

**Public Comment Review Tool – Locking of a Domain Name Subject to UDRP Proceedings – Initial Report**

Updated 1 July 2013 (FINAL) – For complete submissions, please see <http://forum.icann.org/lists/comments-locking-domain-name-15mar13/>

#	Comment	Who / Where	WG Response	Recommended Action
<b>General Comments</b>				
1.	FICPI appreciates the work done by the WG considering that there is currently no uniform approach relating to the locking of a domain name subject to UDRP Proceedings, thereby resulting in confusion and misunderstandings, and generally accepts and agrees with the conclusions and suggestions now presented by the WG.	FICPI / MarkMonitor	Noted.	<b>None</b>
2.	We have no objections to uniform procedures to be followed by registrars for domain locking as a consequence of a UDRP filing. Such standards will provide certainty to all affected parties in regard to what is already a widespread industry practice that is implicitly called for by current UDRP rules.	FICPI / MarkMonitor	Noted.	<b>None</b>
3.	While we believe that the meaning of “status quo” as well as the corresponding prohibition on transferring of a domain name during a pending UDRP proceeding should have been sufficiently clear for registrars and registrants, we recognize that some actors have exploited a historical imprecision in the UDRP and UDRP rules in an effort to frustrate the spirit of the UDRP. We therefore welcome and support the Preliminary Recommendations in this Initial Report, and appreciate the collective efforts of the Working	Com Laude	Noted, although the WG is of the view that it in most cases it does not concern ‘exploitation’ of the existing imprecision, but it is more likely the result of unawareness and/or inexperience with the UDRP.	<b>None</b>

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	Group.			
<b>Preliminary Recommendation #1</b> - In this context, the term “lock” means preventing any changes of registrar and registrant [without impairing the resolution of the domain name] <sup>1</sup> .				
4.	It should be clear that the “locking” of a disputed domain name means that any request for the transfer of this domain name is denied. The proposed clarification is therefore acceptable and clear. Further, FICPI has no objections to the proposed addition “...without impairing the resolution of the domain name”.	FICPI / MarkMonitor	Noted (see also comment #5).	<b>Remove the brackets in the definition and include ‘without impairing the resolution of the domain name solely on the basis of the UDRP’ as part of the definition.</b>
5.	We have no objections to establishing a standard definition of “lock” in relation to a domain subject to a UDRP proceeding (so long as the definition clarifies that a lock shall not impair a domain’s resolution or the ready ability to renew it) as well as uniform procedures to be followed by registrars for domain locking as a consequence of a UDRP filing. The filing of a UDRP is a mere allegation that a domain is infringing the complainant’s trademark rights, and until there is a substantive determination by the UDRP examiner affirming the allegation, there is no valid reason for impairing the domain’s resolution. In fact, such non-resolution would constitute exactly the same type of Internet censorship absent adequate due process that was at the heart of protests against	ICA	Based on the feedback received in comment #4 and #5, the WG agreed to remove the brackets. The WG did discuss that other breaches could still result in the impairment of the resolution of the domain name registration and this should not be prevented by this definition. As a result, the WG decided to add ‘solely on the basis of the UDRP’ to the definition to make clear that impairing the resolution of the domain name would not be allowed solely on the basis of the filing of a UDRP proceeding.	<b>Remove the brackets in the definition and include ‘without impairing the resolution of the domain name solely on the basis of the UDRP’ as part of the definition. Clarify that renewal is allowed as per the UDRP.</b>

<sup>1</sup> The WG is considering adding the bracketed language and would welcome community input on the proposed addition.

