

**Locking of a Domain Name Subject to UDRP Proceedings PDP WG
TRANSCRIPTION
Thursday 06 June 2013 at 1400 UTC**

Note: The following is the output of transcribing from an audio recording of the Locking of a Domain Name Subject to UDRP Proceedings meeting on Thursday 06 June 2013 at 1400 UTC
. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
<http://audio.icann.org/gnso/gnso-locking-domain-name-20130606-en.mp3>
On page:<http://gnso.icann.org/calendar#jun>
(transcripts and recordings are found on the calendar page)

Attendees:

Kristine Dorrain – NAF
Alan Greenberg - ALAC (Vice Chair)
Matt Schneller - IPC
Faisal Shah – Individual
Michele Neylon - RrSG (Chair)
David Roache-Turner – WIPO
Hago Dafalla – NCUC
Luc Seufer - RrSG

Apologies :

Laurie Anderson - RrSG
Volker Greimann – RrSG
David Maher – RySG
Gabriella Szlak – CBUC
Celia Lehrman - CBUC

ICANN staff:

Marika Konings
Lars Hoffman
Berry Cobb
Nathalie Peregrine

Operator: Go ahead we're now recording.

Nathalie Peregrine Thank you very much Ricardo. Good morning, good afternoon, good evening this is the UDRP the main working group on the 6 of June, 2013. On the call today we have Michele Neylon, Lisa Garono, Hago Dafalla, Matt Schneller, Alan Greenberg, Faisal Shah and Christine Duran.

We have apologies from David Maher, Laurie Anderson, Gabriella Schitteck, Celia Lehrman and Volker Greimann. On staff we have Marika Konings, Lars Hoffman, Berry Cobb and myself Nathalie Peregrine. I'd like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you Michele.

Michele Neylon: All right thank you, good afternoon, good morning, good evening, good whatever other time of day it is, and welcome to the wonderful world of UDRP Lock - yes. Okay as per standard I have to ask does anybody have any updates to their Statement of Interest?

And I will just state for the record that as of today I am now the Chair of the Registrar Stakeholder Group which doesn't really change my interests that much but just so you're aware. Christine I believe is still having issues getting onto the phone bridge.

Kristine Dorrain: I just got on, thanks.

Michele Neylon: Oh you're in okay, hi - good morning...

Kristine Dorrain: Hello.

Michele Neylon: ...or good afternoon or whatever time. Okay super Marika sent out a survey to try and get the group's temperature for the record I - as the Chair I decided to take my stance as Switzerland - or Ireland, both neutral countries and not express any opinion and keep out of this, so I did not vote in it but quite a few other people did. So Marika would you like to walk us through this?

Marika Konings: Sure this is Marika again, so what you see on the screen is a very quick report of the survey which I just put together before this call because we had several people that send in their votes relatively shortly before the call started. And so we received a total of eight responses and seven from working group members and one from Phil Corwin.

And just to note that I don't think he's a member of the working group currently but I think he's the main reason why we're actually looking into this issue because on behalf of his organization he filed a comment that the working group should consider this loss of informal response - his opinion is also noted in this poll. So what you see on the screen is basically the aggregation of those responses received and (if asking to describe) people on this (route) to see the individual feedback or have this sliced or diced in a different way we can never look at that.

But as I understand the poll as it currently stands is that most people prefer the first option that's up on the screen that is participating UDRP respondents be granted an express option to request a four day extension should they so choose. With any such received four-day extension request to be automatically granted and then I think we know the rest of the line.

So that's the number one preferred option, the number two is the one to extend with four days, the number three is no change is made but UDRP providers are required to inform their respondents that they have the option to request for an extension. And the last preferred option is to change the working group recommendation to no longer make this a recommendation to remove the requirement for the complainant to notify the responded at the time of filing.

I just thought of may be worth as well pointing out that because I looked at the individual responses and they said as Phil Corwin is the person that actually filed his comment in relation to this. He actually chose as well the option that is currently the preferred option for those that responded to the

poll at his first option in the poll. So I don't know if you - Michele if you want to take it question-by-question or you want me to already to cover as well the next one or you first want to maybe comment to...

Michele Neylon: Let's just pause for a second, let's just take deep breaths and relax and not get too carried away. Okay so based on this then the first - the most popular option of those - with those who expressed an option is the four-day extension thing. So it does anybody have any comments at this juncture?

Alan Greenberg: It's me I do.

Michele Neylon: Go ahead.

Alan Greenberg: Thank you, I just filled out my survey so my answers are not there - I suspect that changes the results. Marika I'm having trouble parsing what's on the screen, we have three questions on the screen - what happened to the fourth? Maybe I'm confused but...

