

**Locking of a Domain Name Subject to UDRP Proceedings PDP WG
TRANSCRIPTION
Wednesday 14 February 2013 at 1500 UTC**

Note: The following is the output of transcribing from an audio recording of the Locking of a Domain Name Subject to UDRP Proceedings meeting on Wednesday 14 February 2013 at 1400 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-20130214-en.mp3>
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 Roache-Turner - WIPO
Matt Schneller - IPC
Laurie Anderson - RrSG
Faisal Shah - IPC
Michele Neylon - RrSG (Chair)
Luc Seufer - RrSG

Apologies :

David Maher - RySG
Celia Lerman - CBUC
Gabriela Szlak - CBUC
Marika Konings

ICANN staff:

Berry Cobb
Lars Hoffman
Nathalie Peregrine

Coordinator: The conference is now being recorded. Thank you.

Nathalie Peregrine: Thank you very much, (Veronica). Good morning, good afternoon, good evening. This is the UDRP Domain Name Lock Working Group call on the 14th of February, 2013.

On the call today we have Michele Neylon, Volker Greimann, Hago Dafalla, Matt Schneller, Laurie Anderson, Faisal Shah and Luc Seufer. We have apologies from David Maher, Gabriella Szlak, Celia Lerman and Marika Konings.

From staff we have Lars Hoffman, Berry Cobb and myself, Nathalie Peregrine.

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

Michele Neylon: Thank you. Good afternoon, ladies, gentlemen and anybody who doesn't want to categorize themselves as either. As per usual are there any updates, changes or whatever to people's conflicts of interest, statements of interest? Any changes? Going once. Going twice. Sold. Next.

Okay then so as you all know of course I have been avoiding you. No, I've actually been busy. I've been traveling. I was away and I was on holidays and I'm back for now.

I understand you've made lots of wonderful progress in - over the last couple of weeks. And Marika and I had a brief call earlier today just to see where we were at and just to look at, you know, timelines and everything else.

So - oh and, Alan - Alan has joined us. Hello, Alan.

So the - from what I can gather, and correct me if I'm completely wrong, there's a couple of comments on the draft document here that still need to be

discussed a little bit. And there's also a document - oh my God, that all changed. Did somebody move that? Okay. Oh they did, fine.

The (results) document as well with some comments and input from ICANN staff. Now, Luc, you're on the call. Good afternoon, Luc. How are you?

Luc Seufer: Fine, sir.

Michele Neylon: Good, good, good to hear. Now I believe some of your comments - people weren't 100% clear on the rationale behind them. Okay Draft Recommendation 5 your comment there about the payment - I think we've already discussed that so that should be Okay. What was the next one? On Recommendation 9 anybody have any comments on Luc's comment? That's a horrible sentence? Luc's comments, do we need to add here that this delay had been set for the defendant to lodge an appeal before a competent court of law or is that obvious? Does anybody have any thoughts on that? Okay. And also as well Comment 6, what's Comment 6 in relation to, Luc? I'm looking at the thing here; I'm a bit confused. We could add that obligation as best practice if not a mandatory requirement for the unlocking of the domain name. Which obligation? The information for the...

((Crosstalk))

Luc Seufer: Yeah, the obligation from the complainant and winning party to provide its information to implement the decision.

Michele Neylon: Oh okay, perfect. Does anybody have any issues or any other comments on that? Nobody? Okay, I'm going to put myself in the queue.

Alan Greenberg: I didn't hear the question. It's Alan.

Michele Neylon: Hi, Alan. I would welcome you back but I was the one who was away so I'll welcome myself back. The - it's - in Draft Recommendation 9 the wording in

the draft is, "The complainant is responsible for providing the registrar with the required information regarding implementation." In other words the information so that the decision can be enacted basically.

And what Luc has suggested is that instead of making this a - making this more binding. So at the moment it just says, quite neutrally, that it's their responsibility but there's no actual obligation on them to do anything. So Luc would like to see that being an obligation.

And having removed my chair hat I would like to support Luc's suggestion because from our experience the entire kind of expectation from complainants that we, as registrars, are meant to mind-read and know magically what we're meant to do with these domain names and who is meant to be what and where they're meant to go isn't very helpful. So putting my hand down again. Anybody else have any other thoughts on this?

Alan Greenberg: It's Alan. I have a question. Is it really - is the path really complainant to registrar? I thought this has to go through the provider.

Michele Neylon: Anybody?

Laurie Anderson: Michele, it's Laurie. I'm not sure how other registrars handle it but we've had a lot of success over the years in dealing with the authorized rep in the case. So generally that's - the authorized rep is the one that we communicate with obviously along with the provider.

