

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings meeting
Thursday 20 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 20 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-20130620-en.mp3>

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

Attendees:

Alan Greenberg - ALAC (Vice Chair)
Volker Greimann - RrSG
Michele Neylon - RrSG (Chair)
Jo Teng for David Roach-Turner – WIPO

Juan Manuel Rojas - ALAC
Luc Seufer – RrSG
Matt Schneller – IPC
Faisal Shah – Individual
Jonathan Tenenbaum - RrSG

Apologies :

Hago Dafalla – NCUC
Kristine Dorrain – NAF
Laurie Anderson – RrSG
Gabriella Szlak – CBUC

ICANN staff:

Marika Konings
Lars Hoffman
Berry Cobb
Julia Charvolen

Coordinator: Please go ahead. This afternoon's conference call is now being recorded.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening everyone.
Welcome to the Lock Working Group meeting on Thursday 20 of June 2013.
On the call today we have Alan Greenberg, Michele Neylon, Matt Schneller
and Jonathan Tenenbaum.

We have apologies from Hago Dafalla, Gabriella Szlak, Kristine Dorrain and
Laurie Anderson.

And from staff we have Marika Konings, Berry Cobb and myself, Julia
Charvolen. May I remind all participants to please state their name before
speaking for transcription purposes? Thank you very much and over to you.

Michele Neylon: Thank you. As usual, are there any updates or changes to people's SOIs?
Once. Twice. Okay. Right, I'm not comfortable with us having too much of a
conversation with so few participants. I don't think that's particularly helpful for
anybody.

Marika, go ahead.

Marika Konings: Yeah, this is Marika. I'm just wondering if maybe we can just have a
conversation on a way forward on - because I think basically the last
remaining issue that we have to address is the one that's on the screen is to
address settlement.

So maybe we can just discuss what approach we can take to try to resolve
this issue possibly on the mailing list because I'm not really sure if, you know,
we didn't have many apologies, we've seen, I think, attendance dip a little bit
or it tends to happen as well towards the end of the process for working
groups.

So if there are any ideas or suggestions on how we can come to a conclusion
on this item so we can actually get everything into the final report and
hopefully get sign-off on it possibly before Durban.

Michele Neylon: Okay. So okay the current state of play is that the Registrars have one view, the UDRP providers have another view and I'm not sure where the rest of you fall to be perfectly honest.

So Alan, what are your thoughts?

Alan Greenberg: I'm straight on with the Registrars. I understand that the providers normally do not do that kind of thing, that they let their panels do it, but I think on a relative scale one can train or provide guidance to the few providers a lot easier to the very large number of registrars and particularly the large number who don't think they need that information until it's too late.

That, you know, yes it's a new thing they're doing. It probably should be done via some sort of standardized form. And I don't see, you know, I'm sure they don't want to do it but I don't see the logic for not doing it.

I do have - I do think we have to make sure to do it in such a way - remember they've pointed out that often people settle so a panel will not be convened and therefore there's no report. And I think we need to make sure that that benefit still stays there.

But I, you know, I don't see it as a way out. I think we have to make sure that we dot, you know, cross the Ts and dot the Is. As Kristine pointed out in a recent mail that the current process makes sure that if people renege on the decision to settle that the UDRP is still going until, you know, the appropriate time. So I think we - again, we need to make sure those assurances are still there.

But I do not think it's unreasonable to put the responsibility on the provider to verify that they have a signed agreement from the various parties instead of putting that assessment on the registrars. So I'm strongly on that side.

Michele Neylon: Okay thanks, Alan. Jonathan, go ahead.

Jonathan Tenenbaum: Sure. And I'm sure this will come as a big surprise but, yeah, I mean, you know, I can't agree more. I mean, we deal with these issues all the time where people are sending us documents and, you know, settlement agreements and, you know, other kind of corporate filings, just anything to sort of back up their position that hey, this is what happened.