Marika Konings: Which fourth question?

Alan Greenberg: I only see four options - three options that were...

Marika Konings: If you scroll down you see the fourth option - it comes on the next page. And as I understand (Paul) has actually listed them in the order of preference. If you see the rating average it means that the first option you see there actually got the 1.88 rating average so...

Alan Greenberg: Oh okay sorry - it got labeled number two for some reason - oh they're both labeled number two, okay.

Marika Konings: I'm not really sure where you're looking.

Alan Greenberg: At the top of the second page it says number two, so I assume that was the second survey question, but...

Marika Konings: It was, the first survey question was your name.

Man: Yes I know I figured that - I just figured it out, thank you. All right I rank them one, two, three, four - so I think that changes the...

Marika Konings: I'm just looking at the survey results, the updated one and it's actually not changed, it's now - that one is the preferred option with a 1.9 rating average. I think it weighs option how many people chose those as the (first).

Man: Okay, okay this is a waiting option.

Marika Konings: Yes I guess what we did is basically give people a order of preference to really try to determine where the balance of the votes lies, it's not that most people that voted for one other option but it's really looking at the first preference, second preference and on the basis of that because I think as we discussed in last meeting just because something has the most votes doesn't necessarily mean that overhaul look at options if the preferred option. So that's what this - (Paul) has done.

Alan Greenberg: Now I understand what you're saying, okay.

Marika Konings: So even with your vote that was still comes up as the preferred option based on how people have ranked their responses.

Alan Greenberg: Yes I have a problem with that kind of waiting because it may mean that everyone gets something they really didn't want but the waiting ends up forcing it anyway.

Marika Konings: Well I guess part of the question - and this is Marika is, you know, whether this is an option that people can live with. Because I think as we're looking at,

you know, this is always a compromise or consensus model looking at different option is this option the people feel may not be their preferred option but does address the concerns that have been raised and is not something people cannot live with.

Michele Neylon: Okay I see Matt and then Alan again, Matt?

Matt Schneller: Okay it looks like - sorry I was trying to figure out - my phone died last week so I have a new one and I was trying to figure out how to un-mute the sucker.

Looks like the item that came out as number one in the voting had as many first-place votes as any other and second most second-place votes. I thought it was also a little interesting that the - that nobody thought this was the worst option out there. I had no (point with this), which maybe is a good sign for this being something everyone can live with, that all of the votes were distributed north of this being a deal killer.

Michele Neylon: Alan?

Alan Greenberg: I guess I'll stand by my original comment of regardless of which ones we recommend there's enough of a split that I think the working - the report has to make clear what the options are so we solicit input from the community on the - on this one.

We shouldn't just silent - we shouldn't just pick one and silently eliminate the others. Well we can pick one but I think we need, you know, a comment on it and present at least what the second runner-up option was or something like that.

Michele Neylon: So maybe - so Alan just sort of thinking out loud here, so something like say, you know, we after discussions in the group, you know, with the most popular solution was X, however we also considered Y and Z or something?

Alan Greenberg: Well and point out that it was close, it wasn't a, you know, a slam-dunk decision otherwise we wouldn't be doing that. But if the first decision is the - which I think is to allow them to request a three or four day extension then we should present at least the second option, you know, that might have won or as close and solicit input on that - something like that.

Michele Neylon: Marika's been waving her hands crazily for the last couple of minutes, go ahead Marika.

Marika Konings: That isn't Michele, first I took my hand down and but now I'm putting it back up, just to note as well and it's something that Christine pointed out in the comments as well that, you know, we did have, you know, not all working group members voted.

So maybe a next step maybe to actually put this on the list and say look these are the results of the poll, you know, based on the poll and what we discussed on the call where the working group is considering, you know, including the following in the report and it can be down along the lines of what Alan said, you know, the working group, you know, following the review of public comments, the working group considered this - this issue and considered the four different options.

And can even, you know, include the result or prefer to do it results of the poll saying that based on that, you know, this is the compromised position that was reached, noting that there were others that were considered too. And basically put that out to the list to see if there's any further feedback or comments on that and hopefully be able at the next call to decide okay let's move forward with this approach and include that in the report as is.

Michele Neylon: Matt, Matt is that (an old timer gone), okay?

Marika Konings: Yes and this is Marika, and I think Matt noted as well because looking at the results now it's actually the automatic or the four-day extension is not even - because I see now as well that the poll has actually not ranked them in order.

So what we need to do is look at the rating average and actually the second preferred option is the no change is made to the current recommendations regarding timing but UDRP providers are required to inform the respondent at the moment of notification of the commencement with additional because I think actually two people have voted since I actually did the report and I need to check back who the other person is. And so then...

