

**ICANN  
Transcription  
Locking of a Domain Name Subject to UDRP Proceedings meeting  
Thursday 13 June 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 13 June 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-20130613-en.mp3>

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

Attendees:

Kristine Dorrain – NAF  
Alan Greenberg - ALAC (Vice Chair)  
Matt Schneller - IPC  
Michele Neylon - RrSG (Chair)  
David Roache-Turner – WIPO  
Ty Gray - WIPO  
Hago Dafalla – NCUC  
Laurie Anderson - RrSG  
David Maher – RySG  
Gabriella Szlak – CBUC  
Lisa Garono - IPC

Apologies : none

ICANN staff:

Marika Konings  
Lars Hoffman  
Berry Cobb  
Nathalie Peregrine

Coordinator: Please go ahead. This afternoon's (council)'s call is now being recorded.

Nathalie Peregrine: Thank you very much, (Tim). Good morning, good afternoon, good evening. This is the UDRP Locking of a domain name working group on the 13th of June, 2013. On the call today we have Hago Dafalla, Michele Neylon, Matt Schneller, Alan Greenberg, Lisa Garono, Kristine Dorrain.

We have received no apologies for today's call. From staff we have Marika Konings, Lars Hoffman, Barry Cobb, and myself, Nathalie Peregrine. I'd like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you, Michele.

Michele Neylon: Thank you. Good afternoon, good morning, good whatever to everybody. As per usual, does anybody have any changes to their SOI or any of those other wonderful things?

Alan Greenberg: Does that mean I have to say whether I'm not interested anymore or interesting? It's Alan.

Michele Neylon: Well, no it's a statement of interest, not a statement of interesting-ness or commitment so you don't have to get into that.

Alan Greenberg: Sorry, this is my third hour of teleconferences and it's only 10:00 here.

Woman: Are you getting a little punchy, Alan?

Alan Greenberg: Oh yes.

Michele Neylon: He gets like that every now and again. I found the best way to cope - to deal with him is just ignore it. I think he's looking for sympathy.

Alan Greenberg: No, no, I strongly support ignoring.

Michele Neylon: Yes, I've got - this is my second today and then I've got registrar (X com) call this afternoon I think. And then I'm off to Austin, Texas tomorrow.

Alan Greenberg: Congratulations, by the way.

Michele Neylon: Oh, thank you. Oh, do I have to update my SOI to include the fact - to include that or not? It's just as well.

Alan Greenberg: I think you better.

Michele Neylon: Oh. ICANN staff people, lovely ladies, including Berry who was just designated as a lovely lady too, do I need to update my SOI to include that or not?

Marika Konings: This is Marika. I think you should, yes.

Michele Neylon: Oh, okay. Well, in that case, for the record, then my - I should adopt - I should inform you all formerly that I will be updating my SOI to reflect the fact that I am now chair of the registrar stakeholder group.

Okay then. Right. Okay, oh, David Maher is back again. Hello David. And - oh, with us - and the WIPO gentlemen who are sharing the one account have appeared. I mean, you're sharing one phone as well, gentlemen.

Man: Yes, we've just got the one phone. We're trying to economize.

Michele Neylon: Well, I you know, if you could (unintelligible) I was going to open a can of worms then you all will get offended so I won't say anything. We encourage such things. You can say WIPO is going green by cutting down on the number of phones that you have.

Oh, there's no registrar today. Oh no, there's one - (Laurie) from GoDaddy and they're big enough to account for several registrars so that's perfect. Okay then, now, one of the issues we were looking at was the settlement thing. And we've - actually I'm not even too sure. I'm looking at this note on the screen. And Marika, is this one of your creations?

Marika Konings: Yes, this is Marika. So I looked back at the transcript of the last meeting because I had to miss the last bit of the discussion, so what is up on the screen is basically the two options that we put out in the survey. The result of the survey, so it's Option A was supported by 88.9% of the respondents and Option B by 11.1% of respondents.

And then below that, I noted some of the issues that I believe were raised during last week's call but I don't think the group came to a conclusion as to what that means or whether we support Option A or B or whether there are some additions that may need to be made to one of those options to accommodate for those issues.

So maybe for those that weren't on the call, I think maybe just repeat the concerns or issues that were raised. I think the first one that was made, you know, the registrar doesn't have a relationship with the complainant so I think from a registrar side, there was a preference for UDRP providers to take on the role of sending me notification to the registrar in the case of the settlement.

But it was also pointed out that the registrar does receive a copy of the complaint that contains the relevant information about the complainant. UDRP providers then stated on the call that they don't have a relationship with respondents, so from that perspective, I think they are in a little bit of an awkward position of having to tell the registrar what to do as they cannot provide any guarantees either that the parties they're dealing with are really the parties they say they are or are involved in the dispute.

But registrars, I think, countered that, you know, the information has been verified by the registrars so they should have the information on who the respondent is.

