

**ICANN
Transcription
Locking of a Domain Name Subject to UDRP Proceedings meeting
Thursday 17 January 2013 at 15:00 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 17 January 2013 at 15:00 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-20130117-en.mp3>

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

Attendees:

Laurie Anderson - RrSG
Hago Dafalla – NCUC
Kristine Dorrain – NAF
Lisa Garono - IPC
Alan Greenberg - ALAC (Vice Chair)
Volker Greimann - RrSG
Celia Lerman - CBUC
David Maher - RySG
Michele Neylon - RrSG (Chair)
David Roache-Turner – WIPO
Juan Manuel Rojas - ALAC
Luc Seufer – RrSG
Matt Schneller - IPC
Fisal Shah – IPC

Apologies :

Gabriela Szlak – CBUC

ICANN staff:

Marika Konings
Berry Cobb
Lars Hoffmann
Julia Charvolen

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

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the Locking of a Domain Name Subject to UDRP Proceedings Working Group call on Thursday 17 January.

On the call today we have Hago Dafalla, Kristine Dorrain, Lisa Garono, Alan Greenberg, Volker Greimann, Celia Lerman, David Maher, Michele Neylon, Juan Manuel Rojas, Matt Schneller, Faisal Shah.

We have apologies from Gabriella Szlak. And from staff we have Marika Konings, Berry Cobb and myself, Julia Charvolen.

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

Michele Neylon: All right thank you. Good afternoon or good morning or - I don't know, I'm running out of time - the times of the day. Everybody, welcome to the super-duper UDRP Locking Working Group. Yay. It's so exciting. Okay I've obviously had plenty of coffee.

As per usual I have to ask you does anybody have any significant changes or substantive changes to their statements of interest or their conflict of interest? Going once; going twice. Nope? Okay, fine, moving on.

Now we are just - we've got a couple of things on the agenda today because I like doing things back to front and upside down I'm going to deal with the Item Number 3 on the agenda before we move to Item Number 2 because last week - oh - I've just been informed we don't do conflicts of interest anymore. Oh for God sake. I wish - I never got that memo. Never mind. Anyway if there was a conflict of interest you'd have told me.

The second item on the agenda - third item on the agenda, rather - is with regards to the next meeting. I know that several of us will be attending the regional meeting in Amsterdam next week and others who may not be attending in person will probably be attending remotely.

Marika, did we have any slots open at other times of the week where we could try to reschedule this call or did we give up? I can't remember where we left that.

Marika Konings: This is Marika. We actually didn't send out a Doodle or anything. So, you know, we could send out something today but I think it would be probably rather late as presumably people coming from further away will have already, you know, still start traveling either, you know, Tuesday or Wednesday so it would be basically Monday which might be too short notice for most.

((Crosstalk))

Michele Neylon: Okay. Well in the interest of transparency and giving people a possibility to do things - we could do a Doodle to see if anybody's available for a call on Monday. And if not I would respectfully request that we skip next week's meeting since I know that none of the Registrars will be around and I suspect none of the Registry types will be around. And I'm not to sure about any of the other people in - based in Europe what they're doing. And I'm sure Alan could do with a day off.

Alan Greenberg: Yay.

Michele Neylon: Thought you might say that. So we can try for Monday or does anybody have any thoughts now that they would like to share? I would throw it open. Love it when things open. Good God I've got to stop drinking this coffee, it's really good. No? No takers.

Alan Greenberg: I'll make a comment. I think we should just cancel at this point. We should have done it earlier, we didn't. Let's accept it and just move on.

Michele Neylon: Okay thank you Alan...

Alan Greenberg: We're making good progress.

Michele Neylon: Okay thank you Alan. Does anybody disagree with Alan bearing in mind he may be small and Canadian and polite but he is a little (furry) little man. Working on the basis as usual with total silence means ascension. Then I will second Alan and say that we cancel the meeting. So, Marika, please note that we have decided to cancel the meeting next week.

Marika Konings: I've noted...

((Crosstalk))

Marika Konings: ...the next meeting would be 31 January for the record.

Michele Neylon: Okay thank you Marika. Woo-hoo we're making progress. We've actually decided that we're not going to work next week. We're so good at this. Okay then now last week we were discussing the straw man proposal. Luc had given us some input. Volker provided - Volker provided some input. There was some discussion on this. And Marika has put up their. I don't know, is it just me - and arrested you - have the rest of you seen kind of truncated things of those pages or am I losing my mind?

Alan Greenberg: What do you...

