TORONTO – Locking of a Domain Name Subject to UDRP Proceedings PDP WG Update
Thursday, October 18, 2012 – 09:00 to 10:30
ICANN - Toronto, Canada

MALE: The time is 9:10 AM and we're doing the Locking of a Domain Name
                                Session. You may begin.

MICHELE NEYLON: Good morning everybody. Welcome to the UDRP Lock Working Group.
                                I'm Michele Neylon the working group chair. Sitting beside me is Alan
                                Greenberg the co-chair. We're going to go around the room to see who
                                is here; we have members of the working group and hopefully people
                                who aren't members of the group are going to participate actively in
                                this wonderful session that we're holding at 9:00 AM local time here in
                                Toronto, the morning after our wonderful gala held by CIRA so we're a
                                little bit foggy this morning I think.

                                There are spaces up at the table if you would like to move up closer to
                                the table. We will not bite. The format of this session is to try and
                                make it a little bit interactive so what we have done is broken out our
                                charter questions a little bit into positions, points, matters of
                                contention, topics of contention, and various people within the working
                                group are going to defend these positions. It doesn't mean that they
                                agree with the positions or not but it is just to get some discussion
                                going. I'm just going to go around the room to do quick introductions
                                starting down my far right, Bentley? If you would just introduce
                                yourself quickly.

BENTLEY: I'm Bentley from Nordic Registrar, Registrar.

LUC SEUFER: I'm Luc Seufer from EuroDNS, Registrar.

JOHN BERRYHILL: John Berryhill, and in this capacity just independent attorney.

MICHELE NEYLON: You could say super-duper attorney if you want.

DAN HALLORAN: Dan Halloran, ICANN staff.

MIKE ZUPKE: Mike Zupke, ICANN staff.

ALAN GREENBERG: Alan Greenberg, At-Large Liaison to the GSNO.

MICHELE NEYLON: I'm Michele Neylon with Black Knight Registrar.

MARIKA KONINGS: Marika Konings, ICANN Staff. I'd like to mention as well that on the line we have the following working group members: Matt Schneller, Lori Anderson, and Randy Ferguson.

MARGIE MILAM: Margie Milam, ICANN Staff.

KRISTINE DOWANE: Kristine Dowane, National Arbitration Forum UDRT Provider.

CELIA LERMAN: Celia Lerman, (Inaudible) member of the BC.

VOLKER GREIMANN: Volker from Key Systems, Registrar.

PAM LITTLE: Pam Little, ICANN Staff from the Contractual Compliance Department.

JILL TITZER: Jill Titzer from GoDaddy.

MICHELE NEYLON: Okay thanks everyone, I see people standing around and sitting down in the back; you can move closer to the table; honestly there is plenty of space. We won't bite.

Could you please turn off the microphones on your computers as this is causing interference with the recording of the remote participation?

Is audio tech support in the room? Could you? There are problems with some of the mics up here.

[background conversation]

MICHELE NEYLON: Sorry about that, we seemed to have had an audio issue. We're moving on again. As I said in the introduction, various members of the working group will be defending certain positions; of course as previously stated, these might not be their own positions. They're the repositions they've been given or chosen.

So the first part of this is Topic A from our charter, when should the lock be applied? We're talking about UDRP here so the UDRP law quench of the lock would be applied. From Proposition A, is Matt here? Go ahead Matt.

MATT SCHNELLER: Okay great, since I'm going first I don't have to make sense to do a super quick background on what the lock is [and when it's declined]. Just in case there isn't a specific provision for locking a domain name pursuant to EDRP itself of in supplemental rules or other document. It's sort of arisen as a matter of practice out of Sections 8a and 8b of the UDRP which limits the ability of the domain name registry to transfer a

domain name while UDRP dispute is ongoing either to a registry or a registrar other than the registrar, this ends with the original registrar.

There are a couple of different issues that arise depending on when the lock is imposed. Imposing a lock is pretty much uniform at this point for almost all registrars at least according to the surveys that we've done and the anecdotal evidence.

If the lock is implied later on say at the notice of formal commencement of the proceeding.,, Actually let me take you a step back. In UDRP rules provide that a complete intermediary proceeding has to send typically by email a copy of the complaint is filed to the domain name owner, and at the same time it's provided to WIPO, the National Arbitration Forum or whatever other UDRP service provider the complainant is using.

The registrant therefore has noticed right off the bat, it may take one and a couple of days for the proceeding to be formally commenced by the UDRP service provider; it can take much longer than that, a week or more depending on how long it takes for the registrar to provide a verification of some of the registrant's details to the UDRP service provider.

In that period of time it's a fairly common problem and certainly not a huge percentage of disputes but a consistent problem that the registrant will either change some registrant information or will change a registrar prior to formal commencement to the proceeding and prior to imposition of the domain name block. It causes a couple of problems, first person to the complaint are referred to the registrant, it may not be accurate, why? Because the registrant's information may

have changed, the change of registrant may have an impact on the complaints ability to prove bad faith for instance if the previously named registrants prior to the lock? What's the subject of previous UDRP decisions or other domain names that are being used and registered in that space – that could impact substantive remedies of the complainant or the change of registrant may have an impact on the ability to complain as a group; multiple domain names in a single proceeding because they have a common owner.

After receipt of the complaint and prior to the lock the owner, the single domain registrant can change each of the individual domain name registration – "registrants" – to different names. It doesn't necessarily prevent them from going forward in a single EDRP proceeding that may require that the complainant amend a complaint and send an additional fee and really rack up some related costs.

Finally, change of a registrar prior to lock since the complainant has to submit to mutual jurisdiction and find the location of the registrant or the registrar may impact the jurisdiction for again "appeal" from a UDRP decision, a lawsuit. So there can be substantive jurisdictional impact as well. Because there's not a formal requirement to impose dominion lock, that's something that's involved in practice to help preserve the status quos as much as possible.