Michele Neylon: Marika can you - Marika you surveyed (monkey) for this didn't you?

Marika Konings: Yes.

Michele Neylon: Can you get it to spit out the chart thing instead which might be a bit easier to understand?

Marika Konings: Let me...

Michele Neylon: There's a charting option - there's a charting option for the results...

Marika Konings: Let me see that.

Michele Neylon: ...which will - might be easier to understand than this kind of waiting thing which to be perfectly frank I'm finding quite confusing.

Marika Konings: (Down at the charge) yes hold on because I'll need to convert it to PDF - it's a bit confusing because I think even looking at the chart it's actually the one that's lowest is the most popular one basically, so it's not the typical chart where it's the one that's highest rated that gets there. It's a preferred option - let me see if I can...

Michele Neylon: Well just for clarity here, what was the - because I'm getting more confused the more I look at these numbers, what was the order that the survey monkey said we prefer or...

Marika Konings: You're saying the outcome was of the vote?

Michele Neylon: Yes.

Marika Konings: So basically the one that if - the one - the number one option there says that it has a rating option of 1.88, so basically you see that at least what's up on the screen now three people chose it as the first option, two people or three people chose it as their second option, two people chose it as their third option.

And then if you look down it's done in a similar way, so you basically need to look at the rating average to make the ranking. I mean I said just before the call I'm sure there's a better way of doing it and I mean I'll pull up the chart and that works that may make it clear or may make - may confuse you even more. And, you know, you have to look side wards because for some reason it doesn't want to take it - (the me) try this.

Michele Neylon: Okay I'm...

Marika Konings: Let me try this again.

Michele Neylon: All right.

Marika Konings: Okay.

Michele Neylon: Now that's a lot clearer.

Marika Konings: So basically I think the way you need to read this chart is that the orange one on the left is the preferred because it was the highest ranked...

Michele Neylon: So that's the one that a three or four-day if you ask.

Marika Konings: Yes, so the number two is that no changes made, the purple one the number three here on the chart is the number three where basically no change is made to the recommendation but when UDRP providers sends their note - sends their notification to the respondent they include the information on how they can request an extension.

Then the third preferred option is the blue one which is the adding of the four days to response time for everyone, no need to ask is it's just a standard option. And then these preferred options - the red column on the right is to change the working group's recommendation, actually no longer requires this notification at the time of filing - or no to actually re-require that to no longer...

Michele Neylon: To remove the recommendation.

Marika Konings: Exactly, and I think as Matt says in the tab closer to number one is closer to the groups aggregate first preference.

Michele Neylon: Anybody have any other thoughts on this at the moment?

Man: Only the one I stated before that I look at these kind of waiting it seems with some care because you can end up having - selecting by it something that no one really wants as the first option so - or very few people really want as the first option, so I say use these ratings (came with care).

Michele Neylon: Okay.

Man: For whatever its worth this did look like this was a co-first option among number one votes.

Michele Neylon: Yes but only a very small number of people actually voted, it was not too representative either. I mean Marika how many people are actually in the group and how many voted in total as of this very minute?

Marika Konings: This is Marika, I'm just trying to see because we just had Alan and Lisa both submitted their votes that weren't in the report it was an issue on but it is recorded in the chart that you see up on the screen now.

I think to note looking at the working group members we do have a whole lot more members but I think if you look at the names of the people that voted I think those are the ones that regularly participated. I think the one person probably absent is David Roache-Turner and I'm just looking through the list of people that actually show the calls. But I think most of the other people that do tend to participate seem to have put in their vote as called for the list of members and I can probably (unintelligible).

Michele Neylon: I will note for reasons I won't go into here the working group rules very specifically say you have to involve everyone on the mailing list, you cannot make decisions on a call.

Marika Konings: Right, exactly so...

Michele Neylon: That was done on the request of one person but nevertheless it ended up in the rules.

Marika Konings: Yes and this is Marika that's exactly why made the suggestion to put what we discuss now on the mailing list saying that while based on the survey results this seems to be the preferred option although it may not be, you know, the number one option for all but is it something people can live with and, you know, we will record that in the report, you know, the other options that were considered in order to address the comments received.

As I said I think it is, you know, worth part of that conversation to be take into account that the person or the organization that actually made a comment seems to agree with what currently comes out as the first ranked option so at least from their perspective hopefully addresses their initial concern that was expressed in response to the initial report.

Michele Neylon: Yes I have only one question at this point do both of the providers on this call say that's something they could implement without undo - not effort but, you know, that's something which is reasonable. It's not - doesn't - it's not going to put onto burden on them.