Marika Konings: Yeah, this is Marika. It's basically the set of Adobe Connect, it's not possible to make the screens or the documents get the complete screens. It automatically adjusts. So what you can do - I've already removed one of the

(pots) so it's - so those (pots) are a bit bigger but you can enhance the size I just going to the percentage of the bottom or doing full screen.

Michele Neylon: Oh okay, yes.

Marika Konings: Or if people prefer only to see one document I can also get rid of the other one as you prefer.

Michele Neylon: Okay thanks Marika. Sorry this is me being rather stupid and it's just - well I'll just leave it as me being rather stupid and I won't say anything further. Okay then so Volker, Luc and Marika - there some notes there and there's also some from ICANN Compliance. Thank you for breaking that out, Marika. This makes things significantly easier for us. And then there's some other stuff from David Roach-Turner.

Okay then, Marika, go ahead.

Marika Konings: Yeah this is Marika. Just to clarify on the left-hand side in the straw man there are also still some comments that Luc initially made. I've taken out the ones that we discussed at the last meeting so there's a bit of a mixed, you know, we need to look at the two things.

So I don't know if people first want to go to the comments that are on the right side or first finish off with Luc's comments, which, again, may relate to some of the other comments that are in here as well.

I think on the point of the information provided by Compliance and the subsequent suggestion from David I think that has already been incorporated in the straw man as-is. But of course people are free to comment on that as well. That relates to the definition of pending.

Michele Neylon: The definition of - oh this pendency thing which confused the hell out of me because I don't speak fluent lawyer. Okay. Be thankful I don't speak fluent lawyer. Imagine me with a law degree. That's just scary.

Okay does anybody have any other input or any other thoughts? I see the Kristine has been sending us - has sent us a barrage of emails to the list in the last couple of minutes.

One thing which I note, which I just would read into the record here even though it is going to be on the mailing list, is it's relation to Whois. Okay (unintelligible) discussion on was the part about registrars who may have stricter Whois accuracy policies than is required, in inverted commas. We do see some number of registrars who spontaneously delete domain name when they get a UDRP notice for either inaccurate Whois or for violating their internal trademark policies.

It would make the provider's job much easier to just allow both but I suspect registrars will not appreciate this possibly viewing the recommendation as usurping their authority. That's from Kristine.

Does anybody have any reflections, any reaction to that? Don't all rush at once. Alan.

Alan Greenberg: Yeah, a question. Is Kristine on the call? No. Yes.

Kristine Dorrain: Yeah, no, Alan, I'm here.

Alan Greenberg: Yeah. What do you mean by usurping their authority? I...

Kristine Dorrain: Oh well this is...

Alan Greenberg: I would - sorry, I would have assumed - I mean, we're talking about, you know, pendency that as soon as there's a notification from the provider that,

you know, you can no longer take action on a domain name and deleting it is a rather strong action.

Kristine Dorrain: This is Kristine. Yeah, and I would agree with you on that. I was just - I was merely just - I had read through Matt's comments and I was just thanking him for, you know, putting all that out there. But he had mentioned in the section at the end where it says how the locks fits with other Whois policies and Matt - I think Matt's on the call too and maybe can jump in if I misread his email.

But it seems to me that he's saying (unintelligible) how the locks fit. But there's some registrar discretion as far as, you know, and let's say there wasn't a UDRP and somehow the registrar became notified that there was a trademark violation or a Whois inaccuracy.

Some registrars have a pretty strict policy of just point blank deleting that domain name or changing the Whois or doing something to that domain name. And I guess the point I'm trying to make is according to the email that - or the stuff that Matt wrote it seems like the registrar has a pretty broad discretion to do that currently.

So if our recommendation says nope, it shall be locked; it doesn't matter if it violates your internal policies or any agreement that the registrant may have signed with you, you may not delete it, you may not, you know, change the Whois information it's just, you know, you're stuck with it for the UDRP.

And I think Matt felt was that that was optional. So the registrar may have a very strict policy but we can't - but they can't enforce it if we say the UDRP needs to be different. You know, to implement the UDRP it has to be different.

But I just - I'm just merely pointing out for the purposes of a public comment that perhaps we could expect a lot of pushback on this point from registrars

who say well wait a second, my policy is so much stricter than even what you are requesting, why can't I continue to do that?

That's the only thing I was trying to say is that we may see some of that. And that may be fine.

Alan Greenberg: Unless we want to be explicit in our recommendations that will say what the precedent is. So, you know, they could take the domain away from the current registrant and have it go to a page saying this domain may be subject to a trademark, you know, violation. But that doesn't, you know, but they can't make it disappear. So we may want to make a recommendation like that. I don't - I'm not sure I understand it well enough to say I do or not. But it sounds like the kind of thing we want to discuss.