The way to best way to preserve that status quo is for a dominion lock be provided as soon as possible by the registrar, but prevent any changes to UDRP, the registrant information or to the registrar and preserve the status quo as nearly as possible as it was at the time at the filing of a complaint by the complainant. Reduce it as sort of

administrative headaches as much as possible for everyone involved with the proceeding across the board. In the interest in economy and keeping everything the way it was when the complaint was filed, the sooner that lock is imposed, and that's upon notification of the complaint, the better off and easier the process is for everyone involved. Sorry that was quite a ramble for this early in the morning.

MICHELE NEYLON: Thank you. Celia is going to give us slightly a different view on this.

CELIA LERMAN: So the proposition I will defend is that the registrars should apply the lock at the moment they use the UDRP provider so it meets their requests for verification. While the advantages of this is basically if this continues with the status quo, a survey is what most registrars are doing today; it ensures that it comes from a trusted source after the administrative compliance has been made ,the administrative review has been made. So the registrar can do is on a firm basis knowing that it's coming from a good complaint from the provider.

MICHELE NEYLON: And now we have Alan to give a complete different view which takes us somewhere else.

ALAN GREENBERG: Thank you Michele. As noted by the previous speakers; there are problems with the two previous options. If the registrars are supposed to do it as soon as they get notification, the registrar has to pay a lot of

attention to random emails coming in, which perhaps they should anyway, but nevertheless, they have to distinguish between a real proceeding and something that might not be. There's a delay associated with actually doing it.

There are some delays because of that process rather. If their wait for the UDRP provider than there might be a significant delay from the time the UDRP provider makes the request until they actually get around to doing it, as we'll see later, may involve a variety of different processes. I would claim that the more reasonable way to do it is as soon as the UDRP provider decides this is something that it must act on, that it utilize a request to the registry to put a lock on. Completely bypasses the registrar, the registrar no longer has to either decide if it's a UDRP that they need to respond to or if they have to take any action.

It reduces significantly the opportunity for cyber flakes, takes something off the registrars lists of responsibilities and presuming this is not done through a phone call or an email, but through some sort of EPP or equivalent link and there are very few dispute providers so outfitting them properly would not be very difficult. It's automatic, it happens instantaneously as soon as the UDRP provider decides that there is some action it has to take; it reduces all the times, reduces the workload. It's a slight change in the wording of the policy but it seems to address all the needs better than the other options. Thank you.

MICHELE NEYLON: Thank you Alan. Does anybody here have any questions? Any ranting or ravings? Go ahead Dan.

DAN HALLORAN: Thanks Michele, thanks Alan. Just so I can understand, we're talking about when it should be applied, like as the word rewriting the policy, we can make changes. We're not talking about best practices. Like which rules should be writing today necessarily?

MICHELE NEYLON: The entire thing here is to remove ambiguity because the way the policy is worded, it does not clearly state registrar shall do x when conditions a, b and c are met or exist. Registrar must do x within x number of days or hours or anything like that. From the working group, you can ask them, the registrars and the dispute providers may not agree with everything but they do all agree that there's a certain degree of ambiguity here. So this is what we're trying to thrash out.

One of the first questions we were dealing with was which notification from whom, what constitutes a valid notification as Matt and others will attest, the kinds of things people are worried about are cyber flight, etc. etc. etc. So this is where that's coming from.

DAN HALLORAN: Okay thanks, I just want to make clear that when I'm saying registrar should do this, I'm not giving an ICANN legal interpretation that the current rules require this or that. I'm just talking with you guys about what the rules could or should be if we were writing them today. Alan.

ALAN GREENBERG: For those not familiar with the PDP process it's within our scope to recommend consensus policy which assuming it's within certain specific areas of the registry or registrar agreements takes effect as soon as it's implemented. We also can recommend best practices and such. We're also limited to the scope given to us by the GNSO. Option C I talked about questioned whether it's within the scope or not. If we decided that that was something we directly wanted to go to, we might want to look carefully at the scope and perhaps go back to the GNSO for a change. That's a subject call and we now have an echo again.

DAN HALLORAN: My first note I think is on those A, B, and C if you're worried about cyber flight, none of them seem to directly address it because if you have the rule that the complainant immediately has to send a copy of the complaint straight to the registrant, then the registrants going to find out about it, probably before A, B, or C could happen. I think C would only work in a thick registry because otherwise, in a thin registry you lock it at the registry level but that wouldn't stop the registrar or the registrant from changing the registrant, the admin contact, the phone number, the email address, the whole WHOIS could be changed at the registrar level even though it's under registry lock.

ALAN GREENBERG: Physically yes. It is within our rights to put a lock on which we tell the registrar that they're not allowed to change and presume that they are to honor it.

DAN HALLORAN: I was just saying if you literally did what's in C, the registry puts the name on, it would be an EPP, server update prohibited, server transfer prohibited, that wouldn't stop the registrar from changing its own WHOIS record. The registry doesn't have any idea who the registrant is; it's up the registrar. If it's not locked at the registrar level, the registrar is free to make any changes. You'd have to add the C that said the registrar also has to.

MICHELE NEYLON: This is Michele just to follow up. As Dan points out, this wouldn't work out, there's no visibility technically on that.   But of course, if all registries were thick, and by thick we're talking about the difference between thick and thin; WHOIS is not referring to anything else with respect to registries just so we're clear. Kristine you had your hand up, oddly enough.

KRISTINE DOWANE: I know you're surprised. Just to sort of further maybe to debate Matt a little bit with respect to Proposition A, one advantage to having the provider request the lock is that the provider is sent every month a list of email addresses that the registrars have designated for abuse. We actually have access to those email addresses so we send the verification request to an email address that is sort of supposedly already being monitored by the registrar for UDRP abuse situations. It would make it much less likely that the email sent by the provider is going to end up in some spam or general info junk folder, which you know if you have just a complainant sending a complaint to the

registrar; it's possible that the registrar won't get it because it's just going to a general info email address.

MICHELE NEYLON: Thank you. John? No.

JOHN BERRYHILL: I was just going to say I realize that what this group has been looking at is how to apply the lock. Eventually locks have to come off, and the issue with getting the registry involved is that they don't get any communication at the other end of these things that, "Hey it's time to take the lock off," or whatever the outcome may have been. Sometimes it's very hard to get the registrars unlocked at the end when a respondent prevails because for some reason, some registrars don't anticipate the result that a respondent would prevail.