Christine Duran: Just to be care- this is Christine you're talking about option one, right?

Michele Neylon: I'm talk about the one that ended up the best.

Christine Duran: Yes I can't speak for WIPO but it's certainly something we could implement without a whole heck of a lot of hassle on this end.

Michele Neylon: Okay good.

Christine Duran: I do know that that wasn't my first choice however.

Man: I think David said something similar on the last call, I think he said that it was a matter of supplemental rules on there and that they could do without too much of a hassle or issue. I don't think it was David's first choice either but I think if he came out the same place.

Marika Konings: And this is Marika, if I can add because this is actually the proposed option comes actually from David and I think in his email he originally expressed indeed that his preferred option is the purple one that, you know, no changes made but the options are expressed in the email that's sent by the UDRP provider.

But I think as part of the email said well people felt that there should be an option for an automatic extension, maybe this is another alternative to be considered. So it's actually something that was proposed by David as a I think a kind of compromise - a possible compromise position between the two options of saying we automatically add four days for everyone or, you know, we don't do anything at this stage, so I think that's where it originally came from.

Man: Oh so we have a way forward.

Michele Neylon: Christine has her hand up.

(Christine Duran: Christine from (NAP), I just wanted to make it clear and point out that while, you know, I think David came up with the idea as an alternative and we don't oppose it as an alternative, just to be clear that this will require a change to the UDRP because there are two other providers that are on the call that this change will have to be forced upon and then if any other providers in the future are credited they will also have to do it.

So therefore I mean while we WIPO can say oh yes we'll just make a change to our separate rules don't worry about it, that doesn't cover the rest of the providers and any future potential providers. So and I know that our group has, you know, kind of worried in the past about, you know, making too many changes to UDRP as, you know, as not really in our scope so just be thinking that, you know, when we make our recommendation we're going to have to be clear that it is going to require an additional change to the UDRP itself.

Michele Neylon: Marika go ahead.

Marika Konings: Yes this is Marika, I just wanted to know that I did have a chat already with our - with my colleagues on discussing on how potential implementation would go forward and I think what David said at this stage that it's probably better for the working group just to focus on what it is they want to achieve

and maybe focus less on what that requires so that can actually be considered as part of the implementation.

Because I think, you know, what we want to try to avoid as well that we don't make recommendations because we don't want it to be implemented in a certain way or another way or are concerned on how it may be implemented, but maybe that's something that is better considered once the (regulator) says well this is what we want to achieve as a outcome that we then can consider as part of the implementation process, this is the best way on achieving that results.

Whether that, you know, requires a change of the rules or whether that is done in the form of an advisory or whether that's done through another mechanism. But I think we may otherwise get distracted by implementation considerations and not actually focus on what it is that we're trying to achieve for that recommendations.

Michele Neylon: Matt's suggesting couldn't it be pushed out as a supplemental rule change, if ICANN strongly asked all providers to update the supplemental rules it seems like it will happen. And then I have Alan in the queue.

Alan Greenberg: Yes since the complainant selects the forum and not the respondent that would end up with the ability of the complainant forum shopping and picking the one that has - that doesn't allow the extra extension.

So if we're trying to affect the option for the respondent of having the extra extension I think it would have to be - our recommendation has to be worded in such a way that it would be mandatory. How it's implemented is, you know, probably ends up being a UDRP change but otherwise we're adding four days to make sure that respondents who to want to have access it, who want to answer can get it and not having it as a formal rule would eliminate an option potentially, so I think we'd have to be careful about that.

Michele Neylon: Okay thanks Alan.

Alan Greenberg: I mean if it was the other way around in the respondent gets to pick the forum then it wouldn't be an issue, but that's not the way it works.

Michele Neylon: Okay anybody else? No...

Matt Schneller: Hey...

Michele Neylon: Sorry go ahead.

Matt Schneller: Sorry this Matt, just one quick comment, you know, we have unlike with the registrars we have a pretty finite group of providers.

Even though, you know, they're - it's a group that can expand, it's a slow process as the Arab Center has found out and it's slow toward accreditation, I mean I guess we could just reach out to the check and Arab Centers to verify that they would do something like the supplemental rule update so that at that point we basically have input from every body if that's going to be our ultimate recommendation.

Michele Neylon: Anybody else? Alan I'll go back to you since you're still there with your hand waving.

Alan Greenberg: I'm not at my computer right now and I left my handout by mistake, sorry.

Michele Neylon: So you're wandering around the house.

Alan Greenberg: I need a second cup of coffee.

Michele Neylon: That's understandable, that's why (white heads) were invented. Okay the other question that we were asking in the survey Marika.

