtue of their registration agreement which is a totally different agreement and it's not - it's not necessarily, you

know, something that the UDRP has even contemplated. It contemplates the providers dealing with registrars.

Alan Greenberg: Yeah, no, no I think you're right. And in fact that may be one of the rationales why a proxy service signing an agreement with ICANN may help them. But - okay we have Marika and Volker with hands up. I'm not sure if they're old or new.

Marika Konings: Yeah, this is Marika. Do you want to go first?

Volker Greimann: Go ahead, Marika.

Marika Konings: Because I have basically I think two questions still there because one thing, indeed, it might be on the third party proxy privacy service maybe that needs to be clarified and in the rules that, you know, a registrar within that 24 hours before it locks it can at that point contact that third party. And as long as they give back whether they want to change or not within that 24 hours as long as they don't contact the registrant maybe that's something that needs to be explicitly stated.

And I still have the question that I don't think was answered on whether at the moment the UDRP provider contacts the registrar or notifies them that there has been a complaint and wants verification of the data. Is there any reason at that stage for the registrar to ask for certain information to the registrant?

And if so would there need to be an exception or is that information that the registrar should have in any case and there would be no need for them to go out to the registrant at that point and then give them, you know, kind of advance notice before they have a chance to actually lock the domain name?

Kristine Dorrain: Marika, this is Kristine. To answer your question we request the following data, we want confirmation that the registrant has in fact signed a registration agreement and what the language of that is. Want to know the name and

contact information for the registrant including the billing address so that we can send an email, you know, a notice to that address.

We want to know if the domain - we want confirmation that the domain name is locked. We want to know the expiration date of the domain name. And we want confirmation that the domain name is not in some sort of a redemption period or expiration period already. Those are the questions that we ask as to whether or not the registrar would need to go back to the respondent to gain that data I would suspect no but I may not - I admit I'm not the authority on that.

Alan Greenberg: Volker.

Volker Greimann: Yes of course, there is two questions that have been asked that I would like to weigh in on. First is the arms length issue that I don't really feel as comfortable with distinguishing between third party proxy services and proxy services that are provided an affiliate of the registrar. I don't think there is many registrars that actually provide the service as the registrar; they usually have a secondary company that's affiliated with them.

And soon as you get that second step to a different company I don't think there is much difference anymore between a third party providing that service or an affiliate of the registrar because to the registrar it's a third party as well.

Second point is that we've seen a couple of cases where complainants raise a UDRP against a large number of domain names which are all under the same privacy proxy and when those are lifted it turns out that those are different respondents after all. So if the privacy proxy does not...

((Crosstalk))

Volker Greimann: ...lifted and that is regardless of whether that's a third party or a registrar for the (unintelligible) service then he would have to defend cases, claims for

different respondents that should be actually set up into different cases - UDRP cases and not be handled in one.

Alan Greenberg: Okay. I'm - I'm not sure - and maybe Kristine can enlighten us - what happens in that kind of case where you suddenly have multiple respondents instead of a single one?

Kristine Dorrain: Yeah, this is Kristine. Well we offer our complainants two choices so there are people who use sort of address spoofing services so there's one underlying registrant actually but they've provided false details to the (registrar) but they all - the IP addresses or whatever it is can be traced back to the single registrant.

So we do allow a chance of (unintelligible) to set up a chain link and explain in their complaint that these really are actually underlying the same registrant. And if they feel like they can do that they're allowed to go forward. The risk there is that the panel will look at the complaint, call bullshit and, you know, dismiss some of the, you know, dismiss some of the domain names and say no these are really against different registrants.

But if they're really against different registrants the complainant can't make any sort of colorable argument then the complainant at that point has to decide which underlying registrant it wants to proceed against and then the case will go forward and that point against those underlying registrants.

And then the others will be dismissed out and the complainants - may feel free to file again if they wish, you know, to go against the other domain names.

