

## **Transcription ICANN Durban Meeting**

### **Locking of a Domain Name**

**Saturday 13 July 2013 at 10:30 local time**

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Coordinator: Excuse me, this is the Operator. I'd like to inform parties today's conference is being recorded. Thank you, you may begin.

Man: Audio time stamp for the next meeting in Hall 2C is Locking of a Domain Name Subject to UDRP Proceedings is the final report scheduled for 10:30 am local time through to 11:00 am local time.

Jonathan Robinson: All right, thanks everyone. Before we commence with the presentation from Michele Neylon I think it's useful for us to do a quick round table for everyone - it'll serve as a roll call and an introduction to everyone in the room.

So if I could start down on my left with Wolfgang? And if we could just work our way around the table and give councilors and opportunity to just introduce name and affiliation and we'll do a quick roll call by that method. So fire away from Wolfgang, please.

Wolfgang Kleinwachter: My name is Wolfgang Kleinwachter. I'm from the University of Aarhus. And I'm a member of the Non Commercial Stakeholder Group.

Magaly Pazello: My name is Magaly Pazello. I am from the Non Commercial Stakeholder Group.

David Cake: Okay. David Cake, councilor for the Non Commercial Stakeholder Group from Australia.

Joy Liddicoat: Just joining the antipodean segment of the Council, Joy Liddicoat from the Non Commercial Stakeholder Group.

Marie Laure-Lemineur: My name is Marie Laure-Lemineur filling in for Wendy Seltzer. And I'm with the NPOC, Non Commercial Stakeholder Group. Thank you.

Volker Greimann: Good morning. My name is Volker Greimann. I'm with the Registrar Stakeholder Group.

Jennifer Wolfe: Hi. I'm Jennifer Wolfe. I am the Nominating Committee Appointee.

John Berard: My name is John Berard. I'm a public relations consultant based in San Francisco, California. And I'm a councilor from the Business Constituency.

Petter Rindforth: Petter Rindforth from Sweden and IPC, Intellectual Property Constituency.

Brian Winterfeldt: Brian Winterfeldt, North America, also Intellectual Property Constituency.

Wolf-Ulrich Knoben: Wolf-Ulrich Knoben. Germany with the ISPCP.

Jonathan Robinson: Jonathan Robinson from United Kingdom. I'm a Council representative from the Registry Stakeholder Group and elected Chair of the Council.

Mason Cole: Mason Cole, North American representative for the Registrar Stakeholder Group and vice chair.

Marika Konings: Marika Konings, Senior Policy Director and GNSO Team Leader based in the ICANN office in Brussels.

Michele Neylon: Michele Neylon. Not a GNSO councilor. Chair of the Registrar Stakeholder Group and various other things.

Holly Raiche: Holly Raiche. I'm actually on the ALAC but I am Chair of the Policy and Implementation Drafting Team so I'm sort of one of you.

Evan Leibovitch: Evan Leibovitch sitting in for Alan Greenberg, ALAC liaison to the GNSO from Canada.

Mary Wong: Mary Wong, newest member of the ICANN policy staff.

Jeff Neuman: I know that's a great thing to hear.

((Crosstalk))

Jeff Neuman: Yeah. Jeff Neuman, I'm the North American representative of the Registry Stakeholder Group on the GNSO Council.

Yoav Keren: Hi. I'm Yoav Keren. I'm the CEO of Domain The Net Registrar in Israel. And I represent the Registrar's group.

Zahid Jamil: Hi. Zahid Jamil. Attorney from Pakistan. Domain Name Dispute Resolution Center. A councilor for the Business Constituency.

Lanre Ajayi: Lanre Ajayi from Nigeria. NomComm appointee.

Oswaldo Novoa: Oswaldo Novoa from Uruguay. Internet Service Provider and Connectivity Providers Constituency.

Elisa Cooper: Elisa Cooper. I'm Chair of the BC and I'm also with Mark Monitor.

Steve DelBianco: Steve DelBianco with Net Choice and I'm Vice Chair for Policy Coordination on the Business Constituency.

Berry Cobb: Berry Cobb assisting with the GNSO Policy Team.

Lars Hoffman: Lars Hoffman, ICANN Policy staff.

Brian Peck: Brian Peck, ICANN Policy staff.