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	the proposed US. SOPA and PIPA legislation in 2012.			
<b>Preliminary Recommendation #2</b> - Modify the provision from the UDRP rules that specifies that upon submission of the complaint to the UDRP provider the complainant should also 'state that a copy of the complaint [...] has been sent or transmitted to the respondent' (section 3, b – xii) and recommend that, as a best practice, complainants need not inform respondents that a complaint has been filed to avoid cyberflight. The UDRP Provider will be responsible for informing the respondent once the proceedings have officially commenced.				
6.	This suggested modification is already working in practice in most ccTLD dispute resolution procedures and as noted, has been an efficient way to avoid cyberflight and secure a proper and safe administrative start of the case. FICPI welcomes and strongly supports this recommendation.	FICPI / MarkMonitor	Noted and agreed.	None
7.	We strongly object to the proposed deletion of the current UDRP requirement that the complainant shall provide the respondent domain registrant with a copy of the complaint at the same time it is submitted to the UDRP provider on the ostensible grounds that such deletion is required in order to prevent "cyberflight". As a practical matter this will substantially reduce the time, by up to one-third, that registrants/respondents have to prepare an effective defense against complainant allegations – as well as deprive less sophisticated registrants of critical time necessary to gain an understanding of the UDRP process and their rights within it, and to locate and secure competent counsel capable	ICA	UDRP Providers pointed out that even though cyberflight occurs in a limited number of cases (estimated 0,5 – 1 %), such cases do cause substantial headaches for UDRP providers, complainants as well as ICANN. Some WG members expressed agreement with the notion that the response period should be increased to accommodate the reduction of the 'informal' response period created by the notification of the respondent by the complainant at the time	<b>Update report by including the following recommendation: 'Participating UDRP Respondents be granted an express option to request a four day extension should they so choose, with any such received four day extension request to be automatically granted, and the corresponding deadline extended by the UDRP Provider, at no cost to the Respondent. The availability of such automatic four day extension option on request</b>

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	<p>of assisting in a defense. The Report lacks any validated documentation that cyberflight is sufficiently widespread to justify this fundamental degradation of registrants rights.</p> <p>Only if verifiable documentation exists demonstrating that cyberflight is a widespread abuse of sufficient negative impact to justify remedial response, we would alternatively propose that in order to address cyberflight concerns while minimizing any negative impact on registrant due process rights and their ability to mount an effective defense, the domain registrar be required to notify the registrant of the UDRP filing at the same time it confirms to the UDRP provider that the domain has been locked – and that the registrant be provided at that time with a full copy of the filed complaint, to be provided by the UDRP provider to the registrar at the time it transmits the verification request – in conjunction with an increase in UDRP response time to 24 days from the current 20 days, to restore the effective response time reduction that would result from this approach. This will assure that the registrant knows of the UDRP filing as well as its specific allegations no later than two business days after the registrar has received the verification request from the provider. If that approach is deemed impractical for any reason then, as an alternative,</p>		<p>of filing. Others suggested that the WG should consider removing the recommendation to eliminate the requirement for the complainant to notify the respondent at the time of filing and recommend that this issue be addressed as part of the overall review of the UDRP. It was also pointed out that in line with the supplemental rules of most (all?) UDRP Providers, respondents have the possibility to request an extension of up to 20 days (for a fee, in certain cases). Some suggested that alternative options to be considered could be requiring UDRP Providers to inform respondents of the possibility to request an extension or consider extending the initial response period and limiting the possible extension time. Following circulation of these options on the mailing list, the WG put the options out in the form of a survey in order to</p>	<p><b>should also be flagged by the UDRP Provider for the Respondent's information on commencement of the proceedings'.</b></p>

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	<p>we would propose that the time in which a registrant has to respond to formal notification of a UDRP filing by the Provider be increased by 10 days, to 30 days from the current 20.</p>		<p>obtain further input. Based on the results of the survey and further discussion, the WG agreed to add the following recommendation to the report: Participating UDRP Respondents be granted an express option to request a four day extension should they so choose, with any such received four day extension request to be automatically granted, and the corresponding deadline extended by the UDRP Provider, at no cost to the Respondent. The availability of such automatic four day extension option on request should also be flagged by the UDRP Provider for the Respondent's information on commencement of the proceedings.</p>	
8.	<p>Complainants already have an enormous amount of time to prepare for a UDRP in advance of filing, whereas respondents must deal with a time constraint that can become problematic in the event of illness or travel. I'd like to see my right to a fair hearing maintained rather than eroded. It</p>	Joseph Peterson	See comment #7.	See comment #7

