

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings meeting
Thursday 09 May 2013 at 14:00 UTC**

Note: The following is the output of transcribing from an audio recording of Locking of a Domain Name Subject to UDRP Proceedings meeting, on the Thursday 09 May 2013 at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to Inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-locking-domain-name-20130509-en.mp3>

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

Attendees:

Laurie Anderson - RrSG
Hago Dafalla – NCUC
Kristine Dorrain – NAF
Lisa Garono – IPC
Alan Greenberg - ALAC (Vice Chair)
Volker Greimann – RrSG
Michele Neylon - RrSG (Chair)
Matt Schneller - IPC

Apologies:

David Maher – RySG
Juan Manuel Rojas – ALAC
Celia Lerman – CBUC
David Roache-Turner – WIPO
Gabriella Szlak – CBUC
Luc Seufer – RrSG

ICANN staff:

Marika Konings
Berry Cobb
Julia Charvolen

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

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the Locking of a Domain Name Working Group meeting on - I'm sorry, on Thursday the 9th of May.

On the call today we have Hago Dafalla, Alan Greenberg, Volker Greimann, Michele Neylon, Matt Schneller and Jonathan Tenenbaum. We have - who just joined as well Lisa Garono. We have apology from David Roach-Turner, David Maher, Celia Lerman, Juan Manuel-Rojas, Gabriella Szlak and Luc Seufer.

And from staff we have Marika Konings, Berry Cobb and myself, Julia Charvolen.

May I remind all participants to please state their name before speaking for transcription purposes. Thank you very much and over to you.

Michele Neylon: Thank you. Good afternoon, good morning, I don't know if it's evening for anybody; we'll work on the basis that it probably isn't. If you look - if you're connected through on to the Adobe Connect we have an idiot's guide to how to use Adobe Connect.

The reason that that is up there in front of you is because ICANN has started rolling out audio into the Adobe Connect so there's some instructions there for those of you who may wish to use the Adobe Connect audio instead of dialing in. I'm not going to spend any time on this. If anybody has problems with this there are people who can help you. I'm not one of them.

Right, okay did we do a roll call? My brain is really not working this afternoon. Marika, did we do a roll call?

Marika Konings: Yes we did.

Michele Neylon: Oh how did I miss that? Sorry, I've been having an interesting couple of days and my head is, as we say over here, melted.

Has anybody got any updates to their statements of interest, conflict of interest? Have any of the capitalists become communists or anything interesting? Have any of you been bought or sold or changed affiliation? No? Okay. Grand.

Okay then right. There's a reasonable number of people here. We don't have a full complement of people but we do have more than we did have a couple of minutes ago so on that basis I think - unless anybody has any issues we should try to just move ahead and treat this as a normal working group call. Does anybody have any issues with that? Fine, perfect.

Marika or some nice person who has access to these things could you bring up the work plan thingy so that we can have a quick look at that since we didn't really get a chance to do that last week please.

All right, Marika, I'll hand this over to you since you understand this better than I do.

Marika Konings: This is Marika. It's slowly coming up on my end. Do you already see it on your side? I don't think on my side there's some delay. Oh there we go.

((Crosstalk))

Marika Konings: So basically what I did is just updated the work plan from, you know, where we left off in Beijing trying to plan through the delivery of the final report. What I've done is tried to aim that for delivery by the ICANN meeting in Durban, which basically would mean that the Council could at that point consider the recommendation which does mean we have a relatively short time frame to go through the comments and finalize our report.

Again this is just a proposed work plan. If people feel we do need more time, you know, it's a kind of artificial deadline to set it for the Durban meeting but it gives us a point in time to work towards. But I think if we see that we need additional time to work through some of the items I think we can adjust the work plan accordingly.

So the idea is that in the next coming meetings we work through the comments received and basically determine for each of those comments, you know, what our response is or whether that requires any changes to our recommendations and incorporate those then accordingly into the final report.

Just to note that actually the reply period is currently open which is still open until the 17th of May. I checked earlier today and no further comments have come in than those that are incorporated now in the public comment review tool. But I will keep an eye open to see if any further additions are made and if so they will get added so those can be reviewed as well.

So that basically would give us from today's meeting to the Durban meeting. Let me just count, one, two, three, four, five, six, seven, eight, nine meetings if we would want to meet that deadline. So...

Michele Neylon: Okay and at the moment there are only four comments that have been received, is that correct?

Marika Konings: That's correct, four submissions have been made; three of those are on behalf of organizations and one of them is an individual which is, I think, supporting one of the other submissions that were made or reemphasizing one of the points that was made in one of the other submissions.

Michele Neylon: Okay. All right, anybody have any thoughts or input or complaints to make? No? Okay so the - if we wanted to make the Durban meeting then you're saying that we would need to have the final report by July 7, correct?

Marika Konings: Yes, this is Marika. Because basically at that point there's no further need to have public discussion or community debates so the deadline that then would apply is basically the deadline for submission to the GNSO Council to get it on their agenda.