MICHELE NEYLON: Thank you John. Kristine go ahead.

KRISTINE DOWANE: We send an explicit email for a lock but then we also send the decision to the registrar. I don't know how WIPO does it but we don't specifically say that they can unlock after 15 days, we just sort of send the decision and then they figure out the unlock part. Every so often we do get a question from a registrar. In fact, unusually I've had three this month asking when they can unlock because of respondents prevails.

JOHN BERRYHILL: There is kind of a weirdness in rule four that says, or down in paragraph for of the EDRP where it says, "If the name is ordered transferred, we will wait ten days before implementing the decision." I think you've seen me sometimes educate registrars, that only applies when it's been transferred because sometimes they'll say, "We'll wait ten days," before implementing the decision when the respondent has prevailed and I wonder, "What is it you're waiting ten days to do to implement a decision that says to keep it where it is?"

In terms of thinking about when and who Is to apply the lock, we need to bear in mind that when the thing is eventually going to be unlocked for whatever reason, that whoever is applying the lock needs to get the communication on the other end if the registry doesn't get a decision, doesn't get any interim orders that's a poor place to be applying it.

MICHELE NEYLON: Okay thank you. Okay the next, oh sorry, go ahead John.

JOHN BERRYHILL: Thanks, just one more thing A, I think it applies to a, b, and c, and I'm sorry I'm not familiar with the paper, I got a quick look at it but just to note that hopefully all those things bring to mind the possibility of a malicious use of EDRP complaint where somebody in connection with the DDoS Attack or something, in all those cases, it looks like nobody is fully vetting the paperwork or making sure it's a legit complaint and that it's valid, there's some basis for the complaint and it's not from some Hotmail address with a made up thing because if you're going to start locking things, depending on what kind of lock is applied, it could

frustrate somebody if I do a UDRP on ICANN.org and all of a sudden I can't update my name servers and then I get with a DDoS Attack, that's a problem.

MICHELE NEYLON: Marika we're listening.

MARIKA KONINGS: Yeah this is Marika and maybe I can expand on the Proposition A because I think partly follows from one of the suggestions that has been made as part of the public comment forum by Intel, where they actually say it should be… I don't remember the exact title they gave it but it should be a verified request. So basically the complainant as part of its submission to the registrar needs to provide certain kinds of documents and if that includes a copy of the complaint they filed or the payment to the UDAP provider and I think some other elements to indeed provide that guarantee for the registrar that it's not a bogus complaint just to get the domain locked for some other reasons. I think that's the proposal Intel has put on the table for consideration to have a verified complaint so if those boxes are taken the registrar can say, "I have everything, lock." I think that was the proposal.

MICHELE NEYLON: Go ahead Kristine.

KRISTINE DOWANE: The thing about the complainant sending the complaint to the registrar and presumably then copying the provider so that the registrar would

realize that this was at least partially legitimate was the idea that a lot of registrars are not that sophisticated and don't employ a lawyer or anyone who would know what to look for to figure out if a complaint was legitimate.

When we get in a complaint, we don't do the full on rule for deficiency check yet, we're rule free, but we do a preliminary check. We make sure that there's complainant information, respondent information, and there's arguments. We do make sure that it's a legitimate looking complaint. We don't go through and make sure the I's are dotted and the t's are crossed but there are cases that get rejected outright before we even request a lock because it is not a legitimate complaint.

MICHELE NEYLON: Alan go ahead.

ALAN GREENBERG: I think if A would be an option that we would implement it formally and some registrars do this right now, that's their business, but if we were to require that I think part of the UDRP fee would have to go to the registrar because we're now asking them to not only take action but verify documents on some level. There's a cost to that whether they have to employ someone or someone simply takes time and responsibility because they're now taking some ownership to make sure they don't frivolously for themselves. The mechanism of the UDRP provider splitting the fee or a separate fee being submitted to the registrar, my mind just boggles.

MICHELE NEYLON: Before I go to vote, I'd just like to say yes. It's nice to hear Alan saying, "I like this idea, I can turn UDRP into something that earns revenue." Go ahead Volker.

VOLKER GREIMANN: Yes the way I see it, Proposition A is just an invitation to abuse the system because anybody could just send the registrar these documents not send them to the provider, maybe not pay the fee to the provider, UDRP would never start, the domain would remain in locked status, the registrar would have no way in knowing that the UDRP hasn't started. That's where the hang up is so Proposition A is problematic in my view.

MICHELE NEYLON: Thank you. Go ahead.

DAVID ROACHE TURNER: Thank you Michele, I think there's a lot of appeal in proposition B in large part because it reflects the reality as it presently exists for the most part in the majority of cases. Codifying an approach that is already in use I think has a lot of efficiency advantages in addition to the comments that have been made previously.

MICHELE NEYLON: Marika?

MARIKA KONINGS: I have a question because B doesn't address the issue of cyber flight. If you still have notification before verification, do we then solve the

issue? I think that some of you have raised that DDoS [is then changed] and the domain name has been transferred away or changed their name so how would you deal with that?

DAVID ROACHE TURNER: I think that's right, I don't think that addresses the issues of cyber flight that occurred between the filing of the complaint and the locking that's proposed under Option B and I think we need to accept as a consequence that proceeding with Proposition B that is going to happen in some cases. I think that only turns the spotlight on thinking about why to rectify those instances of cyber flight where they do occur because although they're not frequent, they are extremely problematic and we do need to continue out deliberations on how best we need to be addressing those.

There is an inter registrar transfer policy that I suppose potentially could be helpful in those circumstances but it's a completely separate procedure, it comes at a cost, it's not specially expedited so maybe if we could think about some way to prescribe a standing practice or policy that regulates dealing with those cases of cyber flight where they occur to give registrars the tools that they need. Simple and cost effective to address those instances where they occur would be useful for us.

MICHELE NEYLON: Marika then Alan.

MARIKA KONINGS: This is Marika with a comment from Lori Anderson. She says in our experience we only received one complaint that was not actually filed. We follow up with the provider and in a few days if we do not receive a verification request.