But when it comes time - if the complainant prevails then, you know, everyone is notified and then we request an account number from the authorized rep so that we can place the domain name in that account. So ultimately our communication is with the authorized rep and most often not with the complainant.

Alan Greenberg: Sorry, the authorized rep of?

Michele Neylon: The complainant.

((Crosstalk))

Alan Greenberg: Okay. So it's not the complainant but it's someone who's identified as the person to deal with...

Laurie Anderson: Right.

Alan Greenberg: ...from the complainant, okay.

Laurie Anderson: In the complaint there is always an authorized representative that is identified and that's the person that's authorized on behalf of the complainant, usually their attorney or law firm, to act on their behalf.

Alan Greenberg: Okay got it.

Michele Neylon: Thank you. David or it could be David plus others, I'm not sure.

David Roache-Turner: Thanks, Michele. At least it's David for the moment. Just in brief response to that earlier question from Alan the role of the provider concludes formally at least on the notification of the decision. So the panel renders its decision, the provider is then obligated to communicate that decision to the parties and the registrar.

The registrar is then obligated to communicate to the parties and to the provider the date for implementation but the steps involved in that implementation thereafter do not involve the provider in any technical sense; it's between the parties and the registrar from that point.

Alan Greenberg: But, for clarification, the provider has told the registrar who the person is that they should be - deal with and believe - and is authorized.

David Roache-Turner: Yes, the registrar is on notice of the parties to the dispute and the provider notifies the decision in which the parties to the dispute are listed. So the registrar knows who the complainant is and who the respondent is. And then it's between the parties, typically a complainant if they're successful, and the registrar to then go about the process of implementing the decision.

Alan Greenberg: Okay. Luc's comment, you know, to answer the original question, Luc's comment sounds reasonable.

Michele Neylon: Thank you, Alan. Just following up here, I mean, speaking as a registrar it's not very clear, at times, who can act as the complainant's representative. I mean, it's not very clear to us anyway. So I think clarity here would be helpful personally speaking.

Okay - okay let me rephrase this, does anybody have any issues with making this responsibility a stronger obligation?

Alan Greenberg: It's...

((Crosstalk))

Michele Neylon: Or are we all...

Alan Greenberg: I guess I have a question. If you say they must do it within 10 days or whatever, you know, in the thing, what happens if they don't?

Michele Neylon: Well I suppose the question is - okay I'll explain to you part of the problem at the moment, Alan. At the moment we, the registrars, are bound to implement a decision.

However, if we don't get the information needed to implement the decision and the complainant doesn't understand how domain transfers work, for

example, we had one complainant who demanded that we magically move domains to Network Solutions or Go Daddy or somebody and refused to actually follow instructions, then we could start getting into trouble with ICANN Compliance for not following the UDRP.

So my thought on this would be if the - if there's an obligation on the complainant to do something coherent, as opposed to not doing anything, then maybe - I don't know.

Alan Greenberg: Yeah...

((Crosstalk))

Alan Greenberg: I think you know my answer to that. I'm completely sympathetic with the intent of what you're saying; how do we word that?

Michele Neylon: Oh okay, fair enough. Volker, go ahead.

Volker Greimann: Yes, I just wanted to add to what Michele was saying that there have been cases where we weren't able to implement the decision for years where we weren't able to contact anyone on the complainant's side after having tried a couple of times. And in that case we just wait until they come to us because it's out of our hands.

((Crosstalk))

Volker Greimann: Which, I might add, is not...

((Crosstalk))

Alan Greenberg: The wording of the policy in that situation should relieve you of the 10 days compliance.

Michele Neylon: Yes.

Matt Schneller: This is Matt. I apologize, I'm on the (unintelligible) so I'm not sure if - I'm new here. One thing I've seen registrars do to sort of discharge that (benefit) today window is that they have (unintelligible) from the prevailing party.

((Crosstalk))

Matt Schneller: ...when the complainant prevails (unintelligible) set up an account, you know, the authorized rep or whatever email address for the complainant is there for the proceedings and say, hey, we haven't heard you from about a specific account number so we set this up (unintelligible)...

Michele Neylon: Sorry, I can't actually hear a word you're saying. You're breaking up.

Alan Greenberg: There's an echo.

((Crosstalk))

Matt Schneller: (Unintelligible).

Michele Neylon: Hello. Sorry, we can't hear you.

((Crosstalk))

Michele Neylon: Sorry, it's impossible - I can't actually - I got the first couple of sentences and then you kind of disappeared into something weird. There's a couple of comments in the Chat. Luc was saying, "If providers could add all Whois details fields in the complaint form that would help."