And they're currently in the process of changing that deadline which is now going to be I think 10 calendar days in advance of the meeting which would take us to the 7th of July because the meeting in Durban would be on the 17th of July.

Michele Neylon: Okay. Actually just with respect to that possible change of procedure when is that change likely to happen?

Marika Konings: I think we're already trying to implement it or using it in practice. I've seen in the messages that Glen has been sending out that we're already trying to get people familiar with it but the actual change is currently out for public comment. That will need to go through the 21 plus 21 if there are any comments and then basically the Council would need to adopt it.

So the earliest would be, you know, if we wouldn't get any comments in the 21 days we could close it after that and they could consider it in the June meeting and then it would become immediately effective.

But as I said I think they're already trying to implement it or use the rule in practice as I think the current rule people felt it's too short and calendar days is clearer than using I think currently officially it says business days in the operating procedures. So the 7th of July is already following the new rules basically.

Michele Neylon: Okay perfect. And thousands died in the rush to get their hands up and provide input on this. Okay fine, if that's how we want to play this. Right then okay so does - I'll just ask a simple question. Does anybody have any issues

or problems with us trying to get the final report done for Durban? Alan, please.

Alan Greenberg: Thank you. I have no problem trying. The schedule, when we're talking about still reviewing comments and then a final review of the report in a matter of days stretches credibility. Normally that's...

Michele Neylon: Well there's only four comments, Alan.

Alan Greenberg: Pardon me?

Michele Neylon: There's only four comments.

Alan Greenberg: No, no I understand which may simply mean the review of public comments are far more elongated than they need to. The point I was making was the review of the final report often is the first time in a long time that people have looked at it and things start popping out so just allowing a few days to clean up the final report probably isn't sufficient.

But given that we can probably compress the rest of it I'm certainly willing to let this schedule stand and see where it goes.

Michele Neylon: Right, okay. I think. Anybody else have any comments to make at this juncture? Please, whoever that is please don't die whilst on this phone call; that would be far too traumatic for us all. Marika, go ahead.

Marika Konings: Yes, this is Marika. Yes, just to note, I think, you know, indeed I've built in a lot of time to read the public comments but of course if we do that faster, you know, that would shorten the timeframe there. And, again, you know, there's a lot of flexibility in here to even, you know, go beyond the deadline if we don't make the 7th of July meeting.

And just to note as well of course the review of the final report will partly depend as well on how many changes we need to make based on the comments received. I think that that will, in the end, be the determining factor on how much further discussion or review is needed and whether we will make that deadline or not.

But I think we just all need to take account that in principle the 7th of July is more of an artificial deadline to give us a goal to work towards but it definitely shouldn't be seen as, you know, by that day we need to rush and are not able to, you know, give due consideration to some of the concerns or the comments. So I think that's something I probably would need to take into account when I look at this work plan.

I think something that we'll need to build in and that's something more on my side to do as well is probably already internally talk to some people that will eventually be involved in the implementation of these recommendations to get a bit closer involved.

I mean, they have already had a look at the first draft and have provided input already through, you know, our initial discussion. But I want to make sure as well to draw them into the (date) at this stage so they can as well provide some feedback if there are any issues that they feel need further detail or whether they would already like some input or clarification from the working group as these things move, you know, eventually through the process from, you know, policy recommendations to the implementation stage.

So that's something that in parallel to us discussing I'll take on as well and provide you with feedback when and if there are any further questions as well make sure to feed them into the process as we move along.

Michele Neylon: Okay. Thanks, Marika. Anybody else have any comments at this juncture? No? Okay. Marika, could you bring up the comment thingy please so we can

actually start reviewing the four comments that we have received. Great, perfect.

Right then so we've got four comments. These are broken out with - into general comments, comments on specific - and - let's try that again, sorry. We have - the comments are broken out in this - into comments which are general in nature and then comments on specific proposals from the report.

And they've been organized - it's actually pretty short; it's not kind of a massive tome or anything crazy. So I would hope that we can get through this in a timely fashion. However, we obviously do need to spend the correct amount of time.

So FICPI's comment - a general one - FICPI appreciates the work done by the working group considering that there's currently no uniform approach relating to the locking of a domain name subject to UDRP thereby resulting in confusion and misunderstanding and generally accepts and agrees the conclusions and suggestions now by the working group.

So response, I assume, we acknowledge that and recommended action, none. Any comments on that? No? Yes? No? Okay moving on.

From FICPI. "We have no objection to uniform procedures to be followed by registrars for domain locking as a consequence of a UDRP filing. Such standards will provide certainty to all affected parties in regard to what is already a widespread industry practice that is implicitly called for by current UDRP rules.

Working group response, noted. Noted and this is what the objective of the working group was. I don't know.

Alan Greenberg: Thank you.

Michele Neylon: Thank you. Okay thank you works for me too. Recommended action, finish the report.