Marika Konings: Yes let me get that up although I may need to look actually at this screen because presumably as well the additional vote may have it changed this.

So based on what I received half an hour before the call the question relates to the settlement procedure. So in this initial one where six people preferred the Option A and one person preferred Option B. We did get some comments here as well.

Someone saying that number four we're favor of option A while the - with the clarification the registrar makes a change and the domain name remains locked until the (missile) is issued and processed by the registrar.

There's also needs to be a time limit on implementing the settlement, order, and unlocking after dismissal. An option C or A are much better than B.

Let me just quickly check on my screen if this has significantly changed based on the votes that we received during the call. Please bear with me.

So yes, no basically it has changed. It's now 8 to 1. So 88.9% prefer option A.

So this seems to be very clear support for the option A. And maybe the group is willing to consider them doing the same thing as we did the other one just putting this out (unintelligible) based on the survey.

There's also been discussions on the call the working group is considering supporting this option and including that as part of their recommendations or to any objections.

Alan Greenberg: It's Alan. If I may I had trouble - and admittedly I was only part way through my first cup of coffee -- I had trouble parsing them.

But I think option A says the provider makes the decision on whether it is settled or not. And option B puts that decision process in the registrar's hand is that correct?

Marika Konings: This is Marika. If I recall those discussions well I think option B is basically what currently happens. I think option A is indeed where -- and I think it's something that especially registrars request or advocated for -- that is actually the provider that indeed informs the registrar what needs...

Alan Greenberg: Right.

Marika Konings: ...to happen.

Alan Greenberg: So they registrar doesn't have to make value judgments on whether the, you know, the two parties are lying, or whether they're dealing with the correct people, or whatever. They simply take instructions from the provider even if it's a settlement instead of a judgment.

And I think if we're going to present multiple options in the report we need to make it clear of what the effect is of the sequence of words we have they are because on a quick reading it isn't obvious.

Michele Neylon: Anybody else? Deathly silence.

Alan Greenberg: It's Alan. If we're going to go to the list again on this one like we did on the other one like we said we would on the other one I think the message is that of those who answered the survey there was overwhelming support of option A over B.

Does anyone disagree? You know, is there any reason why we shouldn't simply go with it and not present multiple options in the report? Unlike the first one this one seems to have a very marked preference within the group who did answer.

Michele Neylon: Okay. So sorry if there's any kind of noise here I've got builders in downstairs bashing and banging with data centers, and coffee rooms, and God knows what else. So if you hear loud noises it's just that.

Okay so Marika well maybe what the best thing to do then is as to do as suggested by Alan that we go back to the main list for the second question.

Those who have responded it's pretty clear what way that's going for the other one obviously it's not as clear.

And but let's just see if we can get some more people to make to express some kind of opinion and then move on from there. Anything else on this?

Christine Duran: Yes. This is Christine. Can I say something?

Michele Neylon: Sure. Go ahead.

Christine Duran: Christine from NAF. I just wanted to make a clear and I'm not going to beat the dead horse that I think this is a terrible solution.

But I just wanted to - I'll again make awareness that all of the - this is going to affect all the providers if you require us to change the rules and change how we do stays and somehow start to get involved with, you know, being in the middle of parties discussions and needs to settle and suspend. So it's not just WIPO and NAF it's going to affect all the providers.

Michele Neylon: Okay. Thank you.

Alan Greenberg: Sorry. It's Alan. I can't put my hand up right now. I have a question for Christine.

I think I understood that but that sounds like a better solution than having a large set of registrars some of whom may be inexperienced trying to take that same set of responsibilities.

Christine Duran: Well how do the registrars transfer a domain name now? I mean they just - is it just - does the registrar get involved with it at all now? I mean if there's not a UDRP? Is it because of the lock that this is even an issue?

Alan Greenberg: Well I am...

Michele Neylon: Transferring what - in what sense Christine? Could you please clarify?

Christine Duran: Well I mean if you want to give a domain name to somebody else you can right?

Michele Neylon: Who's you?

Christine Duran: Well anybody. You, you know, personally. You want to give me a domain name Michele you can give me one right?

Michele Neylon: It depends on the domain extension if it was a .com or a.net well yes if it was a .triple X no, or a .cat, or other ones.

Alan Greenberg: I - if I may jump in its Alan? I was worried because if you go back to the discussions of, you know, at the beginning of determining exactly who is the respondent because of, you know, privacy services or, you know, other things that happened at the beginning of the process I'm just not sure that in all cases the registrar definitively knows who it is the provider is dealing with.

Christine Duran: Apparently the registrar is...

Alan Greenberg: That's the problem.

