

**Locking of a Domain Name Subject to UDRP Proceedings PDP WG
TRANSCRIPTION
Wednesday 28 February 2013 at 1500 UTC**

Note: The following is the output of transcribing from an audio recording of the Locking of a Domain Name Subject to UDRP Proceedings meeting on Wednesday 28 February 2013 at 1400 UTC . Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
<http://audio.icann.org/gnso/gnso-locking-domain-name-20130228-en.mp3>
On page:<http://gnso.icann.org/calendar#feb>
(transcripts and recordings are found on the calendar page)

Attendees:

Hago Dafalla - NCUC
Alan Greenberg - ALAC (Vice Chair)
Matt Schneller - IPC
Laurie Anderson - RrSG
Michele Neylon - RrSG (Chair)
Luc Seufer - RrSG
Celia Lerman - CBUC
Gabriela Szlak - CBUC
Volker Greimann - RrSG
Ty Gray (for David Roache-Turner, WIPO)
Jonathan Tenenbaum - RrSG

Apologies :

Lisa Garono - IPC
Faisal Shah - IPC
David Roache-Turner - WIPO
Kristine Dorrain - NAF

ICANN staff:

Berry Cobb
Lars Hoffman
Marika Konings
Nathalie Peregrine

Nathalie Peregrine: Thank you very much. Good morning, good afternoon, good evening.
This is the UDRP Domain Name Lock Working Group meeting on the 28th of February, 2013.

On the call today we have Michele Neylon, Alan Greenberg, Hago Dafalla, Volker Greimann, Laurie Anderson, Celia Lerman, Jonathan Tennenbaum, Gabriella Szlak and Luc Seufer has just joined the AC room.

We have apologies from Lisa Garono, Faisal Shah and Kristine Dorrain. From staff we have Marika Konings, Berry Cobb, Lars Hoffman and myself, Nathalie Peregrine.

I'd like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you, Michele.

Michele Neylon: All right, thank you. Good morning, good afternoon, good evening, good whatever. As per usual if there's any changes to anybody's SOI, going once, going twice, okay fine; moving on.

Right, so we had some input from Luc and from - was it Volker that provided something else?

Marika Konings: Matt.

Alan Greenberg: Matt.

Michele Neylon: Okay sorry. Just please bear with me, my voice is a bit screwed up this morning. So that has been reflected in the latest draft of the Strawman, which is up on the Adobe.

I can't actually see things. As I said I'm balancing a laptop on my knees so I'm probably - if I make less sense than normal this is part of the reason why. It's my excuse and I will stick to it.

Okay then so Luc's additions; does anybody have any queries about those?
Sorry. Any feedback, any thoughts?

Marika Konings: Michele, this is Marika. Would it be helpful to just go through the changes maybe, the main changes that were made to this version as it was just put out this morning?

Michele Neylon: Yeah, that might help. If you could just kind of point us in the general direction. As I said I'm a little bit challenged here this morning so I'm on a tiny laptop screen which I can barely read.

Marika Konings: That's okay, I'll just go through the document that's now on Adobe Connect. And basically this document covers the changes that I sent out earlier this week that reflects some of the feedback I received from ICANN colleagues as well as the comments that were submitted I think late last night and earlier this morning from Luc as well as Matt.

So on the first point you see there is basically in red basically talking about a preliminary deficiency check. I've clarified the language a little bit there because I got some feedback that it was actually a bit confusing and some people thought that we meant here the administrative compliance check that's conducted.

So what I've done is actually add a footnote to clarify what was meant here that this is more a quick check to make sure that there is no - that it's not a bogus complaint and that the UDRP provider can go ahead and actually ask for the verification from the registrar.

I think Gabriella has her hand up so maybe first go there, Michele?

Michele Neylon: Yeah, Gabriella, please go ahead.

Gabriella Szlak: Yeah, this is Gabby, thank you. So my question would be if we need to also think about maybe a term for this deficiency check or is there any - like I couldn't find this in the Strawman and I'm not sure if this is relevant. But maybe the UDRP providers also need to set a term for these rules for doing this check. Thank you.

Michele Neylon: Okay does anybody have any reaction to that suggestion?

Marika Konings: This is Marika. I didn't completely understand the question or suggestion that Gabriella was making. Could you please maybe say it again, Gabriella?

Gabriella Szlak: Yeah, my question would be when a complainant starts a complaint and submits a complaint to the UDRP then there's no term, I mean, we are not saying here that a UDRP provider has like one day, two days, a month or a week to do this first check even if it's something that in the practice now we know that they do very fast.