David Roache-Turner, "There are possible practicalities that could better be addressed at the level of best practice than necessarily making adjustments which may come at a certain cost and certainly to the rules themselves.'

And Volker is, "Then it's our obligation to figure out which email address belongs to the rep of the complainant." Okay, Volker, you still have a hand up. Go ahead.

Volker Greimann: That's one of those world-famous vestigial hands, sorry.

Michele Neylon: Okay, I thought, you know, thought you might want to say something. Okay moving on, last bit here, Draft Recommendation 10, "In the case of suspension of proceeding, the registrar is required to confirm that the complainant," etcetera, etcetera, etcetera.

Now Luc's query here is, "If both parties are entered into an agreement is there really a need for the registrar to be involved and to take responsibility for the execution of the agreement terms? As a reminder, there is no mandatory procedure or standards for such settlements. Registrars could easily render themselves liable by playing broker/escrow between one of their customers and a third party with whom they have no contractual relationship."

Any thoughts on this?

Alan Greenberg: It's Alan. Before we go on to there does Berry or whoever is taking responsibility for 9 know what to do with it in response to our discussions?

Michele Neylon: Good question.

Berry Cobb: Hi, Alan. This is Berry. I'm taking notes in the next version of the draft and I'll get with Marika to iron out the details of that.

Alan Greenberg: Okay.

Berry Cobb: But it basically sounds like we need a flag just here for defining what the proper language should be and then ultimately making the decision as to

whether this is truly going to be represented as a best practice versus a change in...

Alan Greenberg: Okay.

Berry Cobb: ...the policy.

Alan Greenberg: Thank you, I just wanted to make sure.

Michele Neylon: Okay. So any thoughts on Luc's comment on Recommendation 10? No takers?

Alan Greenberg: Well, we certainly don't want a situation where registrars are obliged to work with someone and may not get paid for it or something like that. I'm not quite sure how to fix it but the comment sort of seems to have some merit. How often it comes up and is this a real practical issue or a theoretical one would be interesting to know.

Michele Neylon: Okay, thank you Alan. Volker.

Volker Greimann: Well one thing that we have seen happen quite often from time to time is that the settlement or the suspension happens before there is a settlement so that might also flow into this at some point because sometimes it's suspended and then they start working on it a settlement, which may or may not come out into operation so that might also be something that we should look at.

Michele Neylon: Okay thanks, Volker. And then David.

David Roache-Turner: Yeah, just - this is David. The way that we typically experience these scenarios is that one of the parties, typically the complainant, will come to us as the provider and they'll say we would like a period of time, a brief suspension, to engage in settlement discussions with the respondent. We

think the matter can be resolved amicably. You know, we'll grant a brief period if the respondent doesn't object to that.

The proceedings are typically then suspended for a defined period, say 7 days, in which the registrar would receive notice and the parties. And then the parties either come back saying the matter has been resolved, you know, the domain name can be transferred pursuant to this agreement which we've reached and they then attach a copy of that in which case the proceedings are again resolved on that basis and we then advise the parties and the registrars that the matter has been discontinued or terminated.

And in the event that the attempt at settlement is not successful and the parties come back and tell us that's the case then we recommence the proceedings via notification to the parties and registrar.

The actual practicalities of determining whether or not a settlement has been reached between the parties are generally pretty straightforward. They tell us that a settlement has been reached and they provide a copy of that agreement or they don't. It's not a procedure that typically involves much time from our perspective as provider at least.

Michele Neylon: Okay, thank you. Volker.

Volker Greimann: One thing that struck me is that the suspension period is not very well defined in the UDRP rules at this time. So as a registrar I had to figure out for myself what does the suspension really mean for the status of the domain name? Do I keep it locked? Do I unlock it partially? What kind of transfers do I allow? How would I perform that? And that's all policy that we have in, effect made, ourselves.

So it would be helpful for many registrars to maybe have an advisory or some statement that tells them how the domain should be treated during the

suspension and how - what kind of actions may be permissible - at what stage.

Michele Neylon: Okay thank you. David.

David Roache-Turner: Thanks. This is David again. Just to build a little bit on what Volker just mentioned, what we do at WIPO in cases where there is a suspension is that we issue a notice to the parties and to the registrar which specifies the relevant period of the suspension. And this is usually a period that's been agreed by the parties.

We then provide some guidance for the registrar, not an instruction of course but guidance, that the domain name remain locked pursuant to any agreement that is reached between the parties as to the transfer of the domain name and that the domain name should only be unlocked for the purposes of giving effect to any such agreement that would be reached between the parties in the event that there would be no such agreement reached and the domain name should be kept on lock status pending the resolution of the dispute in the usual way.