And, you know, I think even with the settlement agreement it's a little bit easier but it still requires sort of this extra - the extra steps on the part of the registrar and to have the - and if we're talking about Option A and Option B, you know, it doesn't seem to make sense to have the provider issuing an order to do something prior to the party's actually settling especially if the - and maybe I'm reading this wrong but on Option B the, you know, Number 2 talked about issuing an order to unlock for the sole purpose of whatever, you know, is going to take place under the settlement. But it seems like that's happening before the parties actually settle.

Right, is that how - am I reading that wrong? And I might be a little late for the party on this, I've been out of the mix of it. But, you know, just to - first of all just to echo what Alan said, I mean, I, you know, I 100% agree with that approach that, you know, let the settlement docs go to the provider.

And then the provider send along the direction to the registrars to tell them what action to take since, in many, you know, I think in a lot of ways that's essentially how the process typically goes anyway were the provider comes to some - makes a decision and then informs the registrar of what the decision or what the directive is based on the decision or, you know, what action is to be taken.

So I think having the settlement sort of flow through them I think makes sense. I think that's in line with the way the, you know, the way the process is now. And my second piece is just - it just seems like between this Option A

and Option B if that's what we're talking about Option B doesn't seem to make a ton of sense to me because we're talking about the provider issuing an order about settlement before the parties have actually settled so I'm not sure what's going on there. But anyway, my two cents.

Michele Neylon: Thanks, Jonathan. So thank you. Okay we've got a couple of people late - just late to the party. So Faisal Shah has joined and WIPO has joined.

((Crosstalk))

Marika Konings: This is Marika. One possible approach could be to go back and now that David has joined the call maybe David is even able to respond but to go back to David as well as Kristine to see whether together with the, you know, suggestions that Luc has made in his email on, you know, making this a more standardized process which then would probably allow as well for clearer enforcement.

Because I think that as well on the last call my understanding would be if this new process for settlement is clearly defined it would also mean that it, you know, becomes part of the policy and basically means that ICANN can enforce if it turns out that, you know, registrars are not following the instructions according to the process that has been defined here.

So whether that would, you know, reassure them and possibly allow them to support Option A together with, I think, the majority of members at least here now and I think as well in response of the survey that seemed to support Option A in dealing with settlements.

Michele Neylon: Okay, thank you. Somebody was trying to speak there. I'm not sure who it was. Please go ahead.

Matt Schneller: Hey, sorry. This is Matt. The perils of not being on the Chat board as well as on the call. One of the things that the Registrars did not - sorry, that the

providers have said they didn't like about A was that some, in part, terminology driven that they - the provider itself can't issue an order. But that's something that only the panel can do after you're basically to the point where you're - the parties have submitted and the panel is making a final decision.

I wonder if we could meet some of the provider concerns and maybe David can speak to this, if we changed the term order to something like the Board can issue a notice to the Registrars that the parties appear to have reached a settlement agreement that would provide for transfer of the domain name or deletion of the domain name or whatever.

And we're, therefore, suspending the proceeding for X number of days to implement the proceeding - or to, you know, to implement the settlement agreement and would appreciate your help in doing so or something like that where it's not an order so the providers isn't stepping into the panel shoes but it's still providing a coordinating role of some sort.

I think the other advantage of doing something like that it also just reduces the total amount of changes it would have to make to the UDRP text itself. It would keep settlement as sort of the same procedural steps that kind of off the books in terms of the formal UDRP steps but it would still allow the providers to play the kind of informal coordinating role that they do anyway.

Michele Neylon: So does David or one of the others want to (unintelligible) and then I'll go to Alan? No? Okay. Alan, you had your hand up?

Alan Greenberg: No that was a fake hand; I hit it by mistake.

Michele Neylon: Oh okay. David, are you there?

Jo Teng: Hi, everybody. This is (Jo Ting) from WIPO. I'm sitting in for David who's just coming out of a meeting which he's running a bit late, I apologize for that.

Michele Neylon: Oh okay. Would you like to speak to this?