But I'm not sure if we need to put some kind of - also a term to do sufficiency checks that we have at the beginning. Thank you. If it's not clear I'll write it down.

Marika Konings: And this is Marika. I think that's a very good question. But as we don't have any of the UDRP providers on the call maybe it's good indeed to put it in an email and, you know, they are maybe able to provide some more specific details.

I don't know, for example, if this is something that they have defined in their respective rules if it indeed - if this is the right term or whether they have a standard term that they use for that. So I think it may be a very good question to ask.

Gabriella Szlak: Okay. Well I'll ask by email then.

Alan Greenberg: Yeah I - I would think unless there is a direct tie to the time we give a registrar to lock then I would think that - that alone is out of scope unless it's directly linked to a locking time - to a locking issue timing.

Gabriella Szlak: Isn't it related to the lock?

Alan Greenberg: Well I think it is but all I'm saying is that alone is not something we should be tinkering with unless it is needed to make sure that, you know, there's sufficient time or not too much time associated with the locking process. I think the locking process goes on - I think the two are going on in parallel so they may well be related.

Gabriella Szlak: Okay.

Alan Greenberg: But I'm a bit fuzzy at this point but I think so.

Michele Neylon: This is Michele. I'm a bit confused. Well I'm not confused I'm - it would help me to understand the issue. Is the current situation causing a problem with this deficiency check? Is there some problem with this that we need to address? Marika, I see your hand up, go ahead.

Marika Konings: Yeah, this is Marika. I don't think there is any issue with it. The main reason why we've included it here is I think to reassure people that UDRP providers just, you know, any complaint they get they automatically forward it to the registrar and have the name locked down.

I think this is a kind of insurance where I think some people said oh, you know, can the UDRP be abused? And if we create a very clear timeframe can people just go and just to have, you know, a name locked down or, you know, possible reveal of information even if it's not a, you know, just for malicious reasons.

So I think the reason why we've added this in here, as I think Kristine has explained to us, that what, you know, they normally do is when they get the complaint they do quickly, you know, to make sure that it's a valid complaint; it's not, you know, Mickey Mouse that's filing this and it's obvious that there's never going to be any payment or any follow up to the complaint.

So it's, you know, if that's confusing maybe - and if it's not indeed an official term we can definitely consider taking it out. But I think it's - the reason why it's mentioned here is more to provide this kind of reassurance that there is a - just a quick verification by the UDRP provider before they actually go and make this request to the registrar to verify the information and lock the domain.

Michele Neylon: Okay thanks, Marika. Gabriella, do you - Gabriella, since you raised this and I'm not saying you're raising it was any issue with this I'm just trying to understand...

Gabriella Szlak: Yeah, I will add something more; maybe it's more clarifying. What I think is that before these - like the process today UDRP providers - it's different because this (commitment), we're changing it all over. We're doing things that now we're saying that the UDRP provider has to first tell the registrar to lock and then the respondent is going to be informed.

So we are changing the whole starting process of the - well, the commencement of the case is going to be different now through these Strawman changes if this goes, right, if this is approved.

So taking that in account now this first point, UDRP complaint is filed with UDRP provider by the complainant in the Strawman, has this provision where - sorry, the second one, the one about the preliminary check - now it's different, it's a different moment only between this UDRP provider and the registrar.

So I was thinking about having a way of explaining or telling the complainant what is going on and that this is going to be different and how long he will have to wait until this commencement now is going to start.

And part of this - of the time for the commencement will be of course this time since he sent - he submits the complaint and all these days until this preliminary check is done maybe it's on the hour but we don't know how much time will it take. So I want to clarify how much time a complainant has between his submit and the commencement of the case.

I'm not sure if I'm being more confusing than clarifying, sorry.

Michele Neylon: That's okay, don't worry. It's okay. It's okay. Marika, go ahead.

Marika Konings: Yeah, this is Marika. As far as I understand I don't think we're changing anything to the time of commencement or response times as they're currently in the UDRP. I think the only thing where we're changing is the requirement of - for the complainant to file the complaint at the same time with the UDRP provider as with the respondent. I think that's the only major change we're making.

I think what we're actually doing here is just writing down what is happening in practice. And again as far as I understand from what Kristine has shared, and I think David as well, that this preliminary deficiency check is, you know, a matter of minutes or seconds; it's not a formal check that takes days because I think it's in their interest to get the complaint as soon as possible to the registrar to make sure that it gets locked.

