ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 21 April 2015 at 1400 UTC

Note: The following is the output of transcribing from an audio recording of Privacy and Proxy Services Accreditation Issues PDP WG call on the Tuesday 21 April 2015 at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
The audio is also available at: http://audio.icann.org/gnso/gnso-ppsa-21apr15-en.mp3

Attendees:
Frank Michlick – Individual
Val Sherman – IPC
Griffin Barnett – IPC
Kathy Kleiman – NCSG
Darcy Southwell – RrSG
Steve Metalitz - IPC
Graeme Bunton – RrSG
Jim Bikoff - IPC
Alex Deacon –IPC
Stephanie Perrin – NCSG
Phil Corwin – BC
David Hughes – IPC
Terri Stumme – BC
Holly Raiche – ALAC
Susan Kawaguchi – BC
Chris Pelling – RrSG
Luc Seufer – RrSG
Osvaldo Novoa - ISPCP
Roger Carney – RrSG
James Bladel – RrSG
Sarah Wyld – RrSG
Carlton Samuels – ALAC
Todd Williams – IPC
James Gannon – NCUC
David Heasley – IPC
Paul McGrady – IPC
Tatiana Khramtsova – RrSG
Vicky Sheckler – IPC

David Cake – NCSG

Apologies :
Don Blumenthal – RySG
Michele Neylon – RrSG
Kiran Malancharuvil – IPC
Lindsay Hamilton-Reid - RrSG

ICANN staff:
Mary Wong
Amy Bivins
Terri Agnew

Coordinator: Good morning, good afternoon. Please go ahead. This call is now being recorded.

Terri Agnew: Thank you, (Francesca). Good morning, good afternoon and good evening. This is the PPSAI Working Group call on the 21st of April, 2015. On the call today we have Graeme Bunton, Holly Raiche, Osvaldo Novoa, James Bladel, Steve Metalitz, James Gannon, Frank Michlick, Roger Carney, Val Sherman, Sarah Wyld, Darcy Southwell, Susan Kawaguchi, Kathy Kleiman, Alex Deacon, Stephanie Perrin, Todd Williams, Terri Stumme, Jim Bikoff and Griffin Barnett.

I show apologies from Don Blumenthal, Vicky Sheckler, Michele Neylon and Kiran Malancharuvil. From staff we have Mary Wong, Amy Bivins and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, Graeme.

Graeme Bunton: Thank you very much. This is Graeme for the transcript. And I'll be helming this ship for today. Thanks everyone for joining. I see David Heasley is on the audio bridge. If there's anyone else on audio only and can't use the Adobe

Connect as per usual just find a place to interject and I'll make sure to add you to the queue. That applies to you, Philip Corwin. And welcome.

Okay so on the screen in front of those in Adobe Connect, and not for those on the phone, we have our work plan. I'm going to reemphasize this briefly because we don't have a lot of time between now and when we want to get the initial report out. And so it's good to make sure that everybody is still on task for that.

So we have today's meeting. It's the 21st of April. We are going to, today, work on 3C 2 and 3 from the disclosure framework and then hopefully get to some of the hanging questions from the entire report.

I want to highlight to you that we're hoping to get a final version of the initial report out by the 24th which is in only three days to finalize that on next week's call which would be the 28th. And we have a deadline of the 30th for any additional statements or minority positions, things like that, to include with the publication of the initial report so it's not a lot of time between now and then and it's only six days between the circulation of the proposed final version and when we're asking for - sorry, it's only two days between - no, six days between the initial report and the deadline for additional statements.

So again I'd encourage you all to - if you would like to put something else out there to go along with this publication that you begin working on that now so we can have that - all of that ready to go.

Great. So any questions on that how long do we have to submit public comments? I believe it's the usual 40 day comment period says Kathy. Mary might correct me if I'm wrong. I see Mary's hand, Mary please.

Mary Wong: Thanks, Graeme. And, no, you're not wrong it's 40 days. So I just wanted to point out too that if you look at this plan if we do submit and publish on 4 May we will close the public comment period on the 13th which is about a week

before the Buenos Aires meeting and that's one reason why we have this timetable given where we are because if we don't make that we will bump up right against the Buenos Aires meeting and if we go into that then chances are we will have to extend the public comment period to beyond the close of that meeting which will obviously take us into the end of June.

Graeme Bunton: Thanks Mary. I see James has got his hand. James. James, are you muted? I'm not hearing anything from James. He's typing. He'll dial in. Okay. So we will let James back in the queue in a few minutes but everyone should be aware of those dates now and we are going to work towards them. Hooray.