ALAN GREENBERG: The whole problem with cyber flight disappears if the rules were written differently and saying when a claim was filed it gets filed with the provider and it's up to the provider to notify the registrant. That's not something we've talked about but that would eliminate the concept of cyber flight because the registrant isn't notified until after the domain is locked effectively if the timing is done right.

DAVID ROACHE TURNER: I think that's an interesting suggestion and I think that there are some policies that are based on the UDRP where that particular practice applies. I think the Dot AU is a good example of that where the complainant files the complaint and if it's validated then it's notified in due course and the registrant received notice and if of course it's valid or withdrawn they never get bothered by it but that change is precisely effective; it minimizes the risk of cyber flight while also preserving a validated request to the registrar for lock so that could be worth thinking about.

MARIKA KONINGS: This is Marika, this is a comment from Matt. He said that's why Proposition A requires including a filing receipts from the provider. The registrar doesn't have to judge validity of the complaint, just that the

complainant has paid $1300 or whatever to kick off the process. If the complaint gets bound by the provider part of commencement we're only talking about a few days in which registrant and registrar transfers are prohibited. DNS changes etc. aren't prevented.

MICHELE NEYLON: Kristine?

KRISTINE DOWANE: I just wanted to add that while I'm in favor of not having the complainant serve the respondent, you know before the complainant is vetted and the domain name is locked; I'm suspicious that this is not within our charter to change other portions of the UDRP that are not related to the lock directly.

MICHELE NEYLON: Go ahead Celia.

CELIA LERMAN: One of my concerns is what happens, I believe that sometime we have to do the UDRP at least review, my fear is that what if we decide something now that then it's changed because we think today it's a bad rule that we notify the complainant, I'm sorry we notify the respondent before verification, what if that changes after we change the current statistic of the UDRP log and then the rules change. Will we have to rethink our views? Maybe we will have to, even if it's besides our charter we need to be thinking about those cases when if the rule is a

bad rule or a rule that has negative consequences, well if these may change let us keep it in mind for this decision we make now.

MICHELE NEYLON: Alan?

ALAN GREENBERG: I think part of our job, although it's certainly not written in the charter to identify things that we have found to be really problematic but are really out of scope because someday there will be an overall UDRP Review and we can pass it on. On the other hand, if something is not in our charter right now and an example is the kind of thing we are talking about, the notice doesn't go to the registrant until the provider has vetted it. It has the word lock in the sentence that we're talking out; it's something I would feel comfortable going to counsel and asking if they wanted to increase the scope to cover. Something that is unconnected with lock is certainly out of scope. We could go either way.

MICHELE NEYLON: John.

JOHN BERRYHILL: I wanted to agree with Mr. Roache Turner. As a practical matter many frequent filers of UDRP complaints have learned to just file it with the provider and actually not serve it on the respondent of the practical matter. Most of the ones I see, most disputes I see the notice to the registrant is what the provider's notification of commencement.

If we go to a recommendation that the registrar applied the lock when the UDRP provider makes some kind of communication to the registrar than that would be backwards compatible with a future role change that eliminated the requirement for the complainant to serve it on the registrant and the provider at the same time. That would seem to be the economical thing to do in view of perhaps a future recommendation to deal with the cyber flight problem that Mr. Roache Turner mentioned, if that makes any sense at all.

MICHELE NEYLON: Thanks John. I think we need to move onto our next section which is Topic B: What kind of lock should be applied? Exciting stuff. You too can get excited by EPP lock statuses! I'm sorry; I'll try my best to make this interesting. First up we have Mr. Alan Greenberg.

ALAN GREENBERG: I don't remember if I actually asked to be assigned this one, as Michele noted, we are not necessarily espousing on it although I do espouse the first one. This one is actually linked to the previous ones so maybe that's why it was assigned to me. It does indeed go hand in hand, that is if the registry is going to apply lock clearly it has to be a registry lock. However, this has merits even without going to Proposition C of the previous one in that it provides a level of consistency among registrars, at least for us for any given registry. It doesn't imply although it could that is a standard lock across all registries but even if that's not the case and it's registry unique, it's consistent among all registrars for that registry but I think that has value.

Although we encourage registrars to have business models which attract certain kinds of clients, the kind of lock that's applied and what they may or may not be able to do while a domain is locked during UDRP, does not sound like the kind of thing we want to encourage that a registrar focus on the business, you know encouraging clients who are subject to UDRP and they pick the best most favorable lock for what nasty things they plan to be doing. I just don't think it should be one of those competitive advantage types of things; it should be consistent so that everyone, a UDRP works the same regardless of which registrar you went through.

MICHELE NEYLON: Just to clarify so we're clear, we're now talking about the wonderful world of EPP, are you talking about that everybody would use the same lock or are you talking about introducing a new EPP status, a new type of lock?

ALAN GREENBERG: I'm not sufficiently expertise on these things to know whether there is an existing lock or a combination of locks that would match exactly what we need and moreover, one of the problems that we realized is currently different registrars use different mechanisms. Some use A lock, some use locks, some use simply transferring the domain to an internal account so it's not locked in any sense but it is no longer on your list of domains you manage so you can't get to it.

Currently, there are all different rules, registrars also have different rules for when it is in this locked status; what can you change and what you cannot change, it is not consistent. Right now I am sure there are some registrars who do things not necessarily to encourage naughty clients but they do things that are more attractive or less attractive or more meet the needs or not meet the needs of people who are subject to UDRP's for valid reasons. Again, I'm not a subject expert in this but the fact that things are radically different from one registrar to another implies a level of choice which I don't think is one of the consumer choices we should be offering.

MICHELE NEYLON: Dan, go ahead.

DAN HALLORAN: Thanks. I think somebody mentioned it earlier but I think when we use that work lock it's very fuzzy; there's no such thing as lock in EPP. Lock was a term in our EPP back twelve years ago and people still use it to this day thinking, "Well it's locked." If you tell a registrar to lock a domain, ten registrars might do ten different things.