So it's a more - a kind of, you know, when you receive the letter that you make sure that you don't throw it in the bin because it was advertising but it's a real letter to you. I think it's more than kind of check that's done and then it's being forwarded to the registrar. So it's - as far as I understand it's not

adding any new requirements or adding new steps it's actually just explaining what is currently happening in practice.

And I do see that Ty from WIPO has joined so we can invite him to jump in if I'm saying anything here that is not according to what is happening today from the UDRP provider perspective.

Ty Gray: Yes, hello. This is Ty from WIPO. I just wanted to say - well thanks for summarizing that. That's exactly, from our perspective, what we anticipate as well. As you had mentioned when a case comes in we do need to just ensure that it's prima facie valid but it's in our best interest to move that along to the registrar as soon as possible.

Michele Neylon: So, Ty, just so - this is Michele speaking - just for my non-legal kind of simple brain you just kind of look at it and make sure that it makes sense; that it's not complete and utter rubbish and total junk? Would that be the simple way of looking at it?

Ty Gray: Well pretty much. Of course from our perspective - this is Ty, I'm sorry - we want to make sure that, of course, that it's been filed under correct policy. We find that there may be people who are either - of course who's spamming us with advertisements or indeed that there may be confusion as to the utilization of the correct policy.

So it's pretty much, on its face, whether it's - appears to be valid. And they make out the arguments under UDRP. And as Marika was stating usually that would be something that could be done within the first few minutes so we endeavor as a good provider to move that along as quick as possible.

Michele Neylon: Okay thank you. Gabriella.

Gabriella Szlak: Okay I think that maybe I have misread something about the timing from the commencement - from the submitting to commencement. I thought it was

going to be longer with the Strawman but maybe it's not. So I will read this again and if I have any comments I will send them to you.

Michele Neylon: Okay thank you. So, Marika, moving on.

Marika Konings: Yeah, this is Marika. So moving on then you see then a footnote that I've added there to clarify that this is to apply once accreditation program for privacy and proxy providers is in place.

Then the second change there - and it's something I clarified in the email as well - I think we've been speaking about underlying registrant of a real registrant but it's been pointed out to me that those are actually not correct terms because under the RAA we do consider the proxy as the real registrant.

So apparently a better term to use is either a proxy customer or a beneficial user. And I think I saw someone just suggest as well there's actually another term that's even used in the RAA which is the customer of any privacy service or the licensee of any proxy service. So you'll probably have to pick one of those terms to really make sure that we are correct in our terminology.

Then the next change I think...

((Crosstalk))

Michele Neylon: Okay hold on Stop. Stop.

Marika Konings: Oh yeah.

Michele Neylon: Slow down. Slow down. Slow down. Slow down. Okay.

Marika Konings: Yeah.

Michele Neylon: Everybody - there now this terminology about the proxy, the privacy, the licensee, the beneficial user, all this, we have to make a couple of decisions here if I understand this correctly, Marika?

Marika Konings: Yeah, this is Marika. If there's a strong preference for either of those terms, I think (unintelligible) with the proxy customer or beneficial user. But if people feel stronger - strongly that it is better to use the language that's in the RAA that's definitely up for discussion.

Michele Neylon: Okay, so does anybody else have any opinions or thoughts or any feelings about which terminology they would like to use or are we happy to leave it with lots of slashes or whatever the hell you want to call them, to be decided later. Alan, go ahead.

Alan Greenberg: Yeah, unless I misunderstand the timing we are likely to see some level of clarity once the new RAA is approved or at least comes closer to being finalized. And presuming that's within the lifetime of this PDP we have the opportunity to change the wording. So it may well be best at this point to use, you know, flexible terms or multiple ones with a slash and then clean it towards the end once we understand more where the world is going.

Michele Neylon: Okay thanks, Alan.

Alan Greenberg: Other than try to define a new term which may stick out.

Michele Neylon: Okay. Volker, I'm going to pick on you because I know you're there and I know you're following the RAA thing quite closely. Is anything within the RAA changes likely to impact the terminology here or not?

Volker Greimann: Not really, no.

Michele Neylon: Okay.

Volker Greimann: There is still discussion about how Whois privacy services should be integrated into the new RAA where ICANN has a wildly different position than the registrars which might have an impact. But I hope we'll see a resolution within the next two or three weeks on that.

So while we use terms we do not use terms like underlying registrant or something like that so I don't think there is much impact at this point either way.

Michele Neylon: Okay so choosing terminology here, which we can - which we don't need footnotes that go on for longer than the actual text to explain them, is probably what we should be looking at.

Volker Greimann: I think so, yes.

Michele Neylon: Because I would hate to see us produce any kind of a report where the footnotes explaining the body of the text are longer than the actual text. That would seem to be a little bit strange. Ty...

