

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings meeting
Thursday 16 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 16 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-20130516-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
Matt Schneller - IPC
Faisal Shah – Individual
Gabriella Szlak – CBUC
Ty Gray for David Roache-Turner – WIPO

Apologies :

David Maher – RySG
Michele Neylon - RrSG (Chair)

ICANN staff:

Marika Konings
Lars Hoffman
Berry Cobb
Julia Charvolen

Coordinator: Thank you. The recording has been started and all lines are active. Please go ahead.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the Locking of a Domain Name Working Group call on Thursday the 16th of May.

On the call today we have Hago Dafalla, Kristine Dorrain, Lisa Garono, Alan Greenberg, Volker Greimann, Matt Schneller, Faisal Shah and Ty Gray. Apologies from David Maher and Michele Neylon. And from staff we have Marika Konings and myself, Julia Charvolen.

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

Alan Greenberg: Thank you very much. As noted Michele is not with us today and I'll be chairing. I still have a bit of a cough so if I start hacking halfway through please forgive me.

And first is there any changes in Statements of Interest? Seeing no hands, hearing no one screaming out we'll assume not and we'll continue on with the agenda of continuing with the review of the public comment tool.

Marika, you raised two questions when you sent out the agenda; do you want to review those now or do you - in your mind is there enough comment that we want to go back over them and try to put them to bed at this point?

Marika Konings: This is Marika. The only feedback we received was from Gabriella, which she sent earlier today. I don't know if people had a chance to review that. And I don't think she's on the call yet.

I think the first - her comment on the first one is quite straightforward. I think it just says that maybe we want to put some additional explanation in our response that, you know, renewal is currently possible under the UDRP rules and that's not something we're looking to change.

I think for the second one I think that's actually something that's anyway on our agenda for today to look further into. But it may make sense for Gabriella when she joins to explain herself, her thinking. I think in short I think she agrees or would support an extension of the response time.

But I think she also asked the same question that I think we also raised at the last call that may - it would be good to have a better understanding probably from the feedback received from UDRP providers how much time there actually or typically is between the initial filing by the complainant and the moment that, you know, the commencement, artificial 20-day clock starts ticking.

Alan Greenberg: Right. Do we have any - Does Kristine or Ty have any input on that? I don't know whether we gave them advance warning. Kristine, you have your hand up.

Kristine Dorrain: Yeah, this is Kristine Dorrain from NAF. And I think I've mentioned this previously but there's the official window, which is the complaint gets filed. We have three days in which to do a deficiency check. The complainant has five days in which to amend their complaint.

Assuming that gets done then the complaint gets commenced. So it should be commenced in no more than eight days. If somebody drops the ball in the meantime or, you know, the complainant basically drops the ball in the meantime then the complaint gets dismissed out from underneath them.

Now the biggest question mark is what we're talking about here today is the fact that we can't start the commencement or the deficiency check until we have the lock from the registrar.

So in many cases we can receive a case and commence it that day or the next day if we have a registrar that's responding in the same day or the next

day like, you know, when we have cases with Go Daddy we can often commence them the same day if there's no other errors in them.

So the problem is is when we have registrars wait and sit on it for, you know, two days, five days, two weeks, a month that's what delays the process. And, you know, it's sort of the flipside of Phil Corwin's, you know, the problem he mentioned.

And I think it's - I think it's realistic. I don't disagree with what Gabriella said as far as how the, you know, the respondents have sort of come to view those extra days as being sort of a de facto additional response period.

And I don't think there's fundamentally any problem with that. But I often wonder if certain registrars don't delay responding for that week, two weeks, specifically for that purpose to give the respondents extra time. I don't know, I mean, it's just sort of been a suspicion that I've had over the years. There's absolutely nothing to base that on.

And I'm not saying that we need to, you know, protect against that in any way. It's just that, you know, that is the one place that slows it down. Otherwise the UDRP defines the number of days that you have between the filing and commencement. So really the only party dragging their feet in the process is the registrar.

Alan Greenberg: Okay thank you, Kristine. Ty.

Ty Gray: Yes, hello. This is Ty. So a lot of what Kristine mentioned there of course is very valuable with regards to how the process runs. Of course many cases, most cases, we see here, you know, we get and we send an email to the registrar, things move along rather smoothly.

I just wanted to maybe take the time now just to emphasize, as a procedure, you know, we note that most cases of course don't see a response, you

know, around 75%, still. And in the cases, for instance, under ccTLD there are many that don't have a provision for notice to the respondent.

But in this regard I wanted to point out that - I'm sorry there. I wanted to point out that currently under the rules, Paragraph 5(d) does have a provision already which notes that at the request of the respondent the provider may, in exceptional cases, extend the period of time for filing of a response.

And we do see occasionally requests that do come in. But it's noted that, you know, irrespective of how much time a respondent may have had, you know, prior to the formal time period as provided, the formal 20 day, you know, typically we don't see many responses.

