

**Locking of a Domain Name Subject to UDRP Proceedings PDP WG
TRANSCRIPTION
Wednesday 07 February 2013 at 1400 UTC**

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On page:<http://gnso.icann.org/calendar#feb>
(transcripts and recordings are found on the calendar page)

Attendees:

Hago Dafalla - NCUC
Lisa Garono - IPC
Alan Greenberg - ALAC (Vice Chair)
Volker Greimann - RrSG
David Maher - RySG
David Roache-Turner - WIPO
Gabriela Szlak - CBUC
Laurie Anderson - RrSG
Faisal Shah - IPC

Apologies :

Michele Neylon - RrSG (Chair)
Luc Seufer - RrSG
Celia Lerman - CBUC

ICANN staff:

Marika Konings
Berry Cobb
Lars Hoffman
Nathalie Peregrine

Coordinator: Go ahead, we're now recording.

Nathalie Peregrine: Thank you very much, (Ricardo). Good morning, good afternoon, good evening. This is the Locking of a Domain Name Subject to UDRP Proceedings PDP Working Group call. It's held on the 7th of February, 2013.

On the call today we have Juan Manuel Rojas, Alan Greenberg, Hago Dafalla, Lisa Garono, David Roach-Turner, Faisal Shah and David Maher. We have apologies from Celia Lerman and Michele Neylon.

From staff we have Marika Konings, Berry Cobb, Lars Hoffman and myself, Nathalie Peregrine. And Gabriella Szlak has just joined Adobe Connect room.

I would like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you, Alan.

Alan Greenberg: Thank you very much, Nathalie and welcome back formally. Our Michele has deserted us again today so we're on our own. And is - any updates to statements of interest? Hearing nothing, seeing nothing we'll go on to the review of the work plan and I'll go over to Marika for that.

Marika Konings: Yes, this is Marika. So basically based on the call we had last week adding some updates to the work plan to reflect as - we missed our deadline of the end of last year and that we're now aiming to deliver the report by the publication deadline for Beijing, which is the 15th of March.

So what I've done is basically listed the meetings that we have between now and that date assuming that we're having weekly - or continuing with our weekly meetings. So I assume that we may spend the next three meetings or three or four meetings on reviewing the straw man and finalizing that but assuming as well that hopefully in parallel people will start reviewing the first draft of the initial report that I circulated earlier this week.

And that leads us then two meetings basically to finalize the report by basically inserting the straw man recommendations and making any edits that may be necessary based on the recommendations we're making in other sections of the report which would then, hopefully get us to the 15th of March for publication.

And then it's also assuming that on the 21st of March we may have a meeting to actually prepare for the Beijing session. And there is also an option to have another meeting on the 28th of March if needed if there is anything further that needs to be discussed or prepared.

Then it's also foreseeing that we'll have a meeting during the ICANN meeting, which I think is probably going to be a more workshop format where we're presenting the report to the community and hopefully are able to get some input or be able to answer questions and encourage community members to actually provide input on the report as part of the public comment forum.

And then the proposal will be that we actually open the public comment forum at the moment of publication so the 15th of March and actually let it running further through to the third of May so people have as well sufficient time after the meeting to submit their contributions.

But again of course that's flexible if more time is needed there. We can always change that. And then we'd basically restart again on the 9th of May with starting to look at the comments received and work towards a final report. And I guess at that date once we have an idea of the number of comments received and how much work we believe is remaining we can then update the work plan to set ourselves a timeline for delivering a final report.

Alan Greenberg: Thank you, Marika. It strikes me that the timing to get the final - the initial report out and finalized by the 15th is tight but as I think I said last time I think we need to get something out regardless of how complete or incomplete it is identifying the parts that we're still working on because I, you know, typically

we want a public meeting where we at least understand the direction of where we're going.

And to wait for the next one after Beijing I think is just far too long. So I certainly think that the work plan you've provided here - you presented here is something that we do need to try to keep to. Anyone else have any thoughts on this? Not hearing anyone, seeing anyone.

Gabriella Szlak: Hello?

Alan Greenberg: Let's take it as a given and we'll keep an eye on it as we're going forward over the next few weeks. It does mean we can't...

Gabriella Szlak: I'm sorry?

Alan Greenberg: It does really mean we can't afford to miss any meetings so we need to keep plodding forward. All right thank you. If we could replace the work plan with the straw man or the comments, I'm not sure which you want to go with first, Marika.

Marika Konings: Alan, actually first on the agenda the initial report just to briefly explain to people what...

((Crosstalk))

Alan Greenberg: Oh I'm sorry. Please, go ahead.

Marika Konings: And this is Marika. Just to note that I quickly checked with our IT support there and he's suggesting because apparently some people on PCs getting an error message when they open the document and he's wondering whether it may have something to do with the recent upgrade of Office that it may want you to convert the document to the latest version of Word and that's why it's giving the error message. But we're looking into that.

So on the screen you'll see the first draft of the initial report and basically follows the model that some of you will have seen from other working groups that we've done.

So basically there are some elements that I tried to complete as much as possible but there are some parts that will need to be completed as we get further through our recommendations.

