

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings meeting
Thursday 31 January 2013 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 meeting, on the Thursday 31 January 2013 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-20130131-en.mp3>

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

Attendees:

Hago Dafalla – NCUC
Kristine Dorrain – NAF
Lisa Garono - IPC
Alan Greenberg - ALAC (Vice Chair)
Volker Greimann - RrSG
Celia Lerman - CBUC
David Maher - RySG
Joanne Teng (on behalf of David Roache-Turner) – WIPO
Luc Seufer – RrSG
Matt Schneller - IPC
Fisal Shah – IPC
Gabriela Szlak – CBUC

Apologies:

Laurie Anderson - RrSG
Michele Neylon - RrSG (Chair)

ICANN staff:

Marika Konings
Berry Cobb
Julia Charvolen

Coordinator: Thank you. This conference call is now being recorded. Please go ahead.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the Locking of a Domain Name Subject UDRP proceedings call on Thursday, 31st of January.

On the call today we have Hago Dafalla, Kristine Dorrain, Lisa Garono, Alan Greenberg, Volker Greimann, Celia Lerman, David Maher, Luc Seuffer, Matt Schneller, Faisal Shah, Gabriella Szlak, we have apologies from Michele Neylon and Laurie Anderson.

And from staff we have Marika Konings, Berry Cobb, and myself Julia Charvolen. May I remind all participants to please state their names before speaking for transcription purposes. Thank you very much now over to you.

Alan Greenberg: Thank you very much. Marika I believe you wanted to talk about work -- or well first of all, does anyone have any changes of statement of interest? Hearing no shouts, seeing no hands, we will go on to the Item Number two, review of the work of the update plan.

As a prelude to it Marika noticed that we didn't make our deadline of having a report for the end of December - for December. Some of the rest of you may have noticed also and has some proposals to make. Marika can you go ahead?

Marika Konings: Yes, this is Marika. We initially set ourselves a deadline indeed for the end of - of last year to publish our initial report. But, you know, for very good reasons we didn't make that deadline because we - we did receive a lot of input that the working was reviewing.

But I think we're making really good progress now on, you know, we're getting -- we've gone through the - the comments and now are working out way through the - the draft recommendation.

So a proposal would be to actually try to get the initial report ready by the - the publication date for the Beijing meeting. Because that would give us an opportunity as well to actually present the report during that meeting and discuss with participants of the meeting and explain, you know, why we've come up with these recommendations.

And to already encourage them to participant in the public comment forum which we can have open in - in parallel. So that would mean actually that we would need to get everything ready at the latest by the 15th of March which I think should give us sufficient time to - to work through the recommendations.

I think we, you know, resolved quite a few comments and I think we're still working on some issues. In parallel I've already started working on a first draft of the initial report which I think I should be able to share with you probably before the next meeting the beginning of next week.

Basically just outline some of the - the background to this issue. Some of our administrative details and I'll try to go through the different discussions that we've had in relation to the charter questions.

Of course, one part that will go in their eventually are the recommendations. But in order to, you know, win some time I think it will be helpful if people can already start reviewing the information if it's in there.

So we in parallel can - can hopefully finalize it - the recommendations which then would go into the report so we can hopefully have everything ready by - by the 15th of March. So that will be my suggestion or proposal to the group.

Alan Greenberg: Thank you Marika. I - I strongly support it. There's nothing like a deadline to get us to get something out. And I think it almost doesn't matter at this point how much is firm recommendations and how much is identifying issues that

we want further input on or simply serving notice that we are still considering options on sections.

You know, I think if we don't meet this meeting, we're going pretty far without, you know, without either coming to some semi conclusions or getting more input. So I think it's timely.

I - I would suggest that we not do the - the public commenting parallel. However, unless - unless we do a really elongated one. I think we should allow a reasonable amount of time after the meeting.

And given where this meeting is - there's an awful lot of travel involved then a lot of people also taking vacations, you know, for a week or so afterwards certainly days.

So I think we'll want to make sure we don't cut short the comment period. But we can - we can debate that when we're coming closer to the - to the actual deadline. So I strongly support getting something out.

And I'm not particularly agonizing how complete it is because I think regardless it will be a good opportunity to get more input. Any other thoughts on that? General agreement or do people want to alter that.

I see we've lost David.

Man: What was our target date again?

Alan Greenberg: Pardon me?

Man: What was our target date again?

Alan Greenberg: The target date is we would have to have the report published by which means the draft done in all of our comments on it by the middle of March.

There's a -- roughly a two-week deadline before the beginning of an ICANN meeting for publication if we plan to discuss it.