It doesn't seem to be something that we see a lot of where parties are being, you know, utilizing this extra period of time. Of course we don't necessarily see all of that I would say to be fair. But there do exist some mechanisms, I think, already built in to the process that kind of takes this into account.

And as Kristine noted that usually these time periods are rather thick and they usually do proceed rather smoothly.

Alan Greenberg: Okay. I have a question. How many of the responses tend to come in towards the end of the 20-day period?

((Crosstalk))

Alan Greenberg: Either to Ty or Kristine.

Ty Gray: This is Ty again. Of course typically we do see them coming in near the end of the deadline period. They do - we do actually get some - it is common to get communication throughout the process especially where a party might not be as knowledgeable in that we do see a lot of communications.

But typically that is the case, just speaking off the top of my head, that they would utilize most of the time - I wouldn't say all of the time - all the time.

Alan Greenberg: Okay so we, of course, can't tell whether that is effectively delaying until the period is almost over or they actually need the time. So I'll tell you my inclination of this, taking off chair hat for the moment.

And the alternative we seem to be looking at is either one of three: either sticking with what we have right now. And I think respondents have a strong and valid objection as has been noted by a number of people. Backing out on the change altogether and not - and allowing the complainant or requiring the complainant to still notify the respondent.

Or extending it by some number of days and putting - excuse me - putting that in the preliminary draft and seeing what the answers that come back. And my inclination is if we're going to end up giving up on the substantive change that we've discussed a lot I think we should be doing that based on input not just unilaterally walking away from it right now.

So in my mind it comes down to coming up with a reasonable number of days which may map to a typical number of days that we see between the original message from the respondent - from the complainant - and the UDRP formally commencing. And I'm guessing that's something like five or six days on the average.

So I guess I'd like comments. You know, does that sound like a reasonable way forward at this point? And if so how do we come up with that typical number of days? Ty, is your hand still up or is that...

Ty Gray: I can provide just a general reaction. Of course I would welcome other people's comments on this just to get some proportionate understanding. But on thinking about this particular topic, you know, and reflecting upon the fact that there's already something that's built into the rules as it stands and then

also reflecting on what we see a lot of our realities are meaning that, you know, there's a lot of response defaults out there altogether that, you know, if it's considered necessary by this group that some sort of allocation of time be given to the respondent that it should be, of course, in light of the - what's happened before proportional to what has gone on.

Meaning that if there was a brief period of window that was available, you know, that such would be proportional to any sort of extension. And in light of the mechanism that's already provided for under the rules and in light of the vast number of defaults something that maybe - something that would be requested by a respondent if it's necessary.

Now this is taking that - if we were to go down this particular path and I think there's been other comments that have made where it's been reflected on the fact that, you know, there is a formal period for response. What we're proposing doesn't necessarily change the formal time period for response.

But in light of other comments that we receive if we feel it's necessary to go down that path that concept of proportionality to what's gone in the proceeding and in light of the response default that we do see the fact that it should be requested perhaps as another point that should be taken on. That's just sort of my reaction, of course, to this situation.

Alan Greenberg: Kristine.

Kristine Dorrain: Yeah. I wanted to just ask Ty a quick question. So this is Kristine from National Arbitration Forum for the record. I'm wondering because, you know, you mentioned that - and I know I mentioned in the Chat that we both have extension periods.

I don't quite - I'm not quite sure how WIPO's works but ours is you've got 20 days at Forum's discretion and you pay \$100 fee for the extension. That's what the respondents can get.

So are you proposing that - or are you - I know you're not proposing, I know you're not even necessarily saying you agree or disagree with this. But is your hypothesis that then perhaps we offer a five-day or whatever it is the group decides, sort of free extension to anybody who asks? And then we add the 20-day extension - that paid extension on top of it? Or sort of what was your sort of visualization of that?

Ty Gray: Well I guess, you know, I don't want to propose anything right here. But my first reaction is that, you know, the first thing that comes to my mind is that well there's - there is a response period that response period remains unchanged with our proposal, first off.

Second, you know, there is an understanding that under the UDRP system there are, you know, a period of days between when a respondent would receive notice pursuant to the rules at the outset of the case when it's filed and then when we formally commence.

And that period of time varies so there's somewhere if - you mentioned Go Daddy would return back the same day and you kick it off on the same day then, you know, that would be different than if you had mentioned, you know, a period of months, delay, although that would be unusual.

And also given what we have already proposed, you know, rather unacceptable, I would say, length of time for a response from a registrar, you know, that's my first - my second reaction there.

And then when we go on just noting the fact that it is rather rare that we do see requests that would be in line with this under Paragraph 5 of the rules. And I would just say off the top of my head when I do see that it would be something like a religious holiday or something comes up and the people were out of office and they were able to document that as the languages say, exceptional circumstances.

All this just being offered up for the group if they consider it necessary to go down this path to utilize these tools. I know in listening in to the different conversations we've all had here that we like to minimize our impact on the UDRP process meaning the kinds of changes that we would recommend.

But that all being said, you know, I imagine we'd want to, at the outset, reduce our impact but if we need to consider these things that these concepts be brought forward.

