

**ICANN Prague Meeting  
LOCK Meeting - TRANSCRIPTION  
Thursday 28th June 2012 at 09:00 local time**

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Michele Neylon: Is there anybody on the conference bridge? No? Okay then for those of you here welcome to the UDRP Lock. And I turned down the volumes - to the UDRP Lock Working Group session here in Prague in the beautiful Czech Republic.

Since we're all kind of civilized and everything I'll ask everybody, those of you setting up the table to introduce yourselves so we'll start down the end over there.

(Ellie Bradley): (Ellie Bradley) from (unintelligible) UK .UK.

(Alan Tony): (Alan Tony) from Imperial Registrations.

(Heather Forest): (Heather Forest) from AI.

Alan Greenberg: Alan Greenberg. I'm the ALAC at Large Advisory Committee liaison to the GNSO and my (mote) it's not in gear yet.

Michele Neylon: And you're also this group's co-chair?

Alan Greenberg: Vice chair.

Michele Neylon: You share chairing. Okay let's move on.

Marika Konings: Marika Konings, ICANN staff.

(David Redstone): (David Redstone), (Turner) World Intellectual Property Organization.

Michele Neylon: AKA WIPO.

Michele Neylon, Black (Knife) registrar and this group's chair.

(Kelly Solta): (Kelly Solta), Registrant (Team).

(Vale Norbrey): (Vale Norbrey).

(Thiobert): (Thiobert) Netherlands real-time registrar registrar.

Margie Milam: Margie Milam, ICANN staff.

Liz Gasster: Liz Gasster, ICANN staff.

(Steve Gregory): (Steve Gregory), ICANN staff.

Michele Neylon: Are there any Working Group members down in the audience who are afraid to come up to the table? And there is plenty of space. You don't need to be a member of the Working Group to sit at the table. You can...

Man: (Unintelligible).

Michele Neylon: I believe there's a Kristine down there who should be invited up even though she might be trying to avoid us?

Kristine Dorrain: Well I'm not trying to avoid. I haven't officially joined the Working Group. I had some personal issues and I lost count...

Michele Neylon: We don't need to know. It's quite okay. There's plenty of space at the table. Plenty of space of the table, we don't bite, especially not this early in the morning.

So plenty of people sitting at the table who aren't members of this Working Group and it's quite okay. All are welcome. We embrace openness and stuff.

Okay then well what we're going to do is we're going to go run through an update on the status of this Working Group. So somehow Marika is going to manage the slides on this.

We're just going to give an overview of what exactly we're talking about. Then we will have at least one little kind of example case study type thing from the gentleman on my left.

And assuming that he's still alive one of my beloved colleagues from the registrar community is meant to be joining us as well to give his view but there's no sign of him yet. This is all of course the (Chuck)'s fault because he didn't know how to throw party.

Okay then so what are - what is this all about? For those of you who are new to all of this there's been lots and lots of PDP Working Groups on various things to do with domain transfers and UDRPs and all these things.

So IRTP Part B Working Group which I was the chair of we suggested that this be looked at and the GNSO and also had looked at potentially having a UDRP review but in the end decided just to stick straight and narrow PDP on this particular issue.

So the official line on this card there's no requirement to lock names that appeared between filing complaints and commencements of proceedings and there is no definition of the status quo.

So we have a number of charter questions that we're trying to address. Should an outline of a proposed procedure, a complainant must follow for registrar to place a domain name on register lock be created?

Should an outline be created with steps to - of the process that a registrar can reasonably expect to take place during the UDRP dispute be created?

Should the timeframe by which a registrant must lock a domain after a UDRP has been filed be standardized?

Should what constitutes a locked domain name be defined? Whether once a domain name is locked pursuant to a UDRP proceeding the registrant information for that domain name may be changed?

And should additional safeguards be created for the protection of registrant's in cases where the domain name is lock subject to a UDRP proceeding.

And since there's lots of words on those slides I'm just going to pause for one second. Is there any of this so far that people are finding hard to follow or understand. Are there any questions from anybody?

So you're all experts on this? Be careful Michele. Be careful of what you wish for. I have no problem with picking on you at 9 o'clock in the morning don't you worry.

Okay so the Working Group is formed. There are 28 members of the Working Group with a broad representation of various aspects of the community with representation from WIPO, ALAC, lots and lots of registrars and loads of attorneys.

One of the first tasks that we be looking at is to get some public input in order to get a better understanding of what the issues are and the scope of them.

So we have currently got a survey which comes in two versions, Version 1. So its survey 1.0 is for registrars and Version 2 is aimed at UDRP providers.

And how many responses have we had so far Marika?

Marika Konings: Last time I checked we had 37 responses from registrars and one response from a UDRP provider.

Michele Neylon: And so if you are a registrar and those nice ICANN staff people welcome to the room -- I see people coming in -- feel free to come up to the table. There's plenty of space.

If you are a registrar you should have received a link to the survey. If you have not received it one of your staff has received it. Please go find those and complete the survey because we really do value your input.

The survey is open until the 10th of July. And then once we have got the survey results in and reviewed them we will then be going to the various stakeholder groups to get some input from them.

We're still of course working on work plans and timings and this and that because until we have a better understanding of the scope of our work it's going to be a bit hard for us to, you know, pull out data out of thin air.

Good morning Mr. Bladel. There is space at the table. Okay.

We had a question which we raised with the GNSO council. Yes go ahead?

Gabriella Schitteck: Hello. Sorry for being late. I'm Gabriella Schitteck. I'm a member of the group from the business group contingency. Hello.

I have a question. As you know we already had answers of - for the surveys. So this is circulated. I'm sorry if this question is out of...

Michele Neylon: Okay no sorry the survey is currently open. We've have had a number of registrars and one of the UDRP providers has responded.

Gabriella Schitteck: Okay.

Michele Neylon: I haven't - we have a looked at the answers.

Gabriella Schitteck: Okay.

Michele Neylon: That was just a simple yes the survey's open, yes we're getting responses. And also as usual I'm encouraging people who have not responded to please do so.

We have not looked at the responses the survey is still open until the 10th of July. I have no idea what they put in there. They might've just put kind of I'm responding and not answering any of the questions. I actually don't know.

Gabriella Schitteck: Okay thank you. I was - I thought maybe I lost an email or something so it's fine. But thank you.

Michele Neylon: Well it's understandable if you get involved in ICANN Working Groups you can get swamped with lots and lots of emails.

I mean as I look through my inbox I see a @icann.org and I have all these emails from Margie and all these emails from Marika and various other people. It's completely confusing and I keep on having to ask them to resend me the important ones.

Go ahead.

Marika Konings: So this is Marika. This is to confirm actually the 36 responses are complete responses. We can also see how many views we have in there. I think we had - the number's a lot of higher.

But the 36 represents the surveys that have been completed to date. And I checked a couple of hours ago.

Michele Neylon: Thanks Marika. We also wanted to get a bit of clarification around our charter. So we would - we asked the nice people in the GNSO council if they could - if they had any issues with clarifying this. So the thing we're asking that we use the slides so I get this right coherently.