Jonathan Robinson: Thanks, all. Let's move on then with the first formal or structured session, Locking of a Domain Name Subject to UDRP Proceedings introduced and presented to us by Michele Neylon.

Michele Neylon: Thanks. Alan Greenberg, my vice chair or co chair or whatever way you want to look at it isn't here as he's doing the ATRT but I'm sure he's here in spirit. Oh look, that would be Evan.

Evan Leibovitch: Yes.

Michele Neylon: Good morning, everybody. The - so I'm just going through the Locking of a Domain Name Subject to UDRP Proceedings, which is a terrible mouthful, which we reduced down to UDRP Lock since we didn't want to waste 10 minutes at the beginning of every call just actually getting the title of the working group.

So as of 5th of July, 2013 we've submitted our final report. Based on feedback from the community we made two substantive changes to our recommendations. The working group has reached full consensus on our recommendations and this is intended to clarify and standardize the process for locking of a domain name subject to UDRP proceedings.

So our recommendations are as follows: Definition of Lock. Preventing any changes of registrar and registrant without impairing resolution or preventing renewal. In simple terms, the domain isn't going to drop off the face of the Internet; you just can't change the registrar or the registrant.

(Two oh nine), removing obligation for complainant to notify the respondent at the time of filing but adding automatic extension of four days to response time upon request by respondent.

Recommendation 4, registrar are not allowed to contact registrant until lock has been applied. The idea being here that just to prevent the cyber flight concept.

Recommendation Number 5, requiring registrar to apply lock within two business days following request for verification.

Six, best practice recommendations for registrars and UDRP providers - excuse me - provide means to identify opening hours, days, in other words such as, you know, business days.

Number 7, requirement for registrar to confirm lock and verify information in response to verification request from UDRP provider.

Number 8, if compliant UDRP provider shall notify parties at commencement no later than three business days. Note, we've changed this from calendar days.

And Number 10, if complaint remains noncompliant registrar shall, within one business day of receipt of withdraw notice, remove the lock.

Number 11, UDRP provider notifies registrant that any updates to contact information also needs to be communicated by the registrant to the UDRP provider.

Twelve, notification also includes information that any changes as a result of lifting a privacy proxy services after the lock has been applied need to be reviewed by the UDRP panel directly.

Noting here that this be further reviewed as part of the privacy proxy accreditation program which has been discussed as part of the RAA.

Thirteen, registrar must communicate within three business days to all parties the date for implementation of the decision. Implement immediately after 10 business days if complainant has prevailed; after 15 business days if respondent prevails.

Fourteen, in case of suspension to agree on settlement UDRP provider informs the registrar of suspension including expected duration. If settlement is reached lock needs to be removed within two business days.

Fifteen, define processes - process for settlement, which includes the UDRP providing confirming to the registrar the settlement reached.

Sixteen, development of educational and information materials to assist in implementation of recommendations.

And, Number 17, creation of an implementation review team to assist ICANN staff in the development of the implementation plan.

And if you have any questions please throw them at me politely.

Jonathan Robinson: Yeah.

Michele Neylon: Oh and Marika is telling me to tell you all of course that this is a very condensed version. There is a full report, of course, and there's also other

stuff within the slide deck as well about, you know, the background and various other things.

Jonathan Robinson: Thanks, Michele. A brief comment just to remind everyone if you have responded well, thank you, to what we asked for coming out of Beijing. That was that there was succinct presentations backed up by supporting material such that we could either take that as read and/or engage with the detail and if appropriate but we didn't go through all of the fine detail so really appreciate that - what you've done there but also highlighting that there is more available.

Any comments, questions or input? Yoav.

Yoav Keren: If you could go back to the Recommendation 12? Just a clarification - is it 12? Yeah. What is - need to be reviewed by the UDRP panel directly? So what happens? Can the registrar lift the proxy? Should they lift the proxy? Do they need to get an approval from the UDRP panel? What's the meaning of this...

((Crosstalk))

Michele Neylon: This is - okay the wording here is notification also includes information - it's if you've lifted it - those changes, not a discussion of whether you should lift or not lift.

Yoav Keren: Okay.

Michele Neylon: So on lifting there's a change then you're notifying.

Yoav Keren: But it says, need to be reviewed. What is the meaning of reviewed?

Michele Neylon: That's up to the UDRP panel.