So next up, ladies and gentlemen, it's going to be 3C 2 and 3 and there's been a bunch of discussion this morning on that on the list and some over the course of the week. Mary, do you think you could bring up the text? And I'll see if I can find the initial text that I think Kathy sent out this morning.

And you should all be able to scroll so let's figure out where that is. It is the - there we go, bottom of Page 8, top of Page 9 on your screen or for those of you working offline. So we have some discussion here around the changes of the language that have happened over the past couple weeks as we've been working on this. And I know that Kathy is concerned about how the text has changed and Todd, very recently, responded with some questions that I think were originally posted by Kiran if I've got that right.

And I see James is in so before we dig into that discussion let's hear from James.

James Bladel: Thanks, Graeme. James speaking. Hopefully you can hear me now. And I really apologize, you know, Adobe audio has been working for me for over a week and now this morning I guess moment of truth it decides to fail. So if we can scroll back possibly to the work plan, or maybe not, maybe we don't need to do that.

Just really briefly, I feel that we are setting ourselves up for an inevitable extension because we are bumping up so close to the Buenos Aires meeting. And in fact I will already be on my way to Buenos Aires and I know some other folks will as well because they have meetings, you know, in advance of the actual official posted meeting schedule.

So, you know, it is our intention - so the question to the group - is our intention to have the public comments including the staff analysis ready for review in Buenos Aires? Is that what we're going to be doing there?

Or, if not, then I think it might be more practical just to close the public comments the week after Buenos Aires when we're all kind of heading home and we've got, you know, all of our - we've all had our nice big steak dinners and we're all heading home and we're trying to kind of, you know, work on all the action items we collected in Buenos Aires. It feels as though that might be a good time to close the public comments.

But I'm just putting that out recognizing how challenging it has been when public comment periods either close right before or right after or in the middle of ICANN meetings and how little work or window for work actually gets done. Thanks.

Graeme Bunton: I think that's a fair point, James. I see Mary has got her hand up but I would be curious to hear any other responses from that. I see Steve so let's go Mary and then we'll go to Steve.

Mary Wong: Actually, Graeme, I'll cede to Steve.

Graeme Bunton: Sure.

Steve Metalitz: Yeah, this is Steve. Maybe we should have the schedule back up on the screen but my recollection is that the comment period closes a week, as we

now contemplate it, closes a week before the Buenos Aires meeting. So it's not - I mean, unless James is taking the steamer there I think he'll still...

((Crosstalk))

Steve Metalitz: ...at his desk. We don't have to wait until the last minute to put in our comments although I know that is the ICANN way and, you know, that's usually what happens.

((Crosstalk))

James Bladel: Sorry, the IANA coordination group is actually meeting the week before so I am leaving the Tuesday before. It's ridiculous, I agree with you, Steve but...

Steve Metalitz: Okay. Okay. Well I was going to say my expectation was that we would have the summary of the public comments available for us to work on and to discuss in Buenos Aires. That's kind of the way this was planned so that we can then get, you know, it gives us a few weeks to take all those comments on board. And I imagine there will be a lot of comments. And still get a - the final report out, you know, the first of September and I think that's the timetable there.

So I think that that's the reason for the proposed timetable here which we've gone over the last couple of calls and Graeme was just reminding us of. Thank you.

Graeme Bunton: Thanks, Steve. What about now, Mary?

Mary Wong: Now would be a good time. Thanks, Graeme. Thanks, Steve and James. So just to add on to Steve's comment, one of the things obviously is that we can extend the public comment period, and this is something that the chairs will obviously be monitoring with staff as circumstances change. But one difficulty

with doing that earlier or even just thinking about that, as Steve pointed out, is that the tendency is for comments to come in towards the end.

So the thinking is that if we are able to meet this deadline we are likely to see quite a lot of comments coming in presumably in the first week or two of June which would allow us to do two things. One is to start our review potentially before Buenos Aires and here we have one meeting that's potentially scheduled for the week - unfortunately I think, James, you're already going to be in Buenos Aires.

But secondly, and just as importantly for the group's review of the public comments, because we have started using in various working groups a review tool which is essentially a table where we compile the comments received and the working group's discussion and response, I think staff does need a little bit of time to do that. And so all this will then set us up for a good working session in Buenos Aires.

Again, none of this needs to be set in stone but that was the thinking. And as I noted I think the chairs and the staff will monitor to see if we can actually meet those deadlines. Thanks.

Graeme Bunton: Thanks, Mary. That's helpful. I see Kathy's hand up.

Kathy Kleiman: Hi. Thanks, Graeme. Can you hear me?

Graeme Bunton: Yeah.