Marika Konings: This is Marika. Would proxy customer then just be basically the simplest translation what we're actually talking about? And then, you know, indeed if there's an official term that comes out of the new RAA we, you know, we can still use that.

Michele Neylon: Okay. I'm happy with that, Marika. I mean, I just want to make sure that we - excuse me - we don't get ourselves too bogged down but just keep it clear. Ty put something up there on the chat: one note we would like to make on Draft Recommendation 3 we would recommend the sentence, "For the purpose of the UDRP the registrant lists in the Whois record at the time of the lock," will be recorded as the respondent, be changed to be - will be recorded as a respondent.

I don't think that respondent is defined in the rules as holder of domain name registration against which a complaint is initiated.

Ty, I'm sorry, but what's the difference between a respondent and the respondent? Because I don't actually understand...

Ty Gray:

Sure - sure, this is Ty. We, of course, just carrying a bit of a message here for David on this. But to help explain this distinction is that when we get complaints we see that the complainant may have made out in their complaint that there may be, for instance, a number of respondents that are named as there may be domain name holders under the UDRP as well.

There's a bit of, I guess, precedent that you can point to that says that there is consolidation of argument or complaints based on the fact that the domain name holder is in fact a separate entity that is, at that time, listed in the Whois based on I guess a beneficial holder sort of basis.

So it's not uncommon that there would be multiple respondents that could be named by the complainant. And so as to name just the respondent, the - as the registrant at the time the registrar comes back to confirm this is a bit limiting as it doesn't capture these other respondents' identities that are named in the complaint either pursuant to a consolidation request as has been developed throughout the jurisprudence or just on the basis of the fact that at the time the complaint was filed or initiated, as it's stated here, this information is not, you know, per se consistent with what is confirmed by the registrar at that time when it comes back to us.

So basically to boil it down it appears that there could be arguments that could legitimately be made by the complainant in its complaint that, for our purposes, we would necessarily want to pass on to the panel for its consideration on that issue.

Michele Neylon: Okay thank you. Thank you. That makes sense to my non-legal brain. Alan, go ahead.

Alan Greenberg: Yeah, thank you. If we're talking about the time at which the complaint first comes in and the provider is, you know, doing their homework at that point it is the respondent. That doesn't preclude others being added afterwards. But at that time the respondent, you know, slot is blank in the form and you're filling it in with the only answer you have, the entity that's listed in Whois.

So I think grammatically the is the correct word to use at the time it's first put in.

Ty Gray: So this is Ty. I understand the - well I'm following the bit about the confirmation from the registrar as to the entity that appears in there. I'm just trying to square that with the arguments that we received from complainants especially when there's issue of false Whois details.

And in relation to some arguments we see where they make the fact that there is one overarching registrant behind these or entity behind these when they reference, for instance, commonality of use between multiple domain names featuring the same content on websites, these sorts of things.

It's - in regards to the named respondent as opposed to the registrant it's not atypical for us to see the complainant argue that this registrant is somebody that we name as the respondent coming in with our complaint.

But we note that based upon our communications with this individual, just as an example, we note that this individual has claimed that they are the owner and so as to make their argument they'll include these other respondents' details as people they name as the actual holder.

And because of the language there as defined in the rules we typically will allow that to go to the panel for them to make the consideration rather than us

state that they need to amend their complaints and name the respondent as a particular entity on that basis. That's why the 'a' versus 'the' suggestion was put out there.

Alan Greenberg: Yeah, it sounds to me - and again I'm not the practitioner but just from the language point of view it sounds to me like what we should be putting is the respondent and then S in brackets after respondent.

Michele Neylon: Okay I think, guys, I think we should try to follow this through maybe on the list because...

Alan Greenberg: Okay.

Michele Neylon: ..we could - no offence to the 'a' and the 'the' and to the article and the indefinite article - and I was the one who questioned it just to understand it so it's partially - more than partially my own fault. But I think we could get bogged down on this a little bit.

Matt, you had your hand up.

Matt Schneller: I took it down.

Michele Neylon: Okay. Sorry. Laurie Anderson is typing because she's lost her voice a bit like I have. She's saying, "In the case of proxy privacy services NAF allows the lifting of privacy at the time of verification whereas WIPO, in their experience, adds the underlying registrant as a respondent in addition to the privacy service." And that's just a note on that. Thank you, Laurie.

Okay then, Marika, moving forward.

Marika Konings: Yeah, this is Marika. And I just took note of Alan's suggestion which seems to accommodate both views of adding the S. I can add it in the next iteration of this draft and people can then discuss further if they want.