Jo Teng: I obviously usually leave this to David but in terms of the whole terminology aspect of the fact that, yes, it is only the panel which can issue an order and the process that is generally done at least here is if the parties inform us that they are going to settlement then we accept that and tell them to give us a time of how long to suspend it and let us know if and when a settlement is reached.

And in which case we then provide some kind of notice to the registrar who would then unlock it in order for that settlement to be implemented.

Michele Neylon: Okay. I think what a couple people were suggesting is that maybe the - it's a matter of terminology whereas it's suggested by others it's just a matter - it's just more to do - a slight change to the process in terminology.

I think, okay, Marika - sorry, I've lost my throat. It might be best then if we were to actually see proposed language to the list so that David and Kristine could have a look at it with, you know, Luc's suggestions. Marika, did you have your hand up?

Marika Konings: This is Marika. No, I didn't have my hand up but indeed I was suggesting that maybe, you know, based on what Matt just suggested as well, you know, changing the issue order to issue notice and maybe then in addition provide some of the description that Luc has provided on how that process could go.

That may not be part of the, you know, one, two, three but it may be part of the explanation to this or kind of more implementation guidance to this recommendation. We can maybe add that and then send that out on the mailing list and specifically ask David and Kristine to respond or provide an indication on whether that would be something they could support or whether there are further clarifications or changes they would like to see in order for

them to be able to support it. And hopefully that, you know, would provide a way forward on this issue.

Michele Neylon: Okay thanks. I can see Luc has joined. Luc, you're the center of attention today. Okay so, I mean, Marika if you could post that to the list then I suppose that's probably a good way forward with this. Faisal, do you have any comments or thoughts at this juncture?

Faisal Shah: No, I agree with Matt. I think it might be, at this point, semantics. And I'm - I can go either way between A or B. And I think (unintelligible) seems to be much more, to me, direct, easier to manage. So those are my comments.

Michele Neylon: Okay thank you, Faisal. And I see Volker has also joined the call. Okay then so it's - everybody kind of happy with that's how we'll move forward with this. We'll perhaps use some kind of wording and see if we can get some feedback from the UDRP providers and see if it's really a matter of semantics or if it was something else. Okay, anything else on this or are we happy relatively speaking? Okay.

The public comments pretty much done with those at this stage. Marika, are there any extra ones that we need to look at there?

Marika Konings: This is Marika. No, you'll see on the screen like the almost final versions. I made the updates based on our discussions last week. The only additional change that I'll need to make is ones we've agreed on the settlement question because there were some comments in relation to that so I think we need to record those in the public comment review tool once we have closure on that item.

But I think otherwise it's for members basically to review the public comment review tool to make sure it accurately reflects our discussion so when commenters actually go back to this and see how we've dealt with their

submissions that, you know, they feel that we've addressed them in an appropriate way.

So if you have any further comments or suggestions or if you believe certain things are missing, you know, please let me know and we can update it. Eventually this will be integrated through a link in the final report so I said that, you know, people can go back and we have a record of how we reviewed and addressed the different comments that we received on the initial report.

Michele Neylon: Okay. Thanks, Marika. I just posted a link there on the Chat. Phil Corwin from the Internet Commerce Association has posted about the four-day extension. And my reading of it is I think he seems to be happy with this. Maybe I'm misreading it. Marika, go ahead.

Marika Konings: Yeah, this is Marika. On that specific point I had - so I had a conversation with Phil because he was indeed asking what the outcome was of our discussions. And I think he did indicate that, you know, although his preferred option would have still been to extend the overall response time by seven days, which I think was his original suggestion, I think he also accepted that this was a compromise solution that, you know, was also a satisfactory even though he would have preferred the other option.

Another question I did - or one comment he did raise and it's maybe something to call out in our report I think he wanted as well to clarify that of course this extension - this automatic extension does not preclude any other extensions that the providers can - or are currently giving at their discretion I think on one of the - I think it's one of the provisions in the UDRP so he wants to make sure that that doesn't replace that existing provision or that option that is being offered.