Christine Duran: ...the only entity who really knows who the respondent is because we have to go with the public Whois which is a vast majority of the time wrong or showing a privacy service.

And in some significant number of cases the privacy service doesn't lift. So we can have, you know, any old respondent show up and say hi my name is (Joe). I own this domain name and I want to settle.

Okay (Joe) great. Well we would assume that the registrar would have some way to authenticate (Joe) as being actually the owner of the domain name.

We have no way to authenticate it. We accept a response from anybody who says they have the domain name. And submit it to the panel. And let the panel sort it out based on the credibility of the evidence and that sort of thing.

But we have no way of knowing if the person who is responding is really the respondent. The only person who could know that is the registrar.

Alan Greenberg: Okay. I guess I wasn't in - and answering the question I wasn't differentiating between the panel and the provider.

Christine Duran: Oh right. And I don't mean that the panel really gets - I mean the panel doesn't know much more either. The panel just looks at the pleadings and they're charged with making an evidentiary finding.

Is (Joe) really the respondent? And can he, you know, make a decision? But I mean if the parties agree to suspend a case and the panel hasn't been appointed it's just going to be me saying okay great go for it.

I mean just so you're aware I mean that's fine if that's what the group decides. But it depends the provider has no special knowledge about who the parties are and what the terms of their settlement are.

That's completely done outside that UDRP process right now. We agreed to stop the process to allow the parties to figure out what they want to do.

And then they currently approach the registrar. And presumably the registrar knows who its customer is and will lock that - unlock that domain name for its customers so that it can transfer the domain name to the complainant.

But we have no way of knowing if the person who's come forward and says yes sure I want to give the domain name away is actually the customer.

Alan Greenberg: I guess I maybe I missed this whole discussion when it was being held. Maybe it was a meeting I missed or multiple meetings I missed.

I guess I - if we're going to revisit this I'd like to hear the other side also because there seem to be overwhelming -- and even taking my vote out which clearly wasn't a knowledgeable vote -- you know, why is there such a push for the change then? And I will take my hand down and not put it up again.

Michele Neylon: Matt go ahead.

Matt Schneller: Under option A Christine wouldn't one way that the provider can satisfy the process B to essentially say we have gotten an email from the representative for the complainant.

And we have an email from, you know, Jim Beam@JimBeam.com who's - we believe is the respondent.

Please verify your records. And if this is correct the parties have agreed to transfer the domain or delete the domain or whatever.

And then it either happens or it doesn't happen. If it doesn't happen things go forward as though there were no settlement if it does happen it's done.

So that way the provider doesn't have to make a determination they just have to say hey this is what the parties have told us or what we believe that - are the parties have told us so registrar if this is enough for you to act on please act on it.

Christine Duran: Right. And I think Matt that I think that that's what - what was - what's going end up happening. I mean currently we require for the parties to stay a case or suspend a case for settlement we require a jointly signed document that they can both, you know, electronically sign and email in separately or they can jointly sign it and fax it in however they work it out.

And then we tell the - we tell the registrar hey these two people are attempting to settle, you know, let, you know, if they settle great whatever, you know, carry on.

So basically yes what you're proposing is probably what would end up happening. We would just get a piece of paper with both signatures on it, tell the registrar yes these two people have already settled, transfer the domain name between them.

But I think the concern was is that there were people who were thinking that the registrars were going to get some sort of insurance, or security, or benefit out of this deal - out of having the providers take the extra steps and the extra time to now facilitate the settlement contract with the registrar.

But really you're not getting anything else. The registrars are not getting any extra assurance because we have absolutely no idea if the person who signed is actually a domain name registrant.

And so I just want to make it clear that you're not - the registrars are not getting anything extra except a single point of contact.

Michele Neylon: Matt nothing further? (Luke) you've been pointing since the chat would you like to say something on the telephone.

And Marika is now absenting herself. And she is passing things over to Mr. Cobb. Oh okay (Luke) can't speak so...

Christine Duran: Can I just respond to (Luke)'s last comment?

Michele Neylon: Okay.

Christine Duran: (Luke) said in the chat that it should be the provider who instructs the registrar to unlock not the registrar on its own.

And I just wanted to follow up a little bit with that and just say that that's sort of the purpose of us notifying the registrar of the stay so that we're saying you can go ahead and unlock if the parties agree.

Now I hear the comment that the registrar doesn't know if the parties have actually settled. And again the registrar is going to know exactly as much as we are going to know.

We're going to get a piece of paper that says we've settled. We want to unlock and transfer the domain name.

Presumably that's the same piece of paper the registrars have been getting for the past dozen years in stay and transfer cases is a letter from the parties saying we've settled. We want to transfer the domain.

