

Report of Public Comments

Title:	Locking of a Domain Name Subject to UDRP Proceedings		
Publication Date:	1 October 2012		
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Section I: General Overview and Next Steps			
<p>As noted in the Issue Report on the state of the Uniform Dispute Resolution Policy, there currently is no requirement to lock a domain name in the period between the filing of a complaint and the commencement of proceedings. In addition, it is unclear what is meant with 'status quo' as used in the UDRP (see http://www.icann.org/en/help/dndr/udrp/policy). As a result, the GNSO Council decided to initiate a Policy Development Process on the requirement to lock a domain name subject to UDRP proceedings. The WG Charter recommends that the Working Group as a first step, request public input on this issue in order to have a clear understanding of the exact nature and scope of issues encountered with the locking of a domain name subject to UDRP Proceedings. This public comment forum is one of the mechanisms that the Working Group has used to obtain such input. The Working Group welcomed any information, comments and/or suggestions that were deemed helpful to get a better understanding of the exact nature and scope of issues encountered with the locking of a domain name subject to UDRP Proceedings. In addition, the WG requested input on the following charter questions that the WG is expected to address:</p>			
<ul style="list-style-type: none">• 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. [<i>Note from the WG: only the UDRP Provider can notify a Registrar that a complaint has been officially filed and in the vast majority of cases, Registrars will only implement a lock based on the request by the UDRP Provider</i>]• 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.• Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized.• Whether what constitutes a "locked" domain name should be defined.• Whether, once a domain name is 'locked' pursuant to a UDRP proceeding, the registrant information for that domain name may be changed or modified.• 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 WG will review the comments received and consider these as appropriate as part of its deliberations on the charter questions and development of the Initial Report.</p>			

Section II: Contributors

At the time this report was prepared, a total of six (6) 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
International Federation of Intellectual Property Attorneys	Julian Crump	FICPI
InterContinental Hotel Group	Carolyn Gorwitz Dinberg	IHG
Internet Committee of the International Trademark Association	Kathryne Badura	INTA
eInstitute – Instituto Latinoamericano de Comercio Electronico	Marcos Pueyrredon	EI
GoDaddy.com	Laurie Anderson	GD

Individuals:

Name	Affiliation (if provided)	Initials
William Clarke	Clarke Jeffers Solicitors	WC

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).*

Both IHG, INTA and GD highlight some of the issues encountered with the current inconsistencies in locking practices and changes to registrant data as a result such as: cyber-flight (also known as 'registrar hopping'); the actual complaint no longer being accurate; affecting the possibilities of grouping complaints or proving bad faith if the registrant suddenly changes; a change of registrar may impact the jurisdiction for appeals, and point out that these may result in additional costs as well as delay.

In addition, the following feedback was provided in response to the charter questions.

Charter Question 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.

FICPI notes that 'there are existing and well functional UDRP procedures and instructions on how the Complainant shall prepare and file a formally accepted UDRP case application' and therefore they see no need to develop a new procedure. WC and INTA suggest that the WG may want to explore specific requirements, which a complainant needs to meet when he/she submits their complaint to the registrar in order to require the registrar to lock the domain name upon notification of a UDRP proceeding. INTA proposes that this could take the form of a 'notice with assurances' which would be sent at the same time to the registrant, the

provider and the registrar containing a copy of the complaint, including annexes and proof of payment of the provider's UDRP fees. WC proposes that in addition to the complaint, the registrants and UDRP provider receipt of the claim should also be included in the submission to the registrar. IHG expresses the hope that once the exact details are worked out by the WG, 'the specific conditions for the "locking" procedure [will] be contained in the UDRP Provider communications'.

Charter Question 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

FICPI, EI and GD all support the creation of such an outline with GD noting that 'in this way, registrars can effectively know what to expect, and what actions to take'.

Charter Question 3 - Whether the time frame by which a registrar must lock a domain after a UDRP has been filed should be standardized

WC, FICPI, IHG, GD and INTA all agree that there should be a specific timeframe within which a domain name subject to UDRP proceedings should be locked. WC is of the view that this should happen within 48 hours after the registrar is provided with the complaint and registrant and UDRP provider receipt of the complaint. FICPI suggests that locking should happen immediately following the request for registrar verification, which should be promptly made by the UDRP provider. IHG is of the view that locking should happen 'whenever a registrar is first notified that a complaint has been filed, whether by a Complainant, a UDRP service provider or otherwise'. INTA proposes that a domain name should be locked within 24 hours of receiving a 'notice with assurances'.

Charter Question 4a - Whether what constitutes a "locked" domain name should be defined.

WC, FICPI, INTA and EI all agree that a definition of what constitutes a lock would be helpful. WC is of the view that such a definition should make clear that 'no movement of the domain name can take place by any party', in addition to being able to take the domain off-line for a specific time period. FICPI notes that such a definition should make clear that 'any requests for transfer of this domain name are denied'. INTA is also of the view that the lock should be standardized and at a minimum it should prevent the transfer, deletion and modification of registrant information.

Charter Question 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.

FICPI, INTA and IHG highlight the issues encountered when registrant information is changed following the commencement of a UDRP proceeding (see also above) and therefore recommend that no changes are made to the registrant information once the domain name is locked. Both FICPI and INTA are of the view that this should also apply in cases where a proxy / privacy services is involved. In such cases, FICPI recommends that the registrar provides the information of the 'underlying registrant' at the time of locking to the UDRP Provider and INTA notes that preventing any changes would 'encourage trademark owners to contact the proxy service with reasonable evidence of actionable harm [...] and would encourage proxy services to act upon such complaints by revealing the beneficial owner's information'. EI also agrees that this issue should be clarified.

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.

FICPI notes that this should be 'further studied and considered' but suggest that a possible approach would be

to balance the need for accurate Whois information with the right to privacy by making ‘the identify of the “underlying registrant” /true holder details known only to the Registrar, parties of the UDRP proceeding, as well as the Panelist/s’.

Additional Issues

In addition to specific comments on the charter questions, FICPI also raises the issue of ‘unlocking’ during a UDRP proceeding and expresses the view that this should be possible in cases where both parties come to a mutual agreement to transfer the domain name registration.

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 Locking of a Domain Name subject to UDRP Proceedings Working Group is responsible for analyzing and evaluating the comments received. Its review of the comments should be available in due time on the Working Group’s workspace (see <https://community.icann.org/display/udrpproceedings/Home>).