Yoav Keren: Okay. Okay.

Michele Neylon: Well, maybe Marika can clarify, speak more clearly than I can.

Marika Konings: So maybe to add - so this is basically - this is not to change or anything from what is currently there but it basically just trying to clarify that if indeed a lifting happens after the lock has been applied and - you know, a registrar or the privacy proxy service goes to the UDRP panel and says, hey, it's not me or it's not my proxy service that's the registrant but this is the real registrant, can you please change it?

We're saying, well that's actually under the current UDRP rules it's up to the panel to decide. And we've heard from some of the UDRP providers there have been certain cases, they may change that but in certain cases they will list both parties then as the respondent.

And in some cases they'll just leave the original registrant as listed in the Whois as the respondent. So this is just basically clarifying what the existing process is, not recommending a change but just making sure that everyone's clear on that - if that happens they need to tell the UDRP panel and they may decide whether to include or change the respondents but that's not something that, you know, the registrar or UDRP provider itself will do.

Jeff Neuman: Okay, yeah so thanks, Michele. This is good stuff. And I think we should move forward with these pretty quickly. And I don't want to stand in the way of that.

My question more has to do with the fact that - and I think I raised this in Beijing, which it's more on the URS which I know is not part of your scope. But I do want to address it with the Council is that some of these - not all of them - but some of these could equally apply to the URS that's going to come into play very soon although it's the registry that gets some of the notifications.

So what I'd like to do is I'd like to move forward with all this. I don't want to slow that down. But I also want some group - someone to look at these issues as it relates to the URS fairly quickly before we actually get URS cases so that we could see because it just makes sense to me some of these recommendations but they're not in the URS currently.

And I think we could just have some of the difficulties or issues that have arisen with UDRP now come up on the URS when we have potential solutions. So I'd like to hear maybe by, you know, later this week of how we can, as a Council, get this work under way with the URS so that we can have some standardization in both of those dispute processes.

((Crosstalk))

Wolf-Ulrich Knoen: The gentlemen on the left hand side first and then Lanre please introduces help.

Philip Corwin: Yes good morning. Philip Corwin of Virtual LLC and speaking on behalf of one of my clients, Internet Commerce Association. I want to - I forget which number it is. I want to thank the working group for the addition of the automatic right for a four-day extension for the respondent if they ask for that...

Michele Neylon: Number 9, Phil - 2 and 9 - Recommendations 2 and 9.

Philip Corwin: Two and nine. And I appreciate that, that was a response to comments I both made in Beijing and filed on behalf of ICA. However, not wishing to be - to seem ungrateful I do want to state one last time for the record that we believe that the automatic extension should be for seven days and not for four days and let me explain why.

In the UDRP the complainant has weeks or months to prepare the complaint. They have all the time in the world. They determine the timing of the

complaint, they can file it on Christmas Eve or at the beginning of August if it's against a European registrant because they know folks will be on vacation.

And the respondent has a very limited time to respond. And in surveying my - the fact is that every since the UDRP began the respondent has received notice of it from the complainant at the time of filing.

And the incidence - I think the working group found that the incidence of cyber flight was extremely small, I believe 1% or 2%, while about 30% of respondents do file a response in UDRP so the number - the group of respondents that's affected by this effective reduction in response time is much larger than the incidence of cyber flight.

In surveying my members the information we got is that the average delay between the time the complaint is filed and the formal notice from the registrar runs from one to two weeks. So we suggested a seven-day extension as the average of that delay.

So, again, while appreciating the four-day right of extension I think really because of the effective reduction of response time for the respondent, which many of these respondents have to find counsel, figure out their arguments, all that, that the number should be changed to seven.

I don't think that additional three days would in any way prejudice the rights of the complainant particularly in light of the fact that once the response is filed and then the complainant responds to that there is a one to two month lag time before there's a decision from the UDRP provider.

So it's not going to affect the timing of the decision, it's just going to give the respondent a more equitable restoration of their effective right to respond. So thank you very much for considering my comments on that.

Wolf-Ulrich Knoblen: So I have Lanre and then would you then comment on the comment made? First...

((Crosstalk))

Michele Neylon: I can take one at a time or I can do at the end, I don't really mind.

Wolf-Ulrich Knoblen: Okay and so it's Lanre and then Yoav.

