

Transcription ICANN Beijing Meeting

Locking of a Domain Name Subject to UDRP Proceedings – Initial Report

Thursday 11 April 2013 at 09:00 local time

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

Michele Neylon: All right, good morning everybody. I think we'll start this - get this going. Has the recording been started Marika?

Okay, good morning everybody. It's Michele Neylon, the chair of the UDRP (lock) working group and sitting on my right is Alan Greenberg, my wonderful co-chair.

I suppose we should do a quick roll call just to see who's here and then we will proceed. We are presenting our initial report and, of course, what we would love to be able to do after we've gone through the basics is any feedback, any thoughts that you have on this, preferably constructive feedback, if you tell us that you don't like something, please tell us why.

And so let's see if we can just do a (unintelligible) to see who is here. So Michele Neylon, Blacknight.

Alan Greenberg: Alan Greenberg, At Large advisory committee.

Philip Corwin: Philip Corwin of Virtual LLC participating as counsel to the Internet Commerce Association.

Erika Randall: Erika Randall, ICANN staff.

Marika Konings: Marika Konings, ICANN staff.

Lars Hoffman: Lars Hoffman, ICANN staff.

John Berard: John Berard from the business constituency.

Berry Cobb: And Berry Cobb from ICANN staff.

Michele Neylon: and for the record we also have John Berryhill sitting down at the table ignoring us, but okay. We have apologies from (Luke Sufere) who's going to the trademark clearinghouse which is right up against this, I think, several of our other regular members, have ended up at the other sessions because it's running straight up against this one.

Please, people, there is plenty of space at the table if you'd like to come up. And Elliot - I see Elliot Noss is in the room. Okay, yes. Okay, if you want to come up to the table because you want to be closer to participate or if you want to be honest like Elliot and just leach the power, feel free.

Okay then, so the UDRP (lock) working group, for those of you who aren't familiar with this, we'll just go through the slides very, very quickly and then open it up hopefully for some feedback from the rest of you. Do we have anybody on the phone bridge, Marika, (instructor)?

Marika Konings: This is Marika. I don't think we have anyone on the phonebridge but we actually have people listening into the Adobe Connect amongst which (unintelligible) who's also a member of the working group.

Michele Neylon: Okay, good morning to those of you who are joining us remotely as well. Excuse me.

Alan Greenberg: Can I have a second?

Michele Neylon: Of course we can. Go ahead.

Alan Greenberg: Hi. I just wanted to say I support the work of this group fully, that I have a full overlap conflict right now and I'll be leaving in about 15 minutes, so it's says nothing about the work of this group or Michele.

Michele Neylon: It was about me. He just wouldn't admit it but we will work on the basis that he actually has got a full schedule.

Okay then, so we're just going to - we'll present the report and I'll try to go through these slides quickly. If I'm speaking far too quickly with my charming Irish accent and you can't understand a word I'm saying, please do let me know. Otherwise, I'll assume that you understand me perfectly.

Okay, so the GNSO - the next slide up there please - the GNSO council issued a PDP limited to the subject of locking of a domain name subject to UDRP proceedings.

For those of you have been around for a while, there was a lot of discussion about reviewing the UDRP and it was decided not to do that at that time so - but this part of this was permitted to be reviewed, as it were.

So the current status is, there's no requirement to lock names in the period between filing a complaint and commence the job proceedings. And there was no definition of status quo which has resulted in the different interpretations and confusion.

Because the - if you look at the actual language of the UDRP, it talks about the status quo which might seem wonderfully clear but this is ICANN. Nothing's ever clear.

Okay, so next slide please. Okay, so we conducted a survey of the registrars and the UDRP providers. We got - we tried to get an idea of our current practices and what issues they face from both sides.

And we also have had comments from various GNSO stakeholder groups and SOs and ACs. And we published our initial report back on the 15th of March of this year.

The initial report contains eleven preliminary recommendations to clarify and standardize the process for locking of a domain name subject to UDRP proceedings and because that's very long, we just keep saying UDRP lock.

Now, most of the recommendations are to quantify existing practices in line with UDRP and are not expected to require any changes to the existing policy. However, we do want feedback. I mean, ultimately we don't know everything. We can't know everything. If the wording is not clear - isn't clear or you think it's open to some other usage or abuse or whatever, you know, you let us know, please.

We're not all seeing and all knowing. However, should these recommendations be adopted in the current form, minor changes may be needed to the UDRP rules and/or the UDRP provider's supplemental rules.

Next slide. Okay, recommendations. Definition of locking. The term lock means preventing any change of registrar and registrant without comparing the resolution of the domain name.

Number 2, modify a requirement for complainant to notify a responded at the time of filing. UDRP provider will be responsible for notification at official commencement.

And number 3, following (routines) of verification requests, registrar has two business days to lock in (unintelligible) the domain name registration.

Registrar is not allowed to notify the registrant until the lock (in averted commas), has been applied.

Three B, any updates as a result of a request by the accredited or affiliated privacy/proxy provider to reveal the underlying proxy customer data, needs to be made before the two business days' timeframe and/or before the registrar verifies the information requested and confirms the lock to the UDRP provider.

If information is revealed after the lock has been applied, the UDRP provider is not obliged to request amendment of complaint but may do so at its discretion.

That's okay, I'm trying to keep up here on my laptop but I have the slides in front of me. I'm just swiping things. Sorry, I'm more than happy to go back, Elliot if you don't mind. No problem. I'm happy to.

And the other thing as well, because a lot of this stuff, it's okay, it's UDRP. I mean, if you're a trademark lawyer - any trademark lawyers here? John, you're a trademark lawyer? Okay. Do you find this stuff terribly exciting?

John: I mean, it's 90% of what I do for a living, so I find it tremendously exciting.

Man: And just from an understand perspective, when you say what information has been revealed after the lock has been applied, what would be an example of that?

Michele Neylon: Okay, maybe somebody else might want to jump in so it doesn't sound like it's the world according to Michele which, you know, would be a very perverse world.

Man: (Ron), do you want to answer that then?

Michele Neylon: Normally, I don't mind. Look, guys, we can try to explain this to you bit by bit or we can wait to the end. I don't mind. Whichever works for you. It's all the same to me. Marika, go ahead.

Marika Konings: This is Marika. I'll try to explain and have anyone else jump in if I'm wrong. I think the idea is here that if the registrar is aware that privacy of proxy services is involved, either because it's provided by the registrar or once we have an accreditation program in place, the registrar can reach out to the service but first needs to preliminarily lock the domain.

So at that point, they don't confirm yet to their UDRP provider that that has been locked but it gives them an opportunity to actually talk to their proxy privacy service to determine whether they want to reveal the data. It gives them an opportunity to do so, but within the two business days.

And at the moment that that happens, at that moment, the change can be made, noting that they need to make sure that they're dealing with an affiliated party or an accredited policy proxy service.