So I haven't had time to reflect. I know our processes and when we see these sort of exceptional extensions of time at the WIPO Center we normally would take that into account or also ask the complainant for its comments when relevant and then proceed to issue some sort of extension.

So I'm just - and instead of giving a proposal it seems like I'm just saying these are the mechanisms, the tools I see that are perhaps useful to address this. If there is, indeed, a feel that we need to do this, you know, and mentioning the - what Alan had said there about the three options that are available for myself, I'm not willing to say what we should, you know, just give up the work that we've done and just move forward or we make certain recommendations.

Or if we do make recommendations that certain options are, again, then put on the table for whatever next step is to be considered in this process. That's sort of what I have in mind. It's kind of a mess of ideas right there.

Kristine Dorrain: Thanks, Ty. That's exactly what - that was exactly my question. And I do understand that you weren't making any proposals. Thanks.

Alan Greenberg: I on the other hand will make a proposal. And again I'm taking off my chair hat and in my normal mode.

I would consider it unacceptable to say that to get what a respondent typically gets now, for those who are responding of course, they have to file for an extension and perhaps even pay a fee. And I don't think I'd make the situation as complex as adding a short free extension and then a paid extension. I think that just confuses the issue.

So I would propose that we change the 20 to, let us say, 24. One could argue if it should be 25 or whatever. But as reflecting the typical amount of time that the respondent gets and go forward with something like that. Does that sound acceptable to the - both the, you know, to both registrars and the providers as a way forward?

Kristine Dorrain: No I don't - Alan, this is Kristine Dorrain. I don't know that the 24 is - I mean, I don't know if the providers so much care. I mean, I'm sure Ty can weigh in on what WIPO thinks. You know, we're just here administering the policy.

But I will tell you that I don't think that the brand owners are going to like it because they want a fast process. You're adding four days to the process which is supposed to be pretty fast. I mean, most cases of ours get taken down in 45 days. Many times they get taken down in 30 days.

So you're adding four days to the process. And for what? For the handful of respondents that actually are going to be affected by this? Because you have to talk about the universe of respondents who are going to respond and were the victim of some sort of delay by their registrar of choice.

So I'm not opposing the idea, you know, on my personal behalf; I'm just saying I think you're going to get a lot of flack from the brand owner community.

Alan Greenberg: Indeed. And that is where the - that is where the objection is going to come from. And essentially what we're saying is we're trading those four days to

significantly reduce, we hope, cyber flight. And the question is, is that a reasonable tradeoff or not?

Kristine Dorrain: I think we can sell it.

Alan Greenberg: I'm proposing it as a disinterested party because I don't play in this field at all. And that is really the tradeoff that we're talking about as opposed to backing out, leaving in the original notification and we're essentially where we are today. Volker.

Volker Greimann: Yes. I also think that we can sell it. First of all the UDRP is not a takedown mechanism; that would be the URS as (unintelligible). The UDRP is a mechanism to take ownership of a domain name. And in that case, yes, I do propose that we should be protecting the registrant that wants to defend his domain name because he believes that he has not violated any third party rights by his registration.

Even if it's only 10% or 5% of all cases that's a significant number. And for the registrant that is faced with this situation that is significant.

Alan Greenberg: Thank you, Volker. Anyone else? Marika.

Marika Konings: Yeah, this is Marika. I'm also wondering that, you know, with the new requirement we have that the registrar needs to lock the domain and respond within two business days; whether that already, you know, will reduce the time as well that currently is being used so that indeed the four days will balance out, you know, those two different elements and, you know, basically land us back at the same timeframe that, you know, currently is available to registrants to respond to cases that are filed against them.

Alan Greenberg: That's a good point, Marika. As Kristine said, sometimes they see a month and that's obviously an extreme case. Ty.

Ty Gray: Sure, I just again just want to echo a bit of what I was saying before about the response we have with regards to requests and the exceptional circumstances. Again, there already does appear to be something that we can utilize if this is something that is seen as a necessary action.

And I think in pulling I guess a number - just a hard number may not be appropriate in all circumstances and also in the large number of cases would serve to merely just extend the process which would just (unintelligible) response default in any event.

So I think that we can - if we want to do the - and knowing that there would be, I would say it's probably a very good point that there would be push-back from certain groups in light of this proposal that we can utilize that and be a bit more proportional at WIPO Center of course an email that's been sent in from a party that just say hey, I need an additional period of days because of this particular reason or that is treated a request in that manner.

So it's not necessarily I would say something that would be a complex or exceptionally burdensome thing at a respondent who's already in the process of writing his own response - his or her response to the complaint.

So in this light I think that if we want to be like coming up with these sorts of proposals it can be useful to maintain this vision of proportionality and utilizing the tools we already have at our disposal.

Alan Greenberg: Yeah. Thank you, Ty. I think the counterbalance of that is those of us who feel we shouldn't use the extension process to make up for what is a, you know, a action that we're essentially taking to shorten - possibly shorten the period of time. You know, I feel that would be inappropriate.