And for example, you know, it starts off on the executive summary, which of course I haven't been able to complete yet as that will be done as one of the last tasks once we have the report finalized or almost finalized.

So it talks a bit about the background. And I think there it would be really helpful if members can have a look at that section. In other effort it's usually more a summary of what is already contained in the issue report because that's normally the place where the issue is outlined and all the information is gathered.

But in this case as there was no issue report specifically on this particular issue, but it was more on the broader UDRP, there isn't much information already published. So what I did I basically gathered some of the information based on the discussions we've had and some of the email threads that we had in the beginning of our working group effort.

But I think I'm sure there are others that can add more detail to this or more background to it. It was basically trying to explain what are the issues that are being encountered with the locking of a domain name and, you know, basically explaining it in more detail as the background to the work that we've undertaken to do.

Then the next section basically is just an overview of the membership and we'll complete here as well to indicate the membership attendance, how

that's basically a bit of a idea of how many people participated and what level and how the representation was from the different groups.

And then Section 5 basically goes into the deliberations of the working group. So what I've done is basically as a first step outlined or provide an overview of the survey we conducted. As you may recall we did that in the beginning and from that we took some findings that are reported here.

And then for each of the charter questions I basically tried to outline what is the current situation relying on some of the facts and figures we got from the survey and as well other information. And then basically working - moving towards working group findings for each of these charter questions which basically most of them flow from the discussions we've had on the public comment forum.

And also we'll eventually leading into the update depending on where we end up with our recommendations. So again there is you feel anything is misstated there or anything is missing, you know, please feel free to add it or provide any suggestions that you may have.

Then Section 6 is basically reserved for the preliminary working group recommendations. So the idea is that once we finalize our work on the straw man proposal we actually are able to insert that here.

One of the things we'll need to do as well is assess the level of consensus for the recommendations either as a package or as - on an individual level. And the working group is also expected to indicate the expected impact of the proposed recommendations.

Again that may be in a more general way say well we expect that courses will have significant implications on how registrars, for example, deal with UDRP cases or, you know, will have an impact on UDRP providers complainants but basically trying to assess what the impact may be.

And again this is also an area where, you know, you may want to ask for input from others as part of the public comment forum so that that can be incorporated as part of the final report.

Then 7 basically just outlines the community input we've received so it reflects the public comment period we've done and the outreach we've done through some of the groups to get input on this.

Eight is basically just a placeholder for now. It's basically more for the final report. And then basically there's some annexes like there's the working group charter, I think there's some other templates that are there.

And again if there's other information that people feel should be added, you know, please let me know. So this document has now been posted on the wiki, you know, so feel free to, you know, redline or send suggestions or edits by email and we can work our way through the different drafts and hopefully eventually get to our final initial report by the deadline we've set ourselves.

Alan Greenberg: Thank you, Marika. One thing I'd like to highlight is we are - we, being the GNSO, is continually reminded that the reports we put out are long and overwhelming and that tends to mean that fewer people actually read them. So as people are reviewing it I guess I would ask you to keep an eye out for things that are in the body of the report that where it wouldn't impact the report greatly to move them into an annex.

Understanding that people may not read them but that may increase the number of people who focus on the report altogether. So I think that's a general tendency we're trying to work on and we've already done it with some of the items here but it's something to keep in mind as you're reading it.

David, I just see you - saw you put a long comment into the chat. Do you want to say something on that?

David Roach-Turner: Sure. It's not intended to be overly lengthy. I just thought I'd put it into the chat so we didn't lose track of it. It's just a very small factual observation on what looks to be an otherwise really excellent start to the draft report with many thanks to Marika and others involved for pulling that together.

And it's just a factual comment to note on one of the pages, which I've mentioned in the chat, that WIPO in fact requires complainants to copy us as a UDRP provider on submitted complaints - sorry, to copy the registrar on submitted complaints and just if we could note that in the report I think that would help to round it out in terms of factual accuracy.

Alan Greenberg: Okay thanks. Any other thoughts or comment on the report before we go back to the prime part of our work? No comments? Then, Marika, thank you very much. It is a good start. And I do suggest that people find the time to at least scan over it and, you know, perhaps we'll devote a couple of minutes every meeting just to getting any input so Marika can try to keep it moving in a good direction as we go forward on the policy itself.

Hearing nothing else, seeing nothing else let's go on to - back to the straw man and comments. And, Marika, do you want to remind us where we are?

Marika Konings: Yes, this is Marika. I don't know if you want to go back because basically the latest changes that were made based on our discussions last week are in Draft Recommendation 2. It's just unfortunate, I think, some of the people that were very vocal about this issue are not on the call today. I think we had quite lengthy discussions between Volker and Kristine about this point so it would be really good to get their input on that.

So I don't know if you want to pause on that now or move actually on to some of the other changes because basically just explained in Draft Recommendation 2 what we inserted there is a provision to actually foresee when they're accredited privacy and proxy providers that there maybe

additional time or an option for the registrar to contact them to allow for the reveal of underlying registrant data.