The first part of Draft Recommendation 3 I think that's just a - moving around of the sentence for clarity. There were no significant changes and I think we just modified the sellers of the registration again as a clarifying language; no big change there.

Here, again, there was the sentence read, "These changes must be prevented from the day of receipt of a request for verification." That's how it originally read.

And I've added in there, within two business days, to make sure that it aligns with our previous recommendations that changes need to be prevented within two business days because otherwise we're saying on the one hand changes need to be prevented from the moment that the request for verification is received.

And in another recommendation we're actually saying that a registrar has two days to make sure that those changes are prevented. So it's just to make sure that that's aligned.

The next one here I think as well the redline is just a clarification, "...has been submitted by the complainant to the UDRP provider," just to make sure that that's clear.

Then the next sentence here in red, as I clarified there, this is actually just moving up the section from Draft Recommendation 2 to Number 3 as it seemed to flow better there and clearer how the process would work.

Then the next changes are also clarifying - the first one's clarifying language just - we had to have a relationship before and that didn't really make much sense to some so I changed it to, "As a result of privacy proxy services."
Then I added there, "In accordance with Draft Recommendation Number 2,"

to make sure that there are specific requirements related to this for the reveal as we outlined in Recommendation Number 2.

Again I've updated the language there to change the underlying registrant to - well changing that to the proxy customer I think as we agreed. Then in Draft Recommendation 4 in the box on the left this is an update. I think we forgot here to update the one business day to two business days so that has been updated here to align it with Recommendation Number 2.

Then going further down Draft Recommendation Number 7, again a couple of minor edits just to clarify or make the language more precise. And again of course if anyone has any issues with these additions or changes people should just speak up and let me know.

Then Recommendation Number 10 so the first change I made there is that basically we didn't add the scenario in which a possible settlement could also have as an outcome that the registration remains with the respondent. So I added that option as one of the potential outcomes of the settlement.

But then the comment that Luc made is that - and it's something we discussed on the previous call as well that the way the recommendation is currently written it puts the registrar in the position of having to confirm with the complainant as well as the respondent what the details of the settlement are and making sure that the necessary confirmations are received.

And Luc is on the call so I'll let him speak to that. But in order to address that my suggestion would be to take out the sentence that's currently in red brackets that reads, "The registrar is required to confirm with the complainant as well as the respondent the details of the settlement." But possibly leave the other parts of the recommendation as they do explain what happens.

I think especially the first sentence may be helpful there because I think this, as well, I think some you remarked it would be really helpful if UDRP

providers and they include expected duration of the suspension in there. And the last part basically explains as well what is expected to happen once the confirmation has been received on what needs to happen with the domain name registration.

So with that - I don't know if Luc wants to say anything more or people want to discuss how to address his comments.

Michele Neylon: Okay thanks, Marika. Luc, are you going to - anything you want to add?

Luc Seufer: The more I'm thinking about it the more I think we should simply remove the whole recommendation or not support it to just leave that a possibility to have that proceeding suspended but do not involve any party in the settlement part. And if a settlement is reached then the party or the complainant terminate the proceedings and (unintelligible) being enforced between them - them and the respondent.

Michele Neylon: Okay thank you. Anybody else have any thoughts on this? Matt, go ahead.

Matt Schneller: Sure, the benefit - or sometimes I've found the benefit of having the suspension and the transfer happening during suspension is that if the proceeding is withdrawn sometimes notwithstanding the settlement agreement.

It's - kind of takes the impetus to act away and it takes quite a while to actually implement the agreed upon settlement because there's no proceeding hanging over the parties where if you're trying to get the transfer done while the proceeding is suspended sometimes that actually makes it happen whereas if it doesn't happen then you have a contract review but maybe you don't, you know, do you want to go to court over this? You have to re-file the UDRP.

It can be a pain to deal with if the one party backtracks on their commitments. But if everything happens during suspension you don't have that risk.

Michele Neylon: Okay thank you. Volker you had your hand up but it seems you dropped it again. Do you...

Volker Greimann: Yeah, I'm mulling my response a bit more.

Michele Neylon: Okay. I'll mentally put you up after Ty then. Ty, go ahead.

Ty Gray: Thank you. This is Ty. I just wanted to add just not the comment so much on the substance there but just from our experience just to note that we see between 20% and 25% of our cases go - settle prior to a panel rendering a decision so we do see this quite a bit. We don't take active parts in the settlement negotiations between the parties.