And I think it was also pointed out that if we - if the working group would, indeed recommend Option A, in which case the UDRP provider would be

responsible for confirming a settlement to the registrar, that registrars do need to be aware that this would not absolve them of any responsibility on the UDRP as I think I said before that the UDRP provider doesn't necessarily have the tools by which they can verify or confirm that the parties are really the parties that they say they are which, I think is the current situation that registrars are in as well.

So I think that's what I basically took away from what read in the transcript. I don't know if there're any other points people want to highlight here and I think the question is where does that lead us?

Michele Neylon: Okay, so don't all raise your hands at once. Oh my god, I've got this massive queue of people there. It's really impressive. You all want to speak on the subject. I'm so happy. Okay, that's not working. Alan, thoughts.

Alan Greenberg: Come back to me in a minute. I'm just rereading it and trying to come up with my thoughts.

Michele Neylon: Okay. David or (Ty) or David and (Ty) - I'm not too sure which one is which, but okay, the WIPO offices.

Man: Thank you. We've been trying to (seem) in synch but it doesn't work so well, so maybe I'll just talk. I just will note that the option which is sketched out and presented here in Option B is essentially - describes what currently happens.

And though, unless there's a real problem with the way things are currently working, I suppose I express a reticence to move away from that norm, unless there was a strong reason for doing it, at least from a provider perspective. And the other point is just to - a question, I suppose, to Marika, which is just, is it possible to know how many responses we've got to the - for the survey.

Michele Neylon: Marika won't be able to answer you for a couple of seconds. She dropped herself off the call.

Man: Okay, I mean, obviously...

Michele Neylon: She's on her way back in. Just give her a second. I mean, if you want to sing in chorus in the meantime, (kind of like old) music, that's okay.

Man: We left the karaoke machine at home I'm afraid.

Michele Neylon: Ah, you're no fun.

Marika Konings: Hi, it's Marika. I'm back again. Sorry for that. I pushed the wrong button and must've disconnected myself. I think the question - because we did have (a sign) on the Adobe Connect. I think the question was how many people responded to the survey? Is that right?

Michele Neylon: Yes.

Marika Konings: Just pulling the results. To this specific question...

Alan Greenberg: It's got to be 9 or 18, I would think, based on the percentages.

Marika Konings: Of course now my Internet is running slow as well. Here we go. So we had eight people choosing Option 1 and one person choosing Option B.

Michele Neylon: And what percentage of the total group does that constitute, Marika?

Marika Konings: You mean, total number of working group members?

Michele Neylon: Yes.

Marika Konings: Or total (unintelligible) members responding to the survey?

Michele Neylon: No, total number of working group members.

Marika Konings: (Unintelligible) number but I think we counted yesterday and I think we ha- or last week, I think we have 18 or 19 members, but I think we need to take into encounter as well that we do have a number of people in the group that are not active. I'm sure they maybe monitor the list but they're not active participants.

Michele Neylon: Okay. (Laurie) and then Alan.

Laurie Anderson: Hi, it's (Lauri)e. My concern is (unintelligible) the registrar unlocks the name so while the transfer and I'm afraid that that might be interpreted by registrars that the registrant will do the transfer or move the domain name to the control of the complainant.

And if we're trying to prevent any kind of flight, you know, the domain could transfer away or the registrant may not complete the settlement. So it seems like the registrant should not have the option to do that or we could run into more problems. It just seems like if the registrar is the one doing the change, it would be more efficient and safer.

Michele Neylon: Okay, thank you. Actually, where's the wording transfer in this, (Laurie)?

Laurie Anderson: It's part - it's number three, parties request the registrar to unlock - not to manage anything further like terms, just unlock to allow the transfer. So that, to me, sounds like the registrar is going to allow the registrant to do the - to implement the settlement agreement.

Michele Neylon: Right. Okay. And just as a kind of - just thinking aloud here, do we really want to talk about - do we want to - is it to transf- would we want to leave something as vague as transfer or would you be happier with something, like say, transferring control of a domain?

Because I'm thinking of a scenario, like, say where you would move the domain into an account for the complainant as opposed to transferring the domain to another registrar immediately which would kind of solve your flight problem possibly.

Laurie Anderson: Absolutely. But I think it should be made clear that the registrant - or that the registrar is the one responsible for making that change.

Michele Neylon: Yes. No, that's fine. I'm just trying to (trash) out at them. I'm thinking about some of the stuff that's been going on in other working groups because one of the problems that we run into is where this kind of overlaps.

I mean, the IRTP, the (Inter) Registrar Transfer Policy changes that are to be implemented in the next few months include some changes with the change of control of domains which didn't previously exist.

I'm just wondering, do we want to use a term as vague as transfer without specifying because it really refers to transfer and the control of the domain as opposed to be interpreted just to mean transfer a registrar?