Certainly it's an option they have but not (unintelligible). Do we have any comments from IPC members on the group? We have Lisa and Matt. Lisa's on the call in any case.

Matt Schneller: Hey, this is Matt. I'm on the bus at the moment but I'll be off in just a second. So, yes, but I'll defer it until you don't have to listen to bus noise.

Alan Greenberg: Okay.

Lisa Garono: This is Lisa.

Alan Greenberg: Yes.

Lisa Garono: I think if we add additional time in we're opening the door to a wholesale revision of the UDRP. And we're going to end up with a lot of activity and a lot of action and we're not going to accomplish anything.

Alan Greenberg: I'm not sure what you mean by opening up the door. At this point this is the only PDP in town and the wholesale...

Lisa Garono: I understand that.

Alan Greenberg: ...the wholesale revision is coming some time in the future.

Lisa Garono: Right. But what we have been doing so far has been taking the UDRP as it exists and taking terms that appear to be ambiguous and defining them. Now we're actually changing something.

Alan Greenberg: Well we - just for clarity we have made the change - the suggested change of not notifying the respondent. And we discussed that a very long time ago. So I think what you're saying is you would prefer to leave the concept of - the possibility of cyber flight - leave that the respondent be notified and not change the delay even though we're reducing the delay somewhat by setting a time limit on the registrar lock requirement.

Lisa Garono: Well it's not really - what I see happening is that if you propose this I think a lot of other things are going to be proposed in the comments. "Well, if we're doing this we should do this and we should do that." And in the end we aren't going to - we're not going to get anything that we want.

Alan Greenberg: Okay I will point out it's not "you" it's "we."

Lisa Garono: I understand, you know, it's just - you know, and it's not a - this is not a substantive comment in terms of I want it or I don't want it; this is sort of a - this is what I see as a process thing.

Alan Greenberg: Okay. I guess I see this as the time delay we're talking about is a direct extension of the - of the requirement that we already looked at to not notify the respondent that the lock is going to be happening. So it's very directly linked to the lock. So certainly other people may ask for other things but they would, in my mind, be likely to be out of scope.

Lisa Garono: Well where I see this will start is why four days?

Alan Greenberg: Okay.

Lisa Garono: You know, and then there will be a big discussion sort of not within our group but within the comments. And should it be longer than four days? And so I guess I come out with Ty is the mechanism for this already exists. The gentler we are in terms of the changes that we make, the more likely we are to get something through.

Alan Greenberg: And I think what we've seen however from the comments we already have on the board, which in theory we're responding to today, is that if we don't do something to counterbalance the no warning of the respondent we're going to be hard pressed to continue with that change.

((Crosstalk))

Alan Greenberg: All right I think we've probably talked this through as much as we're going to with the people on the call today unless someone else has something to say. I think between Marika and I we're going to try to summarize what our options are and go forward on this. Does that sound reasonable? No hands, no comments.

Okay then, Marika, let's try to do that in the next day or so. And if we could - if you could point us to where in the comment response we are so we can continue? I think that was the next item that we had to - just to go back to our regular business. Is that correct, Marika?

Marika Konings: Yes, that's correct. This is Marika. I think where we left it off at Comment 8 but 8 I think deals with the same issue then is line with the comment filed by ICA to note that there should be more time for response; time is taken away from them now even if it's in (unintelligible) time.

Alan Greenberg: I think that one goes into the same bucket as the other one then. Okay what do we have next then? We have Number 9. Marika, could you take over a couple minutes while I try...

Marika Konings: Yes.

Alan Greenberg: ...to get this cough up?

Marika Konings: Yes. So this is Marika. We're now moving into the comments that we received on preliminary Recommendation 3(a). So basically that goes into the process that will follow - following receipt of the complaint.

And the first comment is from FICPI and they say, "It is important that the UDRP provider promptly makes the initial formal request for registrar verification and that the locking of a disputed domain name is done at least at the same time. FICPI therefore supports Recommendation Number 3(a)."

Anyone want to add anything to this comment or should we just respond "noted."

Alan Greenberg: Noted, thank you, whatever.

Marika Konings: Moving on then to the next one. This is Marika again. Comment Number 10 from the ICA. They say, "We would propose solely in the context of the disclosure of compelling cyber flight justification data that the words, 'may do so' be changed to 'shall do so' immediately and that this additional language be added at the end of this recommendation that reads, 'and shall also transmit the full text of the UDRP complaint to the registrant' so complaint to be provided to the registrar by the UDRP provider at the time it sends the verification request."

"This modification would address any documented cyber flight problem of a substantial nature while minimizing the reduction in the registrant's effective time period in which to secure competent counsel and prepare a response. We propose that the adoption of this approach be accompanied by an increase of the standard UDRP response time by four days from 20 to 24 to offset the reduction and render neutral results."

It goes back to our previous discussion partly.

Alan Greenberg: We'll put that one on hold as well.

Kristine Dorrain: Hey, Alan, this is Kristine Dorrain from NAF. Can I...

Alan Greenberg: Sure.

Kristine Dorrain: ...make a comment?