They may make a change then or that update but it needs to be matching the underlying customer data. And at that point, they lock the domain again and confirm to the UDRP provider or verify the information and confirm that the lock has been applied. I think that's...

Elliot Noss: (Unintelligible). I want to stick to understand, you know, forget about comments, agreed/disagree, like/dislike.

So you're saying here that if the UDRP brought and there is privacy in place, and the privacy provider, whether registrar or otherwise, decides to reveal the data, that the UDRP provider is then, at their complete discretion, as to whether to amend the complaints or not. I'm just asking. I think that...

Marika Konings: No, I think there may be confusion. And I have to say we did abbreviate the actual documentation to fit it on the slides. Idea is either there is a review done prior to the registrar confirming to the lock to the UDRP provider and it's at that stage, more at the discretion of the registrar, because as there's no accreditation program in place, they're basically saying it's up to the registrar to make a determination whether we're dealing with a legitimate privacy proxy service and allow that change.

But if that doesn't happen before the two business days or before the registrar confirms to the UDRP provider, that the lock - or the data that is in and the lock has been confirmed that that, it's really up to the UDRP provider to the panel because they see, as I understand, from - I don't think we have any UDRP providers in the room.

But I do see Kristine is on the - in the chat and I hope she'll tell us if I'm wrong. But as I understand, at the moment, it's really at the discretion of the panel, that after the lock having been applied, the UDRP provider is informed that there are changes to the registrant information because of a privacy proxy service being involved.

It's really up to the panel to decide whether they use the underlying registrant data as the respondent or the privacy proxy service or both. And I think both examples have been used, and it's really at the discretion...

Elliot Noss: And the slide is if the privacy provider does reveal the data prior to the lock, then the UDRP provider is required to change a complaint.

Marika Konings: This is Marika. Yes, but at that point, the proceedings haven't commenced yet. And I'm glad that David is walking to the room. So maybe you can restate your question because I think the UDRP providers have a clarity.

My understanding is, indeed, that the UDRP provider would amend the complaint if the registrar confirms upon the moment of verification that this is

actually the on the line registrant information that needs to be in the complaint and they would update this complaint accordingly.

So - but you may want to restate it for David to confirm that.

Elliot Noss: I understand your answer.

Marika Konings: Okay.

Michele Neylon: I think we need to try and get through as many - as much of this as possible because I don't want to see us get bogged down in one.

Good morning, by the way.

Elliot, is that a bit clearer for you? Okay, fine. I mean, ultimately just to clarify this a bit - it is clear. Okay. Perfect.

Right, so we'll move on. Next slide please. Okay. It's a shiny object. Okay then. So a registrar must confirm receipt of verification request and confirm the lock within two business days.

Number 5, if deemed compliant, the UDRP provider will forward the complaint to the registrar and the respondent and notify the commencement no later than three business days following receipt of the fees paid by the complainant.

Number 6, should the complainant remain non-compliant or be withdrawn, the UDRP provider informs the registrar who will remove the lock - again with inverted commas, within one business day.

Next slide. Number 7, the UDRP provider informs the registrant that any corrections to the registrant's contact information during the remaining tendency of the proceedings are also required to be communicated to the UDRP provider.

Number 8, the notifications as per Recommendation Number 7, would also include information of any changes as a result of a lifting of a proxy/privacy service following the locking, would need to be discussed/addressed by the UDRP panel directly.

Next slide. Okay, Number 9, upon receipt of a decision, the registrar must, within three business days, communicate to each party, the provider and ICANN, the dates for the implementation of the decision.

Number 10, in the case of suspension of a proceeding, the UDRP provider informs the registrar of the suspension including the expected duration of the suspension.

Should a settlement be reached, the registrar must remove the lock, with inverted commas, within two business days. In relation to having the settlement, the working group has put forward two different options for further input.

Are (there any) slides, Marika? Are - the other two options (were about the single report)? The options for further input, are they on the slides here? Okay, never mind.

Number 11, ICANN, in collaboration with UDRP providers, registrars and other interested parties, will develop educational and information materials and will assist in informing affected parties of these new requirements and recommended best practices.

And just by note, the working group appears to have consensus for all the recommendations, formal consensus called, as per ICANN's way of handling consensus will be conducted once the recommendations are finalized. And, of course, if you want a full report -- yes, Marika, go ahead.

Marika Konings: Yes, this is Marika. I just noticed indeed that - I spelled it out in the notes to the slides but its actually not on the slides themselves. Two options that are being put out for the input.

Michele Neylon: Oh, yes. Sorry. I couldn't see that there because I - the joys of using a Macbook Air, is you've got to end up with not seeing the things halfway down the bottom of the screen.

Sorry. This going back to the options here. If the - going back slide, Lars, if you don't mind. And it's the slide with 9 and 10.

Okay, sorry. In Recommendation 10, the working group - we've got two different options for further input.

So if the complainant has prevailed, the registrar should implement the panel order immediately after ten business days have elapsed. The complainant or its authorized representative is required to provide the registrar with the required information regarding the implementation.

This may include the information that could - should be in Whois. If the respondent has prevailed, the registrar should prohibit transfer of the domain name to another registrar or registrant for 15 business days.

Yes. Oh, God help. I'm screwing up here completely.

Marika Konings: Yes, that was actually Recommendation Number 9. The two options are below there on the Number 10, Options A and B.

Michele Neylon: Sorry. This is what happens when people have - make me doing stuff early in the morning. I'm going to hand this over to Marika before I screw it up even more.

Marika Konings: Okay, so this is Marika.

So in the case of a settlement, the working group did discuss quite extensively if a more detailed process would need to be put in place to help guide the different parties involved on what needs to happen. And at the moment, they're actually - the two options that they've outlined and would like community input on or if there are other options that should be considered there, of course, we'd welcome that as well.

So the Option A basically step-by-step process will be that point one, parties asked for a suspension. Two, parties settled. Three, parties informed provider. Four, the provider issues an order to the registrar to change the hold details or to leave the domain name.

Five, that change or deletion happens. And six, the complainant confirms the change or deletion is complete. And seven, at that time, the provider dismisses the case.

Or Option B, which is number one, the parties ask for a suspension and a suspension requests includes the automatic dismissal of when a suspension period is up. Two, the provider issue order, allowing registrar to unlock for the sole purpose of whatever the settlement is.

Two, the parties settle. Three, parties request the registrar to unlock, not to manage anything further like terms, just unlock on our transfer. And four, provider dismisses case automatically with no further action needed.

If the settlement discussions break down, either party can request that the case be reinstated before automatic dismissal. As I understand it, I think opportunity B is the current (access) that happens, if I'm not mistaken.

And I think Option A is actually something I think that gets special support from the registrars where they would like to see the UDRP providers actually taking on the role of directing registrars on what settlement has been reached

between the two parties instead of the registrars having to try to make the determination on whether they're dealing with the authorized parties and try to interpret what has been reached.