Laurie Anderson: Right. I mean, at GoDaddy we use change of account or change of registrants.

Michele Neylon: Yes.

Laurie Anderson: Rather - because when we talk about transfer, we're talking about the transfer between the registrars.

Michele Neylon: Yes, I'm just wondering in the context of this, what would we want it to be?

Laurie Anderson: I would say change the control maybe.

Michele Neylon: Okay. Does anybody have any objection to that concept before I move on to Alan?

Alan Greenberg: Alan has a question about it.

Michele Neylon: Go ahead Alan.

Alan Greenberg: I'm not sure I see the difference. Once the registrant is changed, is that registrant can change the registrar almost immediately, can they not?

Michele Neylon: No, they can't.

Alan Greenberg: Why not?

Michele Neylon: Because the IRTP trans- the IRTP policy is changing.

Alan Greenberg: How do you prevent a registrant from changing registrars?

Michele Neylon: By making a policy that does not allow them to change registrars every five minutes.

Alan Greenberg: Okay.

Michele Neylon: I mean, obviously it's not that simple. I mean, the rationale behind that is that...

Alan Greenberg: Today there is no difference I don't believe.

Michele Neylon: Today there is and there isn't. Today there is language in the IRTP where there're options for registrars to allow certain things at certain times or not. We cannot allow the transfer of the domain name within the first 60 days of registration. But when a domain name is being transferred - so let's say you

register a domain with GoDaddy, then you transfer it to Black (Night) and then you want to transfer it to Web.com, and...

Alan Greenberg: Oh, that I understand. But here we're changing the registrant.

Michele Neylon: Yes, I think - I have to look at the exact wording but I think that has been actually changed slightly just to help mitigate against that kind of...

Alan Greenberg: All right, my hand wasn't up...

((Crosstalk))

Michele Neylon: ...and jump that kind of scenario.

Alan Greenberg: All right, if we do that, I have no real objection but I think we've got to be careful with the wording but my hand was up for something else. So when we're finished with this, you can come back to me.

Michele Neylon: Okay, thank you. (Laurie), do you want to add anything further to this?

Laurie Anderson: Yes. I just wanted to say that, you know, technically until this case is dismissed, the UDRP case is still active. So we're maintaining the status quo not allowing transfers would still apply.

Michele Neylon: Okay.

Laurie Anderson: So we're - in our case, we're not going to allow a transfer to another registrar while a UDRP ca- until a UDRP case is dismissed.

Michele Neylon: That makes sense.

((Crosstalk))

Michele Neylon: Sorry, what's that, David? Was somebody saying something there? Okay, moving on to Alan.

Alan Greenberg: Yes, first a question and then my comment. Under the Option B, what triggers number four, that is the dismissal by the provider? Anyone?

Kristine Dorrain: This is Kristine from NASA. And when four happens it's because, at least for us, when the parties notify us that they're going to settle, we issue a stay order to the registrar that says you can allow the parties to transfer this domain name between them and only between them.

And then we tell the parties that if they don't get back to us and tell us that they didn't settle, we're going to assume that they did and the case will be automatically dismissed.

So we are - nobody has to affirmatively do anything to have the case dismissed in the way the forum does there - is the way we do our dispute - our settlement process.

So the parties have to come back to us and tell us that they didn't settle and that one of the party's wants the case to go forward and within that time period, otherwise we're going to assume they did.

Alan Greenberg: Okay, so you give them a certain timeframe.

Kristine Dorrain: Yes, usually - it's 45 days here. I know WIPO does it a little differently I think in something that (David Brustner) submitted, it looks like maybe they do two 30 day options, but we do one 45 day and that's it.

Alan Greenberg: Okay. I guess my overall comment is I have some level of unease with David saying Option B is essentially how it works today and yet, eight out of the nine respondents say they prefer Option A. And I have a bit of a trouble understanding - putting these two together.

Kristine Dorrain: Well, they're the only providers on the call, Alan. And I voted Option B.

Alan Greenberg: Therefore you're the only one because there was only one B.

Kristine Dorrain: Right, and so right. And I guess - I don't know whether David voted or not. And then I have to guess that most of the other people who voted are registrars who, as we talked about last week, appeared to believe, whether they're correct or not I will leave to everyone's imagination, that they're going to get some further security or assurances having the provider tell them that they need to transfer the domain name, leaving aside the fact of whether or not we actually have the authority to do that. But - so the - I mean, I think that part - I think if you have to look at the demographic of who actually voted for which option, right?

Alan Greenberg: Well, but since we're trying to have a policy that works, if the people who have to implement it and - on the registrar's side, and me on behalf of users, I think Option A is better. It - leaving it as B I think is problematic.

I mean, yes, it may involve more work for the provider and maybe your B goes up because of it, but if that's what we need to make the system secure, I'm troubled and, in particular, we're not looking at the large registrars who do these everyday but the ones for whom this is an unusual occurrence.