And basically to clarify that, you know, if such contact is made that there should already be a lock but that changes may be allowed but only in the case where there's, indeed, accreditation program in place. So I drafted some language to that end and basically it's there for people to review and comment on.

Alan Greenberg: Yes, I'm not 100% sure how we want to present that whether we want to present it as integral part of the recommendation or sort of have a two column with accreditation, without accreditation to make it clear what we're talking about under the current scheme and what may happen in the future. But that's a formatting issue and I think we can address that a little bit later in the process.

I think it's a good idea given that the main participants, you know, perhaps other than me, who contributed to this are not here that maybe we want to defer this until next - until the next meeting and go back into the bulk of the document.

Marika Konings: Right, so this is Marika. So then in Draft Recommendation 3 I made there the updates to change one day to two days, also something we discussed at the last meeting.

And also something that was suggested in the last meeting is to clarify that pendency would be from the receipt of a request or verification through the remaining pendency to make sure that there's no confusion over the fact that of course the registrar doesn't - if pendency is from the start of the filing of a request the registrar cannot have any awareness of that because they haven't been notified at that stage - just a clarification there.

Alan Greenberg: Good.

Marika Konings: So then scrolling down to the document the next comment that I see is from Luc in relation to Draft Recommendation 5. The recommendation currently reads, "If deemed compliant the UDRP provider shall forward the complaint to the registrar and the respondent and notify them of the commencement of the (unintelligible) proceedings within three calendar days following receipt of the fees paid by the complainant."

And Luc basically says, "This chronology looks like a call for abuse of the UDRP system. The locking of a domain name should be contingent upon settlement of the provider fee."

Alan Greenberg: Give people a moment to read it over. Is - Luc is not on the call today.

Marika Konings: No, Luc sent his apologies. There was a note in the start but he did send his apologies in for this meeting.

Alan Greenberg: I'm having trouble parsing this. It sounds like Recommendation 5 says it should be done within three calendar days following receipt of the fees. And then Luc is saying it should be contingent on settlement of the provider fee. I'm not sure I understand the difference.

Marika Konings: This is Marika. I'm wondering if he has read that. And I don't know either if that was the intent or not. And maybe, you know, David can clarify there. If as it currently reads you could also interpret it saying that the complaint is already forwarded to the registrar and the respondent if deemed compliant.

But then actually maybe at a later stage that they're actually notified of the commencement of the administrative proceedings which may be later if the fees haven't been paid yet.

I don't know if that is how he read it or if that's actually the intention of the way it's worded now. But I'm also a bit confused about how it's written but I'm

wondering if that is maybe how he read it and that's why he's wondering but leaves it open for abusing the system.

Alan Greenberg: I would suggest we defer this one until Luc gets back because...

David Roach-Turner: I just have an observation. This is...

Alan Greenberg: Oh go ahead.

David Roach-Turner: ...David from WIPO. Which is just that the way this usually works for us is that the complaint is submitted and in the complaint the complainant makes a sworn declaration that payment has been made and that payment is in the process of being processed. And there's a number of ways in which that payment might occur.

It might occur by credit card, for example, which is almost instantaneous. It might occur by way of check, which has to make its way halfway around the world. So there can be a period of days between the submission of the declared certified complaint and the actual receipt of the payment.

From a provider perspective if we receive a complaint where there are reasonable grounds to assume that the payment hasn't - or is not going to be forthcoming, for example, because the complaint is not appropriately verified or there's been some problem with the complainant failing to pay or having been found to have abused the system previously and we deem it necessary to wait for actual received confirmation of that payment we'll do that at first instance.

But the number of cases in which we find the complainant declaring and undertaking to pay and actually not doing that subsequently is infinitesimal.

Alan Greenberg: All right. Does - so what you're saying is you normally do not wait, as Recommendation 5 says, for the receipt of the payments from the complainant.

David Roach-Turner: It depends on the form of the payment and it depends on the specifics of the complaint. Our general approach is to rely on - is to rely on a declaration of payment via the complainant...

Alan Greenberg: Okay.

David Roach-Turner: ...and some indications that that payment has been forthcoming. So for example in the case of a - in the case of a credit card payment, as I say, it's very, very quick; we are in a position to be able to very, very quickly clarify that the payment has been made and it's been received.

In the case of a check, you know, we might have to look at a copy of a Photostat or we might have to see some form of evidence short of actual receipt of the payment itself.

In the vast majority of cases we have the cash in our account before we would proceed with the dispute. But there are some cases where there might be a delay of some days before we would receive actual confirmation of the payment. And in those cases unless there's some reason to suspect reasonable basis to suspect that there's going to be a problem with the payment we would proceed to issue the request.

Alan Greenberg: So the recommendation really should allow you the discretion to wait for payment or wait for - I don't know what the words we're going to put there are - but essentially wait for a confidence level that the payment will be made at your discretion.

David Roach-Turner: I think that would reflect the reality.

Alan Greenberg: Yes. Marika, do you have any feeling on how we could word that or, David, do you have any suggestions?