Kathy Kleiman: Great. Hi, everybody. So following up on what James said and adding a little bit, the Whois Review Team found that, you know, a lot of people, as we all know, a lot of groups and people are interested in Whois issues and sometimes it takes a while to reach them. But one of our recommendations was to really go forward with outreach whenever Whois issues are being debated and discussed.

And this is an important one. And to reach a more general public sometimes takes a while, probably more than 30 days. So I would recommend a longer comment period on this one.

The other is that, you know, with so many things going on in the ICANN universe the idea of using the Buenos Aires meeting to let people know what's pending, to let them know about the report, about our report, and to let them know that the comment deadline is coming up quickly rather than to do it all before Buenos Aires I think we miss an opportunity for our outreach, for presenting to the GAC, for example, for presenting to other groups and letting them know what this very important report that we've worked very long on will be out there.

I get the sense that we're really rushing things whereas if we don't I think we'll have more time and better input and wider input. Thanks.

Mary Wong: Graeme, are you there?

Graeme Bunton: I am. Sorry, I left myself on mute. I had a long-winded...

Steve Metalitz: Very eloquent too, I'm sure.

Graeme Bunton: It was perfect thanking Kathy for her helpful input and what I was saying was that (unintelligible) take this feedback on board and have a discussion. I do think, as James was saying in the chat, if we can get comments in ahead of BA then we have those to review then that's probably pretty useful and a good use of time but I'm going to take Stephanie's hand and then hopefully we can move on and we'll have a think about this discussion.

Stephanie Perrin: Thanks. I hope you can hear me? Stephanie Perrin for the record. I'm going to echo what Kathy is saying and point out that one of the things that concerns me about having no reply comment period is we have to do it all in

the one review period. A, there's so much going on at ICANN; B, people outside who, as Kathy says, are concerned about Whois but don't really understand it are going to take some time digesting this first ever report on this issue.

And, C, we lose the opportunity in that broader public outreach if the reply period has closed we lose the opportunity to explain the report adequately to those people who are watching the Buenos Aires meeting remotely and surely not as part of our public interest responsibility. Thanks.

Graeme Bunton: Thanks, Stephanie. That's helpful input. I don't think it's going to impact the task in front of us today. What is Mary saying? Oh there's no longer a reply period in the new 40-day public comment; it's just a single long thing. So we'll have a chat about this offline and - but we're going to continue working away today.

Back at Section 3C 2 and 3 which as we were almost there previously, thank you James, we're at the bottom of Page 8, top of Page 9. And so there's been, you know, some back and forth about how this text has changed and where we're at currently and where we were previously and now we really need to discuss where we would like to get to.

And I think I might put Kathy here on the spot and do we have Val on the call too? Because I think it was initially her language if I'm not wrong.

Val Sherman: Yeah.

Graeme Bunton: Yeah, great Val is here too. So I'm going to put Kathy on the spot, if you don't mind Kathy, to share your concerns with 2 and 3 and what that change means for you and hopefully I can get Val and I think hopefully Todd too to respond and we'll see how other people feel about this, is that okay, Kathy?

Kathy Kleiman: This is Kathy. Could we reverse that and kind of follow the traditional - that we've done sometime - have the person introducing the language change, introduce it and then I can respond.

Graeme Bunton: If Val is willing to do that.

Kathy Kleiman: It might lay it out for other people. Thanks.

Graeme Bunton: Then that works. I don't want to have a sort of Mexican standoff. Val, would you be amenable to your changes?

Val Sherman: Hi, Graeme. Hi, all. This is Val. I'd be happy to introduce it. I apologize in advance for my voice, I'm a little sick. But all right here we go. So the changes that I had proposed are in C2 and 3 as we all know now. And I think that, you know, I guess what my - I really - when I proposed this I really didn't - I thought that these changes would be not really objectionable to others because, you know, for example in C3 I thought the provider has found adequate reasons against disclosure, that's what - the language was previously.

I thought that adequate was very vague and given all of our discussions to date, you know, we discussed that, you know, essentially the provider would find some reasons for believing that the customer is either not infringing or has some sort of defense or if there's some sort of pretext which we addressed in C5.

So my goal was really to clarify what - the reasons - really to reflect what the requestor themselves would have to provide and essentially provide a mirror image of that so the provider would have to find some reasons for believing that the customer is not infringing or that the customer's use was defensible.

Again, I didn't realize that that would be objectionable. I'm very curious - Kathy believes that and, you know, I suppose others believe that this is a -

this has a lot of implications. I'm curious - I don't fully understand because those were the main two reasons plus pretext, those are covered. So I'm really curious to hear what those reasons - what additional examples that we are kind of cutting out by specifying these reasons here. Thanks.