Alan Greenberg: Yes please.

Kristine Dorrain: I agree that we're sort of putting on hold this part about extending the UDRP response period, etcetera. I am not going to rehash that. But I just wanted to address the first part, which is changing the notification from 'may do so' to 'shall do so' immediately.

And that - because I believe that what they're talking about is - because I don't know if I have the - if I scroll up maybe it says that. I think we're talking about the registrar may notify the respondent after the lock has been placed. And I think we did talk about this but we didn't want to make the requirement upon the registrars because that puts an extra burden on all of the registrars to be responsible to send those complaints to their customers.

And so I don't know if we want to discuss that at all but there were actually - I think there's actually two recommendations here. And I understand we're tabling the second one...

Alan Greenberg: Yeah.

Kristine Dorrain: ...so do we want to talk about the first?

Alan Greenberg: No, thank you for calling attention to that. I think you're correct and I think we very explicitly said that this is a registrar option but it's not something that we feel we want to add to their mandatory list. I'm pretty sure that Michele, and I suspect Volker, both came out strongly on that.

Marika, go ahead.

Marika Konings: Yeah, this is Marika. I do have a question though on how onerous such notification would be. I mean, I don't know (unintelligible) well enough to judge that.

But would it be, you know, following, you know, assuming that these recommendations would be locked and entering into (force) would registrars, in their system, you know, have a kind of switch that when such a request comes in that they flip a switch and saying, you know, this is a UDRP lock that is applied which could, you know, could potentially be attached to an automatic notification to a registrant, you know, if that switch is pulled?

Or how would that work or, indeed, how onerous would just a requirement be on registrars, you know, if these recommendations would come into force and it would be a requirement to, you know, to lock within a certain period of time? And, you know, the lock would, you know, prevent certain set changes. I'm just curious to hear a bit more about that from registrars on the call.

Alan Greenberg: I'd like to hear that too. I suspect the answer is that for the large registrars it's not onerous and for the small ones adding a new requirement is a gotcha. That might put them in an awkward position.

We have Kristine and then Volker.

Kristine Dorrain: Yes, I would say that I agree with you completely, Alan. I think some of the registrars are already doing it as part of their process. I think that theoretically it's not complicated for a registrar to simply forward a document to their client.

However, I think the last words that I heard you say, Alan, are important. The smaller registrars are going to view it as a gotcha. If we somehow make this a requirement is not a way that - another way that a registrar is going to be in violation of the UDRP for something new and on different tasks that they're being asked to do.

That's really not their responsibility. The UDRP is clear that it's the provider's job to serve. And so to the extent that that courtesy copy that the complainant sends is now being deflected as a burden to the registrar who's not even a party to the proceedings I think is going to be a little bit onerous on them.

And I think that it's going to be another way for people to come back to a registrar and say, "Hey, you're not doing your job, you're violating the UDRP. ICANN should investigate you." So I think it's going to be really hard.

You also are going to be - it's also going to be something that the smaller registrars are going to have a harder time understanding. Remember, we're writing this document for those registrars that already don't know what to do so we're adding yet another thing that they're going to have to be able to do into the process.

Also I think that - my final comment on this is that in the event the registrant is a quote unquote privacy service that maybe has gone through a reseller's privacy service to what extent would the registrar be on the hook for then not forwarding the complaint to the quote unquote right person? So that's just one thing I want to leave you with.

Alan Greenberg: Thank you, Kristine. Volker.

Volker Greimann: Well, yes, and adding such a requirement into the UDRP, which is, as a matter of fact, part of the registration agreement, that would also open the door for liability of the registrar if the respondent claims not to have received that notice.

And actually we would be answering a new obligation of the registrar and that could be - from the one side, as Kristine said, in terms of - as something where people would complain about the registrar but also the respondent would also have a door to knock on the registrar's door, claim liability if he lose the domain name...

Alan Greenberg: Yes.

Volker Greimann: ...because of something the registrar did or did not do.

Alan Greenberg: I tend to agree on that. And I think we're taking something that many registrars will view as a customer service, that is to give the registrant a heads up that a UDRP is pending, and transform it into an obligation and I think that's outside of our domain or outside of what we should be doing. Kristine, is that a new hand?

Kristine Dorrain: Sorry, it's a vestigial hand.

Alan Greenberg: Okay. It looks like a perfectly good hand to me. All right I think we have our answer to the first part. And thank you, Kristine, for pointing out there were two parts; that the first part is one we have considered and rejected because we don't believe that we should be adding obligations onto the registrar and the second part we'll defer until we come back to the subject.

And we're on to Question Number 11, which is to do with 3(b). Let's see if I can read this without coughing, "3(b), within three business days at the latest following receipt of the verification request from the UDRP provider the registrar will modify the status of the registration to prevent any change of - any change of registrar and registrant. These changes must prevent - must be prevented within two business days from the date of receipt of request of the verification through the remaining pendency of the UDRP proceeding except in the case of suspension of UDRP proceedings. See Recommendation 10."