Marika Konings: Yes, this is Marika. I think it would be really helpful if David or Kristine can suggest wording if they feel that this - what is currently there doesn't allow for that flexibility or reflect current practice.

Alan Greenberg: All right we'll try to come up with some wording. And hopefully by next week either I'll dream something up or, Marika, you make something up and have them criticize it. If you don't get anything from one of us then just put something in as a placeholder either some draft words or just something in parentheses reminding us that we need to - what we need to do.

And Luc, of course, when he gets back can confirm that's what he actually meant or not.

David Roach-Turner: Alan, just to confirm, I'm not sure that from my perspective - this is David, sorry - there's necessarily a problem with Draft Recommendation 5. I think the language in that recommendation essentially reflects the language that's already contained in the rules.

My observations were more directed towards addressing the comment that Luc makes here suggesting that there might be a problem for abuse whereas I don't think that they - the incidence or likelihood of abuse, at least in our observation, is there.

Alan Greenberg: Okay how about if we simply say no later than three days following receipt? That allows you to do it earlier if you have a high confidence level and wait that long if necessary. Does that reflect reality? So we're mapping to reality and it doesn't really change the wording much or the intent at all.

David Roach-Turner: I think - this is David - this is (a) formulation would be reasonable in my view.

Alan Greenberg: Okay. All right, Marika, you've got marching orders.

Marika Konings: Yes, I got that.

Alan Greenberg: Okay you want to move on to the next one?

Alan Greenberg: Yes, please.

Marika Konings: So Draft Recommendation 6 - if I recall, well, I think this is language that was suggested by Kristine based on discussions we had quite a while ago but I think in the last few meetings we actually didn't get that far into the recommendation.

So Draft Recommendation 6 which currently reads if the complaint should remain noncompliant or fees unpaid after the period for the (unintelligible) to do a deficiency check per UDRP Paragraph 4 has passed or if the complaint should voluntarily - or if the complaint should voluntarily withdraw during that period the UDRP provider informs the registrar that the proceeding is withdrawn.

The registrar shall, within one business day of the transmission of the notice of withdrawal, release the lock. And one comment I made there is that we still, I think at the end of the process, need to define what we exactly mean with lock.

Alan Greenberg: Yes. I think in the middle of the paragraph it should be complainant instead of complaint.

Marika Konings: Yes.

Alan Greenberg: Other than that it sounds good to me. I don't think complaints can withdraw themselves. Any other comments on Number 6? I see no hands. Welcome back again, Gabriella.

Gabriella Szlak: Thank you. We are in 6?

Alan Greenberg: We're just finishing 6. The only comment was mine saying the complaint in the middle of - on the fourth line should probably be complainant. Other than that, and the fact that we need to eventually define what lock is, I think we're done with 6 unless there's any other comments?

And I do recall that I had a homework assignment of defining what items are to be locked and I haven't done that yet.

Number 7, Marika.

Marika Konings: This is Marika. Draft Recommendation Number 7 currently reads, "As part of its notification to the registrant the UDRP provider informs the registrant that any corrections to contact information are also required to be communicated to the UDRP provider as per UDRP Rule 5, Number 2 and Number 3."

And I added there a comment which is again based on previous discussions that we need to include in the initial report part of the rationale for allowing Whois changes or corrections to contact information in Whois are allowed as otherwise might contradict Whois accuracy policy. And I think it's something we addressed in one of our earlier recommendations as well.

And then there's also a comment from Luc that says, "Whois modifications at this stage often leads the complainant to leave the proxy privacy service provider as a codefendant of the registrant. We have seen several UDRP decisions rendered in this fashion."

Alan Greenberg: And all right let's - David, perhaps you can give us some insight as to why that happens. Is it a matter of not believing that the new entity named is really the one who takes responsibility? What kind - what's the rationale if there has been a reveal to keep the proxy provider as one of the - as named in the complaint?

David Roach-Turner: This is David here. Well there are a number of different scenarios that can play out where you see a privacy or a proxy registration service and the shield is lifted to reveal an underlying registrant.

One of those is that the underlying registrant is revealed to the provider and he's also revealed in the public Whois. There is another scenario that's common where the underlying registrant is revealed to the provider but that privacy or proxy registration service remains visible in the public Whois.

And there are also - there are variations, let's say, between the two of those in scenarios where you have a number of different disputed domain names and the practice can differ depending on the registrar that's involved.

So what usually happens in those situations at WIPO is that we then, having received the relevant information from the registrar, we go back to the complainant and we give the complainant an opportunity to amend their complaint.

The complainant can either opt to modify its complaint to address it solely as against the underlying registrant or it can nominate to address its complaint to both the disclosed underlying registrant and the privacy or proxy registration service as a co-respondent.

And one of the reasons why a complainant might choose to retain both, for example, is that the UDRP includes a provision for a respondent who wishes to dispute the result of a UDRP before a court to do that. And for that reason

the complainant has to nominate a jurisdiction that they would agree to submit to in the event that the respondent would dispute in court.