I think those are the two options that are currently on the table. And again, specific input is sought on those or if there are other alternatives that should be considered, that's welcome too.

Michele Neylon: Thank you Marika. You're far more with it this morning than I am. Go ahead, sir.

David Roache-Turner: Thank you Michele and Marika as well. This is David Rouché-Turner from WIPO. I just have two comments. The first is on the language of the recommendations and the second is on Option B which Marika just outlined.

And the comments for both are similar. And that is just to mention that in recommendation ten, at the end of the first sentence, which I'm reading on the screen, it reads, "The registrar must remove the lock within two business days."

And obviously that obligation would apply only for the purposes of the UDRP proceeding itself. It may be worth clarifying that. And the reason I make the point is there are other reasons why a domain name may be required to be locked. For example, court order. And so we would not want to oblige the registrar to take a step that would be precluded by another traditional order rule or anything of that nature.

The other is just concerning Option B which is - which includes a component under which the provider orders or authorizes the registrar to unlock the domain name solely for the purpose of giving effect to the (OA) settlement agreement between the parties.

And the same comment there would apply. The provider could only give that authorization for the purpose of the UDRP proceeding itself. Obviously it would not override any instruction that might be applicable pursuant to a court order or similar judicial instruction.

Michele Neylon: Thank you. Elliot, go ahead.

Elliot Noss: Right on this point, you know, David, you used the language court order. You know, I'm wondering how you feel about - and I'd like to put out - that I think that - if a court proceeding has commenced as opposed to an order has been issued. So first let me just check with you, David, whether you would agree with that statement.

Our practice, and I believe the practice in the industry is that if a court proceeding has been commenced, we lock the name, because otherwise we would have a situation where, you know, you could have the UDRP that's now stayed but you're - you know, you might have a two or three year window between the order being commenced and a court order being issued and a court order being issued where, you know, according to this language, the name would be unlocked.

Man: If I could just sort of clarify one thing you mentioned there, Elliot, is that I mean, that's in the UDRP actually. And in the UDRP, there's this unfortunate tendency to focus on the - what's called an administrative proceeding under the UDRP which is one part of the UDRP.

But if you get into paragraph eight of the UDRP, hey, I mean, it says that if there's a court proceeding, the name is to be locked and that has, you know, utterly nothing to do with, you know, any of the UDRP providers or the administrative - or the conduct of the administrative proceedings.

Elliot Noss: And the language of these recommendations should be consistent with that.

Man: Well, yes.

Elliot Noss: I'm pushing for consistency in that and I'm wondering if you would agree with that.

David Roache-Turner: Yes, this is David. I think the language that I just suggested would help to address that concern because it would limit the (ambers) or any instruction issued by the provider to the application to the UDRP only. So it would not preclude the maintenance of a lock for purposes of the filing of the court dispute. That would be the registrars practice consistent with the UDRP.

Elliot Noss: What I feel that does, I'm going to come to a - I'm going to go a little deeper on a related point soon - but what I feel that does is it instructs courts around the world about the way that the UDRP process handles these things. Sadly because these rules were developed in '99 and there's no capacity for changing them, courts around the world are forced to interpret them.

And what happens, then, is any of the parties to litigation get - you know, have a much greater occurrence of time and costs, you know, as they're trying to educate courts in all of these jurisdictions around the world as to what we all meant. So I think clarity here is deeply important.

So, I mean, I think if you agree that, you know, that is the case, that if there is a court proceeding commence, then we would be really well served in terms of providing, you know, using this as a means - helping for adjudication of domain name disputes around the world to be clear in our language to be expressed about that.

David Roache-Turner: If - this is David. If I'm understanding the implication of what you're saying correctly and the clarity on this point could be useful and you would be proposing as a way forward to address that issue that they were also based on language included in the recommendations to indicate that a registrar

could maintain a lock that it's had applied, resulting from the filing of court proceedings, then perhaps that would be useful clarification...

Elliot Noss: Just a minor adjustment there. You said could. And I'm going to say will or should. You know, it's not about discretion that we, as registrars, want to be effecting what the panel and what the courts decide. We don't want to be interpreted. And right now, there is a huge gray area, again because of some anachronisms around exactly this point.

David Roache-Turner: This is David again. I mean, I suppose the situation may vary depending on the terms of any particular order that would be issued by courts...

Elliot Noss: I'm not talking about order because that's at the end of the process. I'm talking about the commencement of a process.

David Roache-Turner: Right, and the - I guess, the questions that come up with respect to the commencement of a process can then include, for example, a proceeding, a court proceeding that has been commenced specifically with respect to the domain name or is it a court proceeding that has been commenced with respect to which the domain name is a relevant asset?

Is it a court proceeding that concerns receivership or some other scope of assets that goes well beyond the domain name under dispute in the URDP instance? I think there's a lot of variation there.

Elliot Noss: There is but let's not get greedy. Let's deal with the simple case where the court proceeding is dealing with the domain name directly. I agree with you. There are other situations as well. But, you know, for us, we - the clear practice both in our business and with the other major registrars and both would have to deal with this, is to lock around the commencement of a proceeding.

We think that's what we should be doing. I would imagine that you would agree that that's what we should be doing. And what we don't - you know, what happens now is there's a gray area. And you have courts who are going to interpret this.

And they look at the fact that there's a gray area here as meaning that they have to try and infer from what we are all doing here. I want to be express about it.

Michele Neylon: Okay, guys, just bring this in a little bit. From what I can gather, don't give me that look (unintelligible), if we're - you're getting into kind of a court, judicial - a judicial area, not specifically UDRP. Or am I misunderstanding?

Elliot Noss: You are misunderstanding.

Michele Neylon: Okay.

Elliot Noss: Michele think about it like this - you know, imagine that you have a situation where a UDRP has been commenced. All of this has gone on. A court proceeding has been initiated in response to that proceeding being commenced. Okay, now because of that, there's been a suspension or a withdrawal.

According to this language, it's now your discretion as to whether you should maintain that lock because of the court proceeding. You know, John made reference to the fact that some - that elsewhere in the rules, there is a description of that.

But what I would say to you is because this is dealing with exactly this point, if we're not express about that, in this proceeding, then what will happen is parties will argue about it and courts around the world will be forced to interpret it. It's a very simple point.

Michele Neylon: I'm not being, you know, I don't understand what...

Elliot Noss: I think it's one that we should be, you know, deeply lined up around.

Michele Neylon: But what language are you suggesting Elliot? That's what I'm trying to understand.

Elliot Noss: That it's not court order, as David said, and I agree it should be order, but that it should be that a court proceeding has been commenced.

Michele Neylon: Okay.

David Roache-Turner: And this is David again. From a provider perspective, I suppose our principle focus here is it's on insuring that there is a mechanism for getting the domain name locked for purposes of the UDRP and getting it unlocked at the end of the UDRP. And then what happens with respect to the domain name in any subsequent court proceeding is an issue that obviously needs to be considered...