And, Marika, I think I've talked about as much as I can before - if you could take over Number 11.

Marika Konings: Yeah this is Marika. Because I think it's a pretty long comment as well. And just to note the recommendation itself is actually a lot larger; I just, you know, put the first thing in there to remind us what is in there but I didn't want to take up the whole document with the full recommendation.

So the first comment is...

Alan Greenberg: My cough thanks you.

Marika Konings: ...from FICPI, "As regard to business days although FICPI appreciates that the current reference to calendar days may well mean that a specific time limit ends on a holiday the term 'business day' is also not perfectly clear depending on what is considered as a business day in the jurisdiction of each case."

"FICPI notes that the working suggests that business days are defined as business days in the jurisdiction of the entity required to undertake the action. Although this may be acceptable, it also requires such entity to inform clearly of the yearly business days agenda in its rules related to the dispute resolution procedure."

"The availability of accurate identity and contact information of domain name holders is essentially for effective intellectual property rights enforcement. FICIP has urged, and continues to urge, ICANN, Registrars and others tasked with the registration of domain names to provide up to date and accurate identity, Whois, information to those have a legitimate need to obtain such information, especially those pursuing infringement of intellectual property rights."

"Further, Whois record modifications after filing but before commencement of actions lead to unnecessary deficiencies and amendments in the context of the UDRP process. This is most often seen when third party privacy/proxies details are contained in the Whois."

"FICPI notes that in those instances, the current rules are unclear as to who is the correct respondent and what is the proper jurisdiction for such cases. Presently, requisite amendments of UDRP complaints based on incorrect Whois information cause delays and unnecessary extra costs for the

complainant. It is therefore important that the registrant information not be changed or modified once the domain name is locked."

"FICPI welcomes the suggested clarification that the provider is under no obligation to require the complainant to amend its complaint should a further privacy/proxy customer information be released after the lock is applied."

Alan Greenberg: Thank you, Marika. I may have missed something but I think the - other than reechoing our arguments, they lead off with the issue of business days versus calendar days and I think our answer is we have debated it and the working group believes this is the best way to go forward.

And on the rest of it I think they're just saying accurate Whois information is good - and that's something out of our scope - and supporting what we're doing. Have I missed anything salient? Marika.

Marika Konings: Yeah, this is Marika. I'm just wondering, because, you know, one of the things they noted that it would be helpful that people then would point out what the actual business days are.

So I'm wondering if we can just add to that recommendation as possibly something like, you know, involved parties are encouraged to, you know, communicate or post on their Website the applicable business days, you know, for their operations just as a note of encouragement that I can imagine that would be helpful if you're fighting against a certain party that you want to know what business days are typical for, you know, that country or that business.

Alan Greenberg: I have no problem with that. Any comments from providers or registrars who are affected by this? Everyone seems to like it. Any other comments on this - on Number 11 before we proceed? Marika, is that a new hand?

Marika Konings: Nope, sorry, I was writing and didn't have time to...

((Crosstalk))

Alan Greenberg: Okay. All right. We are now on to Recommendation 4. "The registrar must confirm to the UDRP provider within two business days following receipt of the verification request from the UDRP provider that any changes of registrar and registrant have been prevented and will be prevented during the pendency of the proceeding and verifies the information requested by the UDRP provider."

And we have a short comment, which I'll try to read. "FICPI supports the recommendation which is considered another way to speed up the initial part of the process." Noted. No comments, okay.

Recommendation 5. "If deemed compliant the UDRP provider shall forward the complaint to the registrar and the respondent and notify them of the commencement of the administrative proceeding no later than three business days following receipt of the fees paid by the complainant."

"See FICPI's comments on Recommendation 3(b). It is important to clarify what..." - okay that's just another business day issue. And I think that was - that should be a noted then.

Recommendation 6 and an FICPI comment that tersely says they support it. Yet another noted. The same for Comment 15 and Comment 16. We're on Recommendation 8, Comment 16. And I ask Marika to continue for the moment.

Marika Konings: This is Marika. So Recommendation 8 reads, "This notification would also include information that any changes as a result of lifting of proxy/privacy services, following the locking, would need to be discussed, addressed by the UDRP panel directly. The working group recommends that this issue is further reviewed as part of the privacy/proxy accreditation program."

And there's a comment from FICPI. They say, "It should be recalled here FICPI's previous statement that proxy/privacy registrations are not, as such, an indication of bad faith registration and/or use. It is a recognized fact that there may well be legally, politically or personal reasons for not revealing to the public the full official and searchable Whois information."

"FICPI therefore supports further review of this issue including the possible solution in cases where a need to keep information confidential has been demonstrated that the identity of the underlying registrant or true holder details are only made known to the registrar, to parties to the UDRP proceeding, as well as to the panelists."

Alan Greenberg: Any comments other than noted? All right we have Recommendation 9 which is a long one but FICPI supports it. And we have Recommendation 10. And FICPI comment says they, "Welcome the clarification. It is important to retain the ability to unlock a disputed domain during the UDP..." I presume that's UDRP, "...proceedings in cases where parties agree to transfer." I guess that's a noted.