Graeme Bunton: Thanks, Val. I appreciate that. And thank you for being put on the spot there. Kathy, hopefully that gives you something to respond to.

Kathy Kleiman: I think that's great and it does and thanks to Val for presenting and I hope you feel better. Okay, this is - let me just make sure I'm off mute. These changes came in as a real surprise, as you can gather from my response online.

Here from my perspective we've had fairly settled language in 3C for a long time except for 3C 5 that we've been working on. And, you know, (unintelligible) language has provided a lot of guidance there. I think we've really got something. So we've been going back and forth on that.

But to C, and forgive the language, but to see two sections gutted just as we go into the final report was a real surprise. Really the language completely changed. And so it seems, you know, a little late in the day to do that. And also to align it - and the premise of aligning it with what the rights owner is presenting doesn't seem to me to be quite right.

In the original language, so I'm reading for the (413) that I circulated earlier today - we had the - the customer has objected to the disclosure and has provided and in brackets we've got adequate - I don't know if it's possible to put this language up - so we hadn't agreed on the word "adequate" but otherwise we'd agreed on it.

The customer has objected to the disclosure and has provided reasons against disclosure including without limitation a reasonable defense for its use of the trademark or copyright content in question. But there could be a number of other reasons against disclosure.

And those reasons could include all sorts of protections under law, under custom, under rights. And we haven't talked about that in detail because we didn't have to, they were out there, they were something we all knew that certain groups are protected under their national and local laws.

And then, Number 3, was the provider had found adequate reasons against disclosure, you know, presumably based on what some of those other defenses might be. So you're putting forward so the trademark and copyright owners would put forward a case to get the reveal date up based on an allegation of trademark or copyright infringement.

But there may be numerous other privacy and data protection type protections existing under the laws and customs of different areas. And I think if now we go - so now the language to me seems so much more narrow and I think we could be debating it for a really long time.

And that seems to me to be a concern. And also seeing this language that we've debated, no that we've read for so long now being bracketed as optional, no there's a new proposal on the table and I think we should debate it as a new proposal. Thanks.

Graeme Bunton: Thank you, Kathy. And I think that's more or less what we're doing right now. I see James's hand up so we'll go to James.

James Bladel: Thanks to Val and thanks to Kathy, I think for articulating a couple of different ways of looking at this. And I think I have perhaps even a different perspective, I don't think it's better or worse just a third direction which is that in practical terms from a provider's perspective we're not going to have these legal debates, okay?

These complaints are not going to be routed into a room in the basement that is full of lawyers and dusty textbooks, these are going to be routed to I think,

you know, some folks who are, you know, let's just say, you know, that are going to be trained, you know, frontline employees to make a call.

And I'm concerned that the language that we're proposing is taking us further and further into a position where a provider has to judge the claim or the complaint or the defense on its merits. And, you know, honestly if it starts to go that direction we're just going to deny the claim.

It's only in those cases where it's really obvious, you know, hi, I'm from Disney, this guy is not from Disney and there's Mickey Mouse images all over his Website. Please take it down. The slam dunk things like - or please reveal the, you know, the contact information. It's those types of expedited clear cut slam dunk type situations where this is going to be used.

If we get into well, you know, we believe we have rights to this or we believe that, you know, the complainant's case is weak or we believe this is fair use, I mean, anything that starts to go down those areas starts to feel like providers are being asked to referee a dispute between private parties and that's not, you know, that's not a role that we either can principally take on or even practically afford to provide.

So I just wanted to put that out there as a practical concern that these things are going to have to come through and be reviewed and dispositioned fairly quickly and, you know, I'm concerned that we're over-complicating this process to the point where, you know, it's going to be almost unworkable. Thank you.

Graeme Bunton: Thanks, James. Being the referee between third parties is always extremely unpleasant as a service provider and difficult. Just to be clear on that, James, were you advocating then for the sort of more simpler broader language that was previously in 3C?

James Bladel: Sorry, this is James again. Yes, thanks Graeme. I do believe that we should probably look at ways to - I understand the well intentioned desires from both sides to try to craft language that eliminates the marginal cases as much as possible on either side of the spectrum, and I get that. And I think that's a laudable goal. But I think the more we do that the more that, you know, this thing starts to become a sort of Rube Goldberg machine for reviewing complaints and I don't think that we're, you know, we're positioned to implement that.

Graeme Bunton: Great. Thank you. I see Holly's hand.