Michele Neylon: Okay. Any other thoughts on this? So, Berry?

Berry Cobb: Yes, Michele?

Michele Neylon: You're able to make sense of where we're going with this?

Berry Cobb: It sounds to me, for the most part, that, you know - it sounds like this really kind of folds into Draft Recommendation 11 that while Volker says that the suspension period is not really defined an advisory could be useful and perhaps...

((Crosstalk))

Berry Cobb: ...that's where that information goes. But, you know, the way I read it as well it sounds like David, you know, you guys supply that information within the notice. I guess it would be a question that if NAC does pretty much the same thing. And I suspect that they probably do.

Michele Neylon: Yeah, okay. Right. People who have control of Adobe could you put the other document up there please; the input from ICANN staff people.

Berry Cobb: I'm not entirely sure which document you're meaning. Let me...

Michele Neylon: Oh sorry, bear with me one second. There is the email that Marika sent out yesterday there is two documents attached to it. One was draft Strawman proposal updated 13 February, which is the document that was on the screen. And the second one was Strawman proposal comments which is comments from Marika from ICANN Compliance and a couple other things from people - members of the group.

Berry Cobb: Got it. Give me just a second here.

Michele Neylon: Perfect, thank you. David, is that a new hand or an old one?

David Roache-Turner: I'm sorry, it's a vestigial hand.

Michele Neylon: Okay. It's a pity ICANN doesn't have elevator music for those periods when we're waiting for things to be uploaded. I'm a big fan of elevator music.

Alan Greenberg: You could sing to us, Michele.

Michele Neylon: You don't want me...

((Crosstalk))

Michele Neylon: You don't want me doing that; you really don't. That's just a very - that's a very perverse and quite screwed-up concept. But thank you, Alan, thank you.

Right okay - oh I can't move that at the moment. Berry, okay, thank you. Thank you, Berry. Okay so a couple of things here. Draft Recommendation from Marika and then we have some stuff from ICANN Compliance.

So from Marika, "Draft Recommendation Number 4 Working Group may want to clarify that confirm..." sorry, "...what confirm is to the UDRP provider." So, you know, that's a fair enough question. And actually clarifying exactly what it is.

"Draft Recommendation Number 4, would it be helpful to clarify what verification means? What information is requested? Is there a standard template that the registrar can expect to receive? If so would it be helpful to include it or link to it?" Any comments on either of these things so far?

Okay. "Draft Recommendation Number 4, the UDRP does not mention the verification process. Including a referenced definition of the verification process would help clarify that registrars would need to comply with the verification process if that is the objective of the working group." Any thoughts on any of this? No? Okay. Oh, Alan, go ahead.

Alan Greenberg: My hand is up but it's a slow one. On all of these I thought we had suggested earlier on that the more we can do to make this an exercise by rote, by, you know, specific checklist to a registrar, specifically the registrars that don't do this on a regular basis, the better. So, you know, maybe all of these are in the form of best practices or something.

But I think in all these things what Marika is suggesting is that we provide the level of detail which people who do it every day don't need. So I think all of them are things that we should think about doing. That doesn't mean we need to implement them but the implementation should provide them.

Michele Neylon: Thanks, Alan. Just speaking as a registrar who doesn't do massive volumes of UDRPs I would find it incredibly helpful if somewhere on the ICANN Website there was an official thing from ICANN, not from a third party, saying this is what you need to do and this is how you are meant to do it that I could go through and go, right okay, I have a checklist, yay, thank you. But it would need to come from ICANN in my opinion because...

Alan Greenberg: Or the providers because it could...

((Crosstalk))

Michele Neylon: No...

Alan Greenberg: ...for the different ones?

Michele Neylon: No. I disagree on that because I have a contract with ICANN; I do not have a contract with the providers.

Alan Greenberg: But there may be variations between the providers of what they expect from some of these words. I don't know for sure, maybe there aren't. I agree it should come from ICANN but there may be variations based on providers.

Michele Neylon: Okay well I would - I'll meet you halfway and say then the providers should give ICANN the text that they have but I'm not going to go to the provider's Website because ultimately...

Alan Greenberg: Works for me.

Michele Neylon: I mean, that's just my thoughts on that.

Alan Greenberg: No, no...

Michele Neylon: Berry, go ahead.

Berry Cobb: This is Berry. And I think that's exactly what you guys are discussing is the essence of Recommendation 11 on the Strawman. You know, that ICANN will lead the effort of trying to document this, but will collaborate with the providers and registrars and stakeholders as necessary to get the right information up there.

And I would imagine that includes finding a home on an ICANN site that contains his information.