And one of the options at the complainant has for that purpose is the location of the registrant as it's listed in that Whois - at the filing of the complaint with the provider and that sometimes is the privacy or the proxy registration service and the privacy or the proxy registration service is located in a jurisdiction and that may be the complainant's mutual jurisdiction of election for the purposes of the proceeding.

So sometimes a complainant elects to retain both the privacy or the proxy registration service and the underlying registrant. In that sort of scenario we then proceed - in fact in all of these cases will proceed to notify the complaints of both the privacy and the proxy registration service and the underlying disclosed registrant.

And usually the panel will then make a determination when it's appointed as to the identity of the respondent that the panel regards as appropriate. If the panel regards both the privacy or proxy registration service and the disclosed underlying registrant as appropriate co-respondent then we reflect both of those entities in the title of any decision that has been issued based on that panel determination.

So most of the cases of, I suspect at least from WIPO where you're seeing both the privacy or the proxy registration service and the underlying registrant included in the issued decision is named co-respondent is because that's the determination that's being made by the panel following their appointment.

Alan Greenberg: Thank you, David. It never ceases to surprise me when I ask what I think is a simple question and get a very long answer indicating the issue is far more complex than I imagined when I asked the question. If I can summarize I think what you're saying it is to a large extent at the discretion of the complainant whether both remain named or not.

David Roach-Turner: I think there are principally two parties that exercise discretion in this scenario. The first is the complainant because they determine the parties named in the complaint based on the information that we forward to them from the registrar.

And the second is the decision maker, the panel, that needs to make a ruling in due course. The root of the problem, Alan, I think is that the UDRP was never designed to deal with privacy or proxy registration services so it's not well equipped to provide us with clarity.

It's an issue which panels have had to wrestle with I think through their decisions a lot of the time in which providers and parties have had to feel their way. And that's why I think it's - it often sounds complicated because I think it is quite difficult.

And I think, you know, any additional clarity that we can add to that scenario as part of this process can only help.

Alan Greenberg: Okay so but effectively until it goes to the panel it's the complainant who makes the choice whether to accept the new registrant information or keep them both?

David Roach-Turner: That's right.

Alan Greenberg: Okay.

David Roach-Turner: That's right. And I would just clarify there, as I mentioned earlier, that in any event the provider - and I believe this is also the case at NIF - the provider will notify the complainant both to the privacy or the proxy registration...

Alan Greenberg: Right.

David Roach-Turner: ...service and to the underlying registrant. And the reason for doing that is precisely to keep alive the panel's discretion to make a necessary determination without having to require a whole re-notification of the proceeding if the panel determines that it is one or the other and they haven't received a copy.

Alan Greenberg: Exactly, yes. So I think the answer to Luc is yes and it's going to keep on happening at least until we have accreditation of privacy and proxy services. And one can put a high degree of trust in the fact that the reveal is indeed a true reveal and will be acted on properly. And...

David Roach-Turner: I agree with that, Alan. This is David again. And I would also add that I think that there are implications that flow from the question of mutual jurisdiction election that I mentioned earlier. And I'm sorry if this is - sometimes comes across as a little bit complicated.

That there are implications that flow from that because the complainant, as things currently stand, essentially is opting for a mutual jurisdiction election which the rules defined as relating to the identity of the registrant as it exists in the Whois at the time that the complaint is filed.

And I think we need to be - we need to keep coming back to that because when we are thinking about privacy and proxy registration services we also need to be thinking about them in terms of what it means both the complainant's ability to make a mutual jurisdiction declaration with certainty and what it also means for respondents in terms of their ability to take the matter to a jurisdiction which for them is convenient and consistent with the language of the policies that currently exists.

And there's a particularly concrete reason I mention that which is that in Draft Recommendation 3, for example, there some words in there currently in the latter part of the first paragraph which I think we should consider maybe

putting some square brackets around for the moment which is where it says, "For the purposes of the UDRP the registrant listed in that Whois record at the time of the lock will be recorded as the respondent."

And the difficulty they are potentially is that that may - that risks inconsistency I think with the language of the policy itself in some ways at least to the extent that the policy says that the relevant mutual jurisdiction option that's available to the complainant is that identity of the registered domain name holder as it exists in that Whois at the filing of the complaint.

So we may be making a recommendation here that sits very uncomfortably with the way that the policy and in particular the mutual jurisdiction aspects of the policy worked currently.

Alan Greenberg: I'm not sure I'm going to say thank you for adding that level of - not confusion but of difficulty and how this is going to be - going to play out. It strikes me though, as you were talking, that you've given us an excellent reason why we perhaps, in our recommendation - our overall recommendations - should not focus on what happens when there are accredited privacy and proxy services.

Because it's quite clear that part of the creating and accreditation program is going to be looking at the UDRP with a fine tooth comb to catch all of the places where the process may change because of the concept of rather see proxy services and particularly proxy services where the identity of the - or base registrant is masked.

So I'm starting to wonder should we put anything in at all about that world because I think it is - it's going to require a significant amount of effort that can only be done once the basics of the accreditation program are understood and locked down.