Kristine Dorrain: Right, Alan. This is Kris...

Alan Greenberg: I'm somewhat concerned.

Kristine Dorrain: Yes. No, I understand that. And like we talked about last week, again, I agree with you. The larger registrars mostly have this other control. I think - the one thing that concerned me about what you said and just to kind of tie back on where we left our conversation off last week, is that it's not - you know, you reference more secure and more assurances in the process.

They're not - it's not going to be any more secure or any more assurances and as I pointed out last week, the provider itself does not have the independent authority to issue a transfer.

The panel issues a transfer and maybe that's a distinction, is everybody thinks the provider and the panel are, you know, one in the same. But the provider is just the administrative body. The panel is the one who orders the actual transfers.

So you're asking my staff to try to decide whether or not, you know, they should be allowing parties transfer and making a legal determination as to whether or not they should order a registrar to transfer a domain name.

It's not (a panel) order. UDRP policy Paragraph 3 says we will transfer the domain name if we get an order from an administrative panel, not from just the provider who's administering the administrative panel.

Alan Greenberg: No, Kristine, I understand that. And maybe A is worded wrong. Maybe opt-Part 4 of A is the provider through - or you know, on instructions from the panel issues or whatever the right terminology is. I have no quibble with changing that.

Kristine Dorrain: Right, but then I think one of the problems you're going to get into - I'm just predicting here and our resident IP lawyers who are complainant's representatives can weigh in - but one of the things that complainants and respondents want when they settle, is they don't want a panel decision, not even a consent determination.

They don't want any UDRP decision with their name on it published on the Internet. And because all the UDRP decisions have to be publicly published, they want to have a settlement that basically shuts down the process before the decision gets out there.

So if you say, "Yes, we're going to have the panel order a consent judgment," which we talked about last week, it makes perfect sense to have these cases maybe go to a panel for settlement, then you're going to have UDRP decisions published online.

It also raises an issue - and it looks like David maybe has his hand up and he wants to address this - but I think WIPO maybe offers their money back if parties suspend and stay before a certain point. That would also mean that the parties would not get that in that situation but I'll step down for a second and I'll let David answer if, in fact, his hand is up.

David Maher: Yes, that's right, Kristine. At WIPO there is an option, indeed, for parties that are able to successfully settle their disputes before a panel is appointed, they receive a refund which amounts to two-thirds of the filing fee, so it can be a significant incentive for the parties to reach an amicable agreement before the panel is appointed.

And so it would be unfortunate, I think, if we would be looking at a situation in which we would require a panel to be appointed simply for the purposes of giving a (fix) to an agreement that has already been reached between the parties.

And that's precisely what Option B essentially does. It provides a process through which an agreement that the parties reach can be given effect by the registrar. And the proposal essentially would give a registrar an option to unlock the domain name for purposes of giving effect to that agreement, you know, solely for the purposes of transferring or changing the registration data to reflect that of the complainant per the terms of the settlement agreement itself.

Michele Neylon: So David, could you go back to the - what did you say about changing the Whois detail is to be what now? Sorry.

David Maher: So it provides a process by which the registrar can give effect to an agreement reached between the two UDRP parties.

Michele Neylon: Right.

David Maher: Which typically would require changing the registration data to reflect the information of the UDRP respondent to the information of the UDRP complainant.

Michele Neylon: Okay, but is that always actually going to - I mean, how is that going to be supplied to the registrar?

David Maher: Well, typically, it would come in the form of an agreement that the parties themselves would supply to the registrar for that purpose.

Michele Neylon: Okay, and how as I, as a registrar, how am I going to know that that's actually genuine and not completely bogus?

David Maher: Well that - I mean, that would require the registrar obviously to be satisfied that the agreement is a genuine agreement between the parties and typically, you look at the agreement, you see that it's come from the complainant and the respondent in the UDRP proceeding.

And you would ascertain that, at least at WIPO, because you would have the - all of the relevant contact information that would accompany any of the communications that would be sent out in the course of the proceedings, some of which the registrar would receive.

And that communication, the information would allow the registrar to determine that the complainant is X, who they say they are, that the respondent is X, who they say they are and the contact information would be obtained also from that communication document. But, of course, it would

require the registrar to put eyeballs on the agreement between the parties and to ensure that it exists in fact.

Michele Neylon: Okay. All right, thanks. I'll let Marika go and then we have (Laurie). Sorry, Alan and then (Laurie).

Marika Konings: Yes, this is Marika. My question or comment actually is, if the working group would recommend Option A, it basically means that this will go into an advisory or it becomes part of the rules or whatever way is implemented. So it would become part of the official process as such if, you know, if this is what we're going to recommend.