Again you're not getting anything else in the process because that piece of paper that the registrars should have been getting is just going to come from us now instead of the parties themselves.

There's not going to be any further validation, or verification, or any other knowledge on the back of that.

So that's just - I mean I'm just concerned that the registrars think they're getting some extra insurance policy here and they're not.

Michele Neylon: Just (Luke) just saying he's okay with that. Berry has his hand up and so does Alan. And since Berry hasn't said a word in ages I'll let him go first and then followed by Alan.

Berry Cobb: Thank you Michele. This is Berry from staff. You know, I think isn't correct me if I'm wrong but the primary driver here is once we get to this point in the process there is an absence of an authoritative source for the process.

Once the provider gets the - that the parties agreed to settle then the provider is out of it and essentially, you know, the registrars never really considered the authority with respect to this process because they're the ones that are waiting for the lock to be applied and they're the ones that are waiting for the lock to be removed.

So that's where it sounds like there's a disconnect here because otherwise it just, you know, it almost seems to go into a black hole in terms - from an authority perspective.

And the reason why I bring this up is I'm trying to visualize this process from a swim lane perspective by role. And it seems like when we get to this there is no swim lane that this would - that anybody would own.

Christine Duran: Yes well yes I think that there is - I'm not understanding the swindling comment really. Maybe you want to rephrase but I just want to comment on the - that nobody really does own the process.

The providers are responsible for running through the UDRP process itself. There is no stair suspension process in the UDRP.

But the parties have approached WIPO and NAF in the, you know, many years past and said we want the option to settle.

It's not part of the UDRP. It's not part of what the providers. Do but we want to be able to settle.

So we said okay fine. I mean David Roache-Turner discussed this before but it went to ICANN got approval from ICANN to allow the parties to, you know, settle.

But there's no sort of provider oversight because it's not part of the UDRP. It's something that the parties want to do on their own.

And so that's why it is really a black hole. It's completely stepping outside the process to go negotiate something off to the side that has really - that's really not related. So you're right it is a total black hole.

Michele Neylon: Alan go ahead.

Alan Greenberg: I guess I'll ask a question that may be obvious but why did it come to us? Why are we discussing it? Someone must have identified a problem.

Christine Duran: Can I answer that? This is Christine. I think that it was because when we were talking all about the lock there was concern and one of the questions had to do with the unlock and how do we make sure a domain name gets unlocked when it needs to be unlocked?

And then it was identified that one of the places and times in which a domain name is unlocked or is in a quasi-lock because it might be unlocked is during their stair suspension process.

And then of course as we got into the discussion we - there are really no rules around it. It is just kind of the Wild West where the parties stepped out of the process and want to settle.

And I think the registrars were like yes. And we really want some more confirmation that what we're doing is right.

And we did as providers get a couple questions a year about well what - why - what are the parties trying to do? What's the settlement?

What am I supposed to do? Somebody please tell me. So I mean it is - and it does come up. I won't say it's not a problem.

Michele Neylon: This is Michele. Just to answer that question as well Alan as a registrar once we're in this UDRP process we are basically at the mercy of the UDRP provider.

We can't just - we can't - we can't confidently just allow domains to be unlocked, transferred, change, hold, or all that kind of thing once this process kicks off.

So from a registrar perspective we want to be told by the UDRP provider it's okay for us to do something. That's I think that's where (Luke) and others - where that query came from.

I mean it's from our perspective what we want is clarity to know that yes we're doing what we're meant to do because it's our contract.

But don't forget we registrar's have a contract with ICANN. The UDRP providers don't. If the UDRP provider screws up ICANN is not going to terminate their contract because there is no contract. If I screw up ICANN can terminate my contract.

Christine Duran: But Michele I just want to address your comment was we want to know that we can unlock or, you know, we're allowed to unlock. And those were your words.

And that is the order that you could currently. And I realized you meaning the registrar -- you don't have many of these -- but when, you know, when they're currently - the process is you get an order saying the parties are about to settle. If they approach you and tell you they've settled you may unlock.

Michele Neylon: Yes. But we won't to be 100% sure that they actually have said that you the UDRP provider are 100% happy with that.

We don't want a situation arising where somebody represents themselves as being a party to this process. And there's basically you're the gatekeeper that's the way some of us would view it.

Christine Duran: We're not. I'm telling you we only - we literally...

Michele Neylon: But we're not the gatekeepers either. That's the problem. That's where there's a lack of this clarity. This is part of the problem we have with a lot of these processes is that it's not clear.

I don't know who the complaint is. And I don't know who represents a complainant. I have no knowledge of them. I have no relationship with them none.