But we've been acting on the basis of this suspension mechanism that we've had since 2000. And so I just want to present that as just something that - it's a very common thing that we see on our end just to add that to the discussion.

Michele Neylon: Okay, thank you. Volker, have you managed to mull your thoughts over enough?

Volker Greimann: Yes, basically I agree with what Luc has said. The registrar is the main point of contact for the registrant whereas the provider is the main point of contact with the complainant in most cases. And whereas the provider is an arbitrator and deals with arbitration all the time the registrar is usually a business unit or an entrepreneur and not a court or an arbitrator and not usually qualified to make a decision about a settlement.

So the question of whether a settlement has been reached I see more in the realm of the provider than the realm of the registrar actually.

Michele Neylon: Okay thank you. Marika and then I don't know, is that an old hand or not for Ty? Marika, go ahead.

Marika Konings: Yeah, this is Marika. I don't think it's necessarily within our remit to determine, you know, who should be responsible for, you know, assessing whether a settlement has been reached or not because I think that doesn't specifically relate to the locking.

For the reason I think we do need to include something as this is a, you know, and if you see in the blue box is this - I don't know if it's from the UDRP or the UDRP rules but there is specific mention there on if a settlement has been reached that the lock must be removed within two business days.

So I think, you know, for completeness of the process we probably do need to say something about it but I agree and I understand that there is conflicting views on who should be responsible for that assessment. And again I don't know how it's currently being done in process but currently being done by the parties involved. But I don't think we necessarily need to resolve that here as it's not specifically within our scope I think to address that specific question.

So again a suggestion would be to possibly just leave the first sentence to explain that indeed UDRP providers are expected to notify the registrar that a suspension is in place and accept the duration and then maybe just remove all the rest of it and just refer to the language that's currently in the blue box that says, you know, should both parties come to a settlement during the course of the proceeding then the registrar must remove any lock preventing transfer or cancellation within two business days of confirmation of a settlement by both parties.

And basically leave, in the middle, then how that is done and basically follow what is currently being done I presume. Would that be a way of addressing the concerns but still making sure that we do have in here the complete

process of what is required or what the requirements are under the current rules and policy?

Michele Neylon: Just looking at the chat there - and I just want to put my hand up as well just to make sure that it was captured. There's some interesting backwards and forwards here amongst some of the people. Luc is asking whether WIPO will be ready to take over this part in gathering - and gather the confirmation from both parties in assessing the settlement terms and then just give the directions to the registrar so tell the registrar this is what you need to do.

And Matt is basically asking would that be better - would that be preferable for registrars? Laurie - they've had good results during suspension we're getting permission from both parties. And - oh Volker has a query as well which is actually a valid one. Enable a transfer instead of transfer because obviously you - it's impossible for a registrar to unilaterally transfer a domain to another registrar technically speaking.

Marika, you have your hand up still.

Marika Konings: Yeah, this is Marika. Just to note that indeed I have made that specific suggestion in one of the previous versions of this document indeed asking the question, you know, would the UDRP provider be in the position to confirm the settlement. And I think it was Kristine at the time that responded that actually currently NAF just gets the notice from the parties involved that they want a suspension.

And I believe she basically said that usually means they get it for a certain time and if they don't come back they just assume that a settlement has been reached. And when they do come back to resume the proceedings that's when they're contacted. But they're not necessarily, at least in the current model, involved in receiving a copy of the decision. At least that's what I understood or recall from her conversation or her feedback then.

And I think Ty is basically I think saying something similar; that's it's not necessarily within their purview. So maybe this is actually a separate issue that, you know, we can definitely, I think, highlight maybe in the report but maybe this is something that would need to be considered as part of the broader review of the UDRP and how to deal with that.

As, again, I don't think this is something that specifically deals with the locking as such and maybe would involve some broader discussions and considerations.

Michele Neylon: Okay thanks, Marika. There's a lot of chatter here actually on the Adobe Chat which I think is going to be quite interesting to look at. Laurie can't speak so she's putting - she's vocalizing herself that way. Celia, go ahead.

Celia Lerman: Yeah, just one question for Laurie. So in practice does the provider then confirm that the agreement is made? Do they do that? So when does that happen usually? I was going to say - Laurie responds over the Chat. What I was asking so in fact the provider does confirm that an agreement has been reached.

Ty Gray: This is Ty. Just to respond generally speaking what we see is that we'll get a communication either from the respondent or registrant themselves stating that they want to suspend the proceedings or they're not interested in the domain name or that they want to engage the complainant in some way.