And I think our intent would be to schedule a session. And Marika I presume sometime soon we're going to be asked if we want a session or not. So maybe we should try to discuss that today also.

Marika Konings: Yes, this is Marika. I'm suspecting indeed that we will need to fill in the request forms. I think somebody mentioned of it may be coming in next week. But I think what we can do, you know, we basically request a meeting time and a date and we can always cancel it if we don't need it.

But I think it's -- as we're working towards that - that deadline I think it's probably just request - request a time and - and see when we get close to the deadline.

Alan Greenberg: Yes. Probably polite if we let Michele know that we're this. But other than that I - I can't see a reason not to request an open meeting. Okay, no comments on the proposed agenda.

So Marika you'll do your magic and -- with the new target end date work backwards and give us a work plan. And I look forward to seeing the first draft. Any other administrative stuff before we go back into the - the substance of our issues?

Hearing nothing, seeing nothing. I'll let Marika tell us where we are because I have lost track.

Marika Konings: Yes, this is Marika. We still have two - two documents because there is still some comments that we didn't address that I think came in some time ago from - from ICANN staff.

It may make sense to actually first continue with the strawman and basically pick up I think where we left off last time. As there was some -- it has been some suggested language inserted here that was being proposed by Kristine and Volker made some comments as well on that.

So maybe it makes sense to start with that which is in draft recommendation three basically the - the language is highlighted in - in red.

Alan Greenberg: Okay. And I have a question on draft on three also. If I understand what this is saying correctly, the current definition we're using - we may be using for pendency is as soon as the recommend- as soon as the -- where is the right word from -- I think it's as soon as the complaint is filed.

Marika Konings: Right -- and this is Marika -- to clarify, this was the language that was suggested I think by David from - from WIPO...

Alan Greenberg: Yes.

Marika Konings: ...which is certainly let them insert it here. But we haven't really discussed that in further detail yet.

Alan Greenberg: Okay. My question was, how could we have a rule thing of registrars not allowed to make a change from a time which was pieced before they know the existence of - of the dispute?

I mean I think - I think this is saying there is a front -- when it's pending - while it is pending they cannot make those changes but they don't know about it until a later date. And that's what Stephane read so, I think. So I think we need to be careful there that we're not putting rules there which are impossible to follow. Anyone?

Am I still on the call?

Woman: You're still on.

Man: Yes, you are.

Alan Greenberg: This is a feeling of talking into an abyss. All right are there any other comments on - on this proposed language? That seems to me as an inconsistency which we have to fix, unless I'm misreading it.

Marika Konings: This is Marika. You're not talking about the - the pendency suggestion or the - the whole section in read? Because there is a comment in there I think from - from Volker if I'm not mistaken.

Alan Greenberg: Well, I was talking about the beginning where it says, "A registrar may not permit transfer to another registrant or registrar after receipt..." Hold it, maybe -- I thought I saw a word somewhere that said they can't do it while it's pending. Or - or okay maybe I was looking at old words.

Okay, Marika I think I'm confused, I was trying to catch up and...

((Crosstalk))

Alan Greenberg: I don't know what I was looking at when I wrote this - this comment earlier this morning...

Kristine Dorrain: Alan were you talking right below the bottom of that page? It says, "Any changes the Whois information during the pendency of the administrative proceeding." We talked about, you know, we've talked about dependency and Whois changes. Is that what you're maybe thinking of?

Alan Greenberg: Yes, I think - I think so.

Kristine Dorrain: The bottom of that page.

Alan Greenberg: That's the changes that the registrant must - must inform the provider. Okay...

Marika Konings: If I understand you correctly that you're saying that, how can a registrar prevent any changes, if it doesn't even know that a complaint has been filed...?

((Crosstalk))

Alan Greenberg: That's what I thought I read somewhere.

Marika Konings: Right.

Alan Greenberg: But I can't see those - those words so I may have misread something.

Marika Konings: I think it's there in the beginning because it basically says, "The registrar will prevent any changes of registrar and registrant," and then it says, "These changes should be prevented for/during the whole pendency of the..."

Alan Greenberg: That's it, you got it. That's the combination of words that I was looking at. So it looks like we have a conflict between these terms - between these different sections.

Later on the new wording in red says, "May not permit it after they've receive the request for verification."

Kristine Dorrain: In where? I'm sorry I missed it.

Alan Greenberg: At the beginning of draft three, "The registrar will prevent any changes. These changes should be (unintelligible) during the whole pendency period." And the pendency period I thought we were defining as from the time the complaint is filed.

Kristine Dorrain: Oh I see, okay. Yes, posed to define from the moment it's been filed...

Alan Greenberg: Right.