I think this working group should, if Michele or someone could help and go back through, here's what the relevant EPP statuses are and here are the options if you want to have a new one. For this group particularly if you could come up in the end with recommendations on what exactly a registrar must, like they say in RFCs, capital M-U-S-T, a registrar must do this, a registrar may not do that specifically and precisely so that the

registrars could read it and interpret it in the same way would be very valuable.

MICHELE NEYLON: I'll just comment with my registrar as a registrar who does not have a massive legal team [as it's always been for us]. We don't get that many UDRPs; but as a disproportionately large headache because the way the policy is at the moment, I've actually gone to ICANN staff and they said, "Oh it's in the policy." Which didn't help me at all. I ended up having to get another registrar to say, "This is what we do." Which was great, it was helpful; but it's a bit ridiculous. Go ahead Alan.

ALAN GREENBERG: I think you've identified why we're here. The UDRP essentially implies the registrar needs to lock the domain, it's not a defined term; everyone has different understandings. Thus, they deemed it necessary to tell us to spend an awful a lot of time deciding what it meant. Not only is it not defining EPP, it's not defining in the UDRP; it doesn't even say the word lock if I remember right.

MICHELE NEYLON: It refers to the status quo. This is one of the things we've been struggling with.   We're going to Luke; Luke has to defend another position. Dan has something to say first.

DAN HALLORAN: I didn't want to leave that hanging about the not equating lock and status quo I think is an open question; I don't want to bring us off into

different directions but lock does not necessarily equal status quo. That section that's called, Meeting the Status Quo has particular instructions to the registrar, some of which are and aren't related to locking. I Just wanted to flag that.

MICHELE NEYLON: Go ahead Luke.

LUC SEUFER: I think Alan didn't like this here because there is no standard EPP lock for it but work across every registry. We need some leeway to adapt depending on our registrar model if we're resellers to include everybody in the group.

MICHELE NEYLON: Basically what Luke is saying is that it's up to the registrar to make the choice. We have a reaction. Kristine, go ahead.

KRISTINE DOWANE: I think just to further capitalize on what you're saying or to continue with what you're saying Michele is I know when we talked about it on the call that we talked about having a list of parameters within which the registrar would make a choice. We would say, this is the functional effect from maintaining this status quo or prohibition and transfer per rule H or policy program H to apply and then it's up to the registrar within certain parameters to make sure whatever they did had that same affect. I think that not just open-ended to the registrars but it was within these parameters that were set forth by this group.

MICHELE NEYLON: Thank you. Any other comments or feedback? Can we just say that we are not excited by different types of EPP locks? I'm shocked. If this was an ITF meeting they'd be all over this. Okay then.   Because we're getting great feedback; we're getting lots of engagement and I'm really happy to see so many people rushing to the microphones. Yes Volker.

VOLKER GREIMANN: As a registrar and dealing with other registrars and based on the observation that's been made before that every registrar has a different procedure of implementing the lock, I'm more convinced than ever that we should not determine the form of the lock; we should determine what the lock should actually do. If we lay out groundwork about what the lock is supposed to be preventing and what shows to be impossible with the lock, every registrar could keep up with its policies and does not have to rewrite or make major system changes and the same goal will be achieved.

MICHELE NEYLON: Thank you Volker. Go ahead.

DAVID ROACHE TURNER: David Roache Turner from WIPO. We don't have particularly strong views on this issue but it does make sense to us to preserve some registrar flexibility on this question. For us what matters is the effect and if the effect is confirmed and as long as there's no transfer for us there's no problem.

MICHELE NEYLON: Thank you. One of the topics we were going to encounter deals exactly
                         with this; around the changes which is Topic D. We'll try and come back
                         to C if we get a chance but since we're running short on time, John was
                         going to defend Proposition A and Topic D. Go ahead John.

JOHN BERRYHILL: The proposition I've been given is the lock should at a minimum prevent
                         a transfer of a domain name registration to another registrar or
                         registrant. Changes to registrant information resulting from lifting a
                         privacy proxy service should be allowed. It's a happy fun topic. There
                         are some dramatic differences in registrar polices on this point.

                         Some registrars will, as was mentioned previously, move the domain
                         name to an internal account and prevent any changes to information
                         such as name servers or technically information that results in
                         something other than maintaining the status quo. The lifting the
                         privacy proxy service, I think it is useful in circumstances where one is
                         dealing with a legitimate privacy or proxy service. I think it's useful to
                         get the underlying information at least on the record.

                         There's a difference in opinion among UDRP panelists on how to treat
                         the identity of the respondent in those situations but I can't see how
                         anyone would not want to know if it is a legitimate proxy service,
                         whether or not this underlying registrant is someone we've seen before
                         or may have had a dispute recently where it was the second time that a
                         UDRP had been filed against the same domain name and the first time
                         the dispute was back in 2006 and the respondent won. Since that time,

the respondent got kind of tired of being called a cyber squatter so they went with a privacy service and then boom, another one is filed. Having once been determined to have been a legitimate possession of the domain name of course he wanted to argue, "I'm the same person and I'm still in legitimately in possession of the domain name." It can work out both ways. You can find out the proxy registrant, the underlying registrant has a known reputation and profile one way or the other.

Whether the registrar changes that information, whether that effectively makes that party the respondent in the proceeding are two different questions because Mr. Roache Turner will say that it can change the mutual jurisdiction in those circumstances where the registrant turns out to be somewhere else other than the proxy service. I think that the complainant might take that into an account when they file it and say, "Well we'll make the mutual jurisdiction the registrar so that it can't change."

In any event, bottom line, in terms of whatever information can change there are also conflicting obligations, say registrant has 15 days' notice from a registrar to update their contact details and they have an obligation to maintain accurate contact details so someone may have moved and forgot to change their WHOIS information and the UDRP notification may be the first time they're reminded of the fact that "Oh, hey I never changed the address on that domain name and now I have 15 days to change that." That's a policy; that's not a WHOIS Accuracy Policy, it's not a better or bigger policy than the UDRP; they are simply two policies.

The requirements of them can conflict. I don't see how things like, let's use my correct address and not my ex-wife's address, is probably a good idea and I don't see how you wouldn't want to know the underlying domain registrant when that information is available.

MICHELE NEYLON: Thanks John. Reactions? Alan.