The Working Group in terms of the charter is also looking for clarification of when and how unlocking of a domain name should be done once UDRP proceedings are completed.

This is not specifically mentioned in the charter of the Working Group as there was looking for some confirmation from the GNSO. So we contacted them prior to this meeting and then we spoke to the them on Sunday. Sorry I know I did that but I couldn't remember which day of the week it was.

On Sunday and I think officially they didn't have any issues do they? No, no they're quite happy. Oh please go ahead.

Kristine Dorrain: I just was wondering - this is Kristine with NAF. And I'm sorry I have a cold.

I'm wondering if you also included in that there - does this group also - will it also investigate the circumstances under which a domain name might be temporarily or for limited purposes unlocked in case the parties agree to a transfer?

We have many questions about that as a provider. We get lots of registrars that email us and say well the parties want to settle and they have this agreement. And can I unlock it to transfer, so that might be something that's (effecting) the scope as well.

Michele Neylon: I think it is now once we - we got the clarification from the GNSO Sunday that unlocking would also be within the scope. Because now logically if you lock you need to unlock, kind of a bit silly if you don't.

So it would - I will welcome as chair that if these kind of things become issues you guys are having in terms of what you're being asked this is really helpful. This is very, very helpful.

Man: Can I just add to that as well that some may be useful noting into the record that at WIPO perhaps there are similar statistics at NAF as well. But we see about 25% of our current UDRP dispute settling.

So this is a practical issue and about 1/4 of the disputes going through the UDRP for us.

Kristine Dorrain: Yes I think the number for us is around 18% or something. I haven't run the numbers for a while.

Michele Neylon: Yes thank you. And that's just a link - a slide telling us about today's meeting because we recycle. We're very good at ICANN. We recycle things. We recycle. This slide is from the GNSO update.

Marika Konings: It just mentions and here's the link to the Working Group workspace. So for those of you that just want to see what this Working Group is doing and keep track I mean our mailing list are publicly archived and all recordings are - transcripts and recordings are posted as well on the Web site.



But here you can see some of the draft documents this Working Group will be working on. And so keep an eye on that if you're interested in this topic.

Michele Neylon: And also as well of course in common with most GNSO Working Groups if you wish to join. It's not that hard.

You can just email one of us and we can get you added. You don't have to participate (that) actively but you can keep an eye on these things.

All right so following on from this, does anybody have any questions or comments from the floor, from the seats?

Good morning James Bladel.

James Bladel: Good morning. So a quick question and I am not a participant of this PDP Working Group. However we are more than ably represented by (Laurie Anderson) who I consider to be one of the foremost experts on the UDRP on this planet.

So I don't know if she was able to dial in but I think that she'll serve you and serve the group very well on that regard.

So I had this question about settling UDRPs because I'm not really clear. I'm not an expert on the policy but I'm not clear how you turn it off once a PDP has been initiated?

What is the process for...

Michele Neylon: You mean a UDRP?

James Bladel: Thank you, UDRP. Once a UDRP has been initiated how is it - what's the mechanism by which you would then shut it off or does it have to run its course?

(David Redstone): Well the - so (David Redstone) from WIPO.

The way that the UDRP is set up is that once the complaint initiates the proceeding they proceeding would then typically run its course over a period of 60 or 75 days depending on whether you would have a single member or a three member panel.

The panel is appointed with authority to render a decision. That decision is either going to be a transfer which concludes the proceeding or it's going to be a denial which concludes the proceeding or it might be a cancellation which concludes the proceeding.

The panel also has authority to order the termination of the proceedings in certain circumstances, for example if there would be a court proceeding or if the matter would be settled between the parties.

Since the very early days of the UDRP process it became fairly clear that parties where there would be a dispute and they would have an interest in settling the matter before it would go to a panel appointment for a decision that practically it would be desirable to have a practice or a protocol to enable those parties that want to amicably resolve a case without a written and recorded decision should have a mechanism to do that.

And the principle on which that is based is that the UDRP is a consensual mechanism to which both parties agree.

And if both parties agree to settle and to terminate a case they should be able to do that on the basis of that agreement.

So where this happens is a practice certainly at WIPO where on that if both parties agree to a settlement and to a termination prior to panel appointment

we will notify the registrar that both parties have agreed to the settlement of the dispute.

And we will ask the registrar if they will unlock the disputed domain name for the purpose of giving effect to any such settlement agreement that has been reached between the parties.

It's been for the parties to contact the registered to indicate that they've settled the dispute and for the registrar to unlock the domain name and give effect to the transfer agreement.

James Bladel: I think as a that's a good answer and I thank you for that. And I think I actually have more questions based on that. But I don't want to take this group off track so I'll come back to that as time allows. Thanks.

Michele Neylon: Thanks James. Kristine do you have anything to add or are you...

Kristine Dorrain: No we have pretty much the same process.

Michele Neylon: All right, thank you. Does anybody else have any other any questions because if not we'll throw the floor back to James and see (how)'s got questions?

(Kelly) did you have a question? Okay go ahead James.

James Bladel: Okay so it sounds like this is not necessarily a formal mechanism that's built into the UDRP policy but it is more of a rule of procedure that each of the providers have adopted. Is that a fair statement?

(David Redstone): It is a fair statement but it's also a procedure that we discussed with ICANN's...

James Bladel: Okay.

(David Redstone): ...legal counsel's office, I think it would have been back in 2001. And there is a chain of correspondence that records the reasoning, the practical need in the basic outline of the procedure.

I'm sorry don't have a copy of it but...

James Bladel: That's okay.

(David Redstone): if you wanted a copy I could...

James Bladel: No I'm just trying to get a general feel for that because I'm learning that this - I had no idea that this mechanism even existed five minutes ago.

So and so I'm also assuming that whatever fee schedule reimbursement or refunds would be available is also set by the provider?

(David Redstone): Well the - if you wanted a description of the way that the procedure operates at WIPO and I think maybe also at NAF although I won't speak for them but we have a public document that we make available called the WIPO Overview that sets out a number of questions and answers to the very common substantive and procedural issues that can be experienced in UDRP proceedings.

And that document covers the way that our suspension settlement practice operates. So if you want some more information that would be one resource that you could use for that purpose.

Where a dispute does settle because at WIP we're a nonprofit provider, if the dispute is resolved and it's not necessary to appoint a panel to decide the dispute that the parties have agreed to early terminate then we will refund to them the unused panel fee.

James Bladel: Okay. Very, very last question and hopefully it's also a very, very short one. Is the decision - when a registrar is notified - okay let me back up.

As a registrar we are contractually obligated to implement decisions resulting from the UDRP process.

Is the decision to effect a settlement considered a, you know, a decision from the panelists with the same whole authority and force or whatever of the - that a UDRP decision would be?

(David Redstone): An order from the panel to terminate the proceedings pursuant to a settlement that the panel has validated would be analogous I would suggest to a decision issued under the UDRP.

James Bladel: Okay.

(David Redstone): An agreement which between the parties to settle a dispute is precisely that. It's an agreement which between the parties to settle the dispute. And it's an agreement which the provider has taken note of.