Kristine Dorrain: ...however, the registrar theoretically doesn't necessarily know of the case the moment it's been filed.

Alan Greenberg: Correct.

Kristine Dorrain: Okay. Okay, yes. So I think yes, so I think it's just a clarification there I think. So it has to be from the whole -- yes -- we'll just define the comment of it - of the...

Alan Greenberg: Yes.

Kristine Dorrain: ...of the comments because that's an official UDRP term.

Alan Greenberg: But we can't say he must - the registrar must do it during the whole pendency and at the same time say they don't have to do it until they're notified.

Kristine Dorrain: Correct, yes that's...

Alan Greenberg: One of -- we have...

Kristine Dorrain: Yes, that makes sense. Okay.

Alan Greenberg: Okay.

((Crosstalk))

Alan Greenberg: So I wasn't imagining completely. It just took me awhile to remember where it was or be pointed to where it was, thank you.

Woman: Can I ask if I understand this, so you're saying that there's a period in which the registrar might be mandated to do something which they still don't know. That's the problem right?

Alan Greenberg: That's the problem with this draft wording that we have, yes.

Woman: Okay, thank you.

Alan Greenberg: Okay, Marika, back to you.

Marika Konings: Yes, this is Marika. I think actually Matt has suggested some - some good language in the chat. He's suggesting that should these changes must be prevented from receipt of a request for verification through the remaining pendency which I think clarifies that?

Because I think there is still if I understood previous discussion while there's still a need to clarify what pendency means to really make sure that registrars understand that they have this requirement from the moment of the verification and not necessarily from the moment of official commencement.

Because I think there was some confusion over that so I think we may still want to keep the definition in. But indeed make clear that, the requirement for registrars is only from the moment of our verification and then for the rest of the duration of the UDRP proceedings.

Alan Greenberg: Indeed, and, you know, in the other document is for me as you pointed out I think - I think it was compliant that identified several uses of the word pendency, not all of which mean the same thing.

Because here we're talking about pendency of the UDRP but there's also other things that may affect the, you know, court cases and such. Okay, back to you.

Marika Konings: Yes, this is Marika. I think maybe perhaps I'll have Kristine talk about the next section which she had suggested and then add Volker talk about his - his comments to - to this or how you propose.

Alan Greenberg: Okay.

Kristine Dorrain: Okay, that would require me reading. Now we're talking about the next piece read right before draft recommendation four.

Marika Konings: Correct.

Alan Greenberg: I think so.

Kristine Dorrain: Okay. So this is the part where we're talking about underlying - revealing underlying data and then, "A registrar may opt to reveal underlying data in a privacy proxy relationship to the provider or in Whois or both. If it is not aware of such, this will not count as a transfer violation of the above. If it occurs prior to the lock and the registrars reply to the provider."

And then it looks like there is a comment about if a privacy proxy relationship was - were released after the lock is applied and if the matter is notified, the provider is under no obligation to require the complaint and to amend complaint accordingly. It may do so in its discretion.

It is the responsibility of the registrant fighting UDRP rule to E in UDRP in Rule 5B2 to inform the provider of any relevant updates that may affect provider notices and the respondent under the UDRP in the provider's shell in accordance with the UDRP, providers are found with case information of the details that prefers once the providers are aware of the update.

And the UDRP 5B3 requires providers communication for email address of the respondent for instance. And then -- so that's -- my suggestion is how to deal with the privacy proxy.

And then it looks like Volker suggestions were related to -- I see it. Yes, Volker's comment and I saw it in an email from (Frueh). He had a problem with it being optional with the provider. So it's for the reason that a non-amendment may have.

And the problem with this is that -- I mean Volker -- I think he's on and I would welcome the conversation. But the problem is - is that once we've gotten information from the - from the registrar that says this is the underlying registrant or not the registrant's privacy proxy services or whatever; then we go back and we tell the complainant they have to amend their complaint or not or the complaint's just fine.

And so if something filters in later so if the privacy proxy services is revealed or released after that lock and after the threat is notified, the reason it's important is that the provider's is under no obligation to report a complaint to amend is because now I have to start completely over.

And now my staff has to go back over and redo another deficiency check. In the meantime we may have already sort of commenced the case and served the parties and prepared the letters and everything else.

And then we have to tell the complainant, "Oh yes, sorry you know we told you two days ago or yesterday that your complaint was fine. Guess what, it's not."

And you're going to have those raving complainant's lawyers because now they got to bill their client a third time to go back and fix the complaint that originally was declared correct based on the first information from the registrar.

It doesn't provide any finality, I mean we don't know if a privacy proxy relationship is revealed or released after the lock. I mean how far down the road does the change - does the complainant have to go back and amend its complaint.