And, Marika, what are - do we have next? We have a grayed out section but it doesn't have a recommendation number in front of it.

Marika Konings: No, this is Marika. So this is basically the section that we had in the initial report that outlines the two potential options for settlement where we didn't agree on a - one approach or the other but we said let's put both of those options in the report and actually encourage feedback so that as part of our discussions now we can maybe settle either on one or the other or if there's an alternative suggested we could consider that as well.

Do you want me to go through the comments?

Alan Greenberg: I think you're going to have to continue. There's more words than I can get out in a string.

Marika Konings: So this is Marika again. So basically we have two options there, Option A and B. In Option A the proposed process would be that, 1, the parties ask for suspension; 2, the parties settle; 3, the parties inform the provider; 4, the provider issues the order to the registrar to change the whole details or to (leave) the domain name; and, 5, that the change or deletion happens; and, 6, the complainant confirms change or deletion is complete; and, 7, provider dismisses the case.

And the Option B approach was that, 1, parties ask for suspension; (unintelligible) suspension request includes other (unintelligible) dismissal when the suspension period is up; 2, provider issues order allowing registrar to unlock for the sole purpose of whatever this element is; 2, parties settle; 3, parties request the registrar to unlock, not to manage anything further like terms just unlock to allow transfer; and, 4, provider dismisses case automatically with no further action needed.

If the settlement discussions break down either party can request that the case be reinstated before automatic dismissal. And I think if I recall correctly I think Option B basically followed the current process. And I think Option A would be a slight change of current practice where it's actually the UDRP provider that would inform the registrar of what would need to happen with - or what the outcome of the settlements would be.

So the first comment in this regard is a comment from the ICA who says that, "We prefer adoption of proposed Option B as both providing more specific guidance on procedures relating to a settlement and more specifically addressing the subject of the (IR) domain lock."

Alan Greenberg: All right so they're essentially supporting the status quo with more explicit instructions from us.

Marika Konings: And this is Marika. I can then read the following one which is...

Alan Greenberg: Yeah, please.

Marika Konings: ...cum laude. They basically say, "We propose consideration of something along the following lines: At any stage of a UDRP proceeding, 1, the parties jointly notify the provider and registrar of their wish for a 30-day suspension of the proceeding; 2, if the parties need additional time to negotiate a settlement then they jointly request one 30-day extension."

"Three, if the parties are unable to agree on settlement the proceedings would recommence at their pre-suspension state; 4, if the parties reach an agreement they would jointly inform the provider and the registrar of the desired Whois changes. The domain name would be unlocked and the proceeding dismissed without prejudice."

Alan Greenberg: Any comments on that? I have one but I'd prefer to hear from other people first. Kristine.

Kristine Dorrain: I just want to throw out there that basically, I mean, and I don't necessarily agree or disagree except the - the providers - I guess the providers already have rules in place around the suspension process. So, I mean, I'm assuming that what they're saying is this will supersede any rules that the providers have and basically unify and standardize the entire suspension process. That's just my - I guess that's just an observation.

Alan Greenberg: Any other comments? I guess my comment is starting to specify time delays and time limits on the settlement process following a suspension is way out of our scope.

Kristine Dorrain: Well, Alan, that's what the provider supplemental rules do.

((Crosstalk))

Alan Greenberg: Yeah, no, no I understand but us trying to impose them I find a hard time connecting putting, you know, adding a 30-day suspension where there's nothing, you know, or a 30-day extension into the UDRP rules where there currently is no such detail because of the locking issue I find a long stretch.

Kristine Dorrain: Yeah, this definitely crosses a line from, you know, sort of I think this crosses a line. And so but, I mean, even if we can disagree as to whether or not adding four days I think, you know, creating an entire new suspension process, yeah, I agree, that's (absolutely) out of scope.

Alan Greenberg: Okay. Ty.

Ty Gray: Sure I just wanted to jump in there and go back to obviously the reason why we were first talking about suspension here in the first place that well first off we see quite a few of our cases settle out. You know, it's one where the parties come together and they work out a solution.

Around 20% of those cases that we do see do settle out and it would involve some procedure whereby the process would be halted and the parties would work out their problems. And then if they wish terminate the proceedings thereafter.

So it's just important to note that, you know, the process of suspension is a long-standing one; one where the parties have both, you could say, come to an agreement between them and maybe the best solution between the two parties. And it's just that we want to ensure when we're talking about locking of a domain name that we also anticipate the unlocking for the purpose that many of the parties are utilizing in this regard.

So to the extent that such is, I guess, crystallized then the UDRP process or outside as part of, you know, supplemental rules or just a process that parties

will utilize, as far as that's concerned I don't express so much of a preference just the fact that this is regularized in a way that it provides further clarity to the parties and the registrar.

Alan Greenberg: Thank you, Ty. Yes, I think it's important to go back and why we are here. We're here because the settlement process may require an unlock. And our job is to be very specific telling registrars when they may unlock and not. So that's why we got into this territory. Going into the actual mechanics of the suspension I already said I think it's going too far. Volker.