Michele Neylon: Okay thanks, Alan. Alan, I'm ceding the chair to you temporarily and putting on my hat as a Registrar if you don't mind?

Alan Greenberg: Not at all.

Michele Neylon: Registrar hat on, woo-hoo. Kristine's question and comment is quite interesting especially in light of the renewed emphasis or focus on discussions surrounding Whois data accuracy, quality, etcetera, etcetera, etcetera.

Now the question I have doesn't actually address her comment directly because that would be far too easy. It's more one for the rest of you with especially ICANN staff.

What is the - okay imagine a scenario where there is a domain name that is subject to a UDRP so let's just taking in a particular day the domain is subject to a UDRP the UDRP is being processed maybe or not the UDRP has already hit the registrar, it's about to hit the registrar, I don't know. I mean, it's

not as if in Whois it can show you whether the damn thing is in a UDRP or not.

What happens if the Whois for the domain name is blatantly and (unintelligible) - I'm trying to look for a diplomatic word - I'll go with - junk, there. Whew, came up with a polite word. With - absolute blatant junk. So the same domain name is the subject of a Whois inaccuracy report to ICANN. Which ones takes precedence?

Alan Greenberg: I'll call on Kristine and I'll put my own hand up so, Michele, you can take back control when you want to call on me. Kristine.

Kristine Dorrain: Yeah, so what we would do in that case - the Whois accuracy sort of process tends to take longer than the UDRP process in many cases. It depends on, I guess, how fast the registrar works. But what happens is we go with whatever the Whois - whatever the says. The Whois says Mickey Mouse we go with Mickey Mouse. Doesn't matter...

((Crosstalk))

Michele Neylon: Now, Kristine, I don't think you understand my question with all due respect. As a registrar - and I'm sure other registrars can support this - we are coming under increasing pressure from various entities including law enforcement, IP lobby and that guy down the road who doesn't speak to me anymore with respect to the level of Whois accuracy and the level of action or inaction on the part of registrars to either deal with this in some way, in other words, have better quality Whois or to delete or suspend domain names where the quality of the Whois is at best dubious.

So let us say, for argument sake, that my registrar, which for the record it isn't, attracted a very large number of registrants whose domain name choices were to lead to a very large volume of UDRP and other type of

disputes. And I'm talking large volume. Then - and the Whois data was absolute junk.

We would then be hit with lots of - could then potentially be hit with lots of Whois inaccuracy things and be lambasted by ICANN Compliance over the Whois accuracy issue.

Now obviously we have to respect the UDRP. The problem is which one has greater power. It doesn't matter how long the thing takes because let's just say that if ICANN Compliance picks up the phone and rings you to say you've already had three reach notices with respect to Whois accuracy - not that we have, I'm just saying hypothetically - and we are about to pull your contract on you, you know, what are we meant to do?

I'm just trying to understand how that would fit. Thanks. I'll shut up now.

Kristine Dorrain: So this is Kristine. And it looks like there's some pretty learned minds in the queue so I'll speak at it from our perspective and then I think there's a couple things going on.

First of all is the UDRP is just going to continue. We are not waiting for Whois-accurate data. We're - you know, if you provide us with the registrant that you have in your records and we're going to use the Whois data we're going to serve to both of those; that's what UDRP Rule 2 requires. So from there on we're going to carry on.

And I think we've made - I've made it pretty clear throughout the whole time we've been on this call that - and this is sort of why I brought it up with Matt and that is there is this issue - and Matt I think brought it up in his email as far as, you know, how much is the registrar required to do.

And so that's why I've been sort of sensitive to this idea that registrars do want to fix it. They don't want to be in breach. But at that point the UDRP is

just carrying on. I mean, what you do after the UDRP gets commenced as far as updating Whois data, as far as, you know, disciplining your clients or whatever it is that's between you and ICANN. It doesn't affect the UDRP unless of course the registrar deletes the domain name.

Then the UDRP gets affected. But any other action other than deleting the UDRP isn't going to - or deleting the domain name - isn't going to affect the UDRP. So that's from our perspective. And I'll let Alan and Matt talk about their perspectives.

Michele Neylon: Thank you.

Alan Greenberg: Yeah, I guess all I was going to say is that's why, Michele, the situation - the kind of scenario you brought up is why I was saying we must add a rule to cover it because it does put the registrar in a potential conflict and we need to be explicit about what the registrar can and can't do.

You know, so we're making a recommendation which will wend its way into the RAA or the UDRP which says which takes precedence. And...

((Crosstalk))

Alan Greenberg: I don't know - I don't know what the right answer is.