So if the registrar is comfortable with given effect to that agreement then it's for the registrar to determine that.

James Bladel: Okay, all right. Thank you very much for your help.

Michele Neylon: Thanks James. Actually your questions are quite helpful because as a registrar I'm sitting here and kind of scratching my head going.

So (Brian) will have to pick on you since you seem to be sitting right beside me and we'll (unintelligible) chairs with Kristine a little.

So where is - where can I as a registrar go to find this process this procedure for terminating a UDRP because they've reached some kind of decision?

I mean is this is there a nice little document I can go to somewhere associated with the UDRP or do I need to go and dig through the annals of correspondence between various people in WIPO and other UDRP providers and ICANN staff that may or may not still be within organization?

(David Redstone): Probably the - I mean there may be other sources of information but the one to which I would probably refer you would be the WIPO overview.

And I know that's not an ICANN document but it is a document that, you know, distills the reasoning of, you know, many hundreds of panelists over many thousands of decisions.

And there are numerous UDRP decisions in which this issue has been considered and which provides a fairly firm jurisprudence foundation at least for the practice.

I can't think of any public ICANN document that I could point you to that would provide further information on it but...

Kristine Dorrain: With respect to how to do it though I - we've all - I mean I guess I can't speak for WIPO. But NAF has, you know, really detailed in our supplemental rules how the parties would apply for a stay and to pursue settlement and what happens if they don't settle in the right amount of time.

And then when new registrar is copied, is sent a copy of that stay order there's actually instructions in there that says the parties are attempting to settle just as (David) pointed out.

The parties are attempting to settle. You know, you can take this as an opportunity that if the parties approach you with a settlement agreement, you know, you can unlock the domain name for the purposes of transferring between these two parties during the course of this specific time period.

So the registers provided was sort of instructions. So we're not expecting a registrar to know about the stay process but we do provide them with information on it.

And if a registrar ever comes back to us and we do get some questions we direct them to our rules or we explain to them that again as you mentioned to the speaker a moment ago we do explained to them that it's up - you know, just as in any party transfer if you have two, you know, registrant trying to transfer to another registrant you still have to look at it and find out if it's a legitimate transfer request. You mean you don't look for fraud at all?

So well yes we just...

Michele Neylon: No the...

Kristine Dorrain: ...tell them to use their judgment.

Michele Neylon: The IRTP which is the policy for transfers does not have a transfer between registrant policy.

This is why we are - which is something we are currently looking at in IRTP Part C which is being chaired by James Bladel who is sitting there.

And if you'd like to join that Working Group I'm sure James would love to have more volunteers.

There is no - there is currently no ICANN policy on that which is why we're discussing whether there should be. But thank you for the clarification. Alan go ahead?

Alan Greenberg: From what I'm hearing the provider tells the registrar of record that the parties are attempting to settle and therefore are presumed - that effectively means

you are telling them that the dispute is being withdrawn, the domain goes back to the original registrant.

Kristine Dorrain: Well the case is still open. They've just stayed it. So they've asked us to pause the case and keep the lock on.

But the parties have indicated that they may wish to transfer. And so we apprise the registrar that they may be receiving communication from the parties, should be jointly signed by the parties. I don't know if that's what you require but that says, you know, we now have settled.

And then they will further once they settled then they'll, you know, but the registrar will get a notice of termination from us once they inform us the settlement is complete.

Alan Greenberg: But that sounds almost as if they registrar has to review the documents and make a judgment call as to what to do next whereas I would've thought once it is indeed settled the registrar doesn't need to do anything until it's settled. At that point it's settled and presumably the parties have a signed agreement that covers what happened.

Kristine Dorrain: That's correct. The registrar doesn't have to do anything until they hear from the parties that there is a settlement.

Alan Greenberg: Okay.

Kristine Dorrain: Right.

Man: And what should then in the normal...

Alan Greenberg: But if it's from the parties then the question is how does the registrar know whether to believe them or not without having a legal team review the document?



(David Redstone): What should happen or would typically happen would be that the provider would as Kristine said notify the registrar that the proceedings have been system suspended at the agreement of the parties who are engage in settlement negotiations or who may have settled the dispute.

Then typically what should happen is that the registrant of the domain name would contact the registrar and say I have agreed to the transfer of these disputed domain names to the complainant Mr. X.

Can you please transfer them - the domain name on that basis, on the basis of my request. And it would then base the registrar to give effect to that registrant request for the domain name to be transferred on the basis of advice from the UDRP provider that any unlock of the domain name for that purpose would in effect not announce to a breach of the UDRP because the parties have agreed to the suspension and to the transfer for the purposes of giving effect to a settlement. That's the underlying principle.

Kristine Dorrain: The only time the registrar is going to have to like think about it really because like (David) said it's the registrant asking to have the transfer.

So the only real thought that goes into it is remembering that the provider notified the register that the settlement was coming and then saying oh, it's okay if I transfer it even though there's a lock?

(David Redstone): But the agreement might have been that the complaint and gave...

Michele Neylon: Yes.

(David Redstone): ...the registrant a pile of money...

((Crosstalk))

(David Redstone): ...some other terms and the registrar has to do nothing except turn custody over back over.

So that's why I'm saying in either case it is up - the registrant - the registrar effectively can believe the registrant of record as to what to do next which is what I tried to say originally and turns it back to the registrant.

It's only the registrant who can say transfer don't transfer whatever at that point.

Kristine Dorrain: I think from your perspective yes I think a lot of times I don't know (David) what you guys see.

I think a lot of times I see, you know, a jointly signed document. Gut yes there's no - I've never seen a registrar requiring anything like that.

Michele Neylon: Just a reminder people when you're speaking please state your name for the purposes of the transcript or we will have lots of unknown man, woman, incoherent name.

Okay then the man asked him the question was Alan Greenberg.

Michele Neylon: (Kelly) please.

Kristine Dorrain: The woman was Kristine Dorrain.

(David Redstone): The other man was (David Redstone).

(Kelly Solta): (Kelly Solta) Registrant (team). I'm hearing a lot of things about a registrar doesn't have to get involved. But our customers ask us a lot of questions so there's a lot of new things coming up, you know, does a stay a lock can remain in place but how long for?

So as a registrar it is important that we have, you know, and it's one of the topics on the table, you know, what's our role?

It's not really defined, we cannot get involved because they are our customers, and so at the registrar we would really benefit from a nice, clear, simple, procedural document so we can help the process, so.

Man: I fully agree with that.

Man: So maybe that would be helpful to have, but preferably on the ICANN Web site as opposed to barrage a provider's Web site, no offense, you know. We are a contract with ICANN, not with WIPO or any of the other providers. And I see ICANN compliance in the room, but they're the ones who, you know, get to whip us or beat us. Not that often Stacy, I don't look at the (unintelligible). I can see your respect coming out of my pores now.

Okay, what we hoped to do this morning also was to have a look at a couple of scenarios where people have issues surrounding this and the kind of issues that arise for both providers and for registrars.