Volker Greimann: Yes, I have two issues with the comment by Com Laude. One is the one that we already mentioned with the setting of timelines for extensions. I think that should be part of the rules of the provider; that should not be discussed by us. It's outside of our rules.

But I also think that in (iii) they are reversing the current practice of what happens when the suspension ends on its head. Currently if there is suspension end and the complainant does not file for recommencement then the complaint is dismissed. They want to propose that if no agreement is reached there should be automatic recommencement at the time of the suspension ends. And I think that's, one, out of our scope and not the intention of the current process.

Alan Greenberg: Luckily the first part covers us. Thank you. Laurie.

Laurie Anderson: Hi, it's Laurie. I was just going to mention that if we allow a domain name to be unlocked prior to a dismissal so that the respondent has access to it we run the risk of the name being transferred to another registrar, you know, before the case is actually settled.

So in - let's see - and I think it's Option B - and maybe I'm not reading this correctly. "Parties request the registrar to unlock (not) to manage anything further like terms, just unlock to allow a transfer." So - and then if they - but if

somehow they don't come to a settlement then the domain name is sitting there and is able to transfer.

You know, what do you do when it transfers to another registrar that, you know, maybe doesn't follow the UDRP rules?

Alan Greenberg: Yeah, I...

((Crosstalk))

Alan Greenberg: Thank you, Laurie. We'll go to Ty in a moment. Perhaps the clarification would be to Ty and/or Kristine. Since it's - the unlock is predicated on the provider issuing the order I'm assuming that the provider has grounds for not worrying about cyber flight at that point. But we'll go to Ty.

Ty Gray: Sure, this is Ty. I note that when we issue our order we specify when it's requested that a unlock is for the purposes only a transfer between the respondent to the complainant. And I know that when we were talking historically about this - when we were talking about what it means to lock a domain name I know that certain registrars have different practices including moving a domain name to a holding account.

Even so a lot of times it seems like that transfer has been a facilitated process by the registrar. And so what we just note is that when we have the suspension that process allows the domain name to be unlocked for the sole purpose of transfer between the two parties and then we note that as, you know, during the settlement and suspension we don't take active part; we turn it over to the parties and the registrar who's more in control of that technical process.

So it's something that we haven't actually been a formal part of beyond just that notice that we would send out.

Laurie Anderson: Right. This is Laurie again. And I agree with that. And that is the way we do it. We facilitate the change of account actually. We just don't - we don't allow the domain name - we technically don't unlock it; we wait until the parties have made their settlement that they notify us of - that they both agree.

We move the domain name to a new account where it remains locked until we receive a dismissal from the provider. And that way we ensure that the domain name stays where it's supposed to be until the entire case is completed.

Alan Greenberg: All right. Volker and we're just about out of time - we are out of time already. And, Marika, do you have any comments on this before we close after Volker?

Volker Greimann: I just wanted to mention that we handle it quite similarly with small differences. We ask the - if they agree to a transfer then we ask them to open a new account with our retail platform. We push the domain name to that account. Leave it locked so they cannot unlock it. And then we also open up. So it's very similar just that the holding account (really) in the possession of the complainant if that's what they agree to.

Alan Greenberg: Thank you. And, Marika, you had a comment in the back channel that perhaps you want to make now before we close? I think we're going to have to go back to this one in the next meeting.

Marika Konings: Yeah, this is Marika. Just to note I think to the original comment I think - I think it was by Laurie that, you know, no unlocking until the settlement is reached. I think that that is the proposed process for Option B because the Number 2 actually says that the parties need to settle and only if a settlement is reached the domain name would be unlocked by the registrar.

And maybe just one note as well on the suggestion that Matt has posted in the Chat I just, you know, would like to strongly recommend against, you

know, providing the Council with different options and having them discuss it further.

Because I think the Council would basically just turn around and say well, that's why we actually formed the working group to give us recommendations even if they have, you know, a different level of support or consensus and at that stage they can consider what to do.

But I think the working group - or the Council is looking to the working group to provide it with a set of recommendations and not necessarily ask the Council to start debating these issues where they may not have had the background and, you know, time that this group has spent on these issues.

Alan Greenberg: Thank you, Marika. I tend to agree on that. I can visualize situations where a working group defers to Council on things that are really major policy issues. I don't think this one qualifies.

All right we're a little bit over time. I thank you all for attending and for putting up with my coughing and lack of ability to speak. And we'll look forward to talking to you next week. Thank you, all.

Kristine Dorrain: Thanks, everyone.

Alan Greenberg: And Marika can - do you want to try drafting something or do you want me to do something first on whatever the option was I said we'd draft something on? I think it was the extension period.

Marika Konings: Yeah, I'm happy to write something up and get it to you.

Alan Greenberg: Okay. Thank you, Marika.

Marika Konings: All right, bye.

Alan Greenberg: And I'll see some of you later this afternoon on the GNSO meeting or later in the day whatever part of the day it is. Bye-bye.

END