((Crosstalk))

Michele Neylon: No, this is the entire thing, Alan. I mean, I think this is part of the cornerstone to why we have this working group is that while it might be an edge case and it might be a weird scenario if it happened to us in the morning I wouldn't have a bloody clue which one I was meant to go with.

Alan Greenberg: Well, exactly. And it's a scenario where there is a possible conflict between the various policies we have and I think we have an obligation to address the

scenario even if it's an edge-case scenario. You know, I can come up with, you know, wild-ass ways of addressing the problem but I, you know, I don't think that's what mode we're in right now. I just think it has to be on our list of things to address.

Michele Neylon: Thanks, Alan. Marika and then Matt. I'm allowing Marika to go first because she has this wonderful scale at managing to answer loads of questions that we've all been asking.

Marika Konings: Yeah, this is Marika. Not an answer or at least not a verified answer with, you know, from ICANN staff. But, you know, listening to you I think I agree with Alan that, you know, I think there are a couple of options you could consider here.

Indeed either write in the policy that's saying, you know, you cannot change - I mean, I think we have originated here you cannot change it even in cases - even maybe referring even if there is a Whois accuracy report or there's an exception that you don't need to meet those rules then.

But alternatively you could also write in something saying, you know, unless directed differently by ICANN which then would allow for that scenario where indeed if ICANN staff comes to you with, you know, inaccuracy complaints you can update it and be in compliance.

And as Kristine says, the UDRP will proceed in any case. And you also have this requirement under these rules that any new information or updates to contact details need to be communicated to the panel or to the UDRP provider as well so that information will go in there.

Although I guess for the UDRP ruling I guess it still will be against Mickey Mouse or I don't know if the panel at that stage could also decide then to use the real registrant names if the accurate data has been provided. I guess that's another question.

So I think there are a couple of options that you could consider dealing with it. But I'm happy as well to take this question back because, you know, to be honest I don't think there's, you know, what trumps what. Presumably that would need to be either written into the policy if there's a clear, you know, one overrules the other which I think currently is not the case as far as I am aware.

Or just provides this option of saying, well, if ICANN tells you to do it in that case, you know, you get a free pass to basically do as ICANN has told you to be in compliance with, you know, whatever policy at that point is deemed, you know, more necessary to be followed depending on the circumstances.

Michele Neylon: Thanks, Marika. And Matt. Sorry for making you wait.

Matt Schneller: Yeah, no problem. I wanted to hear what everyone else had a say too. I'm not sure that the policies are quite as much in conflict as they may appear. The UDRP has a hard obligation on registrars to - well it has a hard obligation on the entities that are involved in the UDRP to prevent transfer of domain names to a new holder or a change of registrar.

And obviously one of the ways the transfer to a new holder can be affected is by changes to Whois information in the registrant-related field. The obligations under the RAA fall upon the - ultimately trickle down to the - and they require the registrars to have contractual provisions where - that gives them the option to enforce against registrants who aren't providing accurate Whois data.

And they have to do sort of, you know, under the Whois accuracy policy these yearly things or act upon things that they know are likely to be inaccurate. But it's sort of a totality of the circumstances test. And ICANN has been pretty clear and tried very hard to provide some discretion to the

registrars and to let them take the actions they think is appropriate given the situation.

I think the hypothetical that Michele raised where there may be a registrant who's registered a number of domain names with junk Whois data - I think - I don't see a situation where Compliance would have any issue with a reminder being sent to the registrant, hey, here are these 230 domain names that you registered that have obviously junk data. Please update them as you can.

You know, if 10 of those are subject to UDRP and can't be updated because they're locked the registrar has obviously substantially complied with the notification - well they've completely complied with the notification requirement.

And they have a really good story as to the reasonableness of the action they've taken because they're contractually prohibited from taking any action to, say, cancel the domain name for failure to update Whois information as to those 10 but they can continue to take whatever action they want as to the other 240 or whatever.

Michele Neylon: Okay thank you. Alan, go again.

Alan Greenberg: Yeah...

Michele Neylon: No?

((Crosstalk))

Alan Greenberg: No, no, yes. I think the kind of scenario that was just described may well be how it would play out in reality. But it still puts the registrar in a position where they are, on paper, in a conflict and might or might not take a reasonable

action from ICANN Compliance's point of view. And I don't think we want to leave it up to the compliance officer to make a judgment call at this point.

If it's a scenario that does happen in reality or could reasonably happen in reality I think we need to address it.

Matt Schneller: It's not just a judgment call. I mean, I think as part of the negotiation of the RAA and subsequent Whois data accuracy policies that build off the RAA. The registrars have pushed very hard to maintain this discretion and the ability to take action that they think is reasonable. And what you get with discretion is people questioning your discretion in certain situations.