And that just -- there's no finality. We never, never, ever know then that we can finally commence the case and we know who the respondent is. If we say once a lock is applied, we get to proceed, you know, we're going to just proceed with that information, then it's up to the respondent at that point to come back and notify the provider, "Hey, it's not the privacy service, it's me."

And so that's really why I think at that point once the lock is applied and the registrars told the provider who our underlying registrant is at that point the burden needs to be on the respondent to correct that information and not to require the provider and the complainant to have to go back and do yet a third iteration of the complaint and the deficiency check.

Alan Greenberg: Yes, I -- it's Alan. I have a question first and then maybe a comment. I know this is a discussion we had before because I remember I raised it but I don't remember the outcome.

And that is, to what extent are we trying to write rule or recommendations for world where there is currently no accreditation of privacy proxy services and the registrar cannot know for sure in many cases whether it is a privacy proxy service or the end registrant?

I know we discussed the fact that any privacy proxy accreditation we'll have to go through a PDP and it's not likely to happen very quickly. So are we trying to write rules for before and after just before on the assumption that the accreditation - the accreditation PDP would have to revise some UDRP parts of it, if it's applicable?

I want - want some clarity as to understand what - what world are we writing this recommendation for?

Kristine Dorrain: Maybe that's a question for Marika. I'm coming at it from a, what's happening here and now. You know, for the reasons you just stated. We don't know when or if we're actually going to end up with the registrar accreditation policy.

Our process -- not a registrar's accreditation policy I'm sorry -- a privacy accreditation process. And we currently have these problems in the UDRP today.

I mean theoretically, you know, if we're looking at opening the UDRP for revisions in 18 months anyway, I mean you could make that same argument. Why are we even here? Why don't we just, you know, pretend like we're making recommendations for that process?

So in my head we're trying to fix problems that exist today. And if we can solve some of those problems later with privacy proxy accreditation or changes to the UDRP or other things that are possibly coming down the road, then great and fantastic and we can, you know, we are able to solve other problems at that time.

But I guess I prefer to solve the problems we have today and that we don't have definite and firm can make sure that we're actually going to, you know, we don't know when we're going to get the problems addressed using these other mechanisms.

Alan Greenberg: Okay.

Kristine Dorrain: That's sort of my - my interpretation but I could be completely wrong on that.

Alan Greenberg: No, no, I think that's a reasonable way to proceed. You know, to try to make rules for what will happen where there is accreditation, I mean I can hypothesize that there will be a flag in the Whois saying this is a privacy or a proxy provider. And therefore the registrar will know how to proceed and the dispute provider will know how to proceed.

I don't know for sure that's going to happen. So I don't think we can work on it. Volker I - I now have some specific questions but Volker had his hand up. Go ahead.

Volker Greimann: Yes, just to clarify of course that the reveal that I had in mind would have a certain deadline. So basically when the registrar informs WIPO that the process would not immediately go on with the - with the checking and informing of the complaint and that everything is all right.

But if we, for example, allow a 48-hour deadline which would of course require changing some of the deadlines in the UDRP. Within that time no reveal happens then that will be legitimate and then WIPO would just inform the complainant that the - that the complaint would have to be amended.

And the second point I wanted to raise is that even though we have had cases where we immediately lift the own privacy service when we received the notice and informed WIPO of the identity of the real registrar WIPO and NAP in this case we had both cases.

We found that in the end there were cases where the header of the complaint still listed that our privacy service as the respondent. And I think that's a problem especially if you have cases where there's multiple domain names in a complaint.

And the complaint -- the privacy proxy reveals that there's multiple respondents under that or domain owners under that. And the complaint still

proceeds as one because the complainant assumes that it is one case because the privacy service in the Whois. I think that's the real problem.

As the UDRP allows combining cases into one with multiple domain names this becomes a problem if the Whois privacy is not able to reveal because then we would have cases with multiple respondents would be required to respond.

Alan Greenberg: Thank you. Kristine?

Kristine Dorrain: This is Kristine from NAP. I don't, yes, so as long as there's not two separate deadline periods I guess I don't disagree with Volker's first point then. I mean if the group consensus is it's preferable to give extra time in the deficiency, you know, in that - in that initial lock request period.

So rather than I think we said it would be one business day, you know, making it 48 hours or two business days or whatever we decide to give the registrar a time.

I mean we do have to think about the impact of UDRP and the provider's responsibility there. But I mean if that's really the way to solve the proxy service, I don't really object to that.

My problem is we can't have two deadlines. We can't say, "Well, you're supposed lock within one business day, but you can come back up to 48 hours later and change the information."