Michele Neylon: I think it's - Elliot's point is that the court order may - the court stuff may happen at the same time. It doesn't have to be afterwards. Is that correct?

Elliot Noss: Well, in fact, the filing of the UDRP will regularly lead to a court proceeding being commenced.

David Roache-Turner: My suggestion was to reduce it to a suggestion at the level of language which to say that it's helpful, is if we would make a modification to recommend action ten and to Option B that we were just discussing, we could say, for example, that the registrar must remove the lock within two business days for purposes of the UDRP dispute unless the disputed domain name is otherwise the subject of a court proceeding that has been commenced concerning that disputed domain name.

((Crosstalk))

Elliot Noss: Yes, that's exactly what I'm encouraging. That's great.

David Roache-Turner: I don't think we would have any problem with that from a provider perspective.

Michele Neylon: Phil please. Mr. Corwin.

Phil Corwin: If - was that subject exhausted? I don't want to interrupt. I'd like to - Michele, I'd like to just get a bit of a dialogue with you and then discuss another...

Michele Neylon: It's not with me alone, Phil. I'm just...

Phil Corwin: Well with...

Michele Neylon: You know...

Phil Corwin: Anyone else (unintelligible)...

Michele Neylon: I'm just the chair of the circus.

Phil Corwin: I just want to start by clarifying. Current UDRP practice if I'm correct is that the complainant is required to notify the registrant upon filing of the - well you recommend specifically in the report that the complainant no longer be required to notify the registrant upon the filing of the complaint.

Michele Neylon: I'll leave that to somebody else.

Marika Konings: This is Marika. Yes that is correct.

Phil Corwin: Okay.

Marika Konings: So it is still allowed but it is no longer required as it currently stands.

Phil Corwin: No longer required, okay. And that is based as I understand it on concerns of reported incidents of cyber-flight that is where that act or registrant upon receiving that notice but before the registrar has received official notice from the arbitration provider so they can move the domain and avoid the action, so-called cyber-flight. But as I understand that is based on anecdotal reports but there's no actual data as to how often cyber-flight occurs. Is that correct?

Marika Konings: This is Marika. I would actually look to the UDRP providers to confirm it because they have any data on that.

Phil Corwin: Well was there any data - was there any hard data in which that recommendation was made or was it simply based on anecdotal reports of cyber-flight incidents?

Marika Konings: This is Marika. It was on an assessment of what time gap do you have between the month being applied and the opportunity for transfers out and that was one of the obvious gaps that was identified where the registrar is not notified yet or probably hasn't been notified with UDRP provider yet but the respondent has.

So there is an obvious - obviously we can determine that there is an obvious gap there between the fact that the registrar cannot do anything yet to prevent any changes or doesn't see that there may be any changes that are being made to the name that as result mean that the domain name is gone and cannot be found anymore, such are no longer subject to the UDRP proceedings.

So that's why that found that as a mechanism to say okay if we take that obligation at least out which doesn't mean that the complainant can still do so, that may take away that risk and basically notify the complainant at the

moment that the lock is actually - the respondent when the lock is actually in place.

Phil Corwin: Okay based on that background I just want to express a concern here and I intend to file a formal comment letter addressing this and probably some other subjects of the report.

The concern is that right now there's somewhat of a disparity between the complainant and registrant in that the complainant has all the time in the world to draft the complaint, they determine the timing of the filing of the complaint, they can file it on Christmas Eve, they can file it on August 1 against the European registrant when everyone's off on holiday, et cetera, they determine which arbitration provider, which forum they're going to seek arbitration as.

And right now the period which can often exceed a week or more between the time that the registrant receives the notice now from the complainant and the time they receive the official notice from the provider, I can tell you in my role as counsel to a law firm in Washington, registrants who aren't involved with ICANN or with the domain name industry who just have a domain name, receive a UDRP notice is a fairly traumatic experience.

And right now when they get that notice from the complainant they're a little freaked out and they understand what UDRP is. They may understand that they can lose their domain and they use that period now between receipt of the notice from a complainant and the official notice from the provider to understand the proceeding and secure counsel and begin to think about whether they're going to respond, what the response should be so that the practical effect of this for a lot of registrants is take away a week or more of preparatory time to respond to a complaint that the complainant has had a great deal of time to prepare and has all the control with the timing and the provider.

So I think in no way am I advocating for cyber-flight but I think there has to be some adjustment here so that all that time isn't loss. Perhaps once the lock is imposed which takes a day or so, then the registrant should receive official notice from the provider or something so that they don't lose all that time which they use right not to assert their rights when they believe that the UDRP is mistaken and they have rights to the name and should not lose it.

And again I'll be following up officially in the comments on that.

Michele Neylon: Okay thanks I've got a queue here. Just on the remote that Kristine Dorrain is saying to Phil, "We have submitted some data and have noted the number of hours spent handling cyber-flight cases, both with providers and ICANN." Then I have (Gabby) and Mr. Berryhill.

(Gabby): I just wanted to make the same comment that (unintelligible) so it's okay thank you.

Michele Neylon: No comments of your own?

(Gabby): No I just wanted to comment the (unintelligible).

John Berryhill: Okay. I'd like to clarify a little bit what Phil said with a visual aid that's now up on the screen. A lot of people who comment on these things and talk about these things have not been in the trenches and don't see what goes on.

What you're looking at on that screen is a UDRP complaint and I have the WIPO case number on it. It was sent in one, two, three, four, five, six 3-inch binders, it weighed over 20 pounds and that is what we're talking about hiding from the domain registrants in order to minimize the amount of time that they have when they get this UDRP notice of commencement.

And the first thing they do as Phil said is they go to the lawyer that drafted their mother's will, they go to the lawyer that helped them with the deed to

their house who's never heard of... I mean the first thing that many clients - I have a longtime very sophisticated client who got a notice from the ADNDRC Seoul, Korea office in a case last week, even I didn't know that they had opened an office up in Seoul, Korea. Because there are also fake UDRP complaint notices that get sent around because all of this is conducted by e-mail and these things go into spam.

So as you can imagine walking into a general practice law office with something that looks like what we have hear on the screen when the first question out of the lawyer's mouth is going to be what is a domain name, this idea of cutting down on the time that someone has to as Phil said secure counsel that even knows what we're talking about here is a little odd.

And I understand the issue. In fact I saw the other day some blogger saying oh well if you get a UDRP notice go ahead and delete the name or something like that. I would say to Phil there are people that do that. It is an actual nuisance that occurs. But having put in, once we get a policy in place where the registrar is to lock the name upon communication from the UDRP provider then there's not reason to wait until some further step to provide the respondent with the actual complaint.

And I'll tell you what I will do if I see domain names being locked and a UDRP provider not being forthcoming with providing me with a copy of the complaint that's been filed against my registrant and the domain name that is locked is (Christina) I will go to the district court in Minneapolis and I will just file an emergency motion to get it out of you it's where the rule ends up. Thank you.