Okay now from Com Laude. "While we believe in the meaning of status quo as well as the corresponding prohibition on transferring a domain name during a pending UDRP proceeding should have been sufficiently clear for registrars and registrants..." What? Okay.

"We recognize that some actors have exploited an historical imprecision of the UDRP and the UDRP rules in an effort to frustrate the spirit of the UDRP. We therefore welcome and support the preliminary recommendations in this initial report and appreciate the collective efforts of the working group."

Response?

Alan Greenberg: You have a relatively poor view of mankind.

Michele Neylon: I'm trying - I'm biting my tongue here but okay. Yes, that's actually - thank you, Alan, as you're not a registrar I think you're permitted to say that whereas a registrar I'm biting my tongue.

((Crosstalk))

Alan Greenberg: This is a classic assuming conspiracy when incompetence explains something.

Michele Neylon: Yes, yes...

((Crosstalk))

Alan Greenberg: There are plenty of people who do this the first time or once a year and it's not as obvious to them.

((Crosstalk))

Alan Greenberg: Who's Com Laude anyway?

Michele Neylon: Oh, sorry, Com Laude are a registrar. They're - I think they're affiliated with IP Rota. Volker or somebody might correct me.

Alan Greenberg: Okay.

Michele Neylon: They are primarily - they primarily deal with trademark-y types.

Alan Greenberg: Okay.

Michele Neylon: IP holders more than anything else.

Alan Greenberg: I think the proper answer is - the one that we can publish and not have to explain why we're being nasty - is that we are presuming that our clarity will help those with less experience.

Michele Neylon: Yes, fine. I mean, yes.

Alan Greenberg: Or you can use one of my first comments.

Michele Neylon: Well I don't really mind. Okay the next one, per your recommendation in this context the term 'lock' means preventing a change of registrar and registrant without impairing the resolution of the domain name.

FICPI: "It should be clear that the locking of a disputed domain name means that any request for the transfer of the domain name is denied. The proposed clarification is therefore acceptable and clear. Further FICPI has no objection to the proposed addition without impairing the resolution of the domain name."

I mean, okay thank you. I can't really think what else we're meant to say to that beyond thank you.

Alan Greenberg: Yes.

Marika Konings: This is Marika. One thing we may want to talk about here is indeed whether we want to - because we currently have that language in brackets without impairing the resolution of the domain name whether, you know, the support here and of course it can be seen as well in the context of the other comments received here whether on the basis of that the working group can decide whether or not to leave that in brackets, you know, or to basically add it as part of the definition.

Michele Neylon: So what was that, sorry, Marika?

Marika Konings: Yes, so this is Marika. Basically in the definition we currently have we've put the end of the sentence in brackets. And I think we called out in the report that we were looking specifically for input from the community on whether we should leave that language in or not so that's one of the items the working group will need to decide upon as well. And I don't know if it's, you know, appropriate to do it as part of discussing these comments whether we, indeed, make that change and make it a firm part of the definition or whether you want to leave that to a, you know, to a later stage to discuss that.

But that may be one of the actions where we say okay based on feedback received, you know, we haven't seen any objections to that so we actually suggest now removing the bracket in the final version of the report.

Michele Neylon: Oh okay, fine. All right fair enough, fine. Okay next comment from ICA, which is the Internet Commerce Association. "We have no objection to establishing a standard definition of lock in relation to a domain subject to a UDRP proceeding so long as the definition clarifies that shall not..." Sorry. "So long

as the definition clarifies that a lock shall not impair a domain's resolution or the ready availability to renew it."

So in other words they're reinforcing what Marika was just saying. "As well as uniform procedures to be followed by registrars for domain locking as a consequence the UDRP filing. The filing of a UDRP is a mere allegation that the domain is infringing the complainant's trademark rights and until there's a substantive determination by the UDRP examiner affirming the allegation there is no valid reason for impairing the domain's resolution."

"In fact such nonresolution would constitute exactly the same type of Internet censorship without adequate due process that was a part of protests against the proposed US SOPA and (PPEL) legislation in 2012."

I know what my personal response to that is but I cannot speak for the entire working group. I can try - I can try to be objective. I mean, this - that, you know, that is exactly what we were hoping for. I don't know. Does anybody have any neutral language one would use here? Alan, you're the master of diplomacy.

Alan Greenberg: Sorry, I'm trying to still parse this.

Matt Schneller: This is Matt, just one quick question. From the registrar perspective is that something that registrars would rather have reserved as a matter of contract law between them and their registrants so they can do whatever they are comfortable with having in their agreement as opposed to saying you can or cannot prevent resolutions?

Michele Neylon: Matt, this is Michele. I can't speak for all registrars. I know that my legal counsel would probably flay me alive if he thought I was taking domain names offline without proper due process or for - for some other breach but we would take domain names offline for other breaches of our terms of service so I don't know if that helps you. Kristine, go ahead.