I don't think a situation - not canceling a domain name when you're contractually prohibited under the UDRP from deleting a domain name registration so long as you've taken reasonable action in all the other ones can possibly be construed as an abuse of discretion.

Alan Greenberg: Okay, if registrars feel comfortable I can - I'm certainly not going to press the issue. I just think it's a kind of thing that we should be explicit as to what the process should be followed at that point. And my hand is down.

Michele Neylon: Okay thank you, Alan. There's been some interesting comments here on the chat which I will read very, very quickly and hopefully whoever does these transcriptions can make sense of my wonderful Irish accent.

From Matt, "Updating the info for the panel isn't equivalent to updating Whois." Kristine, "The registrant has the responsibility to update their data with the provider; it's not a burden on the registrar." "Updating Whois from provider's perspective is a non issue once the case is commenced - (it's) commenced."

And, "The reason we - I think we're even discussing this is in relation to privacy and proxy services." Sorry, half my staff are all kind of running around

the office now. I don't know what the hell the problem is. I think somebody is on the radio, they're all excited.

Okay then moving on. Marika, go ahead.

Marika Konings: Yeah, this is Marika. If I just may make a suggestion because I think we're having, you know, a lot of really good and interesting discussions. But I think we're getting kind of distracted from, you know, the actual draft recommendation. So it may help for the working group like as we're having these discussions to as well make concrete recommendations or suggestions on how that impacts the straw man.

You know, based on this discussion do people have certain suggestions that they think should be incorporated or are these comments actually in support of what is currently there? Because I think in that way we, you know, we might at some point be able to actually get through all these comments and actually hopefully have something that can be supported by everyone in the working group.

So, you know, maybe that will help facilitate some of these discussions a bit to actually focus on where is it in the draft recommendations and how would it need to be changed in order to address the comments that are being made or, you know, the contributions that are being submitted.

Michele Neylon: Okay. Thanks, Marika. Laurie's just said on the chat there, "Registrars are not required to delete the name for invalid Whois." My reply, okay but I think some people think that we are obliged to delete names for invalid Whois.

Okay then moving on. Okay we have the straw man. We have input on comments from Volker, from Luc, from Marika, from other people. Where to now? Marika.

Marika Konings: This is Marika. If I may make a suggestion it'd maybe make sense to continue with the suggestions that Volker and Luc made because I think they're both closely linked and they follow on from some of the discussions we had on last week's call because it relates to the question of what to do in the case when there is a proxy or privacy service involved.

Is there any kind of window that needs to be provided to notify the service? And are they then in turn allowed to contact the registrant to tell them that this is going to happen and that their data is going to be revealed.

So I think Volker initially suggested that there should be a modification made. And I think the language here suggested after receipt of the provider notification the domain name is locked. However within a certain time period, two to three working days after the lock, a registrar may allow modifications if ICANN accredited Whois privacy and/or proxy providers provide updated information replacing the registrant record to reflect the actual registrant.

And I think this probably just is basically a placeholder - and Volker can correct me if I'm wrong - for if - when the accreditation service - accreditation program for proxy and privacy services comes in place.

And I think then in response to that Luc actually suggested that we could also opt for a two-step verification which would mean within one business day from the first verification request the registrar would lock the domain against registrar transfer operations, notify the registrant of the complaint and the subsequent lock activation and remind him that they may lift any applicable proxy privacy service within the next two business days and simultaneously notify UDRP provider of the lock.

And within three business days lock the domain name against any operation and provide the UDRP provider with the definitive registrant details thus allowing the complainants to amend their complaint if need be. And I think that all relates to Draft Recommendation 3.

Michele Neylon: Okay. Matt, go ahead.

Matt Schneller: I just want to add one note onto Volker's suggestion which I think is a good idea - a sort of look-forward to the different world that we may have if we get accredited privacy proxy services.

To be clear that the only information that the privacy proxy service can substitute is the information that they had on their record at the time they got the verification request from the provider. If we don't specify that there's a big loophole, again, where the beneficial owner can go and pick new names that wasn't currently a record at the time the complaint was filed.

Michele Neylon: Okay. Kristine.

Kristine Dorrain: Yeah, I like Volker's suggestion. This is Kristine from NAF. I wanted to - I sent an email around just responding to Luc's suggestion, which I think makes logical sense except the problem with the two-step verification is that it then puts the provider in violation of the UDRP.

So if the first verification request the registrar locks, which is great, you know, and whatever they want to do about the notifying the registrar, listing the privacy service and locking.

But then it's the second part that's the problem. So giving three business days to provide us with (unintelligible) registrant details automatically throws us then in violation of the UDRP. Which is sort of the status that we're in kind of perpetually here when we're waiting for registrars.