Michele Neylon: Thanks John. There's a couple of comments on the Adobe Connect remote which I wanted to try to summarize quickly for those of us in the room who may not be looking at it.

From (Desiree Boxburger), A Plus.net -- one recommendation that I believe we need to clarify in the definition of lock. There are three layers of lock:

registrar, registrant and registry. Some but not all registries allow for locks. However those locks do not bar changes to the Whois especially in commonness, in other words in Whois.

Also I do like the clarification that barring changes to Whois but allowing resolution of the domain name.

Volker I see you are here, welcome. Any comments or are you just looking directly expressly at me?

Volker Greimann: Well in discussions it was clear that we were talking about the registrar lock because that's the lock that the registrar is able to place so maybe we should just clarify this more but I think it should be clear from the documents that we've prepared.

Michele Neylon: Okay thank you. Marika?

Marika Konings: This is Marika. One of the things I think the working group did discuss but didn't make a firm recommendation on it at the moment is that I think it does say somewhere that before the lock is applied, the registrar's not supposed to contact the registrant on that to authenticate the privacy proxy service. But I think we haven't indicated that a requirement for the registrar to notify the registrant at the moment they lock it.

So I don't know if that's something for example to address some of the concerns in saying there is less time because there may be some time in between the registrant confirms to the UDRP provider and the UDRP provider then transmits the complaint to the respondent so maybe then a mechanism as well to build in more time so where as soon as the registrar locks the domain name, they confirm that to the registrant that is has been locked because the UDRP has been filed and further information will be followed.

Also the requirement to lock within two days doesn't mean that the registrar cannot lock before. I think some registrars have indicated as well that they typically receive a copy of the complaint at the moment of filing by the complainant and they often already lock at that stage.

So again if there would be a requirement built in that a registrar has to notify the registrant at the moment they lock a domain name once they received a copy of a complaint, that may be another mechanism to provide a heads up start but at the same time have the domain name lockdown to prevent any changes which I think is the main concern or the main reason why the working group has considered changing that requirement to require the complainant to notify the respondent at the time of filing.

Michele Neylon: Thank you Marika. Go ahead.

David Roache-Turner: This is David. Just from a WIPO provider perspective I think that latter proposal that Marika just mentioned is one that would work from our perspective and I think the objective here is to get the domain name locked as early as it can be locked to preclude the risk of cyber-flight. It's certainly not intended or designed to minimize the amount of informal time that the respondent has to respond to the complaint. That's not the purpose at all.

Just in response to Phil's query there is also some documents that we fed into the deliberative process as part of the earlier discussions in the working group providing some case studies on the issue of cyber-flight. So if you wanted some information to pass it into your submission process, it should be there in the record from our side as well.

But the other option of course which I think will save some discussion as well is the idea of further reducing the period of time that the registrar might have to put in place the lock after a request would be received. But the difficulty with that approach obviously is that it runs into real world considerations

about when you can realistically lock in light of weekends and public holidays, et cetera, et cetera, et cetera.

So the proposal that we see in the recommendation I think was intended to be a bit of a compromise between the two concerns. So it enabled the risk of cyber-flight which is indeed where it results in a very complicated issue to have to resolve to be managed.

Michele Neylon: Thanks. Phil, the thing from our perspective just so we're clear, for those of us involved in this we're trying to make this clearer, more predictable, less open to individual interpretation or very simply you shouldn't need to have a massive legal team as a registrar to be able to know what the hell you're going to do when there's a UDRP. I mean that's simplifying it right down.

If any of you have issues with our recommendations, if it's not clear to you why we made the recommendation, please understand it's not that we're trying to make life miserable for anybody; we're trying to make things easier to deal with. Now that doesn't mean we've got it right. We could have made a complete mess of this and if we did well we're sorry but please give us input and feedback.

Go ahead Phil.

Phil Corwin: Just to respond quickly to make clear my concern is in no way do I wish to be seen as defending cyber-flight or folks who are trying to avoid adjudication when there's an accusation of infringements, that's not proper. If they think the complaint is unfounded and without sufficient merit, they should participate.

My concern is that for many, many - we live in ICANN world where we know all this stuff and all the acronyms and then I just had a case where the folks who manage my IT services, you know, my Web page and things, one of the senior staff is listed as an administrative contact on a domain name that got

caught up in a bankruptcy court proceeding and suddenly he's the object of a UDRP and there was some claim to the domain and so he's being rated of being named of a domain industry blog as a potential cyber squatter.

And he's freaked out and trying to understand way before he's received the official complaint from WIPO what is this and what do I do about it and what do I tell my customer who I've been listed as an administrative contact.

For folks who are not in this business being on the receiving end a UDRP is a traumatic experience and one that they require some time if they believe if the complaint - if there's a real issue in the case. It's not black and white. It takes time to find warranted counsel Mr. Berryhill that understands how to deal with this type of thing.

And we just don't want to any way enable or encourage cyber-flight, we want to make sure that registrants have sufficient time and don't have this week to ten days they now enjoy before the get the official notice taken away because that's a very important time period for the average registrant to understand what they're rights are and what options are available and to find competent counsel to help them respond.

Michele Neylon: Thanks Phil. And just for the record Phil and I actually had this chat rather informally very late at night with alcohol involved so I asked Phil to come in and give them when we were a lot more sober.

Phil Corwin: I have no recollection of that conversation.

Michele Neylon: Exactly. The gentlemen at the mic and then Elliot.

Man: And the gentlemen (unintelligible) in this case (unintelligible).

I'm sorry of this question because I just arrived so I missed the first ten minutes and you may have already been perfectly clear with that but just a practical question.

When you talk about three business days is it the country of the registrar or what it is? I mean, business days and holidays, it's not exactly the same all over the world.

Michele Neylon: Okay give me one second, John, Marika -- I'll let John go.

John Berryhill: Well the UDRP is the contract provision. The contract is between the registrar and the registrant. The contract sets the venue. The contract sets this contract is valid - if I register a domain name with (Two Cals), it says this contract is to be interpreted under the laws of Canada so to the extent that the contract refers to business days and I have made that contract with (Two Cals) then you'd be looking at business days in Canada because this is a feature of a contract that has a legal site.

Michele Neylon: Is that okay?

Man: That's okay yes.

Michele Neylon: Okay thank you. Marika and then I will proceed to - or are you going to do the remote thing?

Marika Konings: Because I can't read it anymore on my screen because it's over there. So if you can read Kristine's comment before because I saw it passing by.

But on the business days because we did include a footnote on that in the report where I think it's in line with what John was saying that business days are defined as business days in the jurisdiction of the entity required to undertake the action, so in this case the registrar.

Michele Neylon: So for example if you were taking action against one of the domains with us, you would have to bear in mind that we would consider the 17th of March to be a holiday.