Christine Duran: But you know who the respondent is and that's who we don't know.

Michele Neylon: No you do know because I've told you. I confirmed who they are when you ask me.

Christine Duran: So you might have. But the most - the vast majority of registrars don't.

Michele Neylon: But we're meant to confirm to you as part of the process who the respondent is.

Christine Duran: Well you're right correct but...

Michele Neylon: So I mean I'm working on the basis that you -- whichever UDRP provider it is -- has contacted me saying please confirm X, Y, Z.

We confirm X,Y,Z or correct us like the most recent UDRP case we had where UDRP was sent to us for domain that had been - that no longer was registered.

So, you know, obviously that was a bit kind of pointless. So, you know, I have no knowledge of who the complainant is.

I have no relationship with them of any kind whatsoever. I don't know. Somebody could turn up and say hey I'm representing company X.

I don't know that they're representing company X. I have no way of knowing that. So I have no relationship with them. Alan and then Matt.

Alan Greenberg: Thank you. If I heard correctly Christine said that they would issue an unlock request to the registrar when they receive a signed - a document signed by both parties that they are - that there is an intent to settle. Did I hear correctly?

Christine Duran: Yes. We don't say to unlock. We say the parties are attempting to settle. You may unlock if they contact you and tell you they've settled.

Alan Greenberg: Yes okay. Yes the salient part was you receive a document signed by both parties.

Christine Duran: That's correct.

Alan Greenberg: Do you pass that document on to the registrar?

Christine Duran: That document itself I do not. No.

Alan Greenberg: Okay. So they don't know who the two parties are that you've satisfied that your satisfied are going to settle?

Christine Duran: Well they should because they got a copy of the complaint which has the complainant's contact information in it.

Alan Greenberg: Okay. But you've - we've heard before that in the case of privacy, services, and other cases where things are somewhat obscured you may name several people as the respondent.

Christine Duran: Right as the respondent. But your question was how can we identify the complainant?

Alan Greenberg: No, no.

((Crosstalk))

Alan Greenberg: No, no. How can they identify the two parties who you are satisfied have the right to settle?

Christine Duran: Right. And when we talk about respondent the respondent is every entity listed as a respondent. I mean there's only supposed to be one respondent in the case.

And they may have multiple Whois records because they're all they've use different Whois records. But so it's any domain name in that case would be eligible for settlements.

Alan Greenberg: Okay.

Christine Duran: It's not like there should be multiple respondents on a case.

Alan Greenberg: But you said in a privacy service you will often or always -- I don't know which -- keep the privacy service and add the other - the person who is being revealed.

So you may have effectively...

Christine Duran: Yes it could - yes both could be listed in the complaint. Yes it'll really depend on how - what the registry does when they verify.

Alan Greenberg: And who's signature is it that you're looking for on the settlement agreement?

Christine Duran: Anyone's.

Alan Greenberg: Any of those?

Christine Duran: Any name. Yes any name yes. And if it just says privacy service in the name is (Joe Schmoe) we take (Joe Schmoe).

Alan Greenberg: I think we've just defined rats nest.

Christine Duran: Yes it's really - it's very complicated and if the privacy services and the inaccurate Whois information affects us in what we do every day very, very much.

Alan Greenberg: Yes I know. But we can't fix that I was just...

Christine Duran: I know, I know but I was throwing it out there.

Alan Greenberg: One question then I'll yield. Do we have many complaints that with right now the registrars are doing it they may not be equipped for it, they may not want it, but they're doing it you're telling us. Do we have any problems with it right now?

Christine Duran: With the current...

Alan Greenberg: I'm not sure I'm asking you, or the registrars, or whatever. Do end up with people messing up and doing the wrong thing or it does some of people feel out their way in the dark and it manages to work?

Christine Duran: Well to my knowledge we have not had any problem or any reports of problems with fraudulent transfers or any problems like that.

The biggest problem that we have seen is the occasional registrar like I said once or twice a year I'll get an email from a registrar that says what I lost this domain name and now you're telling me that there's some settlement? How am I - what am I supposed to do?

And then I just kind of handhold them through the process and I say well, you know, this is what could happen. And this is what you could do. And feel free to write, you know, contact me if you have any questions. And then usually they don't. And then and then the settlement happens.

Michele Neylon: Okay. Everybody and Matt I'm afraid we've run out of time. It is now the top of the hour. Good to see that we're having a nice albeit heated discussion of various things and let's try to continue this passion and energy on the list.

Look forward to speaking to you all next week. And if anybody has any issues in the interim please let us know. Thanks. Bye.

Man: Thank you all. Have a good day. Operator you can stop the recording please?

END