Or the complainant may come to us and say that the respondent or the registrant has indicated their willingness to enter into a settlement agreement and based upon a request from the complainant or from the parties jointly they request a suspension in order to engage in settlement negotiations.

This happens outside of our interaction. We state when we suspend the proceedings that during a suspension the domain name pursuant to an agreement between the parties may be transferred from the complainant to

the - or from the respondent to the complainant only. And it is also the case where if there's no agreement that is reached, as it typical, that the complainant will ask for reinstatement of these proceedings.

But typically speaking from our perspective what we see is typically the request for suspension and then either notification that this was successful and therefore it would be a withdrawal or a termination request or a request to reinstate. These are our normal contact points in this procedure.

Marika Konings: Volker, go ahead. I think Michele's just running to his door because someone's knocking on it.

Volker Greimann: Okay the - I will agree to that assessment. The vast majority of cases where we have a suspension and that I see the complainant only requests the termination of the proceedings once he has control of the domain name, i.e. if the domain name is in a user account and has his Whois data updated.

And obviously that cannot be done if the lock is still in place. So we would need a step in between the termination of the proceedings and the implementation of the settlement which is usually the removal of the lock and the push of the transfer to an account of the complainant when the complainant - which is the majority of the cases - receives the domain name.

So basically having a notice from the provider in place where he says you can remove the lock and do this, this and that because the settlement proceeding that says that would be great help for the registrars.

Michele Neylon: Thanks, Volker. Sorry, I had to step away because housekeeping wanted to come into my room at 7:30 in the morning for some bizarre reason. Anybody have any reaction to Volker? Marika, go ahead.

Marika Konings: Yeah, this is Marika. I'm just wondering whether this is maybe one of the items where, you know, at this stage it may be difficult to come to resolution

but maybe it's one of the items we highlight in our report as requesting further input on or one of the items we identify as one of the open questions that we want to discuss further and would appreciate community input on to see whether it's something we should be addressing here.

And if so, you know, because as I see it - or at least the feedback I see there are two approaches; the one way is saying the UDRP provider should be responsible for confirming with the registrar what the settlement is or it's the registrar who will do that confirmation with the parties.

So maybe as, you know, it is a big question. And as said I'm not necessarily sure whether it's within our remit as it does address a very, you know, specific detail of the UDRP and not necessarily under the locking question.

Maybe that's a way of dealing with it just highlighting that there's an open issue and then seeing the feedback that is received to determine, you know, how we deal with it in the second part of this PDP.

Michele Neylon: Okay thanks, Marika. Matt.

Matt Schneller: Yeah, I just wanted to check with the - if the - something like the timeline that - the (chat) board is something that Volker thought was workable and something that maybe the providers were comfortable - I guess maybe Ty can speak to whether that would be comfortable to them as well.

It gives the provider a little bit more insight into what's going on so they know whether a settlement is complete and what's supposed to be happening before they give up jurisdiction over it.

Michele Neylon: Okay so Ty and then Volker.

Ty Gray: Sure, this is Ty again. Thank you, Matt. I just - as I was saying in the chat I don't know if I would be at a point now to actually give any opinion on this

topic. The one number in your Chat Item Number 4 about the issuing the order is something that would have to consider to see if that - if that is something that we are in a position to do, haven't really worked this through all the way obviously.

So I think that there may be some aspects of this procedure that just need to be looked at a bit more. And I'm sorry I can't give any further clarification as to whether it would be proper for us or not at this time; I just can't.

Michele Neylon: Okay I think - guys, I think we could go around and round quite a bit with this so maybe it would be best if we put this in as something, you know, we need to put (it) in something we can't quite decide on, I mean, maybe if Matt wants to put something further - for further discussion if the UDRP providers could revert on this as well. Just think about it a little bit further and see, you know, how you view these things, I mean, what - so obviously asking you off the cuff now what you think could be a problem.

I'm just quite wary of the time. Volker, I'll give you a word and then we go to Marika.

Volker Greimann: Yeah, my word is in the chat Matt has made a proposal which looks workable to me. The only suggestion for a change I would make is Number 6 where he says parties confirm change is complete. Actually it would only require the complainant to confirm that the change is complete in my view because the complainant controls the proceedings and cannot at any point request a termination.

Michele Neylon: Okay thank you. And Marika.

Marika Konings: Yeah, this is Marika. As we're heading towards the top of the hour I just wanted to share with you what, from my perspective, should be the next steps now in dealing with this. Because I think we've concluded I think - I mostly added in the Strawman that there might still be minor issues and I

think there's some of the items that may, you know, be further discussed on the list. And I think there's not any problem with that.