David Roach-Turner: This is David. Alan, I agree with that. I think it's very difficult to have a discussion about such a wide ranging and complex topic in circumstances in which we don't yet have the benefit of recommendations about how privacy and proxy registration services are going to be accredited and regulated more generally.

I think we've made very steady progress in this group technically on working towards ways to clarify the way that the lock obligation works in a conventional UDRP proceeding without privacy and proxy registration services precisely because we understand how well that framework currently operates.

I think it's a very different scenario when we get into privacy and proxy registration services particularly because we have to do that while also speculating about how they may be regulated in the future.

Alan Greenberg: Yes. For the future of whoever has to do that work we may want to create a set of nodes of issues where we believe things may change and maybe even suggestions of the direction how they change. But I don't think it could be part of our formal recommendations for the implementation.

I welcome Volker onto the call. And Marika, do we perhaps now want to go back to Number 2 because Volker was one of the participants. We still don't have Kristine. But maybe we can get at least Volker's take on whether to - addresses the kinds of issues he was talking about. Marika.

Marika Konings: So, yes, this is Marika.

So, Volker, I don't know if you have a chance to look at the language that we've drafted for Recommendation 2 that tries to address the discussion we had at the last meeting to have this kind of two-step approach once there are accredited privacy and proxy service in place whereby the registrar at that point in time would be able to go back to the privacy proxy provider and notify

them of the fact that the UDRP complaint has been filed and at that moment the revealed can be done if agreed to.

So basically I've written a paragraph that tries to reflect what we discussed last week and as just a check if that fits with your views and also, you know, we hope to get feedback as well from Kristine who was involved in that discussion on drafting and framing that issue correctly.

Alan Greenberg: Yes, it's Alan. Before we go to Volker I'll note that at least the lead in this paragraph is talking about the situation where there accredited privacy proxy providers so this is the kind of thing that we may want to put into the adjunct comments, not the recommendation itself. Volker.

Volker Greimann: Yes, that makes sense because the program is not there yet. And I have the feeling that at least part of ICANN is reluctant to start that process at least after yesterday's RAA negotiations. So I think that recommendation at this time might be a bit premature, I agree with that. But basically the language looks fine.

Alan Greenberg: All right. That's an interesting and disturbing comment you made. In light of the way our deliberations are going it's quite clear that until the issue of accreditation for privacy proxy services is settled that UDRP is always going to have a level of fuzziness and confusion that is not a good thing.

Volker Greimann: I completely agree.

Alan Greenberg: Let's hope you're wrong. Okay let's - Marika, I'm not quite sure how we're going to format, you know, that putting up beside the accreditation issues. But I think we'll have to - before we finalize these recommendations in the next couple of weeks we'll have to come to some closure on that. And let's go back to wherever we were.

Marika Konings: Yes, this is Marika. If I could just make a comment on the accreditation recommendation. Personally I think there are two options, either indeed you just make it as a suggestion and saying once that PDP kicks off - because as I understand it will need to go through a PDP or at least that's the latest I know of that.

That working group would consider that specific question and consider what this group has already discussed on it. Or indeed you just build it in as a recommendation and, you know, it's of course clear that at this stage there are no accredited privacy proxy providers so that specific provision would not apply.

But you can say well we're already building in and if the follow-up effort can take note of what we've done and what we've suggested of course they have an opportunity then to either rewrite it or change it. I think there are two ways you can basically deal with that.

Alan Greenberg: Yes, whether the accreditation concept needs to go through a PDP is not crystal clear. It is however clear that the changes that may need to be made to the UDRP because of accreditation will need to go through a PDP. So whether it's all wrapped into one PDP or there's just a PDP to fix the UDRP because the other parts have been agreed to this part will have to fall on a PDP since we're modifying an existing consensus policy. At least that's my reading of it.

Volker, go ahead.

Volker Greimann: Just one minor comment. If we want to take out the proxy providers reference I would suggest replacing that with proxy privacy provider affiliated with the registrar or something like that. Because in that case we would want to be able to replace the data.

Alan Greenberg: Okay, that's a good one. And that's - I suspect the large majority of registrations using proxy are indeed like that; I don't know the statistics but I wouldn't be surprised. So adding clarity In those cases I think will help significantly. Good idea.

Volker Greimann: I think we could then reference that in our comments outside the recommendation and say that if ever accreditation program for those providers - third-party providers comes into place the same would apply - could be applied to them if it's so decided in the accreditation PDP.

Alan Greenberg: Good, that's a good...

((Crosstalk))

Alan Greenberg: ...good contribution, thank you. Okay back to - where were we, 6, 7?

Marika Konings: Nine.

Alan Greenberg: Nine.

Marika Konings: Yes, this is Marika. Because of the previous one I think on 8 - we finished out on 8 there were...

((Crosstalk))

Alan Greenberg: Yes, you're right.

Marika Konings: So Draft Recommendation Number 9 I think this is language that was initially asserted by mean and then modified by Kristine based on earlier discussion. So the recommendation currently reads, "Upon a receipt of a decision from the provider the registrar must within three calendar days communicate to each party, the provider and ICANN, the date for the implementation of the

decision in accordance with the policy UDRP Rule 16 and UDRP Paragraphs 4(k) and Paragraphs 8(a)."