Matt Schneller: You asked the question if there was another breach of...

((Crosstalk))

Kristine Dorrain: Oh sorry.

Matt Schneller: I guess my question was just there's another breach of terms of service along with the ongoing UDRP issue would having something like that - leaving in that bracketed text as a firm obligation limit the registrar's ability to take down the site for some other terms (unintelligible) violations?

Michele Neylon: This is Michele speaking again. Personally speaking if - I wouldn't - if somebody is in breach of our terms of service - so let's just say for arguments sake they have knowingly registered a domain name to spread malware or something like that.

I'm going to take that domain down; I don't give a damn about any UDRP because as far as I'm concerned that breach it would override anything else. But that's just me personally. I mean, Volker or somebody else might be in a better position to speak to this than I can.

Volker Greimann: Yes, we would do the same thing. If it was wrong and the respondent doesn't reply to our request to update it that would be a severe breach and we would deactivate it. We would have the right to delete but the - as long as the UDRP is ongoing we would deactivate.

Michele Neylon: So you put it on client hold, Volker, is it?

Volker Greimann: Yes, client hold and we also remove the name servers just for being a good sport.

Michele Neylon: Okay. Thanks, Volker. Kristine and then Alan.

Kristine Dorrain: Okay this is Kristine and I apologize for the baby fussing. Yes, I was going to mention that I think if we (unintelligible) bracketed language seems fine and so far everyone seems to be in agreement with it.

And we do see that where per registrars do sometimes, you know, not resolve a content or do something else with the name, take it down in some other way because our - the UDRP notice has caused them to look into the domain name a little bit and then they found, you know, (unintelligible) problem or something else.

And I think even some registrars have a thing where they - if they find that there's phishing on the Website or some other really sort of criminal activity that they'll take down the domain name then too. So I think whatever we do needs to respect that process as well. And that - I think that's kind of where we were all coming from when we put that bracketed section in. But, you know, maybe we need to do something to clarify it, I'm not sure.

Michele Neylon: Thanks. I mean, just before I go to Alan, I mean, my understanding of this was that we put the bracket in there was more from the terms of, you know, what the hell does a lock mean? And in simple terms it means that. I personally never envisaged that this would be - this would conflict with anything else. I mean, if I need to take a domain down for some other reason that's separate to the UDRP.

Go ahead, Alan.

Alan Greenberg: Yes, I think what we're saying is what the registrar must do in response to the UDRP. We are not precluding any other action the registrar may take for reasons that are either semi-connected or unconnected to the UDRP. So we're specifying the UDRP response; we're not specifying the whole complement of things a registrar may do in the course of its business.

((Crosstalk))

Matt Schneller: Maybe we just need to clarify with something like the - the lock should not prevent the domain name from resolving solely on the basis of the filing of the UDRP or something just to make sure we're preserving as much flexibility for registrars as we can.

Michele Neylon: This is Michele. That's - I mean, I don't know what the exact wording but I kind of like where that's going.

Alan Greenberg: Yes, so do I.

Michele Neylon: That's helpful.

((Crosstalk))

Alan Greenberg: The comment is well taken in that it is conceivable that someone could misunderstand what we say and therefore we need to make sure we're talking about what the registrar does as a response to the UDRP process. And we're not requiring the registrar to do more; we are not forbidding them from doing more if they have some rationale. But it's not a UDRP issue.

Michele Neylon: Yes, I mean, ultimately this working group is about the UDRP, not about the interwebs. Marika, you have your little virtual hand raised.

Marika Konings: Yes, this is Marika. I just wanted to get clear or clarify the language that I think Matt suggested. So basically what you're suggesting that the definition would then read, "In this context the term lock means preventing any change of registrar and registrant without impairing the resolution of the domain name solely on the basis of the UDRP." Was that the language you suggested?

Matt Schneller: Yes, I think we can start with something like that and tweak it later if we need to.

Marika Konings: Okay thanks.

Michele Neylon: I mean, maybe, Marika, just to kind of get this - put this to bed while I still have some hair left, unlikely I know. If you could post that language to the list and then see if we can thrash it out and tweak it. I mean, it's - I think we all understand what we're trying to say but we need to say it as clearly as we can if that makes sense.

Marika Konings: Okay.

Michele Neylon: Thank you, super-Marika. I'm making Marika blush at least twice per phone call is good for bonus points. Right, okay anything else on this one or are we happy?

Alan Greenberg: Happy.

Michele Neylon: Okay. Moving on, "Per your Recommendation 2..." Now I think this is where we're going to have a little - we're going to have a little bit of fun and games. Okay then.

First comment from FICPI. "This suggested modification is already working in practice in most ccTLD dispute resolution procedures and, as noted, as been an efficient way to avoid cyber flight and secure a proper and safe administrative start of the case. FICPI welcome and strongly supports this recommendation."