Unfortunately so far my registrar colleague has not appeared, but since the nice man from WIPO is here and he does have slides, I will pass the mike to him now. Please go ahead Brian.

Brian: Thanks (Unintelligible). What I'm going to do here is just run through a couple of quick case studies. One is from our perspective as a provider what typically happens in the vast majority of UD update disputes that we process.

And the second example is of a case in which things didn't go so smoothly, but its one of the pretty small number of slightly problematic experiences come that I've included just to bring out some of the textures and some of the challenges where there might be some misunderstandings about how the

lock works and how it interacts with for example in this instance a deletion request.

But here on the screen you can see the general provisions in the UDAP that relate to prohibitions on registrant transfer during a pending UDAP proceeding transferred to another registrar - a registrant during a pending UDAP proceeding is precluded under paragraph 8A, transferred to another registrar during the pending UDAP proceeding is precluded under paragraph 8B.

So in practice how does this tend to work? So in a typical dispute with both the complaint comes in, it's (unintelligible) with the sensor by our email or by our online form. Sometimes in a pretty small number of cases, probably about 5%, the registrar will confirm that there has been a lock placed upon the disputed domain name at the time of filing of the complaint; but this doesn't happen typically.

Man: Just one - sir, just one question there. Is this is before you contact the registrar to confirm there's a lock?

Brian: That's right, this is immediately upon filing of the complaint with the center because of the UDAP roles, supplemental roles I think at other providers too require the registrar to be copied upon the complaint that's filed with the provider. So where that occurs in a percentages case is the register will confirm that the domain name has been locked presumably in response to receipt of that copy of the complaint from the complainant.

After it comes in, it's registered, a case number is assigned to it, a sequential number, and the - what we call the registrar verification request is then issued by our assistant provider to the responsible registrar or registrars.

And what that request does and is, it asks the registrar to provide - its sent to the registrar by email is registrar contact information on the internet Web site

that we use for that purpose. And there's now also the radar contact information that is hopefully sent (unintelligible) periodically to facilitate that contact.

Man: Just one second, just for those people who are not familiar, could you explain what both InterNIC and radar are just briefly, please?

Brian: Yes, well InterNIC is the public database that contains intra information about registrars and also contains information about domain names. And in particular the registrar that is responsible for the registration of that domain name, so it's what enables somebody who's interested about that sort of data concerning that domain name, to contact the responsible registrar and to find out where their database is located for example and then into the Whois and obtain the register dot to do whatever it is they need to do with it. For example to follow the UDAP dispute.

So radar is an information document just like is circulated by ICANN periodically to the UDAP providers which contains contact information for registrars that can be used for purposes of UDAP disputes. So for the purposes of requesting verification data and also for the purpose ultimately of notifying any decision when the proceeding would come to a conclusion.

So the request of the registrar, typically of WIPO, contains a number of questions hypothetically ask the registrar to confirm the register name and contact information which is necessary for notification purposes.

Woman: This is in regards to a remote question person is asking. It's (John Venturcka) whether the request for the registrar is to confirm. Is this before informing the registry?

Brian: Before informing the registry? Well typically in the UDAP dispute, we wouldn't inform the registry, we would inform the registrar. That's not always the case

in some of the disputes under some of the gTLD policies for which the registrar is directly responsible.

But under UDAP typically it's going to be the registrar only. I started to say what happens under the new gTLD situation for this, but that's how it works at the moment.

So that information in addition to that request of information of confirmation on the registered name and contact info also asks the registrar a number of other questions including for example the language of the registration agreement which typically determines the language and proceedings, asks about the relevant jurisdiction election of the registrar which is necessary if the registrant validate itself and be safeguarded for a court appeal following the UDAP dispute.

And it also asks the registrar to confirm the domain name has and will remain locked during the pendency of the instant UDAP dispute.

So typically for us, the registrar will respond within 48 hours confirming that the domain name is locked and will remain locked for the dependency of the UDAP dispute. In cases where you have privacy or proxy registration service appearing as the apparent registrant in the public Whois database at the time the complaint is filed, in most instances the registrar in that case will supply us with underlying -- it's called underlying registrant name and contact information which will then supply to the complainant to amend their complaint in due course.

More often than not, but not always, that underlying register data is also then reflected in the public Whois. What then happens is that we use that information.

Man: Sorry, just slow down a little bit because you are going quite fast.

Brian: Sure.

Man: And there's a lot of information even for those of us who have been following this closely, might be a little bit closer information of what. So slow down a little bit. Just go back one slide if you wouldn't mind.

Okay, here for example, in the parent privacy proxy services, you are saying that the underlying registrant data also reflects with Whois dooming that they would change the Whois data?

Brian: Yes, that's exactly what I meant.

Man: Okay, so you're saying that they would remove the privacy proxy protection.

Brian: Yes, there are a number of ways you could describe it. You could say that the privacy shield would be lifted, you could say the privacy service would be unveiled, you could say the underlying registration information would be revealed. So that's the effect of it.

Man: So in other words the thing is just a clarification because it's one thing what is communicated to you as the - what's the official term I meant to use?

Woman: Provider.

Man: Provider, okay thank you. Its one thing that is provided to you as the provider - that's a horrible sentence from provided to provider. But what is important here is that you're saying that also in some cases they change the actual Whois.

Brian: That's right.

Man: Okay, so do they always change the Whois or is this only in some cases? I mean is there...

Brian: No, not always. I mean our estimate is that we are observing privacy or proxy registration services appearing as registrants at first instance in probably about 20% of the UDAP disputes that we administer. And in most of those cases, I wouldn't say all - I wouldn't offer a number but I would certainly say most of those cases, the responsible registrar will provided us as the provider with information which differs from the information which appeared in the Whois at the time the complaint was filed.

That information is supplied to us in response to our registrar verification request. And in some cases it's also then reflected in the public Whois which means that there's been a change in the public Whois data from the time the complaint was filed to the point in which the provider is conducting the necessary verification checks on the complaint.

Man: Kelly?

Kelly S: Kelly S. I mean this also needs to be covered in the working group. Because as a registrar because it's so vague, obviously we don't want to be seen as complicit because we've been made aware there is a dispute. And it isn't clear, you know, do we provide you the registrant information or do we make it public? Because yes, we want to assist in the proceedings but the definitions of where our responsibilities lie and we're not judge and jury.

But obviously, you know, we want to assist the process of this. It would help if it was clarified and if there is a purpose youth protection service, what are the steps that we should do? Should we cover ourselves in contingencies and release it or can we just apply it?

Brian: I fully agree.

Man: (Unintelligible)?



Man: If, and again I'm sorry because maybe I'm new to this but what I don't really understand here is I know that a lot of changes are going on in the Whois policies. And so I don't understand this kind of thing is also considered in the Whois report and everything because I didn't know the registrar was going to change or take out the proxy and the privacy and put in information other than the Whois (unintelligible). I didn't know that, I'm surprised about that.

So I don't know if there is a relationship with who we are talking now and the Whois changes, the theme, whatever. Thank you.