And I think that was my understanding as well that maybe if David has joined in the meantime he can maybe respond to that or if (Jo) knows and otherwise

maybe that's something I can just add to the report so people can review and comment on that.

But I believe it was our understanding that this would be an additional automatic extension that could be added in addition to whatever extensions UDRP providers may currently offer at a fee - or not at a fee or at I think in express circumstances, well, I think this one's more at a - you just ask and we give it to you no questions asked basis. So I just wanted to check on that.

Michele Neylon: Okay. Thank you. All right then so with respect to the comments then it's just really a matter of a couple of tweaks based on how things pan out around settlement and then we're done with that. Other outstanding issues with the report? Marika, put you on the spot again.

Marika Konings: Yeah, this is Marika.

((Crosstalk))

Marika Konings: So this is Marika. So basically the next step for me now is to update the report and turn it into a final report taking note of the changes that we agreed to based on the review of public comments. I hope to be able to turn that around relatively quickly so definitely ahead of the next meeting hopefully in the beginning of the week.

So that would basically be the starting point for all of you to start reviewing that and really make sure that it reflects what we've discussed based on our review of the comments. As I said we still have this one remaining item of the settlement discussions that we'd then need to insert based on the outcome of that. But hopefully for all the other items I think I have enough instructions based on a review of the comments to update those.

I think one of the things we may want to consider doing is actually including a more detailed flow chart to really show clearly what the different steps of the

process are and I'm happy to have a go at that probably with Berry's help who's very good at that.

And I think that's basically it with regard to the next steps on the final report. As I said we're still, I think, working on the schedule to have things done hopefully by the 7th of July which does give us a relatively short time to turn things around.

As I said it's, you know, it is an artificial deadline so I think if at any point people feel that we're (unintelligible) and more time is needed I think we'll need to respect that as we also will need to do a formal consensus call so basically get the report out on the list and make sure that we have - we can measure the level of consensus for the report and its recommendations before we submit it to the GNSO Council.

And then we'll also need to draft a motion so that can be submitted together with the report to the GNSO Council for their review. One related question to that is that we have tentatively reserved a meeting time and space for the group to meet in Durban. So I think as we near our deadline, you know, depending on whether we make it or not we'll need to decide whether to go ahead with that meeting or whether we should cancel it. It's currently tentatively scheduled for Monday morning from 7:30-9:00.

So, again, as I said before I think it's additional incentive to get work done so you don't have to get up that early.

Michele Neylon: I'm not sure whether I want to thank you or strangle you for the 7:30 am meeting but okay. Does anybody else have any input or comments at this juncture?

Okay. One thing, Marika, if you could when you have a chance if you could circulate that explanation of the consensus - what's that thing, you know, the matrix of what is considered consensus...

Marika Konings: Yes.

Michele Neylon: ...on - you know what I'm talking about. I can't think what this...

Marika Konings: Yes.

Michele Neylon: ...damn thing is called.

Marika Konings: Standard methodologies for decision making.

((Crosstalk))

Michele Neylon: What did you say, sorry?

Marika Konings: I said I think it's the standard methodology for decision making as it's called in the GNSO Working Group Guidelines.

Michele Neylon: Okay perfect. Thank you. That would just give us some guidance because it's to do with, you know, if everybody agrees and then, you know, it's obvious. But then there's different levels of agreement and of course there's also the option for people to have a dissenting opinion on things.

Okay then - and then of course our next meeting is next week so is there anything else we need to cover now? I don't think there is. I think we're pretty much done or am I missing something? Okay. Are there any other matters that we need to cover? Alan?

Alan Greenberg: Nothing that my addled brain can come up with at the moment.

Michele Neylon: Okay then. Unless there's anything anybody else wants to cover in the next 15 seconds I will adjourn this meeting and give you back half an hour. Going once. Going twice. Sold. Meeting adjourned. Speak to you all next week.

((Crosstalk))

Alan Greenberg: Thank you.

Marika Konings: Thank you, bye.

Julia Charvolen: Thank you, everyone.

END