Michele Neylon: Thanks, Berry. I mean just speaking as a registrar/contracted party with ICANN, just from my perspective when I've had queries about some of these things; ICANN's staff always point me at various parts of their Web site. I've yet to see them ever point me to a third party Web site.

Just you know, an FYI more than anything else.

Okay, some comments? More comments from Marika on Recommendation 5. There should be some gap in time between when the registrar lock is applied and when the registrant is notified of the complaint.

Any reason the registrant shouldn't be notified as soon as the lock is applied. Otherwise, the registrant might notice a mysterious lock on the domain name without any apparent reason.

Any thoughts on this?

Alan Greenberg: It's Alan. Presumably, the registrar should you know, do them in close succession. There's still a potential that the registrant may notice something before they'd be notified. I mean, there are real delays in the world, but it shouldn't be substantive.

You know, I suspect we should say that they should notify the registrant, you know, within some amount of time if we don't already say that. But, there's still the potential for gaps, and that's life.

Michele Neylon: Okay. Further clarification may be needed. Is the notification three days after the provider deems the complaint to be compliant? Or, is the notification of commencement three days after forwarding the complaint? Or, is the commencement supposed to happen within three days after forwarding the complaint?

So, I think that really could be summarized as what exactly is the timing - I think. Yes, what exactly is the timing? Trying to summarize it.

Alan Greenberg: I'd have to go back and look at what Recommendation 5 is saying, because she's obviously saying the language there is not clear.

Michele Neylon: Yes. I'm trying to - well my probably at the moment is I've got like 15 million windows open in Word, so I actually can't find the damn thing either.

Alan Greenberg: My problem; this is my fourth hour of conference calls today and it's only 10:30.

Berry Cobb: This is Berry. So draft Recommendation Number 5 states if deemed compliant, the UDRP provider shall forward the complaint to the registrar and respondent and notify them of the commencement of the administrative proceeding no later than three calendar days following receipt of the fees paid by the complainant.

Michele Neylon: Okay. Thanks, Berry. Any thoughts anybody? David, go ahead.

David Roache-Turner: Thank you, Michele.

I just want to clarify on draft Recommendation 5 that the date of commencement is the date of notification. So the way that it works is that the provider conducts its compliance check of the complaint as received, and that essentially means going through the rules and ensuring that the complaint is consistent with the various administrative obligations that a complainant needs to meet.

Then if they are within a certain period, and this is where the three days relates, the provider will then forward a copy of the compliant complaint to the respondent. And, that is the point at which the complainant is notified. That is also defined under the rules as the date on which the proceedings formally commence.

And what that means is that the respondent then has a period of 20 days to submit any response to that complaint as calculated from the date of commencement.

And what I mean by that in shorthand is that the three days here, the three day period referred to in this recommendation, doesn't really relate I suppose in any way to the registrar's involvement in the proceeding. It's a matter that the provider needs to determine in a timeframe that they need to adhere to in order for getting the complaint out. But the registrar will receive notice that the complaint goes out on the relevant day, as will the respondent, and that's the date on which the commencement or the proceeding occurs.

Michele Neylon: Okay, thank you.

Alan Greenberg: It's Alan. I have a question.

Recommendation 5 says the provider notifies the registrar and respondent at the same time. I thought we were giving the registrar a head - a jump to get the lock put on before the respondent is notified. Am I just too tired to understand this?

David Roache-Turner: That's right, Alan. Sorry, this is David. That's correct. That's correct.

The way that the sequence typically runs is the complaint is filed with the provider by the complainant. The provider then looks at that complaint to assess whether it's compliant with the rules.

But before it does that, it issues to the registrar what's called a - typically a registrar verification request. And in that registrar verification request is included a list of questions about, for example you know, the contact information of the registrant of the domain name, the language of the registration agreement, confirming in a perfunctory way that the UDRP actually applies to the dispute, because it's referred to in the relevant registration agreement.

And also, requests the registrar, among other things, to lock the disputed domain name pending the resolution of the dispute.

Once that information is then received back from the registrar...

Alan Greenberg: Okay.

David Roache-Turner: ...the provider then uses it to complete its compliance review of the complaint.

And if there are any inconsistencies between the information that appears in the compliance and the information that's received from the registrar, that's the point at which the provider would typically go back to the complainant and say, "There are some inaccuracies in your complaint, because the registrar has told us so. Can you please amend the complaint to make it compliant with the rules?"

And then assuming that those inaccuracies are all corrected and the complaint is otherwise compliant, and the payment has been received for the dispute, and everything else is in order procedurally, then we proceed to forward that compliant complaint to the respondent and to the registrar, and this is the point at which the proceedings commence. This is the point from which the respondent then has its 20 days to submit any response to that compliant complaint.