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	seems to me that the proposed change would indeed erode domain owners rights to some degree. Please consider this a strong vote against the proposed change.			
<b>Preliminary Recommendation #3a</b> - Following receipt of the complaint, the UDRP Provider will, after performing a preliminary deficiency check <sup>2</sup> , send a verification request to the Registrar, including the request to prevent any changes of registrar & registrant for the domain name registration. The registrar is not allowed to notify the registrant of the pending proceeding until such moment that any changes of registrar and registrant have been prevented, but may do so once any changes of registrar and registrant have been prevented. In the case of accredited privacy / proxy providers <sup>3</sup> or a privacy / proxy provider affiliated with the registrar, the registrar may contact the accredited / affiliated privacy / proxy provider to allow for the reveal of the proxy customer data. However, such contact may only be established after an initial lock has been applied preventing any changes of registrar and registrant.				
9.	It is important that the UDRP provider promptly makes the initial formal request for registrar verification, and that the locking of a disputed domain name is done at least at the same time. FICPI therefore supports Recommendation #3a.	FICPI / MarkMonitor	Noted.	None
10.	We would propose, solely in the context of the disclosure of compelling cyberflight justification data, that the word “may do so” be changed to “shall do so immediately” and that this additional language be added at the end of this recommendation that reads: “and shall also transmit the full text of the UDRP complaint to the registrant, such complaint to be provided to the	ICA	With regard to the first part of the comment, the WG noted that it purposely put ‘may do so’ to not put additional burden on the registrar as per the UDRP it is the UDRP Provider’s responsibility no notify the respondent. It was also pointed	None

<sup>2</sup> This is an initial check the UDRP Provider performs to ensure it does not concern a bogus complaint. This check should not be confused with the administrative compliance check as described in the UDRP which is performed as per step 4 of this proposal.

<sup>3</sup> To apply to accredited privacy / proxy providers following finalization of the privacy / proxy accreditation program by ICANN.

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	<p>registrar by the UDRP Provider at the time it sends the verification request”. This modification would address any documented cyberflight problem of a substantial nature while minimizing the reduction in the registrant’s effective time period in which to secure competent counsel and prepare a response. We propose that the adoption of this approach be accompanied by an increase of the standard UDRP response time by 4 days, from 20 to 24, to offset the reduction and render a neutral result.</p>		<p>out that adding such a requirement would create additional liability for registrars in case notifications would not be received or claimed to have not been received. The second part of the comment has been addressed per comment #7.</p>	
<p><b>Preliminary Recommendation #3b</b> - Within 2 business days<sup>4</sup> at the latest following receipt of the verification request from the UDRP Provider, the Registrar will modify the status of the registration to prevent any changes of registrar and registrant. These changes must be prevented within 2 business days from the date of receipt of a request for verification through the remaining pendency of the UDRP Proceeding, except in case of the suspension of a UDRP proceeding (see recommendation #10). [.....]</p>				
11.	<p>As regards “business days”, although FICPI appreciates that the current reference to “calendar days” may well mean that a specific time limit ends on a holiday, the term “business days” is also not perfectly clear – depending on what is considered as a “business day” in the jurisdiction of each case. FICPI notes that the WG suggests that “business days” are defined as business days in the jurisdiction of the entity required to undertake the action. Although this may be acceptable, it also requires such entity to</p>	FICPI / MarkMonitor	<p>The WG noted that it did consider the issue of ‘business days’ vs. calendar days extensively and decided on the approach outlined in the Initial Report. The WG agrees that information on the yearly business days agenda by the different parties involved would be helpful and should be recommended as a best</p>	<p><b>Include best practice recommendation to post calendar of business days for UDRP Providers as well as registrars.</b></p>

<sup>4</sup> Business days are defined as business days in the jurisdiction of the entity required to undertake the action, in this case the registrar.