Because that - that's going to create the situation where, you know, if we're going to send the case back to the complainant and yet again and we've got to -- everybody's got to duplicate their work at a pretty high, you know, cost to both the provider and to the complainant.

So I think that allowing a second deadline is not practical. But if in fact the group decides that giving the registrar a time should subtract down the privacy of the proxy service is an important thing, then I think the best way to do that is to just extend the period and make a recommendation that just says, "You know, that the provider has the extra time during the deficiency check."

And I mean that, you know, that's probably just the best to do that. With respect to the - the naming of the respondent I -- if you'll look up above in the part in red that we already discussed, it says for the purposes of the UD, the registrar -- this is the bottom I think on Page 1.

For the purposes of the UDRP the Registrant list and then the Whois record at the time of a lock will be recorded as the respondent, and that's how NAF currently does their process.

So even if a Registrar comes back and says, "Hey my client - here's my client's information," if the information isn't changed in the Whois then it's - we're still proceeding against the party named in the Whois.

So we'll serve whoever you tell us, you know, in your email to us. We'll serve that memo, send them all the documents but the caption case will be against whoever's listed in the Whois.

So that's why that is in there as part of the commentary. And then from there it's up to the Registrant to let us know if it's really not the Whois service or whatever, so I just wanted to point that out.

And that's why it says that the - that's why - that I included that language in that original section I guess.

Volker Greimann: Just to comment on that, I mean, I handled the UDRP cases for a long time myself in our office so I know how we deal with it and in that case the first

thing we do when we receive a notice and we see that Whois privacy domain and we deactivate a certain flag and then the original domain - the original information is in the Whois and that - after - only after that we apply the lock and inform WIPOs at that point.

When we inform WIPO about the - or the other providers about who is in the Whois, then the Whois has already changed and we still have seen cases where after that the process wasn't amended.

Kristine Dorrain: Is that recently Volker or are you talking a few years ago?

Volker Greimann: We only implemented our Whois privacy service 1-1/2 years ago so it's quite recently, yes.

Kristine Dorrain: Well if you ever see that situation contact me directly because we changed our rules a couple of years ago, so we should be listing in the who in the complaints - the complainant's supposed to list whoever's listed in the Whois.

Volker Greimann: Okay. I'll check that.

Alan Greenberg: Okay and I thank you Volker. I put myself in the queue. With regard to the two deadlines for an in house privacy proxy service and as Volker just described, that's fine to have one deadline but I think we need two deadlines, at least two different time periods -- I won't say deadline -- in the overall policy because we are putting a requirement on the Registrar not to notify the Registrant until it's locked.

And until - therefore for a privacy proxy service that is not in house the sequence has to be it's locked and then you notify the Registrant, which implicitly means if it's a privacy proxy service they may come back.

And I guess we need to require them to come back in a certain time so the Registrar can take whatever action they need. So there really needs to be

two deadlines in the process to handle the case of a non-in house privacy service as far as I understand it or proxy service rather.

Marika Konings: Alan this is Marika. The problem with that is that as there is no accreditation program it's not possible for the Registrar to determine whether someone is requesting the changes is a legitimate service or not.

I think we've already went back and forth on this item and your comment back to Kristine's point on, you know, we're dealing with the issues we can deal with now.

Of course nothing prevents a Working Group to, you know, pass on any recommendations or suggestions to the effort that will deal with the privacy and proxy accreditation.

But I think what I, you know, have - starting to write the initial report what I know down - noted down there is basically saying, "Well, any changes would need to be made within that timeframe."

And indeed you are right. Something that will need to be discussed and I think we've touched upon it before as well is that, you know, does contacting the privacy proxy service - does that - does it equal contacting the Registrant and should an exception be written into that noting that, you know, if it concerns a proxy privacy service that's not considered as communication or that communication is allowed?

But I'm not really sure how we can do two timeframes if we cannot assess who's eligible for that second timeframe at this point in time.

Alan Greenberg: No, no, I wasn't suggesting that and I was talking about today's world, not a future world. What I was saying is we know that there are privacy proxy services out there which are not in house.

And if we want to be able to have - allow a reasonable amount of time for that privacy proxy service should it exist to reveal the real Registrant and have the real Registrant be the one the case is against, then we have to allow some time after the formal - after the lock.

So maybe the whole thing says you - if you are going to reveal it has to be, you know, within two days and the Registrar knows he better lock faster than that to give the Registrar a window to try to find out if there's underlying data or not.

I'm just saying we have to be cognizant of the fact that they're not allowed to notify the Registrant of record until after the lock, and that's the window in which a reveal could be done if it's not in house.