So in that case, wouldn't it then be also that, you know, if the registrar doesn't follow the directions of the UDRP provider, that they could be held in breach by ICANN compliance? Because (unintelligible) I know that you're saying we don't have any authority to force them to a transfer, but couldn't we just turn it around and saying this is now becoming the required process and these are the steps and this is part of, as I said, you know, even an advisory or becomes part of the rules?

Isn't it the case, then, that ICANN compliance can just follow up with registrars then if they don't follow up on the instructions that are provided by the UDRP provider based on the information they have received from the parties that reached the settlement?

Kristine Dorrain: I just wanted to say, yes, I think Marika, if you - if we were going to go with Option A, I think absolutely we would have to provide some authority for the provider in that case because, yes, at this point there's nothing. It's just yes, we think you should do X and there is no authority there right now.

Michele Neylon: Okay, thanks. David, do you agree or disagree?

David Maher: I certainly agree that there's no authority in the UDRP at the moment to allow a provider to order or, in effect, authorize a transfer, yes, although we would need to look at that I think if we would go with Option A.

Michele Neylon: Okay. I'll move on to Alan and then (Laurie).

Alan Greenberg: Thank you. It's Alan speaking. We heard last week, if I remember correctly, that Kristine said that, you know, registrars who don't do this often, at times ask the provider, or at least ask the provider in her case, for help and, you know, guidance as to exactly what are they supposed to do.

So that indicates some level of unease at least with novices. I'm wondering to what extent is there any record of, since we're told that B is essentially what happens today, are registrars burned by this or do they, one way or another, does it seem to actually work?

Michele Neylon: (Laurie), you're a registrar. Can you try to answer that and thinking in terms of not being the largest registrar on the planet possibly?

Laurie Anderson: This is (Lauri)e. In reality, after we receive a suspension, we get an email from the registrant saying they want to turn the name over or the complainant saying the registrant agrees to turn it over. And then we have to confirm with both sides that they both want to do it and get an account number to move the names.

So in my view, if the parties agree first and notify the provider and the provider gives the registrar directions, I'm not saying an order, but just something saying that, you know, they have agreed first and they told the provider what's happening, and then the registrar - the provider could give the registrar direction on what actions to take, it would certainly streamline things and it would avoid the problem with registrars unlocking the name and allowing the parties to move it on their own, or not. I mean, and dragging it out.

Alan Greenberg: But by burned, I guess I was asking are there cases where it does get unlocked and then nefarious things happen because of that.

Laurie Anderson: I have heard of cases, I can't give you a specific example, but I have heard of cases where domain names have transferred to other registrars including GoDaddy and we've ended up being provided with a UDRP decision on a name that was not registered with us where we went ahead and implemented the decision because the domain name was with us.

Alan Greenberg: If I may summarize Michele and then I'll shut up, it sounds like we have a decision that either we come out and say sorry it's the provider who's going to have to take the reasonability on this and yes that's going to imply some work on their behalf or it's the registrar who'd going to have to take the responsibility on this and they're going to have to put some work into this. Either way I think we need to come off the fence and do one or the other.

I'm starting to feel it almost doesn't matter and my inclination is to side with the registrars because I think the small number of providers are likely to be able to do this in a better way than a large number of registrars, some of whom rarely see this and some of whom are not necessarily going to be supportive of the complainant's issue and therefore more worried about their own customers.

So my inclination is if we have to flip a coin and go one way or another is to go with A and figure out how we can make it as painless as possible for the provider and not have to convene a panel which has implications I think which we probably don't want to go in.

Michele Neylon: Thanks Alan. Okay unfortunately the only registrars on this call this week are (Laurie) and myself. Oh not (Laurie) sorry. I'm not too sure where the other registrars have disappeared to this week. So most of you seem to be erring towards the option A possibility and Marika has also made a few notes there

about some of the caveats around this entire thing. So I mean what would people like to do with this and where would you like to go with this? Or is it a case that some of you think this doesn't really need to be changed or what? I mean what is your general feeling?

(Laurie) go ahead.

Laurie Anderson: I think as a registrar we would be okay with option B but I think it needs to be more clarified. As I said before about who's going to be doing the change of account or the change of control of the name as opposed to just having that lock to allow the change to take place. Registrars are going to view that as oh I just have to unlock the names and wait for the parties to make the change them self and that's setting a really dangerous precedent I think.

Michele Neylon: Anybody else have any thoughts? David and (Ty). I'm not too sure which one is typing so I have to call it David and (Ty) is putting a few things there into the chat about how changing the account after the registrar provides us no control over this practice. That's true yes. I can't read this very well. There are a few things there in the chat maybe people can have a look at if they want to...

Gabriella what do you mean exactly? Gabriella's talking to is technology accessible by the parties? Gabriella what are you referring to exactly? Some kind of platform. Platform for what? So Gabriella's talking about some kind of platform where people can choose the options for transferring or not transferring. I'm not sure exactly what that would do. And we do encourage you to think about the box but I'm just still having difficulty visualizing it.