Lanre Ajayi: Okay thank you very much. This is Lanre Ajayi, NomComm Appointee. Thank you, Michele, for the presentation. I know a lot of thought have gone into this recommendation. But I notice that some time line based on business days like a recommendation (unintelligible).

And I want to observe that (unintelligible) from country to country. Some have five working days, some six working days. And I guess that may cause some confusion. So don't you think it is appropriate to apply calendar days in (all) the recommendation?

Michele Neylon: Thanks, Lanre. Speaking very quickly to that. We did discuss that at length. And the business days was exactly because of the discussions we had. I mean, one of the other recommendations we have, which is not binding but is more of a best practice, is Recommendation Number 6 where we're recommending that both registrars and UDRP provider publish, identify or indicate their operating days and hours so that people will have an understanding as to when things are likely to happen.

I mean, this entire thing around calendar days versus business days is something that runs through a lot of ICANN policy and it - you know, if you say to me it has to be done on X number of calendar days somebody else will point out there's a problem with that, whereas if I tell you okay these are my operating days and hours and I will do something with the next X business

days that we have then it's slightly clearer. But, I mean, it's a valid thing. It's something we have discussed at length.

Speaking to Mr. Corwin - hi, Phil. We did weigh that - we did discuss it at length. You know, the reality is that the percentage of the cases where there is a respondent is smaller than the sum total of cases. This is an automatic thing that does not preclude them from asking for a formal extension so you still have that. This is just an automatic one. But the comment is noted, thank you.

Yoav Keren: Yeah, one thing actually - Jeff's comment but - so just a question, was there any consideration of doing the lock at the registry's level? You just said some of the things in the URS are going to the registry. So was it considered to maybe...

((Crosstalk))

Michele Neylon: Yoav, that wouldn't make any sense.

Yoav Keren: What?

Michele Neylon: That wouldn't make any sense.

Yoav Keren: Why not?

Michele Neylon: Because the lock applies to the change of registrant and for a thin registry the registrant data isn't available at the registry level so that wouldn't make any sense to do.

Yoav Keren: Only in the thin registry.

Michele Neylon: Yeah, but considering the registry is Com and Net and they account...

((Crosstalk))

Michele Neylon: ...for the bulk of domain names registered.

Jeff Neuman: Well, to state otherwise even if we go forward with the thick - we have a thick registry PDP...

Yoav Keren: Yeah.

Jeff Neuman: ...we may choose to come back to that later on if that happens but...

Michele Neylon: I mean, we're talking about discussing the current reality. I mean, you know, we have the idea that after the, what is it, 24 months after the first delegation or 36 months or whatever the hell it is that there will be - okay, sorry, 18, Jeff, that there will be an overall review of the UDRP at which point, you know, maybe things will have moved from thick to thin and thin to thick and God only knows or maybe there won't even be a Whois. So, look, you know, there's a lot of things that could change.

Wolf-Ulrich Knochen: Do we have more questions on that? Because I would like - I have a final question on that - one final one. Well then, what is the process right now? So after that you provided these recommendations, what are we going to do with that right now?

Michele Neylon: Marika.

Marika Konings: Yes, so this is Marika. So the final report has now been submitted in line with what we've done for some of the more recent PDP recommendations we provided a draft motion for consideration so to allow already for some discussion of the language that is in there so that if there is a need to make changes or, you know, to the motion itself we can actually do it before making a formal motion also with the desire then that hopefully at the next meeting

there's no need for a deferral as, you know, hopefully people will have had enough time to review it.

So it's basically on the agenda for the Council on Wednesday to have a look at that motion and discuss the report and then hopefully the Council would be in a position to take a vote on it at the next meeting in September, you know, provided that the recommendations in the report are adopted.

It would then be put out for another round of public comments before the Board will consider it so that's basically the next steps in this process. And once or if the Board approves it then we move again in the implementation phase and the Council agrees with the recommendation of having an implementation review team that group would then be formed at that stage.

Wolf-Ulrich Knoblen: So you are saying that this draft motion is on the agenda of the Council meeting next week? And it's in the document as well?

Marika Konings: Yes, that's correct. But as said it's not as part of the motions because...

Wolf-Ulrich Knoblen: Yes.

Marika Konings: ...it wasn't formally made to allow for initial discussions and considerations but it is added as an agenda item...