ALAN GREENBERG: I'm taking off my chair hat now and putting on my user representation representative hat. I have no problem with the dispute provider knowing who the underlying beneficial user of the domain name is and the files at ICANN for instance; if the next time a UDRP is filed against them it goes to a different dispute provider. I have a problem with the beneficial owner being revealed during the process if they end up winning.

Essentially you're saying proxy services have no value if the person who's curious has a few thousand dollars and you can file a frivolous complaint, the registrant wins hands down, and it goes on the public record for a while and there are services who trace the history of WHOIS so you can always find out for that three week period it showed the real owner and of course it goes onto the dispute provider's public record. I have a real problem with that.

MICHELE NEYLON: We have one remote question first if you don't mind. This question is from Steve Levy. If registrar changes are permitted during the lock, how

can we prevent changing language requirements, forum shopping for example, to registrars who file baseless appeals for losing respondents?

JOHN BERRYHILL: I thought both of them said registrar changes should not be allowed and that's actually very clear in paragraph 8 of the UDRP, it's clearer than the registrant change language. I can't see too many situations unless there was a registrar change that was already pending as has occurred in two or three instances that I'm aware of. The registrar changes are more clearly ruled out in paragraph 8 of the UDRP that are registrant changes.

MICHELE NEYLON: Dan go ahead.

DAN HALLORAN: Thank you. I think on both A and B and all the various elements in A, this thing just calls out for more precision and going field by field through like, should a registrar change be allowed? Should a registrant change be allowed? Shouldn't admin contact update the change; phone number, email address. What about name servers? Just go field by field rather than, A and B are pretty rough; there's questions in there whether is registrar or registrant changes. It's kind of hard to comment on air because there's a lot packed inside there.

MICHELE NEYLON: Thanks. We're trying to get clarification from the remote participant. Kristine go ahead.

KRISTINE DOWANE: I'm just going to mention that not only going through field by field as to what changes should be made, but also to think about when those changes should be made.

As far as the way the NAS practices are for lock, once we request verification from the registrar and the registrar come back and says the domain name is locked, here's the registrant; it's proxy service, it's not a proxy service; whoever it is; we serve them. If that registrant then needed to update their WHOIS information, or whatever, we're not going to go back through the WHOIS throughout the life of a dispute and keep checking to see if it's changed.

Once we serve the respondent, the respondent's still going to have to come back and say, "Hey by the way I moved, can you forward all my case information to this address?" We happily do that but we're not going to keep stalking WHOIS so if information is permitted to be changed, the lifting of the privacy proxy service, I think we also have to decide, in that sort of circles back to Topic C, but when can you make those changes and how much time was the window in which the registrar can lift that privacy proxy service? It can't happen ten days after the complaints been served.

MICHELE NEYLON: Dan?

DAN HALLORAN: So I guess we got a clarification that Steve was asking about. He was asking about registrar and that wasn't part of John's Proposition A; it states allow change of a registrar or registrant but you were saying, kind of advocating allowing change of registrant and not really allowing change of registrar which is how it's written there.

Alan's point about the proxy privacy; I see that the Proposition says it should be allowed, not that it would be required to overturn the privacy or proxy but just that it should be allowed. Maybe the registrar or the proxy service finds that the user violated the terms and they need to turn off or there's a court order and they need to turn off so   I   think that should be allowed as very different than must be or will be.

MICHELE NEYLON: Just for clarification, these were just trying to get a little bit of talking points on a bit of dialog so these are not anything that we voted on and (inaudible) our consensus-y thing. Marika then John.

MARIKA KONINGS: This is Marika. I think Steve proposed some clarifying language that were meant for these questions because he said some registrars are notorious for encouraging losing respondents to file basis of appeals in effort to gain leverage in negotiating a sale of the domain to the complainant. One other question I wanted to raise as well is I think as part of the comments filed we've seen as well the change of the registrar might be problematic as it would change a jurisdiction, if I understood rightly so that's not a consideration that might need to go into the discussion how that would factor in or at what point that can

still happen, the strange of registrar before that would affect the jurisdiction of the proceeding.

JOHN BERRYHILL: There was, I think both of them have been disaccredited now. There was one registrar in the state of Texas that was sort of a house registrar for a particular registrant, actually a particular registrant organization that would file just ridiculous lawsuits to stop transfers of UDRP. There was a registrar I believe that was in an Asian country that was actually selling this service of, we'll file a lawsuit in a country where the courts work very slowly. I think they have been disaccredited too. Regardless of what changes are and or are not fair or foul, I don't think the registrar should be changed.   Regardless of what changes should be made; I don't think there should be an opportunity to change what jurisdictions are competent.

I wanted to go back to Alan's point though; it was very interesting that what if the UDRP is just being used as a mechanism to reveal the underlying registrant on a basis of a frivolous claim. I think at some point we have to say, "Well, the value of privacy proxy service is what it is, it's not absolute." I did have a situation where the person bringing the complaint was a religious cult leader who was going after someone who had actually escaped from the cult and had a critical page and it was registered through a proxy registration. What we had done to help that party get set up was they registered it through one proxy provider and then took that registration and registered it through another proxy provider so that the proxy reveal showed a proxy provider underneath so there are ways of dealing with that.

On the other side of it is we have this New gTLD Program and part of the program is to do part of the background check of the New gTLD Program is to ensure that we aren't making TLD registries out of cyber squaders. There is a three strikes rule with respect to UDRPs and domain name litigation. There is this new interest that has arisen in connection with who these people are registering these domain names and ICANN has an interest in knowing whether or not any of the gTLD applicants have or have not had the threshold number of adverse final decisions.

MICHELE NEYLON: Thanks John. Dan.

DAN HALLORAN: This is Dan; I just wanted to thank John for ringing endorsement of ICANN complaints efforts and the fact that those two registrars you say were causing trouble are no longer accredited, I think that says something.

MICHELE NEYLON: David is going to defend a slightly different position.