Michele Neylon: So what's in violation of the UDRP?

Kristine Dorrain: We have to do the administrative compliance check within three calendar days of receipt of the complaint. The rules say that we have to either - that we

have to serve the respondent three business days after we receive the complaint and payment and - unless there are deficiencies. So the inference there is that we have those three business days to - or three calendar days to find the deficiencies, notify the complainant and then the complainant has five calendar days in which to fix the deficiencies.

And so if we're waiting one to, you know, if we're waiting three to four business days, not calendar days but business days, for the registrar to come back and get us new contact information we will be unable to meet our requirement to do the compliance check within three days because the UDRP doesn't build in time to wait for the registrar to get back to us. All of that has to happen in the three calendar days.

So - and I will note that, you know, we're waiting for registrars a large chunk of our time. And so it's already happening that we are not in compliance because we are always waiting for registrars. But I think part of the point of being involved in this is to try to reduce that window so we can be more in compliance in getting those administrative deficiency checks done, you know, on a timely manner.

So that would be my point - my comment to Luc's otherwise wonderful two-step suggestion.

Michele Neylon: Okay. So based on the list I have here I have Alan and then I have Volker.

Alan Greenberg: Yeah, I - just a short comment. Based on what Kristine said clearly we have a conflict between the terms. And we either need to reduce some numbers or increase others. You know, if indeed we can't reduce the registrar delays enough to satisfy the three calendar day requirement on the providers then we need to increase the three calendar days.

I mean, we need to end up with equations which balance. So I'm not trying to propose which it is but clearly we need to make one of those adjustments if -

otherwise we're in a situation where we're demanding that people be noncompliant.

Michele Neylon: Okay. And Volker.

Volker Greimann: Yes, I was actually not aware of the three calendar day requirement that the providers face not having dug in too deeply into what the providers have to do and more focusing on what we have to do.

That actually is something that we should bear in mind for the next review of the UDRP perhaps because I think three calendar days already would put a provider into noncompliance with the UDRP in case of a long holiday or a long weekend so that's something that's problematic because no - most registrars don't work on the weekends and public holidays and would not be able to answer in that time.

And then - thus putting the provider into noncompliance would be problematic in my view.

Michele Neylon: Okay thank you. Alan.

Alan Greenberg: Yeah, I - Volker said for the next UDRP review. I think that's within our scope. If we find out that the timeframes that relate to locking don't add up properly I think it's within our scope to recommend the changes. I don't see how we can avoid that being within our scope.

Michele Neylon: Okay. Matt is that an old hand or a new hand or a - a couple things - whilst we're - Marika, continue just very quickly. A couple things there in the chat. "Registrants have an ongoing obligation to be accurate in the Whois. If they weren't accurate prior to the filing Whois is stuck; but they can update their contract - contact info under Rule 2(e) for the purposes of the proceeding."

Okay, Marika.

Marika Konings: Yeah, this is Marika. I just want to confirm, you know, based on the discussions we have now that there seems to be support for including the procedure that is described by Volker. If people agree I can, you know, try to write that in into Draft Recommendation 3. Is that - is that a correct assessment for what was discussed? I think there were some issues with Luc's proposal but I think both basically tried to do the same thing if I understand.

So is that what the working group would like to do or is there another approach they would like to see inserted in the Draft Recommendation 3?

Michele Neylon: Anybody? Anybody?

Volker Greimann: Well I wrote the proposal would I would agree to that, yes.

Michele Neylon: Thank you, Volker.

Marika Konings: Yeah and this is Marika. Of course noting the modification that Matt suggested which I think was supported as well by several on the call or in the chat.

Volker Greimann: Agreed.

Michele Neylon: Okay. Right. This thing with the calendar days and working days the UDRP refers to calendar days so weekends count as well, is that correct?

Kristine Dorrain: Yeah, this is Kristine. They do. And then our supplemental rules we push no deadline under our supplemental rules falls on a calendar day. So it always gets pushed to the next working day. So even if we have to count the three days we always get at least the day that we're back in the office to do everything. So it does effectively give us one day and that - that's the way our supplemental rules are written.

And that's why I think that allowing the registrar - I mean, I've been advocating for the one business day for the registrar because I think that that does work together with the way we currently operate here.

Michele Neylon: Yeah, so you'd be in support of replacing calendar day with working days, is that what you're saying?

Kristine Dorrain: In the UDRP?

Michele Neylon: Well, yeah.