Wolf-Ulrich Knoblen: But it would be helpful if it's put on the list of the documents in advance that we can take it - a review on that? Is that...

Marika Konings: Yeah, the motion was also circulated with the reports to the Council list.

Wolf-Ulrich Knoblen: Okay.

Marika Konings: But we can also add it to the - I'll check with Glen where it's currently posted but I presume it's somewhere on the - where the document...

((Crosstalk))

Marika Konings: ...it was also posted on the Council mailing list.

Wolf-Ulrich Knoben: Because it would be helpful for the stakeholder groups to have a look at this.

Marika Konings: Yeah.

Wolf-Ulrich Knoben: Jeff please.

Jeff Neuman: So just to clarify it was not submitted in time to be considered at this meeting, is that the rationale?

Marika Konings: No, but I submitted it. It was made by a Council member. So basically - we could have asked a Council member to make it but in line with previous practice and also because the final report was submitted relatively close to the meeting we thought it would be wiser to actually have it as a draft motion on the table.

You know, but of course if there's a desire and people want to, you know, go beyond the rules that currently exist to still consider it that's an option. But I think in line with previous practice on PDP votes we've said, okay, let's introduce it first as a draft motion and then for the next meeting have it as a formal motion.

Jeff Neuman: Yeah, and on that - so - and I don't want to be accused of going around process so I'm not going to - but, you know, this is one of the reasons why things take too long. I know we don't have an August meeting so now the fact is we actually have the motion but we're not going to act on it this meeting and we have to wait until September.

I mean, that's, you know, even just to call like a half hour meeting, you know, just to approve it and move it forward faster I think is - we should come up with other mechanisms to move some of these things faster when they aren't controversial; and maybe it is controversial. I think we had an interim report. The interim report didn't seem to - the initial report didn't seem too controversial so it would surprise me now if there's huge gaps.

Plus, I think in my observation of the group it seemed to have very active participation from the Intellectual Property group, the commercial business users, Registrars. And so it seemed like there was - ALAC and Non Commercial. So it seemed to me a good balance so I'd be very surprised if there's - and a little disappointed if there's extensive comments.

That said, I don't want to go around it; we should have it. But perhaps we should consider a mechanism to move these a little bit quicker in light of the conversation we just had of how long things take. To me now not having a meeting in August - and I don't know when in September our meeting is - but we have a pretty big gap of something that probably should go a lot sooner and now we're delaying it several months.

Wolf-Ulrich Knoben: Marika, okay last.

Marika Konings: Yeah, this is Marika. Maybe something to just - when we consider the motions because, indeed, if there is a view that this is not controversial and people are willing to move on it, you know, there's nothing for if there's unanimous agreement to move it as a formal motion. A Council member can do so and no one objects to it being included in the agenda.

As said, the reason why we've done it is in the past we've had experiences where, indeed, motions would come formally on the table and then we had a lot of difficulties because some people want to change it here and there so we kind of had this practice of doing it this way.

But I completely agree that if indeed there is, you know, full support for moving this forward quicker because if, indeed, if we adopt it here it means that we can already put it out for public now - comment now, prepare the Council report and move it much faster up to the Board than it would otherwise be if we would have...

((Crosstalk))

Marika Konings: I completely agree.

Wolf-Ulrich Knoben: I see others raising their hands. But since we are going to run out of time here so I would suggest that we take this point to the afternoon session when we talk about motions. Not that we talk about this motion but we talk about the process of this motion because I understand that there may be discussion necessary within the stakeholder groups about this motion.

So if you could agree to that that we take it to the afternoon - the session and we're talking about this motion I would like to finish that session right now. Is that okay with you John and (Eta)?

((Crosstalk))

Wolf-Ulrich Knoben: Thank you. Thank you very much. Yes. Okay thanks very much. So thank you very much, Michele, and the team, for providing us with support and the recommendations.

Well, the chair, has left so (unintelligible) so okay, yeah, yeah. Yes, okay, please.

Mason Cole: Mason Cole speaking, the vice chair of the Council from the Contracted Parties House. Jonathan had to step away for a bit and asked that we handle the introduction here of Holly and her group here. She's to provide an update for the Council on the charter drafting team for policy and implementation.

((Crosstalk))

Mason Cole: Oh, I'm sorry, I forgot the recording. Yes.

END