If the complaint is not deemed compliant by the provider and it's not cured by the complainant, then the proceedings are withdrawn and the provider sends a notice to the parties and to the registrar advising them of that fact.

And at that point, typically the domain name is then unlocked in due course on the (state) of that notice.

Alan Greenberg: Okay. So it's my lack of sleep, not remembering that this is a second notification to the registrar; not the first time the registrar's heard about it.

David Roache-Turner: It's probably the third notice to the registrar.

Alan Greenberg: Well, whatever.

David Roache-Turner: The registrar probably would - yes. There's lots of opportunities to hear about it.

The first one typically is when the complainant files the complaint with the provider at first instance.

Alan Greenberg: Yes.

David Roache-Turner: The second typically is when the provider goes back to the registrar and says, "Can you please send us this verification information?"

And then the third is the actual formal commencement of the proceedings.

Alan Greenberg: But it's not the lock order. It's something after that. So I withdraw the question, and sorry for taking up the group's time.

Michele Neylon: Okay, thank you. Great. Now I've managed to lose the window. Hold on. Oh, there it is. Okay then. Right. So one second. Just scrolling down. Okay, then.

Alan Greenberg: What's the answer to Marika's question though?

Michele Neylon: Um...

Alan Greenberg: The answer David said is the commencement. It has commenced when the notices is sent out.

Michele Neylon: Yes. I think that's correct. Yes. So, I think that's clearer. Sorry. It's just the number of references to compliant and commencement of notification in that one sentence hurt my poor little head.

Alan Greenberg: Okay. So the provider has three days to do this, but it commences as soon as they do it.

Michele Neylon: Yes.

Alan Greenberg: Okay. So, that would imply that the wording of the recommendation may be slightly fuzzy if she came up with all those questions which don't apply.

Michele Neylon: Yes.

Alan Greenberg: Okay.

Michele Neylon: Now for my...

Man: Sorry. Can you say it again?

((Crosstalk))

Michele Neylon: Of course (unintelligible).

((Crosstalk))

David Roache-Turner: Just a small suggestion on Point 5. The notification - just to clarify that one, the notification is the date on which the provider sends the compliant complaint to the respondent. I'm not sure what the relevance of the three days to this statement is.

Alan Greenberg: Well, I thought it was saying that the provider has three days to do this. Maybe I'm not reading it correctly.

David Roache-Turner: That's correct. The provider does have three days within which to do that. That's right.

Alan Greenberg: Yes. It's - the three days are...

David Roache-Turner: But the two questions are not - they're not - it's not an either/or situation is what I'm saying.

Alan Greenberg: Yes.

David Roache-Turner: It is accurate to say the notification occurs or must occur within three days - no. (Unintelligible) I'm getting confused. The provider has in there three days (unintelligible)...

((Crosstalk))

Man: All right.

David Roache-Turner: ...(unintelligible).

Alan Greenberg: And do we want to make this three calendar days? I thought we were standardizing on business days.

David Roache-Turner: Yes.

Michele Neylon: Well, we need to specify some kind of days surely.

Alan Greenberg: Yes.

David Roache-Turner: At present, it's three calendar days under the rule.

Alan Greenberg: All right. If you're happy with it, I'm happy with it.

David Roache-Turner: Well, we're certainly happy to change it. Three business days is as convenient from the provider's perspective as it is from the registrars.

Michele Neylon: Unless we just send them all on Fridays. But anyway, we won't talk about that.

Moving swiftly on.

Volker Greimann: No objections here either.

Michele Neylon: Sorry?

Volker Greimann: No objections. I think it makes absolute sense to switch from calendar days to business days, because three calendar days is sometimes impossible to manage for the provider if the registrar has a long holiday some weekend and the complaints come in on Friday.

And it's going to be very hard for the provider to make three day periods based on that alone.

Alan Greenberg: Well, but right now we have a situation where the providers are meeting the three calendar days, but obviously they would prefer three business days. I think that's a summary, David?

David Roache-Turner: Yes. That's a pretty fair summary, Alan.

Alan Greenberg: Okay.

Volker Greimann: Just a question from my end here. Do you always meet that? Because even from my experience, I see that there is sometimes situations where we are not able to provide all the answer right away because we have to contact the reseller concerning the language of the agreement, so we are not able to provide all the answers that you're asking for within the three calendar days.

David Roache-Turner: No, that's right. It's not met in every single case, but it's met in let's say the significant majority of them.

Volker Greimann: All right.