DAVID ROACHE TURNER: I'd be happy to and in doing so I'm not suggesting that I necessarily support the proposition of course. I've been handed it like a can out of the pantry as tasty as it might be. I think some of the reasons why Proposition B could be attractive, we've already heard, the first is that I think it offers the possibility of preserving the privacy of any registrant

that would be using a privacy or proxy registration service in the public WHOIS. During the UDRP proceeding it wouldn't necessarily preclude the registrar from making available underlying registrant information directly to the provider that can then notify the complaint on the basis of the contact information that's provided and of course can make that information available to the complainant for any substantive modifications to the complaint that would be appropriate in light of that additional information.

It's a solution that I think has certain appeal because of its simplicity, it means the information in the public WHOIS obviously remains fixed for the duration of the proceeding. It also avoids any confusion I think with respect to the mutual jurisdiction issue which John did mention. The UDRP defines the mutual jurisdiction option as the location of the registrar or the registrant at the time of the filing of the complaint. Precluding modifications in the public WHOIS avoids any uncertainty about that question which is useful, potentially. I think that would pretty much sum it up from my perspective.

MICHELE NEYLON: Thank you. Any reactions? Even a frivolous reaction would be good. Dan, thank you.

DAN HALLORAN: I just wanted to flag again because this came up. This one if you literally prevent any changes that might have an effect on somebody who changed their name servers in response to a DDoS attack or other

changes so again, just the question to go through and literally feel that field and see if you really mean every field.

MICHELE NEYLON: We're going to take a remote question, sorry, I try to give a preference to the remote participants. From Matt Schneller, question for David. How would decisions be captioned and the registrant identified in the decision? Both the service and the underlying registrant or just the service?

DAVID ROACHE TURNER: At WIPO, at least, typically where a registrar would disclose an underlying registrant the decision would reflect both the service that provides the privacy or proxy registration services, and the registrant whose details had been disclosed by the registrar as the relevant registrant of the domain name under dispute. Typically in those cases, the issue of determining the appropriate identity of the respondent or respondents falls to the panel. The panel of course issues the decision so it's ultimately for the panel to determine what goes in the caption of their decision but that's typically what happens in response to that question.

MICHELE NEYLON: Thank you. Kristine.

KRISTINE DOWANE: I would like to answer the questions because ours is slightly different. We have defined the holder of the domain name for the purposes of the

caption as the entity in the WHOIS at the time of verification. If the verification, if the WHOIS privacy service gets lifted, so the WHOIS at the time of verification shows the underlying respondent, that's what we would put in the caption. If it doesn't get lifted we would only include the privacy service but then we would serve all of the information and provide the panel with the information of both the proxy service and the underlying registrant and then allow the panel to make that decision. We then have panels who will occasionally change the caption in the decision and then we have to change it in our system. Just a slight difference for how we would handle that.

Then for my comment in respect to Propositions A and B here, one thing to consider as well is, and David mentioned this a little bit, that you would definitely be creating efficiencies to go with Proposition B and sort of streamline the process. When you think about what happens if you are having a case with ten domain names; and all of those domain names are listed with a proxy service, and then we serve the proxy service that passes on the complaint to the underlying registrant, what if there are ten underlying registrants? We've had this situation, we will get ten responses back and they'll filter in over a period of time so we don't necessarily know how many responses are coming, or who is sending them.

UDRP complaints are supposed to be between a single complainant and a single respondent. While you could argue that the proxy service was the single respondent, in realty I'm now faced with ten responses. It creates a lot of administrative hassles if you don't lift the privacy proxy service when the registrar wants to do that. I thought I I would just

throw that out there as one of the administrative hassles that can exist if you were to go with Proposition B.

MICHELE NEYLON: Mike.

MIKE ZUPKE: This is Mike Zupke, ICANN Staff. One of the things that I want to understand just a little bit better here is the intent or sort of differentiation between A and B. Neither one of them as I understand it would require the privacy or proxy service to disclose right? This is allowing it to shoot its own terms of service, require that owner should an inevitable proxy accreditation program require that. Is that a correct understanding?

MICHELE NEYLON: Yes and no. What we were discussing is whether it's a case of the privacy service mandating the removal or leaving in the public WHOIS the privacy proxy data, but actually passing on the data to the dispute provider. I think at least one member of the working group or maybe it was the drafting team; my brain is a bit fried when it comes to when this happened exactly. It did raise some concerns around freedom of speech in this particular section. If you were to work on the basis that some people might want to file superior UDRPs just to cast out the underlying data then there are certain dangerous things that may or may not be big or small. Go ahead Marika.

MARIKA KONINGS: Of course it raises an interesting question because I think in this case if there would be a requirement to lift the privacy proxy service, we could only require that if the service is provided by the registrar. We don't have contacts at the moment with privacy proxy services; however, as they're looking at developing a program, maybe that's an element of discussion that would come up there and could still be a recommendation here if that is the direction the working group would take if that would be a requirement to say when you start looking at that, we recommend that this or that happens. I think at the moment I'm not really sure that we could require reveal as ICANN doesn't have contacts with privacy proxy services.

MICHELE NEYLON: I'm sure somebody here is going to have an apoplexy about the reveal requirement. Celia please.

CELIA LERMAN: Just for clarification from Kristine, the administrative workload would be in both cases right? Let's say you have one proxy service and then it turns out you have several different respondents, the administrative workload would be in both cases with Proposition A and Proposition B, correct?

KRISTINE DOWANE: Yes, there would an additional administrative workload but with Proposition A, we would have dealt with it up front at the deficiency check standpoint where we would have told the complainant they can only proceed against one respondent and that they need to kick some

of the people out of the complaint and only proceed against one respondent. We would have dealt with it sort of all in one little neat package up front rather than drawing it out through the whole process and making the panel to decide which respondent to go against and trying to sort through multiple layers of responses.

CELIA LERMAN: There might be a case where we need to have a balancing cost/benefit analysis and say "Well, do these cases happen a lot?" And maybe simplicity that David was pointing out that it's more beneficial for both cases than Proposition A for some cases. That is the question.

KRISTINE DOWANE: A lot. That's a really good question. Enough that they make us shudder but I would not say a lot, no. Maybe a few a year.

MICHELE NEYLON: Brian?