So we simply have to make sure the timeframes allow for that sequence and that's what I was trying to imply, but you're right. There may not be two deadlines in it but the sequence that we're mandating must allow for that to happen, otherwise we're putting the Registrar again in a catch-22 situation where they cannot meet all of the obligations, and at the same time give the Registrant the fair opportunity to reveal the underlying Registrant. I'll be quiet now. We have Volker and then Matt.

Volker Greimann: What I was proposing mainly concerns such animals as accredited Whois privacy proxy providers, ones that have common assistance or affiliated ones. I'm not sure if we should extend that same privilege to unaccredited or - and privacy proxy services in the wild because that would in my opinion create some uncertainty.

In that case where we would have accredited proxy privacy accreditation services, then we would immediately lock the domain name as we do currently when we receive the complaint.

And then the privacy service would be informed and they would have a two-day window in which they would have to inform both the privacy - the UDRP service provider and the Registrar.

And at that point in that time window let it be 48 hours or something else. The service could be lifted - the lock would be lifted again with the agreement of the provider.

And only after the 48 hour second window has passed the lock becomes more permanent and no further changes can happen. I would like to illustrate that with another example, which was a problem recently in a UDRP case we had with WIPO where we had a privacy service with a - which was one of our resellers.

And they forwarded everything that they had. They chose not to reveal because they didn't receive it in time, and they forwarded everything they received from WIPO concerning the complaint to the actual Registrant.

The actual Registrant was very - would've been very happy to transfer the domain name but he tried to agree in the suspension period that they wanted to transfer it but we couldn't accept that agreement because we wouldn't - we're unable to verify that they were the Registrant and the reseller was a bit quiet - on the quiet side of that.

Alan Greenberg: Volker when you say transfer do you mean put their own name in Whois or transfer to the complainant?

Volker Greimann: Transfer to the complainant.

Alan Greenberg: Okay.

Volker Greimann: The complainant had requested a suspension of the process and the original Registrant had agreed to that transfer, so we would've been able to transfer the domain name right away.

And just because we didn't see the information of the complainant then we had - we were unable to reveal that. Because we didn't have that information we weren't able to confirm that that is indeed the actual Registrant that responded in this case and has the authority to transfer.

So in this case it would've been helpful if the Whois privacy service had been able to lift that, and then in that case we would've been able to transfer the domain name in the suspension period, which was a problem.

Alan Greenberg: Okay thank you. Matt?

Matt Schneller: Hey so one specific response to a couple of comments that Volker has made. I wonder if it'd be useful if you either email David Roach-Turner on the group or offline and then circulate his response about what the specific case numbers are to see if he has any recommendations for the current draft proposal that might address those specific situations that have arisen.

I think they got to dig through the - their files and sort of track it and give you a really specific answer to those. The other more general comment following up on Alan's suggestion that there are non-affiliated privacy proxy services right now and that our rules should take them into account, I think we have to note that they exist, although I don't think we have to necessarily pick a rule that is equally convenient for those as it is for in house privacy proxy services.

If there winds up de facto favoring one or the other that's kind of not our problem, so I don't think it's - I agree with you that we shouldn't ignore them but I don't think we need to make a rule that has the side effect of maybe making life less convenient for them than for in house privacy proxy services.

Alan Greenberg: Yes. Thank you Matt. My only comment is I wasn't suggesting we make it convenient for them, just that we set the deadlines for the Registrar that allow, I mean, we know there exists arm's length privacy proxy services and they do seem to be involved in UDRPs.

So should we - the timeframe should make it possible for the real respondent, the real Registrant to be named. So we shouldn't set an impossible deadline of, "You must let us know within four microseconds after we tell you otherwise it's too late."

I'm not necessarily saying we have to make it extremely convenient for them, just possible. Is that what - that's what I was suggesting. All right, how do we go forward on this?

Do we need to change any of these words at this point, and if so who's willing to try to draft them? Marika.

Marika Konings: Yes this is Marika. Hearing the discussion I'm wondering indeed if just moving the window to two business days would allow indeed any checking that needs to be done with, you know, privacy proxy services noting that indeed we would then need to address the fact of the non-communication or factor in that, you know, it's up to the Registrar then to determine or basically just say, "Okay we are not going to say anything about that," and basically recommend that this is an issue that is considered as part of the accreditation program.

And just basically now say, "Well within one or two days it needs to be locked and no communication with the Registrant," and basically leave it at that.

I don't know. I'm not really sure what the answer is but I'm seeing that we still have an issue here and...

Alan Greenberg: Let me ask a question to Volker, any other Registrants if there are on the - Registrars on the call, do you have provisions in your agreement saying, "If you are making this - registering on behalf of someone else and if a UDRP is filed, then the following rules apply?"