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	<p>inform clearly of the yearly business days agenda in its rules related to the dispute resolution procedure.</p> <p>The availability of accurate identity and contact information of domain name holders is essential for effective intellectual property rights enforcement. FICPI has urged, and continues to urge, ICANN, Registrars and others tasked with the registration of domain names to provide up-to-date and accurate identity (“Whois”) information to those having a legitimate need to obtain such information, especially those pursuing infringement of intellectual property rights.</p> <p>Further, Whois record modifications after filing but before commencement of action lead to unnecessary deficiencies and amendments in the context of the UDRP process. This is most often seen when third party privacy/proxies details are contained in the Whois.</p> <p>FICPI notes that in those instances, the current rules are unclear as to who is the correct respondent and what is the proper jurisdiction for such cases. Presently, requisite amendments of UDRP complaints based on incorrect Whois information cause delays and unnecessary extra</p>		practice.	



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	<p>costs for a complainant. It is therefore important that the registrant information not be changed or modified once the domain name is “locked”.</p> <p>FICPI welcomes the suggested clarification that the provider is under no obligation to require the complainant to amend its complaint, should a further privacy/proxy customer information be released after the lock is applied.</p>			
<p><b>Preliminary Recommendation #4</b> - The registrar must confirm to the UDRP Provider within 2 business day following receipt of the verification<sup>5</sup> request from the UDRP Provider that any changes of registrar and registrant have been prevented and will be prevented during the pendency of the proceeding and verifies the information requested by the UDRP Provider.</p>				
12.	FICPI supports this recommendation, which is considered another way to speed up the initial part of the process.	FICPI / MarkMonitor	Noted	None
<p><b>Preliminary Recommendation #5</b> - If deemed compliant, the UDRP Provider shall forward the complaint to the Registrar and Respondent and notify them of the commencement of the administrative proceeding no later than 3 business days<sup>6</sup> following receipt of the fees paid by the complainant.</p>				
13.	See FICPI’s comments on Preliminary Recommendation #3b above. It is important to clarify what are regarded as “business days” in each case, especially since UDRP is a global dispute resolution system.	FICPI / MarkMonitor	See response to comment #11.	<b>Include best practice recommendation to post calendar of business days for UDRP Providers as well as registrars.</b>

<sup>5</sup> The UDRP Provider will send a request to the registrar to verify amongst others that the named Respondent is the actual registrant of the domain name(s) in issue, language of the registration agreement as well as checking the Respondent's contact details.

<sup>6</sup> This change to the UDRP Rules (currently it says ‘calendar’ days) is recommended to ensure that this is in line with the 2 business day requirement to lock as otherwise there may be a situation whereby 2 business days are longer than 3 calendar days, not allowing the UDRP Provider to perform the administrative checks within the allocated timeframe.

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<b>Preliminary Recommendation #6</b> - If the complaint should remain non-compliant, or fees unpaid, after the period for the administrative deficiency check per UDRP Para 4 has passed, or if the complainant should voluntarily withdraw during that period, the UDRP Provider informs the Registrar that the proceeding is withdrawn. The Registrar shall, within one business day of the transmission of the notice of withdrawal, release the “lock”.				
14.	FICPI supports this Recommendation.	FICPI / MarkMonitor	Noted	None
<b>Preliminary Recommendation #7</b> - As part of its notification to the Registrant, the UDRP Provider informs the Registrant that any corrections to the Registrant’s contact information during the remaining pendency of the proceedings are also required to be communicated to the UDRP Provider as per UDRP rule 5(ii) and (iii).				
15.	FICPI supports this Recommendation.	FICPI / MarkMonitor	Noted	None
<b>Preliminary Recommendation #8</b> - This notification would also include information that any changes as a result of lifting of proxy / privacy services, following the ‘locking’, would need to be discussed / addressed by the UDRP Panel directly. The WG recommends that this issue is further reviewed as part of the privacy / proxy accreditation program.				
16.	It should be recalled here FICPI’s previous statement that proxy/privacy registrations are not, as such, an indication of bad faith registration and/or use. It is a recognized fact that there may well be legally, politically or personal reasons for not revealing to the public the full official and searchable Whois information. FICPI therefore supports further review of this issue, including the possible solution in cases where a need to keep information confidential has been demonstrated that the identity of the “underlying Registrant”/true holder details are only made know to the Registrar, to parties to the UDRP proceedings, as well as to the Panelist/s.	FICPI / MarkMonitor	Noted	None