Michele Neylon: Okay. We have about - oh, Berry, go ahead.

Berry Cobb: This is Berry. Just out of curiosity, what happens when you don't make it? So it's the fourth or fifth day. It's defined as a rule within the UDRP, but is there a consequence or any negative occur - nothing happens?

Okay, thank you.

David Roache-Turner: It's a good question.

The main point to note about the three days is that it runs from the point at which the complaint is compliant and it's found to be compliant. And it's not always possible to ascertain that until the relevant response is received from the registrar. So it may be that the period of time exceeds the three days.

But on the way that the - the way that Paragraph 4A of the rules works at the moment, at least on one reading, until the complaint is deemed to be compliant, that three day calendar period doesn't run.

Alan Greenberg: So if you get information from the registrar saying it's going to take a lot longer - a little bit longer to get the detail of who the real respondent is, you simply do not deem it compliant.

David Roache-Turner: Well, not if we're relying on certain information from the registrar to ascertain that compliant status. So for example, you know there's certain information that we're only going to be able to get to the registrar. So for example, the rules require us to notify a copy of the complaint to any billing contact information, which is available for the registrant.

And, we're not going to be able to obtain that information except from the registrar because of course it's not publicly available. So until we have that information or response from the registrar, we're not able typically to deem the complaint to be compliant. So, we may need to wait for a period.

This can obviously cause delays if there is a delay in the response which comes back from the registrar for that purpose.

Alan Greenberg: Okay. So you're comfortable with what it says, and the onus is on you to do it, so let's not - we don't need to - we're spending more time on it then.

David Roache-Turner: Sure.

Alan Greenberg: I think that's what I'm hearing.

David Roache-Turner: Yes.

Michele Neylon: Okay, I think.

And now I'm beginning to discern why nobody - no hold a second.

So (Luke)'s saying - so in a nutshell, registrars don't need to replay to the provider within two business days, because I'm confused now.

So do we need to reply or don't we need to reply?

Alan Greenberg: It sounds like you need to reply, but that reply may say, "We're working on it."

Michele Neylon: Oh, okay. All right.

Alan Greenberg: Again, not being a provider or a registrar, that's what it sounds like we're discussing.

Michele Neylon: Okay.

Alan Greenberg: I'm not sure the policy says that, but that sounds like (unintelligible)...

((Crosstalk))

David Roache-Turner: I'm sorry. Can I just inject some context here? This is David.

I mean part of the reason we're having this discussion is to manage risks in cases where disputed domain names are not timely locked. So wherever the registrar does not respond confirming that the domain name has been locked and it hasn't been locked, there's a risk that the registrant of the domain name will take that domain name and register it somewhere else or transfer it

to another party, or whatever the case may be. And, that causes huge complexities in UDRP disputes.

So part of the reason why I think we're having this discussion is to try and agree on a time that is reasonable, and as reasonably tight as it can be to enable the registrars to do what they need to do to ensure that the domain name is locked and confirmed as such.

And so obviously, the longer the period of this time is greater the risk that there is going to be a problem. And I supposed it's also you know helpful I guess to recall that we're talking about a mechanism, the UDRP, that's intended to be an expedited mechanism.

So if we have very lengthy periods of time, you know under which certain things you know are allowed to happen or are allowed to drift, let's say, we can risk the effective operation of the policy in a timely fashion. But, I think it's good to try and keep ourselves focused on where we can, making the time periods as workable as they need to be, but also as they can be.

Michele Neylon: Okay. Volker then Alan.

Volker Greimann: I'm not sure. It have been a while - a few days since I last the UDRP, and I didn't look for this specific topic. But I think the UDRP policy or the rules make some room for the possibility of a registrant change and of a - I think the registrant change - in the case of a registrant change, the new registrant must agree in writing to be bound by the decision, and - on the registrar change, then the new registrar has to lock the domain name.

So I'm not quite sure if a late lock is that much of a problem if the domain is transferred for example, because the new registrar will be bound at that point.

Michele Neylon: Alan or David. I'm confused now, see.

Alan Greenberg: This sounds like one of the things we have to - you know, when we get closer to finalization, we have to read over all the recommendations and make sure that they meet the original reason we were convened here, and that is to make sure that the lock is done properly in a timely manner.

So...

Michele Neylon: Yes.

Alan Greenberg: ...yes, there may be delays in getting the right information to the provider to allow them to carry it out, but that should not necessarily delay putting the lock on. And, we just need to do a sanity check as we're coming closer to the end to make sure that we didn't forget why we're here to begin with.

And, you know...

Michele Neylon: Okay.

