

Report of Public Comments

Title:	Locking of a Domain Name Subject to UDRP Proceedings – Revised UDRP Rules		
Publication Date:	29 August 2014		
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Section I: General Overview and Next Steps			
<p>Currently there is no requirement to lock names in the period between filing a UDRP complaint and the commencement of UDRP proceedings and no definition of “status quo”, which has resulted in different interpretations and confusion of the UDRP. To address this issue, the GNSO Council decided to initiate a Policy Development Process on 15 December 2011. As part of its deliberations, the WG was required to consider the following questions:</p> <ol style="list-style-type: none"> 1. Whether the creation of an outline of a proposed procedure, which a complainant must follow in order for a registrar to place a domain name on registrar lock, would be desirable. 2. Whether the creation of an outline of the steps of the process that a registrar can reasonably expect to take place during a UDRP dispute would be desirable. 3. Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized. 4a. Whether what constitutes a "locked" domain name should be defined. 4b. Whether, once a domain name is “locked” pursuant to a UDRP proceeding, the registrant information for that domain name may be changed or modified. 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. <p>The Working Group published its Initial Report for public comment on 15 March 2013 (see http://www.icann.org/en/news/public-comment/locking-domain-name-15mar13-en.htm), followed by its Final Report (see Locking of a Domain Name Subject to UDRP Proceedings PDP Final Report) on 5 July 2013. The GNSO unanimously approved the recommendations at its meeting on 1 August 2013 followed by the ICANN Board on 28 September 2013. An Implementation Review Team (“IRT”) was formed, and ICANN staff, together with the Implementation Review Team, modified the UDRP Rules</p>			

to incorporate the recommendations. The modified UDRP Rules were posted for public comment.

ICANN staff, with the support of the IRT has reviewed the submitted comments and, where appropriate, will incorporate suggested modifications into the UDRP Rules. Once finalized, the Policy will be implemented and made effective for all gTLD registrars and UDRP Providers.

Section II: Contributors

At the time this report was prepared, a total of four (4) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Intellectual Property Constituency	Petter Rindforth	IPC
FICPI	Alexandra Louage	FICPI
Microsoft	Tara Knapp	MIC
Marques Association	Caroline Perriard	MAR

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

A majority of the submitted comments relate to Paragraph 4(b) of the modified UDRP Rules. IPC, FICPI, MIC and MAR all noted that the reference to “days” is inconsistent throughout the UDRP Rules. IPC and FICPI recommended modifying all references to “days” in the UDRP Rules to “calendar days” for the sake of consistency and to avoid confusion with the term “business days”.

IPC also recommended that the definition of “Lock” in Paragraph 1 be modified to prevent changes to any contacts in the Whois record. The IPC also recommended modifying the definition of “Pendency” to include the language “upon publication of a decision dismissing the Complaint.”

IPC also recommended that the Rules be modified to specify when a UDRP Provider is required to submit a verification request to the registrar and recommended the time period should be codified to “one calendar day”.

IPC, MIC and MAR recommended that Paragraph 4(b) be modified to prohibit registrars from disclosing the complaint to third parties in addition to the respondent.

IPC and FICPI noted that the extension in Paragraph 5(b) concerning an automatic extension of time

for a Respondent to respond to a complaint would make the UDRP less efficient and is unnecessary. They recommended that this extension be deleted from the modified Rules. IPC and MIC also noted that the extension in Paragraph 5(b) is ambiguous because it refers to “days”. Both groups suggested that the extension in Paragraph 5(b) be changed to “calendar days”.

IPC and MAR recommended that Paragraph 16(a) be modified to include a timing requirement in which UDRP providers must publish the decision. IPC also recommended that UDRP providers be required to maintain publication of a decision perpetually.

IPC requested that Paragraph 17(a)(iii), which addresses some of the steps required if the parties agree on a settlement, be clarified to include: “If the Parties reach a settlement, they shall inform the Provider in writing as required by the Provider’s supplemental rules, if applicable.”

Finally, MIC requested that Paragraph 17(a)(iii) be modified as follows: “The Parties reach a settlement and provide a standard settlement form to the Provider further to the Provider's supplemental rules and settlement form. The standard settlement form is not intended to be an agreement itself, but only to summarize the essential terms of the Parties' separate settlement agreement. The Provider shall not disclose the completed standard settlement form to any third party.”

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The Implementation Review Team (IRT), that was formed by the GNSO Council to evaluate the proposed implementation of the policy recommendations as approved by the Board and which worked with ICANN staff to ensure that the resultant implementation fulfills the intentions of the approved policy recommendations, assisted staff in reviewing the comments received. The IRT noted that the PDP WG discussed the use of business days vs. calendar days at length and specifically included the term business days in its recommendation to prevent contracted parties and UDRP providers from having to work on weekends and holidays. The IRT also noted that the PDP WG also purposely chose not to modify the reference to “days” throughout the UDRP Rules because it believed it was outside the scope of its charter. Accordingly, the IRT recommended that the modified UDRP Rules remain unchanged in reference to this suggested change in Rule 4(b).

Regarding the definition of “Lock”, the IRT noted that the PDP WG discussed this and agreed that a registered name holder should be permitted to modify certain information such as, its billing contact during the course of a UDRP Proceeding. Accordingly, the IRT recommended leaving the definition of “Lock” unchanged. Regarding the definition of “Pendency”, the IRT noted that the implementation of a decision could include various actions performed by a registrar, e.g., transferring a domain, removing a lock, deleting a domain, etc. Accordingly, the IRT deemed the added language as unnecessary.

The IRT discussed IPC's recommendation to require providers to submit a request for registrar verification within one business day. The IRT noted that providers generally have a practice of submitting verification requests on the day they receive the complaint, provided the complaint is received on a working day. Adding "one calendar day" to this requirement would require UDRP Providers to work during weekends and holidays and is therefore not recommended by the IRT.

The IRT noted that the PDP WG discussed the text of Paragraph 4(b) regarding notification to third parties, and it decided that adding this language would prevent a privacy or proxy service from being lifted before the lock is applied. For that reason, the IRT was opposed to making any change to this recommendation based on the comment from IPC, MIC and MAR.

The IRT noted that the extension in Paragraph 5(b), opposed by IPC and FIPCI, was the product of community discussion and specifically included because of feedback from the community. Accordingly, the IRT is opposed to removing this extension. The IRT, however, agreed that "days" should be modified to "calendar days" to avoid any ambiguity. The UDRP Rules will therefore be modified to incorporate this comment.

The IRT believed the comments regarding how long a UDRP Provider has to publish a decision and for how long the decision should be remain published were outside the scope of the WG's charter and should be reserved for the review of the UDRP in 2015.

The IRT was unsure of the intent of the IPC's comment regarding Paragraph 17(a)(iii), and as a result did not recommend a change to the Rules.

Lastly, the IRT believed that the comment from MIC to include the specified language in Paragraph 17(a)(iii) codifies a practice that UDRP providers are already engaged in; however, the IRT added the language for the avoidance of doubt. The UDRP Rules have been modified to include the suggested language.