Kristine go ahead.

Kristine Dorrain: Hi this is Kristine Dorrain. I think I kind of follow where Gabriella is going. We currently have a process for settlement and suspension, not settlement necessarily but suspension, that we use for RES and we're going to be using

for URS and hopefully migrating to UDRP soon where the parties actually log into their online account with us and mutually click a button saying we want to settle, here's some reasons, can we get a stay of the case? And they mutually go in and log on and are sent to that and then whoever's in charge of the case at that time whether it's the provider or the panelists, goes in and clicks yes okay I authorize the stay.

And so I think what Gabriella's saying is that you would make something similar to that or make that process available to the registrar to log in and see that the parties have both assented. Right now -- I just wanted to address that a little bit -- right now it's also being done just by a piece of paper where the parties mutually sign a piece of paper saying -- and they fax it to us or e-mail it to us; I'm not sure how WIPO collects that data -- that say we want to settle, here's our signatures, can we stay the case.

So currently we're collecting it via paper. I don't know how much more technology would speed things up because we're already sort of emailing these documents around but it is an interesting theory because it's something that we are sort of adopting here generally.

Michele Neylon: Okay thank you. Anybody else have anything to say on this at the moment?  
Marika go ahead. Super Marika on the phone everybody. Marika go ahead.

Marika Konings: Thank you for that introduction. This is Marika. I think going back to the point that Alan made and I think people have made in the chat as well, so we just need to get a sense of whether there's some really strong support for option A. I mean the poll leans that way but I think (unintelligible) it's the preferred option but I don't feel really strong about. And I do think we see the providers having strong support for the option B.

So I think the question is the people who feel strongly that option A should be pursued and should be on the table and further considered or are people willing to go to the default or I think the more current process even if that may

require some further clarification to the actual language that is there in order to move this discussion forward? Because I think we do need to come to some kind of closure or at least a plan of how we're going to come to closure and not have this issue maybe lingering on for a couple of more calls.

Michele Neylon: Okay thank you Marika. Kristine. No? Okay.

Right we do need to come up with something. We can't - we just need to actually move forward on this in terms of deciding on what way we want to go with this. I mean we have discussed it yes, we can say that we discussed it of course, but if we are to make a recommendation we have to be able to make a recommendation that is well actionable I suppose might be the word I would use.

And please Gabriella it's not your fault. It was an open matter anyway.

I would recommend then that Marika if you could just summarize this and put it to the list and then we can see if people can actually come back with something constructive on this within the next couple of days. Could you bring up the comments please? Wow that was fast. I know you guys are efficient but that's scary.

Okay.

Marika Konings: We actually left off at comment 24 at the end. There are three comments left there that I think are categorized under other comments that didn't either fall under any of the charter questions or any of the recommendations we made.

Michele Neylon: Okay thanks. I'm just trying to scroll here like mad a second.

Marika Konings: Actually if you go to the bottom you can just type in the page you want to go to and it's Page 13.

Michele Neylon: Oh I didn't know you could that okay. Okay comment from ICA: "ICA continues to believe that UDRP reform of at least a procedure should be an issue in the near term or the primary focus on establishing a standard enforceable contract between ICANN and all the creditors of UDRP providers."

Any comments?

Woman: I think noted would suffice because I don't think it really relates to anything we're talking about here.

Michele Neylon: Okay thank you. Anybody else have any other thoughts on this? No? Okay.

Twenty five, "Some ITA members have reported that a registrar lock (unintelligible) whether imposed in response to a UDRP or for other purposes has impaired ready renewal of a domain approaching expiration. We therefore urge that the final report also contain responsive language making clear that domain renewal should not be impaired by a registrar lock."

I see Marika's got her hand up.

Marika Konings: Yes this is Marika. Just a note that we also covered this under comment five and that we actually noted it as one of the recommended actions that we would clarify that renewal is allowed as part of the UDRP. I think we probably already addressed the comment there.

Michele Neylon: Yes. Thanks. So I'm just looking - I'm a bit confused. Why would - I was wondering if this is saying in some circumstances if the domain name isn't within the UDRP they aren't able to renew it? Is that what they're probably getting at?

Marika Konings: This is Marika. I think yes. I think that's what he means.

Michele Neylon: Okay. All right that's fine.

Alan Greenberg: Some registrars have enforced it that way.

Michele Neylon: Okay. Which is interesting. Okay. And lastly I assume this is also from ICA.

Marika Konings: This is Marika. This is actually a thing that was raised by Elliot Noss during our session in Beijing but I think repeated as well by some others so I haven't attributed it. But I think we actually already did make a response to it as well.

Alan Greenberg: That did come from Elliot.

Michele Neylon: Okay so that's done. Does this mean we've actually finished going through all the comments at last?