"If the complainant has prevailed the registrar shall implement the panel order immediately after 10 business days have elapsed, UDRP Paragraph 4(k). The complainant is responsible for providing the registrar with the required information regarding implementation. This may include information that should be in the Whois."

"If the respondent has prevailed the registrar shall prohibit transfer of the domain name to another registrar or registrant for 15 days from the date the decision is transmitted from that UDRP provider. UDRP Paragraph 8."

And there are three comments here from Luc. The first one is, "Why does that fall under the registrar purview? Can't the UDRP provider do the math?" I think this relates to the first part.

And then he has a comment as well in relation to after 10 business days have elapsed he says there, "Do we need to add here that this delay has been set up for the defendants to lodge an appeal before a competent court of law or is that too obvious?"

And the - and he also has a comment regarding the response of providing the registrar with the required information. He says there, "We should add that obligation as a best practice is not a mandatory requirement for the unlocking of the domain name."

Alan Greenberg: Thank you. And we have several hands up. Volker.

Volker Greimann: Yes thank you. Volker Greimann speaking. Just a question, if this notification by the registrar is really necessary within three calendar days the normal way we handle it currently is that we know that the provider will inform the

complainant and the registrar and the defendant - respondent about the results of the case.

So after we receive this we will inform within usually three business days the complainant if he has one how he can transfer and when he can transfer. And in case of the respondent losing we remove the lock - the respondent winning we remove the lock so I'm not quite sure why we need a three calendar day communication from the registrar for something that is already being communicated by the provider.

Alan Greenberg: And I can't add any insight because I don't understand either. David.

David Roach-Turner: Yes, just a couple of points of clarification, one is just in response to Luc's first comment although he's not on the call quite does this fall under the purview of the registrar. I think there are probably two reasons for that principally. One is that it's the registrar that actually needs to implement the decision and the provider of course can't do this themselves.

And the other I think is that because the provisions in the UDRP require implementation within business days it's the registrar that's of course best placed to calculate the business days that are applicable in that relevant jurisdiction. That's just an observation.

The other is just a comment on the language in Draft Recommendation 9 which says that upon receipt of a decision from the provider the registrar must within three calendar days communicate to each party, the provider and ICANN the date for implementation.

I think the way that the policy reads, at least currently, the rules, is that the provider needs to communicate to the registrar and the parties the decision within three calendar days. And the registrar is then - at least according to the rules - supposed to immediately communicate the relevant day for implementation 10 business days thereafter.

So it's just a factual point. I'm not sure if the point of the recommendation is to reflect the current language of the rules or to suggest some change to them. But as it reads currently it's not consistent in that way with the way that the rules operate at the moment.

Alan Greenberg: And how would you suggest changing it? Now that I read it carefully I realize that what the registrar is providing is not information about the decision that telling the parties the date that will be implemented, which I didn't catch to be honest on my first reading. I'm not also quite sure why it's three calendar days there instead of perhaps one business day.

David Roach-Turner: I mean, I think - sorry, this is David. I think it depends whether what we're doing here is making a recommendation to change the rules and the policy or whether we are proposing a recommendation that's consistent with the rules and the policy.

If the objective is the latter my suggestion would be to change the language so that it reads, "Upon receipt of a decision from the provider a registrar must directly communicate to each party, the provider and ICANN the date for implementation of the decision," because that's the requirement that exists under the policy and roles.

If we're making a recommendation At the policy and rules - or the rules in particular, Paragraph 16 - be changed then I suppose we should say that.

Alan Greenberg: Okay. We have Marika. David, I think that was your old hand. Marika and Volker next.

Marika Konings: Yes, this is Marika. I think one of the things that may help here then is actually to define what directly means. And I don't know if indeed that Kristine tried to attempt to say that three days is immediately - or directly because I think that's one of the things we're trying to do in this effort to really make

clear and as well make sure that ICANN Compliance can enforce what needs to be done.

Because, you know, if we say directly some might say well directly for me is within a week; others might say directly for me is in one day. So I think if we can clarify what we mean - try to interpret what directly means for us I think that may be helpful.

Alan Greenberg: That certainly makes sense because what we're trying to do is add clarity specifically for registrars who may not do this on a very regular basis. Volker.

Volker Greimann: Volker guess I'm just concerned that I'm giving Compliance another tool to shoot myself in the foot with by defining the period that may not - we may not be able to meet. For example if we receive the decision on December 23 then there is no way that will be able to - even by close of business of that day we might not be able to do it because there is three holidays afterwards maybe even more.

So business days - two business days maybe as a compromise might be more applicable than three calendar days because it takes into account business practices of different registrars.

It should also be enough because even if the complainant receives the information of how to transfer the domain name and when to transfer the domain name one day prior to his ability to do so and he's still able to transfer the 10th day.

And finally we've seen a lot of cases where even though we communicated this right away when we received the information from the provider we've seen cases where the lawyer of the complainant doesn't respond for half a year to transfer the domain name. And we have to run after them for something.