((Crosstalk))

Michele Neylon: Okay so we can thank them if we wish, send them flowers and chocolates. Now I see a - I mean, I'm going to read their response now but I know that the ICA has very big problems with this so I'm going to read it but you'll need to have a look at it yourselves because it's worded in a particular fashion and

we need to come to terms with it because there's been more than one submission echoing this.

So, ICA. "We strongly object to the proposed deletion of the current UDRP requirement that the complainant shall provide the responded domain registrant with a copy of the complaint at the same time it is submitted to the UDRP provider on the ostensible grounds that such deletion is required in order to prevent cyber flight."

"As a practical matter this will substantially reduce the time by up to 1/3 that registrants/respondents have to prepare and effective defense against complainant allegations as well as deprive less sophisticated registrants of critical time necessary to gain an understanding of the UDRP process and their rights within it and to locate and secure competent counsel capable of assisting in a defense."

"The report lacks any validation documentations that cyber flight is sufficiently widespread to justify the fundamental degradation of registrant's rights.

Only if verifiable documentation exists demonstrating that cyber flight is a widespread abuse of sufficient negative impacts to justify a remedial response we would alternatively propose that in order to address cyber flight concerns while minimizing any negative impact on registrant due process rights and their ability to manage an effective defense."

The domain registrar would be required to notify the registrant of the UDRP filing at the same time it confirms that the UDRP provider that the domain has been locked and that the registrant be provided at that time with a full copy of the filed complaint to be provided by the UDRP provider to the registrar at the time it transmits the verification request in conjunction with an increase in UDRP response time to 24 days from the current 20 days to restore the effective response time reduction that would result from this approach."

"This will assure that the registrant knows of the UDRP filing as well as its specific allegations on reaching the two business days after the registrar has received the verification request from the provider. If that approach is deemed impractical for any reason then, as an alternative, we would propose at the time in which has registrant has to respond to formal notification of a UDRP filing by the provider be increased by 10 days to 30 days from the current 20."

Marika, was that the comment as submitted?

Marika Konings: This is Marika. Yes, but this specifically to this item; there's as well other parts that they've submitted...

((Crosstalk))

Michele Neylon: No, no that's fine. It's the punctuation that was causing me headaches.

Marika Konings: I may have put things together and taken out, you know, examples or things like that because the whole submission was a lot longer but I think this...

((Crosstalk))

Michele Neylon: No, no I know that, I know. Okay. Anyway I'll - I'm not going to go any further. Right then. Ladies and gentlemen, reactions, please. Alan.

Alan Greenberg: Yes, I'm - to be honest my head is still a little fuzzy and I have trouble understanding the - there's one thing that says 20 to 24 and then later on 20 to 30. And I'm not quite sure I understand the relationship between those two.

Michele Neylon: Okay. Could somebody respond to that?

Volker Greimann: I agree. I would like to analyze this comment a bit more in detail because it raises some important points about registrants' abilities to (unintelligible)

UDRP. And as it's quite wordy just one reading might be insufficient to grasp what is meant by it.

Alan Greenberg: Yes, I tend to agree with Volker.

((Crosstalk))

Michele Neylon: I'm just going to paste in to the chat, for those of you want, I'm pasting - I'm going to paste into the chat a link to the original. There that's - there's the actual original comment as submitted. Marika, you have your virtual hand raised virtually...

Marika Konings: Yes, this is...

((Crosstalk))

Marika Konings: This is Marika. As I understand I think what ICA is saying that, you know, if we can prove, indeed, that cyber flight is an issue and, you know, we have good reason to make a proposal to change this requirement for the complainant to notify the respondent and basically they're saying well then we suggest two alternative approaches.

The first one would be that upon the lock that is applied by the registrar the registrar would immediately notify the registrant that the domain name has been locked and is subject to a UDRP proceeding before even, you know, sending the verification to the UDRP provider. And in that case I think they suggest that that may win some time but they still believe that the response time should be extended by four days so from 20 to 24.

And I think their other alternative is saying well, if you don't agree with requiring the registrar to notify the respondent upon the moment they lock the domain name then we think you should actually extend the response period by 10 days because then we believe that too much time is lost that currently

exists for a respondent to, you know, prepare their response or, you know, get legal counsel.

But that's one they're suggesting, I think, to go from 20 to 30 instead of 20 to 24 which is, I think, in their first alternative to the proposal. That's I think how I've understood or read their comments.

Alan Greenberg: So that means they're implying that the lag between the registrar letting the dispute provider know and the dispute provider notifying the registrant warrants an extra 10 days, an extra 6 days which sounds like overkill to me.

Michele Neylon: Alan, I think that's what they're saying, yes.

Alan Greenberg: Yes.

Michele Neylon: I think.

Alan Greenberg: Okay I made the statement a long time ago saying that when this issue first came up that if indeed we are shortening the response time that a registrant has we should make a compensating change somewhere else to cover it. And I think that's reasonable.

Matt Schneller: I'm not sure that we're doing that.