Before I go taking back the queue I just want to try and get some input, the stuff from remote before it goes off the screen completely.

So Kristine Dorrain was making a couple of comments and so was (unintelligible). Can somebody try and grab that because I'm having problems here?

There's some discussion on the remote about registry level locks, registrar level locks, registrant level locks and the general thing here is that in our discussions, nobody really raised the issue of registry locks. I suspect this might be because it hasn't really been an issue but this is something somebody was asking. So John do you have any thoughts on that?

John Berryhill: Yes the registry has no involvement, no touch point, no contact with the UDRP. The UDRP operates in a manner that's not even visible to the registry. It is a term of the registrar contract and there's no point in the UDRP process cycle where the registry is involved in any way so it would be an entirely new thing to take this out.

I agree though that it is the simple solution would be to have a mechanism with the registry to at least keep the domain name at the same registrar because then it's not going anywhere and it's not getting deleted so any order bearing on that registrar would be effective.

But the way that the UDRP was structured and is a creature of something of the way that ICANN itself was structured but in a manner to somewhat isolate the registries from involvement in any number of things that it would be convenient to have them involved in.

Michele Neylon: Thanks John. Marika did you want to...? No okay. Just from the remote and then I'll come to you David, Kristine I managed to scroll back up, to Phil would it be helpful if the working group provides a best practices document with information for the registrars to send their client when they lock the domain? Does anyone think that registrars would like that?

Phil Corwin: Well I'm not representing any registrars officially for this conversation and I just heard the question so it's based on about 12 seconds of consideration. But it sounds like something worth considering, a standard.

Just like there's now a draft of the standard registrant rights and responsibilities document that will be linked to by all registrars Web pages, might it be worthwhile to developing a standard disclosure agreement that all registers are a required to send to a registrant upon when they receive notice that a UDRP has been initiated.

It would seem that it would assist particularly the unsophisticated registrant in understanding what's going on and what their rights are and how they might best proceed and that it might be a good idea to secure competent counsel as well as what the basic rules are, when the official time to respond begins running, things like that.

Michele Neylon: Okay thank you. David and then I think I might have Elliot. No? Okay Elliott it's to you.

Elliot Noss: There's a been a very recent change in the approach of some panelists around court orders being filed -- sorry, court orders being filed -- court proceedings being commenced, typically UDRP panels when court proceedings were commenced would defer to those court proceedings except in extreme circumstances. And extreme circumstances were defined in working group A in 1999 as things like a registrant using some remote jurisdiction to kind of forum shop to try and avoid the UDRP proceeding.

Really since the commencement, panelists have respected that. There are recently panelists at least in a couple situations have actually started to issue decisions in the face of court proceedings being commenced. It's a very recent and troubling change in practice. And then that has the effect of again muddying the role of the registrar and of course of the registrant meaning you could have a situation where a UDRP panel has issued a decision but a court proceeding has been commenced.

Now the challenge is that at the creation of the policy, the policy was clear on what would happen if a proceeding was - if the core proceeding was commenced prior to the UDRP being commenced or if a UDRP was - sorry, the core proceeding was commenced in response to a UDRP decision. But the policy while it's at least to me very obvious and clear what the policy intended, the policy is silent on the situation where a UDRP proceeding was commenced, a court proceeding was commenced in response to that and a UDRP decision has been issued.

So now again we have a situation where courts are forced to interpret what we as the ICANN community want and intend from that. And what they end up doing again in this situation is trying to triangulate from old working group papers because we don't have a good set of rules, we don't have a contract with UDRP providers and we have no means of amending the practices because this is really just a - this is implementation not policy, the situation that I'm talking about.

So I'm wondering if we have an opportunity in this PDP to address this issue and close gap. I don't think the panelists or I don't think the UDRP providers want to have this gray area, I think they would probably prefer for it to be defined. But right now again it's a gray area and it makes it very difficult for registrants, for registrars and for courts. So I don't know if that was clear David but I'd love to hear your thoughts on that.

Michele Neylon: Just one thing guys we've got some people here in the audience that want to give us some feedback and David and Elliot as well. No offense but I hope you understand I want to get as much feedback from as wide as possible. So David if you'd like to come back then Elliot and then we'll go to this gentleman here. Okay?

Elliot Noss: I'm sorry Michele I agree but look we've had a lot of - this is a very specific, very important issue that...

Michele Neylon: I don't think...

Elliot Noss: ...should run to ground and I don't mind moving on and I don't mind waiting...

Michele Neylon: No, no, no...

Elliot Noss: ...my place in the queue for the rest of the discussion but I don't want to cut this short.

Michele Neylon: I'm not trying to cut this short, I'm just trying to make sure that we get as many people in as possible. I'd like to do both.

David Roache-Turner: Two quick comments, one on Elliot's point and one on the earlier discussion about the roll of the registry in the lock process.

I think the relationship between the UDRP and the court proceedings is an important question and I think it's one that obviously needs to be discussed. I'm not sure if it's the sort of discussion that necessarily should take place in this working group given the mandate that we've been set.

I think the place for it to occur may be in the subsequent discussion about the UDRP mechanism at large we're told by ICANN is going to follow this fairly limited technical discussion about the lock procedure. That's just my view.

But the issue of the...

Elliot Noss: I'm sorry David, I'm going to run this issue to ground first. Look the intellectual property community - John as a registrar I'm dealing with situations that I don't know what to do with. If you'd like to advise me to what to do and pick up the liability around that I'm okay with that but right now I carry it. Thank you for your opinion.

David the intellectual property community broadly opposed looking at UDRP reform in the last go round and now I hear you saying well we might do it down the road. We have a hole today that complainants are taking advantage of and sadly that by issuing a decision, panelists issuing decisions from your arbitration forum in the face of both the working group A papers and years and years of practice has a created a very expensive and every risky gray area for registrants and registrars.

We could deal with it well within the context of locking here right in this PDP despite John's opinion by simply identifying that where a court proceeding has been commenced, the registrar should respect that proceeding at a level superior to whatever happened -- and again that's proceeding, not order which I think is clear in the working group A papers.

If the registrar should respect that court proceeding that's been commenced despite any decision that a panelist might have rendered especially in a situation where a complainant hasn't even filed a response because they've relied on 12 years of practice and instead have gone to court.

David Roache-Turner: This is David just briefly I'm not sure it's for a UDRP provider to advise a registrar about what its obligations pursuant to the commenced court proceedings or court orders would be. But I think that the language that you just suggested earlier is probably fairly consistent with the language that I just proposed when we were discussing the earlier recommendations.

Elliot Noss: Except it could exist in that second place in this set of recommendations. And maybe what I'll do is I'll be more specific about where we could be explicit about this in two or three places in the recommendations but I'm really pleased to hear that you agree that that clarity would be both consistent with what we're all trying to do which is protect rights in a balanced way and to make sure that we kind of have clarity for all participants so that's great.