So I think three calendar days is a bit too unwieldy for most registrars and it would be better to have a timeline that is in accordance to business practices so business days, maybe even two, yes. Shorten it but make it business days that's essentially what I'm asking.

Alan Greenberg: It's Alan. I tend to support that. I do worry, you know, and, Volker, maybe you have some thoughts on this. What happens if we have a registrar who says I close down from Christmas to New Year's in the first business day after the 23rd is 3 January? Do we need to worry about that kind of scenario or do you believe that that's - and I guess I'm asking David also.

Volker Greimann: Well we could define business days as days of national holidays not days where the registrar closes down so that might be one way. And I'm not sure - I don't have the policy in front of me but how many days do you have for implementation - 10 calendar days or business days?

Alan Greenberg: I'll turn to David on that.

David Roach-Turner: I'm sorry, what was the question again, Volker?

Volker Greimann: How many days - after have a days can the decision to transfer be implemented, is a 10 business days or 10 calendar days?

David Roach-Turner: Ten business days.

Volker Greimann: So that wouldn't - even if the registrar went on holiday for a week, which I know a couple of Japanese registrars do, I would just push back the implementation by that much. And being informed later because of changing it to business days would not put the registrar in a situation where the complainant in a situation where he would be able to transfer at a later date. I don't think it's going to be a problem.

Alan Greenberg: Okay. I tend to like your idea that somewhere we may want to define business days and not make it totally the discretion of the registrar. So maybe that's something we can come back to after we go through all of this. I think in general we have moved away from calendar days especially when the number of days is small because of the kind of situation you're talking about.

David Roach-Turner: This is David. I don't have an especially strong view on the issue but I'm just querying that we're comfortable that we've got coverage under the mandate to make recommendations on adjustment to implementation date in the context of this particular working group?

Volker Greimann: I'm just asking if the policy as it is states business days then, yes, I understand that if we define business days that might be going beyond our scope. But defining business days as well for the response time of the registrar or the information time of the registrar should be no problem. Would that be agreed?

Alan Greenberg: I mean, if we're - in my mind if we're talking about something in relation to one is something locked or unlocked it is within our domain.

David Roach-Turner: But how does when the registrar notify the date on which the decision would be implemented in connect to the question of lock? And I'm not saying it doesn't; I just wonder where that connection would lie?

Alan Greenberg: Well if the decision is to transfer and clearly the domain remains locked until it's transferred. So I think it's still within our scope. The registrar can't unlock it with the current registrant if the provider has ordered the transfer unless I'm missing something. Marika, any thoughts question are we in an issue of missions creep or do you feel comfortable?

Marika Konings: Well this is Marika. As I said, you know, if there's a term directly and there is agreement here in the group that directly means within three business days I'm not really sure if there is a big issue. Of course if people really object and

say it should be calendar days or we shouldn't touch it I think it's something else.

But I think I hear people saying that at least the three business days is considered reasonable and doesn't...

Alan Greenberg: Yes.

Marika Konings: ...change the rules, it just interprets what directly means.

Alan Greenberg: Yes. No I feel comfortable we are not creeping. But, you know, if using the term business days adds a level of uncomfortability to anyone except me then I think it is reasonable that we define that along the way.

David Roach-Turner: This is David. Where you discomfort is if we start talking about making an adjustment to the actual date of implementation itself. I think the question of when, within a day or two, the registrar notifies the parties about when the decision is going to be implemented is one thing.

And maybe it's good to have a conversation about that so that it better reflects current business realities. But where I think we shouldn't tread lightly at least is into the question of when the decision itself should be implemented in accordance with the language in the policy where we've got a fair degree of clarity on that currently. And, I mean, I'm not sure that we need to be discussing that question.

Alan Greenberg: Yes, I don't think we are suggesting that that be changed. I don't think. I've lost track of exactly what the new words are but I think that 10 business days there was just reaffirming what is in the policy right now and I don't think we have the problem.

David, is that a new hand or just the...

((Crosstalk))

David Roach-Turner: Oh, I'm sorry that's a - what was it, a vestigial hand.

Alan Greenberg: Yes. I don't think vestigial is actually the right word in this case but nevertheless.

David Roach-Turner: Redundant perhaps.

Alan Greenberg: Perhaps.

((Crosstalk))

Alan Greenberg: All right, where are we going now? Marika, do you feel comfortable with...

Marika Konings: Yes.

Alan Greenberg: Okay.

Marika Konings: This is just a note that we've actually passed the top of the hour so I don't know if you want to continue further or...

Alan Greenberg: It's just such a fascinating discussion and I never thought I would say that. All right then I would...

((Crosstalk))

Alan Greenberg: You are right, we are passed the hour and I have another meeting not very long from now so I will thank you all and we will continue with Number 10 I think. And please take the time to at least start glancing over the draft report and let's get feedback to Marika on that.

Thank you all.

David Roach-Turner: Thank you as well.

((Crosstalk))

Gabriella Szlak: Thank you. Bye-bye.

Marika Konings: Bye.

Nathalie Peregrine: Thank you, (Ricardo). You may now stop the recordings.

END