You have a certain amount of time to reveal or things like that?" Are there any provisions in your registration agreement that address the - this kind of situation we're talking about?

Volker Greimann: We have general rules about registrations in the name of a third party or fourth party, but nothing specifically concerning UDRP.

Alan Greenberg: Is it reasonable to assume that once we put in reasonable limits you might change your registration agreement to then set shorter but also, you know, viable limits on the Registrant, because that would give, you know, we - I'm not sure we can mandate that or want to mandate that Registrars do that?

But that would give the providers some level of assurance that once the window has closed it is indeed closed.

Volker Greimann: Well we would do that and I think we could also do that as part of policy that every Registrar must do include certain language in there.

Alan Greenberg: Okay.

Volker Greimann: ICANN has come forward with a lot of requested changes to the agreements...

Alan Greenberg: Okay. But, I mean, the...

Volker Greimann: ...resellers with certain...

Alan Greenberg: Yes. I mean, that may give us the tools to provide a short but reasonable deadline and at the same time be, you know, I'm not sure it's being fair to the providers but giving the providers a, you know, a way to allow them to manage the - to manage their business and exist so...

Marika Konings: Alan this is Marika. So can you just repeat what you would like then to see passed?

Alan Greenberg: Well the suggestion is that if we say, you know, they're - the - that the lock and any reveal must be done within two business days that gives the Registrar the ability to put in their - and maybe we require it.

But it gives them the ability to put in their registration agreement that if you are registering on behalf of someone else if a UDRP is filed or if some sort of proceeding is filed, then you have, you know, 24 hours or something like that in which to reveal who the underlying - or respondent should be or you will be the respondent.

So I'm not sure we - I'll leave it up to the Registrars to say whether we really want to acquire it, or simply give them a window in which they could put such a requirement in if they choose.

Marika Konings: This is Marika. But it still doesn't answer the question on the communication with the Registrant or, you know, I guess it's something where we can build in an exception saying, "Unless it concerns communication in relation to reveal of a privacy proxy service," and just wait for the process.

Alan Greenberg: No I don't think so. I think we need to write the rules such that they cannot communicate until a lock is put in but in - under the deadline that they have to respond to the provider under the 48 hours the Registrar is still allowed to enact changes...

Marika Konings: Okay.

Alan Greenberg: ...to effect a reveal. Sorry I'm just trying to formulate the wording here but I think, you know, we can provide - they have to lock it from the point of view of the Registrant making changes unilaterally.

But we can allow the reveal to be done even though the lock is normally there. And, you know, Volker was talking about, you know, two levels of locks: a really hard lock and a - the softer lock and I think that's what we're talking about.

Marika Konings: Okay I think I understand you so I can try to write that into the recommendations.

Alan Greenberg: Yes. Okay let's keep going. We have Volker.

Volker Greimann: Yes just one comment. Our current practice is that when we have a domain name where it's plainly visible that it's a Whois privacy service, our usual answer is not - this is the Registrant when we answer to the provider.

But the Registrant in this case is a Whois privacy provider. This is his data but there may be an underlying Registrant which we no - have no knowledge about.

And if that's the answer and if that's what happens and the privacy proxy provider is an accredited entity, once the accreditation process comes into play then I think such a twofold lock might be a good idea.

Alan Greenberg: Yes.

Volker Greimann: That would also be a very good idea to make it more attractive to companies that are not affiliated with the Registrar to become accredited with ICANN once the accreditation program is in place just as an idea.

Alan Greenberg: Yes I think once the accreditation program is in place, which we're not trying to work through right now, I think it is reasonable to say that, you know, the Registrar and the provider can assume that whoever's the Registrant of record in Whois, if it's not flagged as a privacy - as a proxy provider then - because privacy providers - the real Registrant is named.

Just the contact information is masked and - but presumably it's a pass through so it's only the proxy providers we're talking about where the - at least the - according to the definition in the AoC Whois review it's only proxy that we're worried about.

Privacy - there's no question about who the Registrant of record is so - sorry. I've lost my train of thought. But I think once we have accreditation the world become a lot simpler and we can make dogmatic rules.

But if you're not accredited, if you're not a proxy provider you take responsibility for any ones you - any domains you register. Okay Matt, you have your hand up. Sorry I didn't notice.

Matt Schneller: So I think the problem with having any sort of recognition of a two tier system now prior to implementation of an accreditation service is that if I am a squatter who owns a bunch of domain names, I put something in my Whois information that says, you know, "I am Privacy Service X."