Man: Okay, thanks. I'm going to remove my hat as chair for 30 seconds and pass the chair will go to Alan briefly. I would also echo this because I'm a little bit confused here because my understanding is that once UDAP proceedings starts, we're meant to maintain the status quo.

Now this is an area where I start developing massive migraines. I would have assumed - somebody with a law degree can correct me, that the status quo also includes the Whois displayed.

I can - personally speaking as myself and not as this working group chair which is why I passed the chair to Alan briefly and that may sound ridiculous but I try to keep these things separate. It's one thing I can understand that I would pass the underlying information that I hold to WYPO or whoever, but actually changing the Whois, isn't that putting me in breach of the policy or did I miss a memo somewhere? Please, Christine.

Kristine Dorrain: So I would say yes, but I - from what I understand...

Man: Yes to which part?

Kristine Dorrain: Yes, to the we believe that that's a breach. We believe that the information should not change once a complaint is filed.

However this is my understanding from a long discussion I had a long time ago, that there's something - and forgive me because I do not know the RAA like everyone else does. But my understanding is there is something somewhere that says, "as long as the registrar promptly unshields the registrant in the Whois data, the UDRP doesn't have to go against them. And I don't know where I heard that but we don't fight it because as long as it goes quickly, we don't - it's just such a big - it happens so often.

Man: At this juncture I'm going to be really, really cruel and ask somebody like Stacy or Mike or even Steve where ICANN Staff who do know the RAA very, very well, do they have anything that they can say to help clarify this question? Or are you all hiding from the muck?

Christine was talking about - well Mike, did you hear the question?

Mike: I think I got it.

Kristine Dorrain: You know what I'm talking about or where I got that from?

Mike Zupke: I think (unintelligible) over, this is Mike Zupke, ICANN Staff and if I could just try to repeat the question and make sure I understand it.

What I think I heard you say was that when a complaint is filed about a domain name in the UDRP case, and the registrant appears to be a proxy service that in some occasions the registrar upon being notified of the complaint will change the Whois data.

I see you nodding so I think I got it right. So I think and, you know, I don't want to speak for registrars because I don't work at a registrar, but I think that when you see that happen it's probably a result of the registrar's proxy service or, you know, it could presumably be an independent proxy service.

But I think what you see is the proxy service has a licensing agreement with the underlying customer and that agreement says, "In the event a dispute is filed we immediately terminate our services as proxy. You're the registrant of record and you allow the registrar to note you as the registrar of record and Whois." And so I think that's probably, you know, what you're seeing happen.

Man: Thanks Mike. Brian, do you have anything further to add?

(David Redstone): This is David. But, you know, we often sound alike.

I don't have anything to add to that except to say that I think the relevant provision in the RAA Christine might have been referring to is - I think it's 3.7.73 in the RAA which basically says that in the event that a license or a domain name would authorize the use of their domain name by a licensee and there would be a court proceeding or a UD update dispute. Then the licensee - sorry, the licensee has a reasonable period of time which to disclose the identity of the license or the licensee or will be on the hook, in effect as the responsible party.

And so that's not a clause that references the UDRP or tied to it in any express way, but I think it's sometimes sided in support of this practice that we've just been discussing.

I think one of the challenges here with this question is that the whole use of policy and proxy registration services whether there offered by the registrar or a third party is a business model that really postdates the UDRP. So it's not a practice, a commercial practice that the instrument is really quick to deal with.

So I think this is an area like some of the ones we've discussed only where it would be useful to get some guidance from ICANN. Not necessarily to amendment to the UD update, but through some form is instrument or advisory or complementary policy that gives some guidance to registrars and to providers and to complainants and to respondents and to panelists and to

stakeholders in the UP update generally on how this apparently pervades to, you know, practices should be managed. Because it's something we all have to deal with.

Man: Alan and then Kelly.

Alan Greenburg: As listening to this as someone who hasn't played this game before, it strikes me that the requirement to of a proxy service or a privacy service to reveal who the real owner is, is not necessarily synonymous with changing who the owner is in Whois.

And the concept that the owner of records in the registrars point of view and half way into UDRP say, "Oh I'm not really the owner, (Mareke) is." Sounds like something which is potentially improper thing to do.

So I understand why the provider needs to know who the real owner is and who they should be dealing with. And that doesn't sound to me like who should change Whois, unless we actually come up with a provision that says so.

(David Redstone): Actually, as provider, we don't really need to know. We just need the registrar to tell us, you know, who the relevant responder in the record is and to whom we need to notify the complaint.

But it can be a particularly material interest to the complainant that's filing the dispute to know who the substantive owner of the domain name that they're complaining about is so that they can make their case. And I guess it's in the interest of that underlying registrant to receive notice so that they can respond to the allegations. And it's in the interest of the panel to know who the real registrant is so that they can assess the merits of the case.

And it's these sorts of questions that make it complicated because it would be real easy for us as the provider to just say, "Hey, well tell us of the privacy or proxy registration service and the registrant and let's get on with it."

But you can really make it complicated when you actually get to the assessment of the standing merits which is also an issue because the UDRP crystallizes the applicable mutual jurisdictional election for the registrant by reference to the location of the registrant in the Whois at the time of the filing of the complaint.

So where there is a modification in that information after the complaint is followed it can raise questions about what the applicable jurisdiction would be if the registrant wants to evade itself with that, that extra core protection by taking the dispute to a court.

Alan Greenburg: I think I understand the concepts; I'm just not convinced that the data in the public Whois has to change to allow all of that to happen. You need to know and things need to be revealed to you but that doesn't mean you can only get it through taping a Whois query.

You know, the registrar tells you Whois, who paid them the money. If that organization wants to say, "I'm doing it on behalf of someone and I have a contract I can show you to demonstrate that," that solves your problem of who you are dealing with and what jurisdiction it is and all that. I'm not sure why the registrar needs to be brought into it to effect the unilaterally change who the owner is.

Man: (Unintelligible) Kelly in the queue? I have nothing but to please and straight (unintelligible) Margie as well. Sorry, I've lost my voice almost. Kelly please.

Kelly: Kelly (Unintelligible). Yes, well when we changed the subject we seem to have a clash. On one partly the RAA is saying to, you know, seem to call to order, we can reveal who we are working for but the WIPO side was saying,

"Keep the status quo." And this is where in the registrar community there is so much variety in how we all work.

(David Redstone): I just want to clarify that from WIPO's perspective; we're not saying that it should be kept as the status quo. What we're saying is that it would be real ideal if there would be a process and a protocol that would describe how it should work.

Our practice is at the moment predicated on the subsidization that we're over the registrar tells us that there is a different responsible registrant. Of course we are going to provide that information to parties, we're going to make sure that it feeds into the relevant notification and the relevant substantive consideration, you know, by the panel and due-course.

So we will act on whichever of those two scenarios we observe in any individual case but it would be desirable to have a single system that applies across all, you know, scenarios if we can find one. I certainly agree with that.

Man: Kristina and then Margie.

Kristine Dorrain: Okay, Kristine (Unintelligible), I finally remembered to state my name, sorry.