Marika Konings: This is Marika. You may want to just reconfirm that people agree with that because I don't know if everyone was in Beijing when that was discussed so maybe just for the record we can cover it and make sure people are happy with the proposed change.

Michele Neylon: Yes okay let's do that very quickly. Go back down... All right. So the comment: "The recommendations should be clarified to indicate what should happen with the lock in case a court proceeding has been initiated while the UDRP case is still ongoing."

And the comment there which is from the Beijing workshop: "If we would make a modification to recommendation number ten and to option B for example, the registrar must remove the lock within two business days for the purpose of the UDRP dispute unless the disputed domain name is otherwise the subject of a court proceeding that has commenced concerning the disputed domain."

So does anybody have any comments on that, any other thoughts or do we agree? Don't all rush.

Alan Greenberg: It's Alan. I think a registrar who is confronted with this is insane if they don't ask their lawyer.

Michele Neylon: That's actually a very fair point.

Woman: We're assuming that all the registrars...

Alan Greenberg: That doesn't mean we shouldn't be clear on what we intended to happen.

Michele Neylon: No, no, no that's perfectly fine by me. I mean speaking as a registrar, if I get hit with a legal letter or a legal threat from somebody that looks valid, I do take it quite seriously and I do tend to pass it over to my legal counsel. And it doesn't matter what anything else that might be going on, I still have to deal with what's going on and what's landing on my desk.

Okay then.

Alan Greenberg: To answer David, half of it's scrolled down onto the next page.

Michele Neylon: Yes. See the thing is they've commonized on phones, what he forgot to tell us was they actually commonized on monitors. He's using a 14-inch monochrome display I think.

Man: Actually you'd be depressed to know how accurate that statement is.

Michele Neylon: Not really no because I don't work for you so I don't really care sorry, whereas all my staff has nice big monitors. I think I'm now buying them 24-inch LCDs.

Man: I'm in the wrong business absolutely.

Michele Neylon: Yes but you make more money per client than we do on average.

Man: I wish.

Michele Neylon: Well don't try to (bale buck) with me it isn't going to work. And you can Google (bale buck) I'll send you a link.

Any other comments on this or can we consider the comments have been closed? Can I actually say that? Okay I'm going to say it. We have finished reviewing all the comments.

Marika please don't say we've not finished reviewing all the comments I'll cry. Go ahead.

Marika Konings: This is Marika. I think we have reviewed all the comments. I think we do need to make a couple of updates based on the discussions we had, the agreement we reached on the comment related to the change of informal response periods. I'll need to update that and we'll still need to probably go back as well once we've reached a decision on the settlement options to reflect that here as well.

But I think the next step basically would be for me to go back to the initial report and start transforming that into a final report and making the update that we have noted here in the public comment review tool. And I think then the main issue that's still on the table is the question of settlement. So I'll send a note to the list if people agree because I think there were a couple of suggestions in the chat to update option B to make that more accurate or more specific so I can already maybe have a first attempt at doing that and maybe then inviting others to comment on that or make additional suggestions. And if people have ideas for specific language, please feel free to send it me directly.

But I think we're at the point we're getting close to being done I guess if there are no further issues that are being identified in the initial report as it currently stands. And I think that's the next step basically.

Michele Neylon: Okay. Thank you Marika. Any other comments at this juncture?

Okay then now we need to get closure on one or two of these outstanding items so if you could please respond to the various emails over the next couple of days so that we can finally close off those areas where there's a certain degree of uncertainty.

Marika your hand is up again.

Marika Konings: Yes this is Marika. I noticed actually as we have a couple of minutes left could we maybe just go...

Michele Neylon: Oh dear, oh dear.

Marika Konings: ...go back to the two options and actually try to write in the specificity in option B that some people were asking for if people still have nine minutes to spare.

Michele Neylon: So which bit are we looking at Marika exactly? Is it B is it?

Marika Konings: Yes I think there's one thing I've already written in because I think (Laurie) noted that the unlock that was that was unspecific so I put there now rapid so step three reads, " Parties requested by the registrar to unlock solely for the purposes of transferring to the complainant with whom the settlement has been reached." So that's the other language.

I think I noted that this should also cover a scenario by which a settlement is reached in which the respondent actually gets to keep the name so I think it would need to precede that as well. And I think there was as well the language that we just discussed adding that if court proceedings are going on

then of course a domain name shouldn't be unlocked. But I think there were some other comments as well in the chat.

And I think Matt was actually raising some issues. Maybe Matt can actually state what he believes is still missing here or should be clarified. That would actually help me write that up.

Michele Neylon: Okay. Matt?

Matt Schneller: I don't know it's an issue that we can necessarily address. But I think one of the points of discomfort that complainants can have with settlements under the current regime, certainly option B's way of doing things, is that you're kind of dependent on since you don't have an order from a panel or anyone else, the good faith of the parties, well the respondent and the registrar, to unlock solely for the purpose of transferring to the complainant if that was what the settlement agreed upon.