David Roache-Turner: This is David. In my personal view it makes sense I think to make clear that the discussion we're having is about the operation of the UDRP and that any instructions or recommendations that would be made would be subject to any obligations that the registrar would be under pursuant to commenced court proceedings or to any court order that would be issued.

Elliot Noss: I think that's great thank you.

David Roache-Turner: I just want to make a quick comment if I could on the issue of the lock and the role of the registry. I just to want to mention and there's been some discussion of this earlier in our deliberations that the way that it operates under the URS, the Uniform Rapid Suspension system, which is intended to be a complementary rights protection mechanism is that it's the registry that imposes the lock and the registry imposes that lock within 24 hours of the receipt of the notice from the relevant provider.

I think there is some value in seeing if there are ways that we can align the operation of those two mechanisms because they're both rights protection mechanisms and they both serve broadly the same purpose. They're both going to have compliance obligations for all stakeholders in both processes and so there is value in trying to look at ways to align them where we can in my view. Thanks.

Michele Neylon: Thanks David and just on the URS thing that's the one thing we had looked at I think in our deliberations previously and had decided that it was going to be

a bit awkward to even consider this because well a difference thick and thin but without a scope for what we were looking at.

This is one of the other problems we've been having is that some of these conversations whilst valid the scope we had within this working group was very, very narrowly chartered.

Now I have this gentleman here to my right and then (Stephanie) sitting down there in the queue. There's a couple of people commenting from remote and hopefully we can capture those somehow.

(Yance Pitihenson): Yes hello everybody. I just came in late and it was a half an hour meeting but this is really my -- yes for the record my name is (Yance Pitihenson) and the CEO of a tiny registry in Iceland (unintelligible).

The thing is that domain disputes is on the registry level by us and I must say I understand the gentleman from the (Two Cals) because we have had - we've been in his shoes let's say. And as a registry we don't want to decide anything. We want to do but we don't want to decide. We want the courts to tell us what to do and it has to be precise.

So we invoked our own dispute procedure within (Esnick) and I don't know, I'll be as brief as possible but I just want to tell you that we have implemented it in our Web service where the registrant appeals for a dispute lock. He has to log in. And when we were designing the system we wanted the registrant to be the person that does most of the things. We don't want to decide for him and we hardly want to touch the whole process.

So he logs in on his username, he enters the dispute lock application and then he has to file in the forms and he had to put in a if I just read for you, article 27, (Esnick) considers locking requests if a (unintelligible) by verification that the case has been brought to resolution by. Then number one, extended costs, you have to get a consumer agency which is very strong and

(Esnick) court of appeals which we don't run anymore because the consumer agency does all the disputes now, or any other party formally qualified to issue a legal binding verdict in this case.

Now here comes the point that I wanted to say and that's why I agree with the gentleman from (Two Cals). The verdict and (Esnick) as a registry has been helping the lawyers and someone was talking about lawyers that only does wills for the mother and so on, that's also the case in Iceland, so we have been schooling our lawyers and our courts to have the verdicts as accurate as possible and tell who should to what. And only if the verdict tells (Esnick) as a registry to transfer a domain we will do it, if the verdict is towards (Esnick). But of the cases the verdict is towards the registrant and this is the main point.

The registrant has to log himself into the system on our Web site and he has to transfer the domain himself. We as a registry we don't want to touch it. They're both our customers and we look actually at the domain itself as a customer because a domain that is being disputed is always going to be at the registry.

I don't know if you get through what I mean. So the registrant has to transfer the domain. If he doesn't, if he says no I'm not going to transfer the domain to a fellow I'm competing with in the business, then there's a possibility of deleting the domain. If he deletes the domain and there's only one counterparty, the counterparty becomes the domain automatically to the system -- case solved.

If he doesn't delete the domain and doesn't transfer the domain and the verdict is towards him as a person, as a registrant, at least the consumer agency in Iceland, they'll put a fine on him and it's half a million kronor. I don't know what it is in dollars but it's a pretty heavy fine if he doesn't transfer the domain. So the registry as a third party doesn't do anything else, else providing the system to do this, the passport.

Michele Neylon: Okay thank you. (unintelligible) (Stephanie). You cannot blame me for everything (Stephanie) as much as you may wish to, I'm sorry it's not me.

(Stephanie Parrot): Thank you. My name is (Stephanie Parrot) and I'm on the expert working group which of course Michele is also on with respect to the new directory of services.

I think my thinking is very much in keeping with my colleague from Iceland so I'll try to be brief. I was following up on the point that Elliot had made that you don't have clear policy guidelines and that courts are forced to interpret. And I understand that the scope may be limited in terms of the remit of this group but I'm as a newcomer to ICANN I'm very curious as to how you do implementation at the ground level without clear policy guidance.

It strikes me as very risky if you're hoping to actually, may I use the word, harmonize in a global sense as to what the rules are. The sooner you get the policy guidance out there, the better it's going to be before courts have years and years of precedence that they've worked out on their own.

So my question is how do you given your scope's limited and your supposed to be implementing, how do you raise the policy issues that seem to be glaring falling out of this?

Michele Neylon: Thanks (Stephanie). Actually Elliot go ahead.

Elliot Noss: Yes you know (Stephanie) there's been a lot of to and fro with the reform, with the contracts with providers. There has been from my point of view too much resistance from particularly the IP community who I would really urge to see this as an opportunity to create clarity as opposed to a threat to the great progress we've all already made. So I would use this forum to say hey let's all work together to just get a cleaner, better operating system.

I was thrilled to hear David say that ICANN has indicated to him that that's something that we're all going to be tackling very soon. And so hopefully it's the sort of on the ground implementation pieces like this that flag that we all have this big opportunity and it will be a great one to work together to really sort of make all of this more effective.

Michele Neylon: I have Marika and I also have this lady beside (Stephanie) and Phil and David.

Marika Konings: This is Marika. This is in relation to - in response to when are we going to review what has happened and as well as the comments David made. Maybe some history for those who weren't involved before because we did actually have an issue report on the review of the state of the UDRP.

Basically there was extensively discussed a lot of issues have been identified as part of that issue report but at that time it was decided by the GNSO council that it didn't want to embark on a full review of the UDRP but only focus on this specific issue for now and actually weigh the overall review of the UDRP together with all the other RPNs that had been put in place for new gTLDs.

I don't remember exactly what the timeline for that is but basically that review will start I believe one year after I think the delegation of the first gTLD. So that has already been put in place as a means of saying let's not only look at the UDRP but in context of all the other mechanisms so there can be an overall review of everything in place and make sure that everything fits nicely together. I think that was thinking at the time at least.

Michele Neylon: Thanks Marika. The lady beside (Stephanie).

(Lu Jo Chin): Hello my name is (Lu Jo Chin). I work for the DotAu domain administration. No we have the DotAuDRP. Basically it's based on the UDRP. I just wanted to make a comment basically to perhaps assist with the situation here.