Kristine Dorrain: Yeah, oh well sure absolutely, any time we can replace calendar day with working days that would be great. But I think that it's not - I don't think there's a conflict. If our recommendation gives the registrar, you know, one business day, however they define it, to respond I think the way we, at least at NAF and I don't know what David has to say, but I think at least the way we define the three calendar days it would still work out because we get to - we roll it to the next working day.

So even if there was a long holiday weekend in there we still will have that day that we're back in the office to process what we need to process.

Michele Neylon: Okay. Does anybody have any other thoughts? No? Okay. Right then so some people like Luc and Volker's proposal with options. There's a couple of issues around it which has been outlined. There's a couple of - there's going to be a couple of minor amendments put in. Right, what next?

Let's see - just looking at this here. Marika, go ahead.

Marika Konings: Yeah, this is Marika. Do you just want to continue on with the comments on the right hand side and then we can come back later to the ones that are still in the document from Luc?

Michele Neylon: Yeah, that's probably easiest. Thanks for directing me back to the one true path. You can walk - do you want to walk us through your own comments, Marika?

Marika Konings: Yes. And this is Marika. Just to clarify these are not necessarily my own comments; these are comments that I've gathered from feedback I received from colleagues in the legal department as well as compliance.

I think some of these may have already been addressed by some of the discussions we've had but I think we just cover them and see if we have already spoken about them or addressed the issues.

I think, for example, on the first one I think that's also something that was pointed out by Matt in his email. So the first one is Draft Recommendation 2 and 3, the UDRP sets forth exceptions that allow for changes of registrar and registrant during a pending UDRP proceeding to Paragraph 8(a) and (b). As such registrars should not be instructed to prevent any changes of registrar and registrant during a pending UDRP proceeding.

And this is Marika. Maybe that is something just to note down that there may be exceptions based on - maybe it's just a clarification that can be added here saying, you know, exceptions provided under rules Paragraph 8(a) and (b) or something like that. I don't know if that's a...

Michele Neylon: So in other words clarification.

Marika Konings: Right, clarifying that there may be exceptions based on Paragraph 8(a) and (b) in which case changes can be made.

Michele Neylon: Okay. Continue.

Marika Konings: Okay, the next comment - then the next one Draft Recommendation Number 3, is the registrar allowed before initiating the lock to process a change of registrant to transfer the rights to the domain from a proxy service to the licensee of the proxy service? And I think that's something we I think already extensively discussed and have now I think Volker's proposal on the table. I'm not sure if we need to discuss this further.

Michele Neylon: Anybody have any input here? Speak up or forever hold your peace. Matt says he thinks Volker's does the trick. And Luc has a new business development idea. Okay which - right, moving on; next.

Marika Konings: Yeah, this is Marika. Yeah, Draft Recommendation Number 3 and I think that's something we haven't exactly discussed but I think there have been some comments on the list about that. Basically Draft Recommendation 3 the suggestion is that the working group should try to be specific about which changes should, must - may be allowed and which should, must - may not be allowed.

I think we've spoken clearly about, you know, that there should be no changes to registrant and registrar. And we've also I think spoken in the past whether there should be any clarification that, you know, a registrar must allow changes to domain servers and whether, indeed, there are other elements that we need to be really clear about what can or can't be (do) and be very specific.

So I think that's a question where I think we're - we still need to be - provide further details. And I think that's the part that's basically highlighted - oh no, sorry, I'm thinking somewhere else.

Michele Neylon: Okay. Next bit.

Marika Konings: It would be good if we can have some discussion on that or some...

Michele Neylon: Okay.

Marika Konings: ...clarification because that's still - because basically - that's basically the part highlighted in yellow in the bright yellow in Draft Recommendation 3 because basically it says the following changes should not be prevented. I think we talked about what should be prevented - or maybe we should basically make this must.

But is there anything we need to put in here or do we just leave that up to the discretion of the registrar? So it would be helpful to get some guidance here so we can actually write something up that people can review.

Michele Neylon: Okay. Matt has his hand up. Go ahead, Matt.

Matt Schneller: Hey, sorry for the toddler noise in the background here. But I think since the transfer prohibition is the only thing that's - is derived from the UDRP itself I think anything beyond that is optional and is a matter of contracts between the registrar and their customers. Whether they're going to prohibit anything else, make any additional requirements about elements of Whois or other background information that can or can't be changed I think that's just up to the contractees.

Michele Neylon: Okay. Alan.

Alan Greenberg: Yeah, I don't question that the contract can or should be specific but I think we're giving guidance to the registrars for what they can put in the contract. And I made a suggestion - but I don't remember exactly but I think it was that maybe one of the outputs of what we do is a list of Whois elements with yes, no or under what conditions can you change or under what conditions or timeframe can you change.