Alan Greenberg: It does elongate the overall UDRP process somewhat. But if we're trying to help the UDRP by eliminating cyber flight which apparently we have decided based on statistics or whatever that it is a significant issue and particularly on the relatively few times it happens it causes significant problems then I think we need to address the parameters so that the vast majority of people who are - who will not contemplate cyber flight are not impacted.

So I think the gist of the comment is appropriate. The exact timing is something we need to work on. And I'm finished.

Michele Neylon: Thanks, Alan. Sorry about the background noise. One of my managers wandered into my office and just started talking to me. Matt and then Kristine.

Matt Schneller: Yes, I think the ICA comment was predicated on the assumption that the registrant response period would start ticking over at the time of service of the complaint on provider.

And I think the operating assumption for all of us in drafting the report - and we can certainly clarify this - was that the registrant's response deadline will start ticking away from the time of service by the provider onto the registrant which we've - the response deadline for the registrant - the exact same 20 days that they currently have.

So I don't think registrants will have any less notice at all. I think, you know, we've all been trying to change the UDRP as little as humanly possible. And I think that changes it as little as we possibly can.

Michele Neylon: Okay thank you. Kristine, I think you were next.

Kristine Dorrain: This is Kristine from NAF. And, you know, I just wanted to sort of echo that we - the response period officially will not change as a result of this - as a result of this recommendation.

What will change is the practical, you know, or effective response period in that when the respondent receives a copy of the complaint from the complainant then we have to wait for the registrar to verify, then we do a deficiency check and then the complainant has a chance to correct your deficiencies. That's the sort of five days and a short week that they're talking about.

So had the respondent gotten that original complaint from the complainant they would have been on notice that something was coming. And now that

presents its own problem that I think I've outlined for this group before which is the original complaint is filed, you know, only about half of the cases or maybe even fewer than have is that the original complaint that is always - you know, that ends up being the actual complaint because there's amendments that we require the complainant to take.

And sometimes respondents are added or subtracted or domain names are added or subtracted for one reason or another. And so, you know, it's not even really accurate in half the cases. But it does provide those respondents that, you know, with this idea that something is coming down the pike for them.

So it does functionally remove a little bit of heads up notice that I think sounds like many of them are using to retain counsel which I think is interesting given the number of extension requests that we get as providers because the respondents tend to request an additional 21 days to respond - or 20 days to respond if they want.

And with the sheer number of those that say the reason that I need the additional time to respond is because I haven't yet retained counsel. So it seems to me that a great number of them aren't actually retaining counsel in those five days. So I think that's the point of what the ICA is trying to say.

Michele Neylon: Okay thank you. Matt again or is that an old one?

Matt Schneller: I'm putting my hand down.

Michele Neylon: Okay. Marika, go ahead please.

Marika Konings: Yes, this is Marika. I'm just wondering, you know, based on Kristine's comment because I actually wasn't aware of this possibility to ask for an extension, whether a possible alternative compromise could be that as part of the notification that's either provided by the UDRP provider or the registrar if,

you know, the working group would agree that upon locking the registrar is required to notify the registrant that their domain name has been locked because they're subject to a UDRP proceeding that as part of that notification information needs to be included on the fact that they can ask for an extension.

And I don't know if here are certain - they need to do it in a certain way or in a certain timeframe but that that information is provided at that point so that indeed it is clear for a respondent that, you know, that indeed they have an opportunity to ask for more time if they need to, indeed, digest it or ask for, you know, look for external counsel.

So I don't know if that's a possible alternative or compromise to address the concern here that less time may be available to the respondent if, you know, they are aware that they actually can ask for an extension or ask for more time which would even widen the gap if we're talking about that it would be 20 and maybe plus I think 6 days has been suggested that the gap may be between the filing by the complainant and actual notification by the UDRP provider.

Because that would actually say you can ask for 21 days additional time. So it may just be a suggestion to consider.

Michele Neylon: Okay thank you, Marika. Just a note from Matt there in the Chat. Registrars are going to object to any affirmative obligation beyond lock, right? I can't see why to have agreement from the registrar community that they must notify their customers upon lock. Speaking as a registrar, yes, I can see that causing me headaches.

Alan, go ahead.

Alan Greenberg: I'll suggest a compromise which I don't really - I think is getting to be a little bit out of our scope in that we could tweak the first response time by increasing it

and delay the amount that the extension could be made which gives the overall time to the complainant the same and gives the same time to the respondent if they don't ask for an extension.

But I'm a little worried that it's going a little bit beyond our scope. But so in other words make it 24 and 17 or something like that instead of 20 plus 20 or 20 plus 21.

Michele Neylon: Okay.

Alan Greenberg: You don't really want to increase the amount of time it takes to complete the process. That's not reasonable to the UDRP - the person submitting the UDRP. On the other hand I think we owe, you know, on the assumption that there are some registrants who are not guilty of cyber squatting. We owe them, you know, a reasonable time to respond. So maybe that's a way of doing it. It's a little bit too invasive for my level of comfort but it is an alternative.