Alan Greenberg: ...I think at this point, you know, we almost got to get rid of most of the comments and then read it through and make sure we have something consistent and we don't end up conflicting our - contradicting ourselves into different recommendations.

Michele Neylon: Okay, thank you Alan.

Right. Ladies, gentlemen, boys, girls, and other classifications, we have about four minutes left until the top of the hour, so what I'm - rather than trying to go through the rest of this document, which basically won't happen, what I would suggest we do is as follows.

There's some input here from two parties. One from ICANN Compliance, which could be summarized as, "Will you please - can you please help us?" And what - they've put it in a more wordy way. Basically what they're saying

is that they're not 100% clear on what the term pending means, and would appreciate clarification. And then, go on to give us several examples of where the term pending is used in the UDRP. So, that's what basically all that's about.

So if somebody - now, we've had long - very, very long discussions about this entire concept of pendency, but I think what they're looking for is a simpler, shorter, clearer definition of what it is. And, I'm not too sure exactly what that comment David Roache-Turner is made - is - refers to.

David, just very briefly, what's your comment refer to?

Alan Greenberg: That was in terms of getting things locked quickly.

Michele Neylon: No. I'm looking at the document in front of me here on the screen.

It is in part to address the concluding comment to the compliance team regarding breadth. It - sorry. I don't know - breadth of what? Sorry. I'm not too sure what that is.

Okay, anyway.

David Roache-Turner: This is David. Sorry, Michele. Which part of the text are you referring us to here?

Michele Neylon: Sorry. The second page. It says from David Roache-Turner. "In part to address the concluding comment from the compliance team regarding breadth. It would go down further down the definition route within the (unintelligible), perhaps we consider a working definition," is that your attempt at a definition of pending?

David Roache-Turner: Yes, it is.

Michele Neylon: Okay, sorry. Okay, fine. That makes a little bit more sense. So it was the breadth term that confused the hell out of me.

David Roache-Turner: (Unintelligible). Sorry. The context of that is that there are two relevant events under the UDRP which can affect the issue of dependency, and one is dependency of a UDRP proceeding, and the other is dependency of a court proceeding. And the reference to breadth was just simply to ensure that the proposed definition of pendency dependency applied both to the UDRP and also to the issue of a court proceeding that would be commenced. That's all it captures.

Michele Neylon: Okay, fine. Sorry. It was just - as I say, it was the term breadth confused the hell out of me. But then again, maybe I'm just easily confused.

Okay, then. So right.

What I would suggest then is moving forward next - at the next meeting of - Volker, go ahead Volker.

Volker Greimann: Sorry. I didn't want to interrupt you there.

Michele Neylon: It's okay.

Volker Greimann: I think the issue of dependency is of importance, especially because transfers may occur after a complaint has become pending. For example, if we received the notice on Friday, but late on Friday we have other things to do and not looking at the email or something like that, or it's already past our business hours for a complaint that comes in from (unintelligible), then over the weekend, the domain is transferred accidentally.

Then - and there may be cases where a domain, after the UDRP has become pendent, has been transferred and we might also want to look at that. For

example - and a quick first look procedure for that set of circumstance as well.

David Roache-Turner: I second that suggestion. This is David from Volker.

Michele Neylon: Okay.

Alan Greenberg: It's Alan. If I remember the discussions we've already had with pending is that that there are multiple - not multiple definitions, but there are multiple interpretations of pending and we need to make sure that they're consistent and implementable.

We certainly cannot say - if pending is defined as when the complaint is filed, we cannot say the registrar must have locked it by then, as soon as it's pending. That requires time machines.

And you know, ICANN doesn't provide them, last I checked. So again, we need to make sure that whatever's in the policy defines the terms consistently and only uses one definition.

My recollection is in the old PDP rules that we're no longer working on, a PDP was initiated at three distinct different times, because we reused the word, and we need to make sure that's not the case here.

Michele Neylon: Okay, thank you.

Okay guys, we're - we've gone past 1600 hours my time zone, or whatever time it is wherever you are, so I think - okay, we've gone over. We've got a draft - a current draft - a report which Marika circulated prior to the meeting last week I believe it was, and then we have the Strawman, so there's just a matter really of updating this based on what we've discussed today.

And, there's still a couple of areas where while we may not have a final, definitive definition or decision on something, maybe we might just end up with a couple of alternative definitions as suggestions.

So if you could follow-up - we can all follow-up on this via the email list, and I will speak to you all next week. Thank you. Goodbye.

Man: Thank you, Michele.

Woman: Thanks. Bye-bye.

Woman: Thank you, (unintelligible), and I'll stop the recording.

Man: Thanks everybody.

Woman: Thank you. One moment please.

END