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<p><b>Preliminary Recommendation #9</b> - Upon receipt and communication of a decision from the Provider, the Registrar must within 3 business days communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy (UDRP Rule 16 and UDRP Paragraphs 4(k) and Paragraph 8(a). If the Complainant has prevailed, the Registrar shall implement the Panel order immediately after 10 business days have elapsed (UDRP Paragraph 4(k)). The Complainant or its Authorized representative is required to provide the Registrar with the required information regarding implementation; this may include the information that should be in the Whois. If the Respondent has prevailed, the Registrar shall prohibit transfer of the domain name to another registrar or registrant for 15 business days from the date the decision is transmitted from the Provider (UDRP Paragraph 8).</p>				
17.	FICPI supports this Recommendation	FICPI / MarkMonitor	Noted	None
<p><b>Preliminary Recommendation #10</b> - In the case of suspension of a proceeding (when the parties have agreed to a settlement), the UDRP Provider informs the Registrar of the Suspension, including the expected duration of the suspension. Should both parties come to a settlement, which would involve a transfer, cancellation or agreement that the registration will remain with the Respondent, the registrar must remove any lock preventing a transfer or cancellation within 2 Business days of confirmation of the settlement by both Parties.</p>				
18.	FICPI welcomes this needed clarification. It is important to retain the ability to “unlock” a disputed domain name during the UDP proceedings in cases wherein parties agree to a transfer.	FICPI / MarkMonitor	Noted	None
<p>In relation to the settlement of a UDRP Proceeding, the Working Group has discussed the following two options to further clarify the steps involved. However, the Working Group has not come to a conclusion yet which of these two options, or a possible alternative, to recommend. As a result, the Working Group is requesting community input on these options, and suggestions for possible alternatives so that these can be reviewed as part of the discussions on the Final Report. The two options are:</p> <p><b>Option A:</b> - (1) parties ask for suspension, (2) parties settle, (3) parties inform provider, (4) provider issues order to registrar to change the holder details or delete the domain name (5) that change or deletion happens, (6) complainant confirms change or deletion is complete, and (7) provider dismisses case</p> <p><b>Option B</b> - (1) parties ask for suspension (suspension request includes automatic dismissal when the suspension period is up), (2) provider issues order allowing registrar to unlock for the sole purpose of (whatever the settlement is), (2) parties settle, (3) parties request the registrar to unlock (not to manage anything further, like terms, just unlock to allow transfer), and (4) provider dismisses case automatically with no further</p>				