If you have - certainly some registrars and some registrants gut feeling is more trustworthy than others of course. It's probably the same for complainants as well. But when you're dealing with a registrar where the registrar and registrant seem very strongly like they may be the same entity, you don't necessarily have the trust level without a panel order to go through the current settlement process because you're dependent on nothing bad happening that isn't supposed to through the settlement agreement.

And you have contractual rights maybe but that's not necessarily something that's viable if the domain ends up being transferred to a registrar, an individual in Indonesia or something. Anyway it's not anything that's particularly easy to address, just one of the reasons why the status quo isn't always totally comfortable.

Michele Neylon: Okay thank you. Is that okay Marika?

Marika Konings: This is Marika. Yes but as I said if there are any other elements that people think should be further clarified here it would be helpful to let me know or suggest some language because I think as well if people are leaning towards option B and I think several of you have indicated that the more specific or precise we can be the easier it will be for those parties that are involved in the process to know what they need to do or what they can expect to happen.

Michele Neylon: Okay. Alan, good afternoon Mr. Alan.

Alan Greenberg: Thank you. I was going to ask a clarification on something I thought I heard Marika saying but I may not have been paying attention. Marika did you say but the name should not be unlocked if there's a court proceeding?

Marika Konings: This is Marika. I think that's what the suggestion was in the discussion in Beijing. The question was I think from the registrars that there currently isn't any specific guidance on what they're supposed to do or not supposed to do when a court proceeding has been initiated while the UDRP is still ongoing. And if I understood Elliott correctly I think he just basically wanted to know basically that it should say somewhere that you can't unlock if that's ongoing.

So in the case of a settlement I guess the proposal is even if there is a settlement, if there is a court proceeding ongoing, it shouldn't be unlocked until the court proceeding completes or withdraws or is not longer on the table.

Alan Greenberg: Okay I guess I need guidance. When there's a court proceeding does the court independently request something equivalent to a lock that freezes...?

Michele Neylon: No, no I think the two - I think what Elliot might have been talking about was if there's a dispute around the domain name you might have a civil action case going on at the same time as you're embroiled in the UDRP.

Alan Greenberg: Right.

Michele Neylon: And it's not a matter of the courts telling you specifically to lock the domain name but you probably would lock a domain name that's subject to any kind of legal dispute because the last thing you want is to have the court pull you in and say that you as the registrar were, what's the word, complicit, implicit, whatever the bloody word is, in doing something to thwart the court's actions or something.

Alan Greenberg: Okay I guess the question I'm asking not so much is the court order a lock but in such a circumstance I presume once the registrar has been notified they can't do things in parallel which would subject them to a problem with the court. Okay where I'm coming from is I'm a little worried that we say that a lock which is put on because of the UDRP must be maintained because of a court action. I'm wondering does the registrar really have the authority to do that or do we need to word that in a somewhat slightly different way.

Michele Neylon: Okay. Does anybody have any thoughts on this? Kristine has noted that a court will sometimes will issue the wrong lock order, not always.

Alan Greenberg: Then obviously that would have to be obeyed if they're within the jurisdiction, you know, if the registrars in the jurisdiction.

Michele Neylon: Yes well I mean I can tell you -- I'm quite happy to put this on the record -- we have received court orders to transfer domains and do various things but since they weren't from courts that we recognize we haven't taken any action. So I'm not going to follow a court order from, I don't know, Toronto for example. Why would I? I'd politely reply to them look we're based in Ireland. We don't follow your court order.

Alan Greenberg: I was only worried that we're putting a registrar in an awkward position if we tell them what they must do because of a court order.

Michele Neylon: Oh I see what you mean. I'm not sure what the exact spirit of that is but I mean it may be...

Alan Greenberg: I'm sorry it's not court order; at this point it's a court action.

Michele Neylon: Hmm I guess.

Alan Greenberg: I just think we need to work this carefully that if there's a court action, the registrar needs to be cognizant of it and take appropriate action. We're not in a position even to say which takes precedent in any given jurisdiction

Michele Neylon: True, very true. Does anybody else have any last final words here or if not we're going to call this a day or a week or a month or a year or something. Okay then I'm calling it. It is the top of the hour.

I wish you all a happy week and hopefully I should be able to speak to you next week. And in the interim please keep an eye on emails and such things and please respond to them. May the force be with you.

Alan Greenberg: I may not be able to attend next week I'm not sure yet.

Michele Neylon: Okay. Talk to you all again.

Alan Greenberg: Thanks. Good meeting.

Woman: Thank you.

Man: Bye.

Man: Bye everybody.

Woman: Bye.

Woman: Bye.

Woman: Thank you very much (Tim).

END