My comment was basically was to Alan, is that your name? I mean it was basically what David just said. We - our practice is that we will take the information from the registrar, we will serve it always; it's always going to be included in the address that's served.

But for us the actual captioning of the case, the naming of the case publically for the purpose of the publicly posted decision unless otherwise decided by the panel is what's in the Whois.

So if you, you know, if the registrar is going to change that information, then that's what's going to be listed in the caption of the decision, again unless the panel has the authority to change whatever it wants.

So we start by the default being what's in the publicly available Whois at the time of commencement is the named party for the purposes of the caption of the case. And so for us, it's having something - having Whois change does, you know, change that -- publicly available caption.

Man: Just by way of clarification, and I know they're trying to have a huge number of UDRPs, but what do you do in the case of dotTel to name names that's registered to a private individual which means that basically there is no data in Whois apart from their name?

Kristine Dorrain: I think we've only had one of those, and it was probably chunked in with other domain names. It's probably dot com dot net dot org, dot tel. I don't think we've ever had a just dotTel case.

Man: Margie and then Kelly.

Margie Milam: Yes, I think we are really having a fascinating discussion and think we're learning a lot about these issues. From the working group perspective, I would encourage you to think about what you think the right process should be.

Because in the terms of, you know, the charter of this working group, you're talking about locking and unlocking and when you would have a lock. And some of these issues of -for example, whether the privacy service can correct the Whois information before the lock goes into place. That's all what your, you know, that's all within the scope of what you're looking at.

So rather than, you know, there may be different views on, you know, when that's appropriate under the current agreement, but your charter is really to

look at and see what do you think the right answer is. And that's what, you know, the work of the committee could be.

And if you think that it's reasonable to have the privacy service to correct the whois before the lock goes into place, then that's the part of the recommendations that you would, you know, you would put in your report. And therefore if you clarify some of this where it seems like there's not a lot of clarity about what the rules are. And so it's a terrific discussion.

Kelly: Can I just ask a question which is that I recall and when we were discussing this a little bit in some of the earlier working group deliberations. But there was some fantastic discussion from the community in vesting in some investigators and thinking about this very question.

I think dating from back of the (unintelligible) had made, there had been some preliminary discussion at least about the possibility of whether ICANN staff could send for example an advisory around to registrars and other providers and other stakeholders indicating how, you know, privacy and proxy registration services would be regarded for the purposes of UD update disputes.

And I just wonder if that's something that could be usefully reinjected into this process or - I don't mean to set off a bomb by asking that question.

Man 1: This is so much fun to watch. (Rico), please.

(Rico): This is (Rico). I think just a comment because I know I need that discussion was had before but I think the issue there was like, I don't think that we want to be in a situation where we need to be the ones deciding what is the right answer. So I think that we're saying that if the working group would come up with a recommendation saying, you know, "This is how to process should be."



Yes, I think we could definitely have an advisory or guidance or whatever you want to call it, but I think from our perspective we would like for the community to tell us what such an advisory should look like. So it think we're probably on the same wave length, but we're really looking towards this working group to provide that information.

Man: Please state your name.

(Alan): Hello, it's (Alan) from (Unintelligible). My comment would be that some - we've seen the introductory, the creation of a UDRP instance from actually the wake up call to the registrar. And so you might find you can call for entities to registrant who has their IT department on the Whois. And in that case the presence of the UDRP suddenly gets the management taking more seriously and they want a corporate address or legal contact details put on the WHOIS.

So I can see a case where it would be right and proper for parties in the dispute and any future correspondents to get that data changed before the lock was put on.

Man: Thank you. (Kristine)?

(Kristine): (Kristine) from MEF, I just wanted to mention that you don't have to change the Whois in order for the registrant to update their address of record within the system.

For instance once the case is served the - and management decides that they you know want their correspondence to go to their lawyer or whoever, you just notify the provider and the provider updates the contact information in their system.

Man: Yeah, I appreciate that from the provider's point of view. I'm looking at from the registrar's point of view. You know if the policy is locking down our natural

reaction is to keep the status quo until the dispute is over, you know protect everybody.

So I can see the case where the registrant quite rightly and properly wants a Whois data, public Whois data updated and I'm just wondering where the policy would prevent that happening.

(Kristine): Yeah I believe it would, and further more at least from MAF's perspective if the registrant information is updated after you've corresponded with those but you've locked the domain name, we're not looking at the Whois any more.

So if you update that information our system doesn't go look at the Whois every time you want to send something. The registrant would be - it would be necessary for the registrant to contact the provider and say hey don't use the information in the WHOIS to contact us.

They would have to contact us directly so that we could update our records internally at that point because we do not keep looking at the Whois to figure out if things have been changed so that we can continue to update the parties.

Man: Okay yep, understood. I'm just - what I'm asking is you know is ICANN going to be instructing the registrars to freeze the Whois? That's my point.

(Kristine): It's my understanding when we've had after you've locked the domain name, if the domain name gets transferred after - if the Whois changes after the lock, we will notify ICANN compliance.

Man: Just a point of clarification, not to disagree necessarily but to introduce a nuance that prohibition under the UDRP is on the transfer of the domain name during a pending UDRP proceeding.

So I think there is a question at least as to whether updates to contact information for example that do not amount to a transfer would or would not amount to a breach of paragraph eight of the UDRP.

So it may be that there is some scope for defining a little bit where that could be some modifications made to the Whois during the UDRP update proceeding where that would not amount to a transfer and still potentially be consistent with the UDRP at least as we read it.

(Kristine): I was going to say we don't usually even know that the Whois changes unless the complainant notifies us and says you know they changed the Whois and then it's usually to a different registrant.

If you had updated the contact information we would not even know, we don't keep looking at it.

Man: And I think that that's a good point to make because if we start getting engaged in discussions at this point I think it is useful to think a bit about what the notification procedures should be in the event that there is a change.

Because it can affect things like the registrant receiving notice for example so it is helpful to hear it, when there has been a modification from the provider perspective from the registrar if possible.

Man: Some very interesting exchanges here. (Gabriella) did you want to - you looked like you were about to say something.

(Gabriella): I'm - this is (Gabriella), I'm confused about so many things, I'm going to ask the registrars something so if you are changing the - if someone changes the WHOIS does the registrant will be notified that this - the proxy is not there any more and his name is there?

Or he just looks randomly and finds out there's a change. I mean does anyone inform the party that he's in this situation?

Man: I will throw this open to any registrant who would like to step into the breach and answer that. Anybody? Kelly?

Kelly Salter: Kelly Solter, register AT, I'd like to say every registrar would but because there is so little clarification on it, I'm going to you know say probably every registrar does something different.

Which is probably not what you want to hear but with so little clarification and defined policies this is where we get the situation that we're going to resolve.

Man: I mean speaking as a registrant I don't know because we haven't had enough UDRPs for us to actually have a consistent policy internally.

I mean part of the reason I joined this working group was because the policy in my view was so very vague and ambiguous and it was so easy for ICANN compliance to find me in breach of the policy, I was kind of going well I don't have a massive legal team.