And I just wanted to let you know that the auDRP has worked extremely well. We don't actually have any issues in respect to cyber-flight. We have actually never had an incident of cyber-flight.

And in addition to Elliot's comment -- sorry.

Man: (Unintelligible).

(Lu Jo Chin): Ah okay -- about the effect of court proceedings in relation with the auDRP, I'd just like to say this: we have released in 2003a clarification on that and it's very similar to the UDRP in relation to that and it just basically says that if the registrar has received within ten days period official documentation that they're registrant has commenced legal action against the complainant. And the registrar must take note of the action until the legal action is resolved.

Elliot Noss: I have a question on that. Is that - sorry is that, I want to make sure I heard you right, I think you said if a court proceeding has been commenced in response to the ADRP being commenced.

(Lu Jo Chin): Yes that's right.

Elliot Noss: As opposed to in response - see the problem is the UDRP language is ambiguous. It clearly says in response to a UDRP decision but it doesn't say what happens if a UDRP - this is a gray area that sadly some in practice have taken advantage of now.

And sadly in couple narrowed circumstances, and I know you can't have perfect uniformity around your panel so I sympathize with you, but if there's a situation where a UDRP has been commenced, a court proceeding has been commenced and a panelist has chosen to issue a decision, well now a court proceeding has been commenced in response to the UDRP being commenced not in response to the decision.

And so that is just a gray area, it's not one that was intended because nobody expected there to be that crazy of circumstances either in working group A or in the way that panelists would render decisions. And so sadly there's ambiguity and where there's ambiguity lawyers love to take advantage of it and so they do.

So your language sounds a lot clearer. I would really appreciate if you would submit that a comment to this PDP because that would be fantastic.

(Lu Jo Chin): Okay.

Michele Neylon: If you want to there's a couple ways you can send feedback with us, under the comment period open or if it's easier for you and just want to send us a link or a document or whatever either grab me or I'm going to volunteer Marika for this. She's Marika. Just grab any one of us and please do share this stuff. We want to make things better.

And I see a couple of hands going up and I'm conscious that we have about seven minutes until we have to evacuate this room. So Mr. Corwin oh sorry, on to you, so sorry David. Phil go ahead.

Phil Corwin: Well...

Michele Neylon: Okay David I'll let you go first. Go on.

David Roache-Turner: Just very quickly I just wanted to clarify for the record -- this is David -- that I don't have any personal insight additional to the information that we just heard from Marika about the UDRP revision process that we envision. But of course the UDRP does intentionally preserve the rights of registrants to take a matter to court in the event of a filed UDRP action or in the event of an issued UDRP decision.

Elliot Noss: I'll give you a circumstance where panelists have ignored that what you call clarity and I think that's great. I'd love to...

David Roache-Turner: I didn't call it clarity, I just said that the UDRP reserves the right of the registrant to take a matter to court and it's designed to do that. And I just want to also clarify that the UDRP also reserves to the panel discretion to either issue a decision in the event of commenced court actions or to proceed to issue a UDRP decision that is then not binding in the event that there would be any subsequent court action.

Elliot Noss: Again I don't think you've heard me. There's two things. One is that the discretion which I don't question was very narrowly created to deal -- and it's expressed in working papers -- to deal with situations where a respondent is forum shopping, goes and commences an action in some remote jurisdiction with the purpose of avoiding the decision. So that's first of all.

Second of all it's not - you talked about a court proceeding in response to a UDRP decision, the problem is again so I'm clear where a UDRP has been commenced, a court proceeding has been commenced in response to that and then a panel issues a decision.

Just a very technical level that court proceeding has now not been commenced in response to a decision but it was it was a response to a commencement. And it's that gray area, again that ambiguity. I wouldn't even call it a gray area but I think the intent of a policy and the practice has been clear. But it's that ambiguity that some have now taken advantage of.

So all I'm looking for again is for all of us to have a more effective process where that ambiguity doesn't exist. Language like that ADRP language which I think you'd be very supportive of in a - at a practical level would clean all of this up.

David Roache-Turner: This is David again. And just a third suggestion, and I do hear you Elliot, I understand what you mean by this. But it may be also that there could be scope for considering the type of precedent that the auDRP has in place which incidentally also provides a precedent for the discussion about the cyber-flight management issue that we were deliberating about earlier.

But it may be that that type of approach in the form of a policy or a best practice to complement the language that exists in the current UDRP might be used for a way forward on this issue.

Elliot Noss: I think that's great. You'd have to get that to your panelists hand too right?
Yes I think that's great David thank you.

Michele Neylon: Okay Phil.

Phil Corwin: Just a clarifying statement on the subject of general UDRP reform, I believe I'm correctly stating what the status is at - following the receipt of the state of the UDRP report, there was intense debate about whether or not some form either substantive or at least procedurally UDRP reform should be initiated with intense resistance from intellectual property.

And of course I'm not quite sure why except they've been - they were very focused at the time on trying to convert the new URS into a very low cost, faster version of the UDRP by reducing the burden of proof and providing a domain transfer option, et cetera. That fortunately because of efforts of persons like myself and many others resisting it did not go forward.

But the official status as of December 2011 the GNSO council voted when they allowed this report to go forward said that UDRP would not commence -- now it's not required to commence -- but it will not commence until 18 months at a minimum after the introduction of the first TLD which if ICANN is on track so the first one will be introduced in the third quarter of this year would mean

that the first UDRP conform could not commence if the GNSO council sticks to that position until the first quarter of 2015.

It doesn't say it will. We don't know what various constituencies will say about commencing it in 2015 and given the importance of the subject and the complexity of the subject, I would expect that if it does commence in early 2015 we would not have recommendations for the community to consider until mid 2016 at the earliest because of the importance and complexity.

So I think just to clarify when that might happen, how much time it might take that's kind of the status quo right now.

Michele Neylon: Thank you Phil. Marika and then we're going to have to close this.

Marika Konings: Yes this is Marika.

Just one addition to what Phil said because if indeed the council at the point decides not to initiate, what will be delivered at that point is an issue report by staff. I think we have already committed to that and that is a decision by the council that was taken at that time back. But that would then identify any old issues including all the other RPMs and that point it would be the council decides whether or not to proceed or not.

But again it doesn't preclude if any other issues are raised at a council level, should the council now decide to initiate a PDP or address issues, that avenue still remains open. I just want to clarify that as well that if there are any specified issues that are raised that can always come up to the council level and if they decide to request an issue report, initiate a PDP that course of action is always available to the council.

Michele Neylon: All right thank you Marika. As we're pretty much finished here, thanks to everyone who came. This was the super duper UDRP Lock working group meeting.

For any of you who sat through this and didn't give us any feedback, don't be shy. There's a public comment open at the moment.

If you need to speak to anybody who is involved with this try grabbing me or one of the other members of the working group or of course Marika, and thanks everyone.

END