But the idea would be that, you know, after this meeting I make the changes as we discussed today and then actually start moving this into the initial report so that the next meeting we can actually start looking at the initial report as a whole which also still may include, you know, some tweaking and changes to the recommendations.

But I'm hoping that we're nearing a stage where, you know, we're almost there that we don't have to do any more major tweaks or changes. But I think I said there's still some items that, you know, if we can start discussing those on the list they can then be made as part of, you know, if an agreement is reached they can then be made as changes as part of the initial report itself.

So that would at least be my proposal on how to proceed. So we're no longer looking at two separate documents but it actually becomes an integral part of the initial report and we can start focusing as well on getting that in the right shape and ready for publication by the 15th at the latest.

Michele Neylon: Okay thanks, Marika. Volker, is that a new hand?

Volker Greimann: No that's the all-famous vestigial hand, sorry.

Michele Neylon: Thank you. And I think you've set yourself the personal challenge to use that word today in a sentence. Congratulations, you won. Okay we've got about five minutes left so basically Marika is going to make a few more tweaks to this and if there's any further kind of comments and stuff so that we're moving towards having this initial report out in time within the deadlines.

Marika, you have your hand up again.

Marika Konings: Yeah, this is Marika. I just realized that in all the chat I lost that but Gabriella actually said that she had a further comment to Recommendation 5 once we had gone through all the other changes so I don't know if that's still a point she would like to make or whether that has already been addressed.

Gabriella Szlak: Thank you, Marika. This is Gabriella. Well, I will ask a question about - can I raise Recommendation 5 first? If the complainant - first the 4 - the UDRP provider shall forward the complainant - the complaint to the registrar and respondent. And now to 5 the registrar and the respondent of commencement of the (unintelligible) proceedings within three calendar days.

My question would be can we put here notify the parties and the registrant (as well) the respondent of commencement, which is obvious but it's not there.

Michele Neylon: Anybody? Okay so Matt's putting on the chat, good point. The complainant would also want to know about commencement. I presume that's a reaction to this or am I being stupid? Marika, go ahead.

Marika Konings: Yeah, this is Marika. This language I think is actually from either the policy or the rules. And I don't know if that's maybe already mentioned somewhere else. And I'm hoping that - I see Ty - Ty thinks - exactly, I think he's already putting something in there. It may already be covered somewhere else.

Gabriella Szlak: Yeah, I know it's in the rules and I was comparing the rules with this which is why I'm asking the question. Because in the rules it says that both parties will be informed of commencement.

Marika Konings: And you're basically saying that we should call that out in the draft recommendations not necessarily in the blue box?

Gabriella Szlak: I'm sorry, can you repeat that?

Marika Konings: You're basically saying that we should call that out in one of the draft recommendations and refer to the relevant paragraph to make sure that it's clear that that needs to happen as well? Do I understand you correctly?

Gabriella Szlak: Yeah, yeah. Because in general when you read the Strawman if you put yourself in the shoes of the complainant it seems the complainant is not informed of many of the steps. But maybe it's obvious because we have the rules. But comparing the two documents maybe it's better to clarify this.

Marika Konings: Okay. Ty has provided the link or the paragraph in which that's covered so I can add that in the next version to make sure that is clear.

Gabriella Szlak: Thank you.

Michele Neylon: Okay. Celia, go ahead.

Celia Lerman: Yeah, this is Celia. Just one more question also for the sake of clarification I was wondering if we could also add a footnote somewhere that - well the business days as per the policy are the business days as observed in the location of the registrar.

Michele Neylon: Okay. Is that clear, Marika?

Marika Konings: Yeah, this is Marika. Shouldn't that be the business days for the party that's required to do the action? Because I think in certain cases we also say that the UDRP provider has to do something in a certain number of business days. I was under the impression or had the understanding that the business days refer to the party that was required to do something so in their business days they would need to do that.

But I agree, I think that should be clarified what we mean there. So if that was not the understanding and it's only the business days of the registrars it

would be helpful if you tell me that that is the case and I can write a footnote to that.

Michele Neylon: Okay so, Celia, will you - can you follow up on that?

Celia Lerman: Yeah, thank you. That's perfect.

Michele Neylon: Okay thank you. All right then so keep an eye on the mailing list. If there are any specific issues you want to address do so via the mailing list so we can move forward with this. And we'll speak again next week at the same time. So we're done. Thanks, everybody.

Gabriella Szlak: Thanks.

((Crosstalk))

Nathalie Peregrine: Thank you very much, (Tonya), you may now stop the recording.

Man: Bye.

Alan Greenberg: Thank you.

END