I'm not - I don't know these registrars who have the legal team, I don't want to end up in breach so that's why I'm trying to actually work out what the hell I'm meant to be doing.

But we have had issues, speaking to this thing about changing registrant contact details, not in the context of the UDRP we have had issues where we have been notified by somebody that their contact details will be used in the Whois on a domain name for which they have no knowledge.

Did not want their details there, so we would have informed our client the contact details were problematic let's just say. And we would have given them a reasonable period of time to rectify the Whois details.

However as far as I'm concerned if I'm in receipt of this kind of complaint there are two issues, one is with ICANN policy which is fine and dandy, the other part is with I would view as the law, in my case the Irish law, we could care less about US law.

So that would be you know impersonation of - it's a bit fraudulent so we would unilaterally change the details to be those of the account holder if they didn't act within a reasonable period of time.

I don't know if Kelly or one of the others can speak to the same thing.

Kelly Salter: Kelly Salter, registratee, yeah, we've had clients who put our name in the domain name and as soon as we've discovered it, yes, they do get contacted to say the date this information, because obviously we are not the legal registrant.

Or it will be changed.

Man: Actually speaking to this one we have the situation arise where we ended up about an inch away from being taken into court by not one but two separate parties.

Where a charming client of ours, I use the word charming because any other word would not look good in the transcript, had a domain name that was not in our accreditation, put our details in every single field in Whois.

And then proceeded to use the domain name to purportedly infringe the rights of a national television channel and the largest sporting organization in the country.

So we were being hit with stuff from both television company and the sporting organization and we had nothing to do with it, try to explain to them that no, this was not our domain name.

That's not the first time that's happened to us. Mike go ahead.

Mike Zupke: Mike Zupke again from ICANN staff and I'm starting to regret I didn't take you up on the invitation to sit at the table earlier.

Man: Well you're always welcome Mike, you know that.

Mike Zupke: Thank you, I appreciate that. The one thing that I just wanted to raise and I thought Margie was going to say this earlier and that's that when it comes to the Whois privacy and proxy services, this is a topic that's currently under discussion in the RAA, the registrar accreditation agreement negotiations.

And it happens that this is an area where it got pretty good agreement between staff and registrars about the fact that there should be some sort of uniformity and you know what we're calling it is an accreditation service for proxy services.

So that in order to be a proxy you have to become accredited by ICANN and then I think you know what I'm hearing from the UDRP providers is that you know you would probably start to see more consistency in that you know there will be a set of rules that they're have to follow about when you reveal underlying customer and that sort of thing.

You know that may be potentially out of scope for this working group or not, but the extent that you know thought goes into that I would encourage you to sort of gather those thoughts because assuming you know we get past the first hurdle of the agreement then we will get to the developing the program for the proxy accreditation service or that's offered by ICANN.

So want to include the rules that are really relevant to you know today's marketplace now that we're you know as you mentioned that when the UDRP was developed you know these services didn't exist.

So we've got the opportunity to catch up a little bit I think.

Man: Kelly?

Kelly Salter: Kelly Salter registratee, I'm aware of the privacy proxy is looking at being an accredited service which yes, solves a lot of problems. I am usually ICANN world though so you know it is this something that's going to take a couple of years to come into place?

Because we're in situation now where obviously we are all working to different rules and you know which is very dangerous. So it's just I have a question about timing, you know there is kind of a clash between the two working groups, kind of, if we're discussing when to reveal privacy proxy and there's an accreditation.

But you know which is going to come first?

Man: Okay thank you. Absolutely fantastic, some wonderful backwards and forwards and Kelly you are welcome to join this working group should you wish. Mike?

Mike Zupke: So I mean the short answer is I don't know. You know the longer answer is we really - I'm not even sure what form the development of the proxy accreditation program will take, whether it will be through GNSO or whether it will be staff or what exactly the consultation process will look like.

So I really don't know.

Man: Okay thank you. Let's pass this back over to our friend here from (unintelligible) who has a couple more slides, so if you could maybe do the shorter version or something.

Man: Okay I'll wrap it up quickly. Okay so I'll move through remainder pretty promptly. So we've got up to the now very well discussed question of what happens in a privacy or proxy registration so this case which we've spoken about.

After the relevant information has been obtained from the registrar the center either takes that information back to the complainant and then asks them to amend the complaint if it differs from the information that appeared in that file complaint.

Once it's been amended or if it was already correctly identifying the confirmed registrant, you notify the complaint to the respondent and we copy the registrar on that.

The respondent then has 20 days to reply, assuming the case doesn't settle, the panel is then appointed and a decision is notified.

And next, the decision will either order a transfer or much more rarely a cancellation if the complainant has been found to have established their case under the three elements of the UDRP.

Typically the registrar will then respond to that notification of decision that's forwarded by the provider, confirming the implementation date for that decision pursuant to paragraph 16A of the rules.

This doesn't happen in all cases. The general rule under the UDRP is that the registrar would then proceed to implement the decision in accordance with Paragraph 4K of the UDRP unless there has been documented evidence for say a court dispute considering the domain name in a relevant jurisdiction.



In the event of a denial, the UDRP doesn't prescribe what would happen then but what typically happens is that the domain name is unlocked, although there is of course an expressed prohibition under the UDRP on the registrar not transferring the domain name for a 15 day period after the UDRP proceeding has concluded which among other things might give an unsuccessful complainant who's case had been thrown out by a panel who told them to take it to court some days in which to do that.

And to still benefit from a residual lock for that purpose, so there's no side the flight between the two proceedings and what happens when it doesn't run smoothly, it is a long and tortured case that I won't torture you with going in to.

Many of the data without it but suffice it to say it ran as a pretty conventional dispute, maybe just accelerate through all the slides.

It involved 23 domain names but the lock confirmation came in from all three responsible registrars as it usually would. Things were going smoothly, the compliant was notified, the respondent defaulted.

The panel was appointed and then after the panel had been appointed it came to the center's attention that there had been modification to the WHOIS data.

And that modification took the form of a change in status of 21 of the disputed domain names to the redemption period which you can see reflected there on the slide.

So we went to the registrar and we asked them to confirm that the domain name as the registrar had previously indicated would remain locked in subject to the UDRP proceeding.

The response that we got from the registrar in that case you can see on the slide so this is not the response, this is the relevant provision in the ICANN expired domain and deletion policy that governs scenarios in which there is a request to delete a domain name during a pending UDRP proceeding under which the complainant would have the issue to elect to renew the domain name on the same commercial terms to enable the proceeding to go ahead.

We went back to the registrar and asked them to just give us some information about what might have happened in light of their earlier confirmation, this is the response that we got.

Thank you for your patience, my apologies for the delay, I would like to confirm that the legal counsel for the owner of these names and advise that the domain names be deleted prior to the UDRP process and we had proceeded with their request.

You know we went back to the registrar again, basically asking them again to confirm what might have happened in light of their earlier lock confirmation and in any event asking them to provide any instructions that we could convey to the complainant.

Ask for purposes of enabling the complainant to rely on their entitlement under the EDDP which is the response we got, thank you again for your email because the domains were deleted before the process began.