Michele Neylon: Okay. Matt, go ahead.

Matt Schneller: Two comments. The first the - I believe extensions are a matter of the provider supplemental rules and are up to however they want to conduct their proceedings at the moment. I don't think extensions are available as a matter of right.

And I guess the broader and maybe more hopefully useful comment, the way the current UDRP works and the timing works I think is actually - it gives respondents less total time to deal with the final version of the complaint that whether they get to keep or must transfer the domain name based on when the proposed change was.

The proposed change would require - would start the 20 day response deadline only after imposition of the lock which would only occur after sort of

the final version of the complaint with whatever changes that needed to be made to it after initial filing were made.

So I - I think if anything it just is absolutely clear that the proceeding - the registrant will in all cases have 20 days. I think some registrants when they get served the initial complaint, which obviously - under the current rules - which obviously happens before the notice of commencement issues (unintelligible) under the assumption that their 20 day timeline runs from the time of service by the complainant rather than from the notice of commencement from the provider.

So, you know, I think under no circumstances will any party have less actual time to provide their response than they currently have.

Alan Greenberg: I'm not following that. It's Alan.

Michele Neylon: Okay.

Ag: I thought we had said that they have 20 days from the actual formal start of the complaint but they have N days ahead of that because of the notice directly from the person filing the UDRP and they will not have that now.

Michele Neylon: Matt.

Matt Schneller: What they'll have notice of is something that may or may not be the ultimate complaint. They're not getting the final document on which they win or lose - on which the complainant or respondent wins or loses any earlier or later than they're currently getting.

And you can't provide any notification that a claim has been filed prior to that without running into - in that earlier notification is exactly why cyber flight is a potential issue and the only reason why it's a potential issue.

You know, you can maybe shave a day, half a day, something minimal off that timeline by requiring registrars to provide notice upon imposing a lock. But it (unintelligible) obligation on a registrar who - frankly the registrar is not the party that the UDRP is directly focused at on anyway.

The terms of the UDRP refer to you as the registrant throughout a UDRP. So I'm not sure that that's a great way to do it; it just add - without a lot of cost to the registrar community and another step that they're responsible for without providing much in the way of affirmative notice to the - to the registrant.

Michele Neylon: Is that any better, Alan?

Alan Greenberg: No, not really because yes in some cases the registrant is working on wording that may not be what the final UDRP says or there may be other respondents added but they've still gotten a heads up that something is coming.

Michele Neylon: Kristine.

Kristine Dorrain: This is Kristine from NAF. And I just wanted to say, you know, I think we're dealing with sort of logistics here, right. So the people that are actually, you know, going to be responding - because you have to remember only about, you know, only about 25%-30% of cases even get a response.

And then you're going to hire counsel and you don't need that full amount of time and are not going to be serviced by the fact that the providers do offer options for extensions and, you know, would want to take advantage of those few days is going to be a relatively small percentage.

And we've already discussed that, you know, the cyber flight is a relatively small percentage with the, you know, each one sounds like it has a pretty big impact. So it sounds like it's kind of going to come down to, from my

perspective, which does this committee feel is the most harmful to the UDRP process?

Do we feel that complaints are more disserved by having to deal with the runaround of the cyber flight, you know, providers and complainants? Or is it a bigger deal and more important that the respondent, you know, gave a couple of extra days of notice. And I don't mean to just minimize that because I'm asking it as a legitimate question, not a rhetorical question.

So I thought I would throw that out there for discussion because, you know, just statistically speaking, you know, the number of people who will be utilizing that extra time is pretty small.

Michele Neylon: This is Michele. Just before going any further with this, I mean, statistically speaking how many cases of cyber flight do you see as a percentage, Kristine?

Kristine Dorrain: I can't recall what we reported to you but it was some small percentage. It was like a half a percent or 1% or something. But those cases cause a vastly disproportionate level of headache for the complainant, for the providers and for ICANN.

Michele Neylon: Okay. Mr. Greimann.

Volker Greimann: Yes, just wanted to raise the point that I do not agree with the sentiment that as the number of respondents that actually respond is very small we should not worry about any shortening of time spans because the majority of UDRP cases won't be affected because those are the ones that are important where we have complaints that are worth fighting about from the respondent - those respondents that have a right or think they have a right to the domain name.

And cutting short any of the response times those respondents need is I think worth protecting their safety.

Kristine Dorrain: To be clear, Volker, I didn't mean to imply that that was insignificant or unimportant. I was merely pointing out that the number - sheer number is a small number as is the number of cases of cyber flight are also a small number but a very high importance. So I just think the committee needs to sort of be able to weigh both of those, that's all. I wasn't trying to make any value judgment on that, I apologize.

Michele Neylon: Okay.

((Crosstalk))

Michele Neylon: Anything else, Volker, sorry?