The problem is when - when a registrar has locked the domain name promptly and everything is locked down and then some sort of a third party - not necessarily the kind that's a company related to the registrar but some true third party provider comes back and says oh yeah I guess there was a

privacy service two weeks later well now it's notified its five customers of the - and then we get five different responses; that's where the drama comes in.

That's why we are really opposed to, you know, the sort of ability to people - you know, these third party - and I use third party loosely because I understand Volker's point that technically these - some of these privacy proxy services are not actually the registrars, it's a subsidiary of the registrar or whatever.

But my concern is if you've got an actual third party provider who's really just sort of the registrant covering up for these underlying people and then they come back weeks later that's really where the problem comes in. It's not the people that go within their internal system or find something within 24 or 48 hours.

Alan Greenberg: Okay thank you. I have a question for registrars I guess. And that is, you know, if it's your own captive proxy service or it has a name of the company, you know, equivalent to, you know, proxyservice.com or something that's fine. How do you know someone is a proxy service?

How do you distinguish between a company that is - or a lawyer that's acting as a proxy or a privacy provider and changes the registrant and someone who changes the registrant falsely equivalent to cyber flight? How does the registrar actually recognize a legitimate - given that right now they're not, you know, they're not accredited by ICANN or anyone else. How do you recognize a proxy provider?

Volker Greimann: Yeah, I'd like to answer to that.

Alan Greenberg: Thank you.

Volker Greimann: In many cases that's not possible. In those cases where it is not possible we treat them as a registrant. In other cases it's plainly visible because of the name when it says domains by proxy, proxy domain...

Alan Greenberg: Sure.

Volker Greimann: ...proxy service. In some cases we just know it because it's the same address as the resellers through which the domain was registered. And when they say - when it's not a name but a proxy service or a domain admin registered through and something like that. So it's a bit of a mixture between experience and actual knowledge.

This will probably become more clear when - once the actual proxy service accreditation comes through...

Alan Greenberg: Sure.

Volker Greimann: ...which we're working on at the moment. But currently we only treat those that are plainly visible as proxy services as such.

Alan Greenberg: Okay that's a good answer. Marika, back to you I think.

Marika Konings: This is Marika. We're actually on the top of the hour. I don't know if you want to continue further or people have other...

((Crosstalk))

Alan Greenberg: Oh you're right, we are on the hour. We didn't get many items done but I think we had an interesting meeting. When is our next one, Marika? Do we know when our next one is?

Marika Konings: Exactly, I mean, I propose that we just continue again on the same schedule then the question is whether people want to meet next week, which I can tell

you that the ICANN offices are closed so preferably we don't schedule any calls in that week. So then the next one would either be the 3rd of January of 10 of January if people prefer to take a little bit more time off during...

((Crosstalk))

Alan Greenberg: My inclination is to say on the 3rd we're still going to have a fair number of people who take the rest of that week off. And my inclination is to say let's hold the next one on the 10th. Is there any strong opposition to that given that Michele isn't here to object. And I don't know if he...

((Crosstalk))

Alan Greenberg: And I don't know if he's working that week at all or not.

Marika Konings: Volker has his hand up but I don't know if he's objecting...

((Crosstalk))

Volker Greimann: Oh that's a residual hand but I an answer to that as well. I will be gone until the second week of January but...

Alan Greenberg: Okay.

Volker Greimann: ...go ahead without me.

Alan Greenberg: No, no, no we will cancel our meeting in deference to you.

Volker Greimann: Oh that's so nice.

Alan Greenberg: Next meeting will be held on Thursday the 10th of January if I have the date correct.

Marika Konings: Perfect.

Alan Greenberg: And I do.

Volker Greimann: That sounds perfect.

Alan Greenberg: Thank you all for a good meeting. I wish you all a happy Holiday season. And don't eat too much.

Volker Greimann: Thank you.

Alan Greenberg: Bye-bye.

Kristine Dorrain: Thanks, Alan. Thanks for stepping in.

Marika Konings: Thank you.

Gabriela Szlak: Bye-bye.

((Crosstalk))

Gabriela Szlak: Happy Holidays to all.

END