There will not be an ability to lock and hold the domains at this time, the complainant however will have the option to register the domains once the registry releases them.

Again please note that the domain names were deleted prior to the UDRP. We then noted at the center that the domain names had apparently changed to a pending, delete status.

The panel which was empanelled at this time then subsequently was wondering what had gone on and so the panel issued a administrative order to the registrar inviting the registrar to explain if it was able to what might have happened in view of the registrar's earlier confirmation of lock.

And the registrar replied indicating that an error had occurred and that it had taken action at the registry level and that the disputed domain names would be resorted which in fact they were on May 19.

The decision was subsequently rendered and as it turned out it was a transfer order and there were no subsequent issues, we respected the decision and implementation.

But it was a process that resulted in some significant delay in the UDRP process and some investment of time on the part of the parties and the provider and certainly the panel.

And doubtless the registrar and the registry as well. We never actually discovered what had happened beneath the surface in that scenario.

And nor did the panel record any decisions on the issue for those who are interested in reading the published result, you can find it on our website if you're interested.

I won't go through these other examples which I just included here, you can see they provide a flavor of some of the other sorts of scenarios that can come up where there's a misunderstanding about the way that they - a registrant prohibition on transfer operates.

So the first is simply an example of the registrar not responding to our requests and there were some problems that occurred that didn't exist in that case.

And didn't for the duration, fortunately it was a dispute in which they...

Man: Sorry, so there was no Whois data at all?

Man: Yeah there was no Whois data and fortunately the respondent, the registrant of the domain name was quite active and was able to supply us with the contact information that we needed in order to notify them of the dispute.

And so the matter went through to a resolution and the decision actually was implemented. But not on the basis of any publicly available Whois data.

The second one was a case in which the registrant unfortunately wasn't able to respond at all, you know despite some friendly reminders to the RBR and with predictable complications in that case.

Man: Just one second, when you have registrars who do not respond, do you raise this directly with ICANN compliance, or what do you do?

Man: Of course, usually we would send a reminder to the registrars that don't reply within 48 hours if they still don't reply after that, typically we would take the complaint to - if not a complaint we would advise ICANN compliance that there had been a problem with the registrar group for whatever reason had been unable to reply.

If we're not able to work with ICANN compliance to resolve that particular situation, and the delay would become a lengthy one typically we would attempt to go back again to the registrar, also keeping ICANN compliance advised that you know regrettably if we have sufficient information to notify and proceed with the commencement of the dispute we'll proceed on the basis of that information.

So it happens rarely fortunately, but it's a bit complicated obviously when it does. For those who are interested I've mentioned the WIPO overview

earlier, we also have a WIPO legal index of decisions which you can find all sorts of examples of similar types of situations.

Regrettably few but there are some out there and we've referenced that. We're running really out of time so I just want to quickly mention that we have not yet submitted our data in response to the provider survey but we will soon be doing that.

My colleague (Ty Grave) who heads our registrar liaison team at WIPO unfortunately couldn't be here, but he just emailed me hot off the press the results from the sample of (unintelligible) and he's obtained looked at to enable us to respond to the survey which we will certainly do directly.

But just to give you a flavor of some of those responses from the WIPO perspective we found that in less than and we looked at a sample of representative sample based on 2012 filings, we looked at all of our cases this year and we chose every tenth to maintain an element of randomness.

We think that gives a pretty good picture, we found in about 99% of cases the registrar was confirming lock in response to the provider verification request.

We found that about 6% did not confirm lock within five days of the request but all others did. In about 5% of cases the registrar confirmed lock at the domain name on receipt of the complaint from the complainant because the complainant copied the registrar at the time of filing.

There was no indication in any of the cases that we looked at that the registrar indicated that it would not lock the domain name until the proceedings had been formally commenced by sending up the complaint to the respondent.

At WIPO most of our cases are being - are subject to the registrar verification request being sent within 12 hours of the filing of the complaint. We had no

recorded instances in the sample group of cases of a registrant breach of paragraph 8B, i.e. a transfer to a different registrar during dependency of the UDRP proceeding.

We saw less than 1% incidence of our (unintelligible) on the paragraph 8A which is a registrar registrant's transferring to a different registrar during a UDRP pendency.

Man: So to a different registrar or to a different registrant?

Man: We had no instances in the set (unintelligible) we had about 1% in breach by the registrants transferring to a different registrant.

Man: Okay but hold on, previously you talked about people changing the Whois in order to remove proxy services and everything else, surely that's the same thing.

Man: Well it depends how you define it, if you would define it in those terms then yes, they have to figure that submitting would be about 25%.

Man: Thanks for the clarification.

Man: Yep. In about 7% of the cases that we sampled we saw an (indition) indication of some difficulties, whether from the complainant or the registrar perspective with respect to the implementation of the decision.

And in about 33% of those 7%, the difficulty appeared insofar as we were able to determine to relate to the registrar not unlocking the domain name timely on conclusion of the UDRP proceeding. So some information there.

Sorry that we haven't got it in written form so that people can consider it but of course we'll send it into the (snow band) I guess I'll go around as we discussed a bit earlier to everybody.

So thanks very much everybody for listening.

Man: Thank you. Marika.

Marika Konings: Yeah this is Marika, we're on the side of time, I just want to read for the record there was one question from Pam Little on the chat which I think related to our earlier discussion as just wanted to read it on the record and there's a quick response.

There's a question to the UDRP providers, what is the respondent commence court proceedings in a court other than the jurisdiction that the complainant has submitted in the complaint within the 10 business days period after the panel has rendered a decision in favor of the complainant?

Man: Well the short answer to that is that it's a mess at the registrar. I mean the UDRP expressly authorizes a registrar not to implement if the relevant requirements under 4K are not met.

And one of the requirements under 4K is that the court challenge would occur in a jurisdiction that the complainant has elected in its complaint and the complainant has the option to elect either the courts at the location or the respondent being the respondent's local courts presumably.

Or the courts of the principle ops of the registrar if the registrant has agreed to that in a registration agreement. So of course if a respondent in a UDRP proceeding would commence a court action in a different court, I mean it would be a matter of that court if it would be prepared to issue an order to the registrar.

And I guess it would be a matter for the registrar to determine you know what effect if any and what compliant steps would be appropriate for it in light of that court order.

Man: All right, thank you. I think we're out of time. Marika?

Marika Konings: Just a reminder if anyone if anyone is interested in joining this working group you know come and see me, give me your business card or you know talk to Glen, the GNSO secretariat and all you need is just sending in an email and you'll be added to the main list, everything you need to do is complete a statement of interest.

And then you're a member of the working group.

Man: Or ICANN staff which is scary for you grab one of the other working group members who promise that they won't bite, oh (Gabriella), you don't look happy, what's wrong?

Thank you for those of you who came along and asked us some interesting questions and got involved in some discussion. For the rest of you if you are interested in following the deliberations of this working group, it's really exciting and we do have public archives of the mailing list.

And if you want to get stuck in and join the working group there's an open invitation, please feel free, come join the party. Thanks everybody, please stop the recording.

END