Volker Greimann: No, I agree with that.

Michele Neylon: Okay. Alan, go ahead.

Alan Greenberg: Yes, Volker said pretty much exactly what I said earlier that, you know, on the assumption that there are some cases where there is, you know, the UDRP is won by the registrant and they should be given - in fixing this lock problem, which we were called upon to fix, we should not be disadvantaging them to any extent.

And I really don't know whether the impact by lengthening the overall process or potentially lengthening the overall UDRP process is, you know, what the impact is in reality. If we were designing this whole thing from scratch we could add a new response date, you know, simply saying serving notice that you will respond.

And, you know, that's due within 10 days and it triggers another 14 days or something like that. So...

Michele Neylon: Okay.

Alan Greenberg: ...you can verify the ones where there is no response at all quickly. But I think that's a little bit out of our scope to do so I'm not in a position to evaluate what the impact is on all the successful UDRP cases of adding a few days onto the 20. I'm just out of my depth in talking about that. So I guess I'd like to try to understand what that impact is.

Michele Neylon: This is Michele speaking as - not speaking as the chair but speaking as a member of the working group more than anything else. A silly suggestion, I mean, maybe not that silly but just a suggestion, preliminary Recommendation Number 2 doesn't actually directly address the entire thing around lock, what constitutes a lock, what doesn't constitute a lock.

And it isn't, in many respects, core to providing the clarity which this working group was meant to provide. So maybe to replace that recommendation might be to say that in a future review of the UDRP the issue surrounding potential cyber flight may need to be addressed. I don't know, I mean, just a crazy thought.

Alan Greenberg: It solves our problem but I think it's a cop-out. Alan speaking.

Volker Greimann: I also think that it's something that should be looked at in a reform of the UDRP but it's not directly within our scope here.

Kristine Dorrain: Yes, this is Kristine. I think that kind of goes back to the - a long time ago we were sort of wondering how - if this was really in our scope. And I think, you know, pushing it back on to a reform of the UDRP sort of does put it back under the proper, you know, category for discussion.

Michele Neylon: This is Michele. Just addressing a couple of reactions there. I mean, Alan, maybe it is a bit of a cop-out but maybe it isn't. And I'll explain what I mean.

Some of the changes that this kind of thing could involve are quite fundamental changes to the UDRP as a whole.

And there is meant to be a review of the UDRP in the future where a comprehensive review, tweak, change and everything else, will be able to address a lot of different parts of this including a whole range of other things.

So, I mean, personally I don't have an issue with saying, look, you know, we've looked at this, we have quite a bit of data that we collected, we've discussed it. It's really outside our scope to try to solve this. I mean, Phil Corwin and other people have raised very valid issues here.

So, I mean, I don't know, I mean, or if you want I can just be much more (brat-faced) and say I don't mind saying yes it is a bit of a cop-out. I hope you're not offended by that, Alan.

Alan Greenberg: No, I'm not offended. I could live with it. I think if we do that the report has to really go into the logic of why we went partway down and then back down so that the thought processes are not lost.

Michele Neylon: No that's fair enough; that's fine by me. That's absolutely fine by me.

Alan Greenberg: I think it's unfortunate what - I think what we're doing is a good thing but if the second and third order effects are such that we can't fix them without starting to be too invasive maybe that's the case.

Michele Neylon: I mean, Alan, I think that's part of the problem that you can't - we can't - I mean, to be able to deal with this in such a fashion that you're not - you don't have the nasty unintended consequences you end up having to make massive changes in a lot of different places and I think that's the problem.

Alan Greenberg: Well...

Michele Neylon: And I've just realized it's gone past the top of the hour. Oh my God. Volker, did you want to have a last word?

Alan Greenberg: Yes, just one quick...

((Crosstalk))

Volker Greimann: No, it was just a vestigial hand here.

Michele Neylon: Okay.

Alan Greenberg: Yes, just one quick comment. There is a simple change and that's simply to extend the 20 days by 4 days or so. And what I don't understand is the impact, you know, on the rest of the UDRPs which are successful on that and what would be the act - the reaction of the IP community to us doing that?

Michele Neylon: Okay.

Alan Greenberg: And if we could gauge that then that might be a simple solution or it might be totally unacceptable. So I think we almost need to throw out a trial balloon to some IP people and see what their reaction is. I suspect I know but.

Michele Neylon: Okay. Right. It's the top of the hour so actually from the starting off of not - potentially not having a meeting to actually having a meeting and some substantive discussion it's a pleasant change. I will not be on the call next week due to the fact that I can't be in two places at once. Alan will be on the call assuming his voice and everything is functioning correctly.

And I look forward to speaking to you all in two weeks from my case and next week in the case of Alan. Thanks.

Alan Greenberg: Thank you, all.

Michele Neylon: Bye.

Volker Greimann: Talk to you next week, Alan. Bye.

Marika Konings: Bye.

END