And if we follow that through then we're going to list all elements. And I think that would really be useful and provide clarity to registrars who don't do this

very often. I mean, saying you can't transfer the domain to a different person but you can reveal privacy, you know, is almost a conflict in itself. So I think we really need to be specific on this.

Some of it may be - not redundant but may not be necessary to meet the UDRP but I think we should provide good guidance to the registrars as the output of what we do.

Michele Neylon: Okay I'm just putting my registrar hat on again. Strongly agreeing with Alan and not feeling dirty about it. From my perspective as a registrar the current - the current UDRP policy and everything around it is far too vague and ambiguous. And it's not at all clear to me which - apart from don't allow the domain to be transferred - which elements should or should not be - should or should not be frozen.

And we've had a number of disputes around domains not necessarily involving UDRP, where, you know, we've handed some bits off to our legal counsel and he's a lawyer, you know, he knows how to turn on a computer and he does do email and I've even had him submit a comment to an ICANN public forum.

But, you know, he looks at the wording of something and he's trying his best to interpret it. And he needs to be told categorically yes, this is allowed; no this is not allowed.

With respect to the Whois and data elements which ones can or cannot or should or should not or must or must not or whatever be modified at various stages in a UDRP that makes a lot of sense to me. That seems incredibly logical and it's something I can give to a geek and say make this happen and they will have a nice template; they will make it happen. Thanks.

Marika, go ahead.

Marika Konings: This is Marika. As I think Alan made such a good suggestion would he maybe be willing to volunteer to make a first draft of such an overview? I'm happy to work with Alan on that of course but...

Alan Greenberg: Since we're skipping next week's meeting, yes.

Michele Neylon: And, Alan, if you need help with regards to the elements in Whois or whatever, you know, ping me an email. I can do emails.

Alan Greenberg: I'll do - I'll put something arbitrary. If it's wrong people can critique it. But...

Michele Neylon: Oh don't worry, I'll take pleasure in doing that.

Alan Greenberg: That will be an interesting example of - is all this clear enough that I can even figure out what the elements are that we need to talk about. By the way I was going to put a comment in the chat but I'll say it since I'm speaking. Michele, I don't - I think we need to be clear enough that you don't have to consult your lawyer.

Michele Neylon: Well that would be - that would be ideal, Alan. That would be ideal. And, I mean, jokes aside we are not Go Daddy, no offense to Go Daddy but they have entire legal team.

Alan Greenberg: Yeah.

Michele Neylon: A lot of the smaller - smaller registrars either don't have a legal team or the legal team is one person who is trying to juggle a million and one things for the registrar. And I'm sure Volker and Luc could speak to that. You know, they probably have to deal with just about every single legal issue that has anything to do with the company in many cases.

I mean, how many lawyers do you have in Key Systems, Volker?

Volker Greimann: Well there's me...

Michele Neylon: And...

Volker Greimann: And there's somebody who handles a bit of abuse but that's it.

Alan Greenberg: Yeah, but, Michele, there's going to be plenty of things in contracts which require interpretation; a list of Whois fields should not be one of them.

Michele Neylon: Well that's exactly my point. And what I'm trying to get at is that, as you say, you shouldn't have to call on your lawyer for something like this. You shouldn't have to make an interpretation; it should be this is a list which I can follow. And I'm a strong believer in check this.

Now that doesn't mean I want ICANN or anybody else to tell me everything that I have to do but for certain things like this telling me what - giving me explicit instructions on certain things that I can then follow makes it nice and easy. I mean, it's not as if we actually make any bloody money from processing UDRPs. You know, it costs us money if anything.

Right, it's three minutes to the top of the hour. One of the last items - one of the other items there that - there's a couple of other items there around definitions and clarification again. Draft Recommendation 4, a working group may want to clarify the confirm - what confirm means to the UDRP provider. And another one there around verification, again just more clarification as to exactly what is required.

Now we don't have time to discuss this now so, you know, those of you who work for the providers if you have, you know, the fact that you may have documentation hidden somewhere on your Website it would be helpful if we could have some of this information front and center so we can try and get it somewhere where we can all see it, you know, kind of nice and clearly and we don't have to go looking.

We will not be meeting next week. Several of you will be in Amsterdam. If you are in Amsterdam I'll look forward to seeing you all. If you're not in Amsterdam well then I won't see you. Have a pleasant week and speak to you all in two weeks' time. Thank you.

Alan Greenberg: Bye all.

Marika Konings: Thanks.

Alan Greenberg: Thank you, Michele.

Matt Schneller: Bye.

Marika Konings: Bye.

Volker Greimann: Bye.

Michele Neylon: Thanks.

END