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action needed (if settlement discussions break down, either party can request that the case be reinstated before automatic dismissal).				
19.	We prefer adoption of proposed Option B as both providing more specific guidance on the procedures relating to a settlement and more specifically addressing the subject of the IR – a domain lock.	ICA	The WG wondered whether as UDRP Providers already have certain rules in place to deal with settlement, whether either option A or B would require any changes to those rules.	<b>Update report and include revised version of option A in the report.</b>
20.	We propose consideration of something along the following lines: at any stage of a UDRP proceeding (i) the parties jointly notify the Provider and registrar of their wish for a 30-day suspension of the proceedings, (ii) if the parties need additional time to negotiate a settlement, they may jointly request one 30-day extension, (iii) if the parties are unable to agree on a settlement, the proceedings would recommence at their pre-suspension stage, (iv) If the parties reach an agreement, they would jointly inform the Provider and the registrar of he desired Whois changes, the domain name would be unlocked, and the proceedings dismissed without prejudice.	Com Laude	The WG noted that step iii would reverse the current process, as currently there is no automatic recommencement. Some noted that some registrars will move the domain name registration to a separate account, until the dismissal notice is received from the UDRP Provider. The WG agreed to conduct a survey amongst WG members to receive further input on the two options under consideration and/or possible alternatives. Following further review and discussion, several members of the WG felt strongly that UDRP Providers should be responsible for communicating the settlement agreement, possibly in the form	

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			of a standardized form to be completed by both parties, to the registrar for implementation. UDRP Providers did point out that currently they do not have any mechanism to force the registrar to implement such a decision. Based on this feedback, the WG decided to include a refined version of option A in the report.	
<b>Preliminary Recommendation #11</b> - ICANN, in collaboration with UDRP Providers, Registrars and other interested parties, will develop educational and informational materials that will assist in informing affected parties of these new requirements and recommended best practices following the adoption by the ICANN Board of these recommendations.				
21.	FICPI looks forward to seeing this educational and informational material, which should be useful to our members in their daily work of providing efficient assistance to clients in UDRP cases.	FICPI / MarkMonitor	Noted	None
22.	ICA agrees that such materials would be beneficial and believes that, in addition to input from all interested parties, that such materials should be subject to public comment prior to final adoption.	ICA	Noted	None
<b>Charter Question Charter Question 5 - Whether additional safeguards should be created for the protection of registrants in cases where the domain name is locked subject to a UDRP proceeding</b>				
23.	In regard to additional protections for registrants, we favor adoption of a specific prohibition against unilateral registrar movement of a domain name	ICA	The WG pointed out that registrars may have valid reasons for moving a domain	<b>Check report to make sure that it clarifies that legitimate changes / updates to the</b>

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	to a new account that deprives the registrant of control over his domain name registration until such time as the UDRP provider renders final judgment (assuming absence of subsequent appeal to a court of competent jurisdiction) or the case is settled or withdrawn.		name registration to a separate account to avoid unauthorized changes to a domain name registration, for example if there would be a violation of other terms of the agreement. Also, any such prohibition would require changes to the registrar – registrant agreement, which the WG does not consider to be within its remit. The WG does note that a registrant should not be prohibited from making any updates to their domain name registration that are legitimate, even if such changes need to be done via the registrar.	<b>domain name registration should not be prevented by the registrar.</b>
<b>Other comments</b>				
24.	ICA continues to believe that UDRP reform of at least a procedural nature should be initiated in the near term with a primary focus on establishing a standard enforceable contract between ICANN and all accredited UDRP providers.	ICA	Noted, but the WG does not consider this within scope of its charter.	<b>None</b>
25.	Some ICA members have reported that a registrar “lock”, whether imposed in response to a UDRP or for other purposes, has impaired ready renewal of a domain approaching expiration. We therefore urge that the Final Report also contain responsive	ICA	See comment #5	<b>See comment #5</b>

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	language making clear that domain renewal should not be impaired by a registrar lock.			
26.	The recommendations should be clarified to indicate what should happen with the lock in case a court proceeding has been initiated while the UDRP case is still ongoing.		(From Beijing workshop) If we would make a modification to recommendation #10 and to option B for example, that the registrar must remove the lock within two business days for purposes of the UDRP dispute unless the disputed domain name is otherwise the subject of a court proceeding that has been commenced concerning that disputed domain name.	<b>Update recommendation #10 to note that the registrar must remove the lock within two business days for purposes of the UDRP dispute unless the disputed domain name is otherwise the subject of a court proceeding that has been commenced concerning that disputed domain name.</b>