And I register all my domain names as Privacy Service X and then treat it as a privacy service, where in fact all I'm going to do is whenever a UDRP claim is filed I will simply use the window of time provided by the - this extra two stage process to pick some random contact information in an inconvenient jurisdiction instead of providing my actual contact information.

So I'm not sure that having on the face of the Whois record that there's a privacy service involved is necessarily a workaround until - at least not in the universe we're currently in.

Alan Greenberg: No, no, I don't think anyone was suggesting that we have that kind of flag now. If I did I didn't mean that. All I was suggesting is that the - we set a timeframe which allows, you know, in a world without time machines for the Registrar to notify the Registrant.

And if it is a legitimate privacy proxy service, and I don't know right now how a Registrar decides if it's legitimate or someone lying and saying they're a proxy service, and I'd be curious about how Registrars do make that decision today but, you know, I can't worry about it because it's not something we can legislate.

I was just looking to make sure that we have a pliable timeframe that covers the situation. I mean, you know, for instance in the case of Volker knowing that one of his resellers does operate a privacy service, that that allows the things to be done in the right sequence. Marika.

Marika Konings: Yes this is Marika. To comment as well on what Matt was saying I think indeed the way I envision of writing it would be is rather the Registrar may in those cases where, you know, he or she feels that they're working with a legitimate privacy proxy service indeed of course put the lock and contact them.

And I think as Volker indicated that they would only do that in those cases where they, you know, are sure that they're working with a legitimate service.

And I understood him saying as well that it wouldn't happen if indeed it just happens to have proxy or privacy in the Registrant name. But I guess in the, you know, of course it may not apply to everyone but I think again those issues are only going to be solved hopefully as part of the accreditation program, which could bring some more clarity and then certain requirements in place.

Alan Greenberg: Okay Marika let's assume you understand the situation. If we want to tear apart the next draft we can but hopefully we won't need to. Okay no more hands. Let's go on then.

Marika Konings: Yes this is Marika. Just to note I did add one footnote that you see at the bottom of Page 2, which I'm not really sure is something we can actually require.

But it was a discussion as well that of course when there is a reveal it should only include data that's actually held on record by the privacy proxy provider and not other data that comes in later at play.

But again I'm not really sure if that's something we can enforce at this point in time, as we don't have any accreditation. So maybe this is just something to mention or a recommendation for the next efforts taking place in that area.

I think that the next item - because I think we addressed the comments that Volker made and some of the other items related to Recommendation 3 - oh actually Volker's hand raised so I think maybe he wants to go first.

Alan Greenberg: Go ahead Volker.

Volker Greimann: Yes just as an aside I think we can require them to reveal only the data of the Registrants that they have on record, and that is because ICANN has become relatively fond of doing audits.

So I'm assuming that the privacy providers will also be regularly audited and in that case it can be reviewed.

Marika Konings: Yes right, so only when indeed the program is in place. That's what I meant but not currently.

Alan Greenberg: Well, I mean, Registrars could put such a rule in their registration agreement. There's no way to verify it.

Marika Konings: Right.

Alan Greenberg: I mean, the, you know, when there - things are accredited there's a whole bunch of - interesting questions open up. Are - is the privacy proxy service data going to be subject to escrow?

Can that escrow data be revealed in some circumstances without the privacy proxy service? Do we - so all sorts of good questions come up. I'm not clear that they're anything we can deal with today though.

We are approaching the hour. Marika I don't think we really can start on the next item at this point. Is there anything else we need to do? I'm just presuming we'll meet next week.

Michele cannot be on the call. At this point I believe I will be. If my schedule needs to change then I'll send out an email, and we'll either find a temporary alternative Chair or we'll cancel the meeting. But other than that would presume there is a meeting next week.

Marika Konings: Yes and this is Marika. If I can just encourage everyone to review as well the rest of the recommendations and send any suggested edits or changes to the mailing list so we can really, you know, try to get to a stage where we have everything on the table that needs to be discussed and hopefully come to closure and not having to go back and forth between particularly some of these items. So if I can just encourage everyone to do that that would be help.

Alan Greenberg: So you encourage us to do the review more than a half hour before the meeting.

Marika Konings: Exactly.

Alan Greenberg: I'll try. As usual no guarantees. Thank you all for a interesting call. I think we didn't get very far but I think we have a much better understanding of the problem for this particular recommendation than we did at the beginning.

So thanks for your participation. From a call that looked like we weren't going to have any people on we ended up with pretty good attendance and discussion. Thank you all.

Kristine Dorrain: Thanks everyone. Thanks Alan.

Alan Greenberg: Bye-bye.

Marika Konings: Bye.

Woman: Bye-bye.

Coordinator: Thank you for participating in today's conference call. You may now disconnect.

END