BRIAN: To the extent that the question was how many cases do we see in which privacy and proxy registrations services are involved, if that was the question?

CELIA LERMAN: The question was how many do you have where you have the same proxy service with different responses behind it?

DAVID ROACHE TURNER: Sorry, this is David. It doesn't happen frequently for us but I agree with Kristine that when it does happen it's very, very complicated. It's particularly complicated in cases where you have dozens or hundreds of domain names and the complaint is filed against a single privacy or proxy service and then you get a situation where you have a disclosure of dozens or hundreds of individual registrants. It's complicated. Typically what happens in those cases at WIPO where a complainant is unable to show that all of those areas of different disclosed underlying registrants are not in fact the same or related entities; then usually it's necessary procedure to split the complaint into a number of individual complaints to deal with, they should be individual disclosed registrants.

CELIA LERMAN: Do you think that would change the defense of Proposition B? That you may be forward that you can now have an impact or are you still going to stick to Proposition B?

DAVID ROACHE TURNER: I'm not saying I support Proposition B, to the extent that I'm defending it, I think that the main difference as I understand it between Proposition A and Proposition B is that in Proposition A we're talking about possibilities for modification to the public WHOIS whereas in Proposition B, we're talking about not allowing modifications to the public WHOIS but we are including the possibility of the registrar providing certain information to the provider about the underlying registrant. To the extent that I'm understanding is correct, I don't think

there is going to be a huge amount of difference from the perspective of the provider and the amount of time they have to put into the case because they're still going to have to deal with the consequences of one or more multiple underlying registrants, whether you define them formally in the public WHOIS or not is not going to affect the administrative implications of having that information.

MICHELE NEYLON: We've got about seven minutes left so I'm going to try to make a quick stab, so the lawyers in the room; that's most of you; if we can work on using short sentences and keeping to the point, not to offend or anything. Another question which quite a few people feel is key is removing locks from a domain name. All the providers get all happy and bounce around the place like a bunny and think about bunnies when things get locked quickly, but how about removing locks? Very quickly; Volker will give his thing.

VOLKER GREIMANN: Yes I've been asked to defend Proposition A, Topic E: Unlocking a Domain. In my opinion it's essential that a registrar may be able to remove a lock under certain circumstances. One of which is that the complainant and the respondent have reached a settlement and that just a current process these cases we usually receive comment from both, the respondent and the complainant that they wish for the removal of the lock. The provider is also involved and asked to suspend the proceedings. Once the proceedings have been suspended we allow a lock when we receive a confirming message from both parties.

MICHELE NEYLON: Thank you Volker; that was quite succinct for a lawyer. Well done. Reactions? You all love the idea? Kristine, thank you.

KRISTINE DOWANE: This is Kristine. My only reaction is that, and maybe this is just stating the obvious but in the group, just for the benefit for the people in the room, this has been kind of a significant discussion because there is with general locking process itself there is no standard procedure around what happens if the parties want to settle, stay and how that lock gets removed and how the parties get to do it.

Circling back to the notion that a lot of registrars don't have legal counsel or people to help them figure out if this is a legitimate document, I get a lot of questions from registrars saying, "What is this document, what am I allowed to do with it? Please help." The only thing that I wanted to add is this is sort of significant and I think its' going to be an interesting part of work product that we can come up with a sort of standard mechanism for how to do this.

MICHELE NEYLON: Volker.

VOLKER GREIMANN: Yes I agree that the circumstance under which this removal of the lock would work would have to be defined to make a common universal process out of this because as it is defined it's still quite similar to the, the registrar still gets to decide how to do it or has to decide on how to

implement this suspension. When I was first confronted with it I also had to think about that for a while and for me it's easy as a lawyer; other registrars might not have that. If we define circumstances under which a suspension and the removal of a lock would then work, that would be very helpful for a lot of registrars.

MICHELE NEYLON: Go ahead David.

DAVID ROACHE TURNER: I just want to second what Volker said. I think it's very important that we think about how we make provision for unlocking domain names in cases of settlement. We see at WIPO about 25%, a quarter of all UDRP cases settling before panel appointment so having a mechanism to deal with this pragmatically is important. I think there has been a mechanism that is fairly long standing, I think it was discussed with ICANN, Dan; many years ago back in 2001. I think that works well in many cases so building on that makes sense.

I think it's also worth touching again on the subject that we mentioned earlier that there is preclusion under Paragraph 8 on registrants transferring the domain name for 15 days after the UDRP Update Proceeding has concluded and run its course. Part of the reason for having that of course is to enable a party that would want to take the dispute through to a court proceeding, being able to do that without the consequences of cyber flight intervening in that procedure is also something to consider.

MICHELE NEYLON: Dan?

DAN HALLORAN: I agree, it's not spelled down in detail to UDRP and Marika showed me an email from 2003 where I said it made sense if the parties want to resolve the dispute, if it's a dispute resolution procedure, we should allow it to be implemented. In this one I encourage precision though and avoid the passive voice. I know this is not yet a policy but, "The lock may be lifted," I would translate to, "Registrar must implement a transfer if the provider says the parties have reached a settlement," or something like that.

MICHELE NEYLON: Okay, we have about two minutes left, I'm going to call this a day or morning or evening depending on which time zone you're in; thanks for everybody who came along, thank you to all who interacted, thanks for all of you not falling asleep, thanks for actually dragging yourselves down here this early in the morning.

KRISTINE DOWANE: Can I interrupt? There's one more comment in the chat from Lori Anderson if you want to hit that, or no?

MICHELE NEYLON: I think we're going to have to leave it; we really don't have enough time. Marika, if you could send it to the main mailing list that would be helpful. In terms of a little bit of housekeeping, the next working group meeting will be in two weeks' time on the 1st of November. In terms of

times, there's a bit of weirdness with time zone changes. Those of us living in Europe are happy bunnies. Some of the North Americans are going to be traumatized but I'm sure they will get over it. Thanks to all of you who participated, and if anybody has any questions or wants to give us more input, there have been and there will be public comments. Members of the working group are always happy to talk to you. We have business cards and some of us even have hats. Thank you, John. Thank you everybody, until the next meeting.

[End of Transcript]