Holly Raiche: Thank you, Graeme. This is Holly for the record. And it's really a question probably to James and to you. At one stage we kept the language broad without any examples so essentially saying well we all understood what the various examples were. But examples started to come in really as assistance to say starting with the slam dunk language what did we mean by slam dunk? Could we give some examples or not?

So we've gone in two directions, probably in both cases, trying to assist, one, by giving just a general feel but then by saying well these are the sorts of things we mean. So I think my question is is it more helpful to say there's a general rule which is really reasons against disclosure and then maybe three or four examples just to make sure that people understood this is not just about IP, it's about other things. Or leave it general. I guess my question is which is more helpful. Thank you.

Graeme Bunton: Thank you, Holly. I would have to think about that and maybe James will have a response. In the meantime I see Steve and then James Gannon so, Steve, please.

Steve Metalitz: Yeah, this is Steve Metalitz. Just a couple of points. I think - I guess two questions, one to Kathy, and this is the one I put in the chat, is if she could give us an example of a reason for nondisclosure that would be, quote,

adequate, unquote, but not the pretext reason which is covered in 5 and not the - one of the reasons in Val's language. So I think that would be useful.

And I guess a similar question to James is, okay so if the language is, you know, is left as adequate or if it's left as compelling, which is what the group that you were in came out with...

Val Sherman: Yeah.

Steve Metalitz: ...as the proposal, compelling reason, maybe we go back to that, could you tell us what you think your company - your service would state as a reason in a case where it refused to disclose but did not have any reason to doubt the prima facie case that was being offered or the - did not believe there was a defense?

So how would you, I mean, from the perspective of a service provider what would you be saying back to the requestor to explain the nondisclosure? Because I think the important thing here is what's communicated back to the requestor? How specific it is so that they can make up their mind about what to do about it. Thank you.

Graeme Bunton: Thank you, Steve.

Steve Metalitz: So I'd look forward to a response from Kathy and James on those. Thanks.

Graeme Bunton: All right, Kathy and James, you have been called out. We'll hear from James and then hopefully we can get a response from you guys. James Gannon. James, can't hear you.

((Crosstalk))

Graeme Bunton: I see you as on mute. He SSED'd, not sure what that means. Okay so James, we'll keep you in the queue, let us know in the chat when you're back on. I see Kathy and James with their hands up so Kathy first please.

Kathy Kleiman: Terrific. And apologies for missing Steve's message in the midst of so many. I'm glad - so many messages in the chat. Thanks for repeating it. Okay, so things that the entire time we've been talking about this language in C - 3C 2 and 3 - that I've been thinking of is of course, again, the trademark owner, the copyright owner will present a good case for infringement.

But what if it's a laughable case? What if they are assuming - and I'm going to give some outrageous examples so bear with me. But just because a lot of good faith people are trying to draft this doesn't mean bad faith people might not be trying to use it.

So what if we're talking about some pictures that were posted by a battered women's shelter of, you know, children's drawings, they happen to include Mickey Mouse. We're not talking about plastering Mickey Mouse all over the Website, we're talking about some drawings, that are posted.

And there's an allegation of infringement made but it's a battered women's shelter. There may be privacy rights that protect it. In the US there may be laws protecting the abortion clinic. It's not a pretext, it's a legitimate intellectual property claim but we're doing it through this informal process here that we've created at ICANN.

We can't overrule any, you know, we can't overrule these types of protections and we wouldn't want to. So let's say there are clear protections under data protection laws. Let's say the Website is clearly one that's being used by someone under the age of 18 in the United States, it's possible that now or in the future they may be protected by the Federal Trade Commission's COPA laws, the Children Online Privacy Act.

So I can see a number of reasons why even a good faith intellectual property infringement allegation would be balanced by a very good faith privacy or data protection claim. No pretext involved. And we've been working with this the entire time so to eliminate it now so narrows what the providers can look at that I think we'll be back talking about this for weeks to come as we try to get the language right on something like this.

I think we had something we were all working with for a long time, which I appreciated. I would recommend we go back to it. Thanks.

Graeme Bunton: Thanks, Kathy. And Stephanie in the chat is saying that to make this bullet proof for bad faith actors that the real problem we're word-smithing over and I think it was Alex Deacon was pointing out that the word "adequate" is perhaps problematic. And I think we spent some time on that previously and as was mentioned it was originally the word "compelling."

And so maybe we can come to a place there where we can phrase that in a way that is a bit stronger than adequate but still works for people. I see James has his hand up. James, please.

James Bladel: Thanks, Graeme. James Gannon looks like he has typed his pretty lengthy comments into the chat. I'll yield my spot in the queue if you or staff want to read out his comments.

Graeme Bunton: Sure, I can read that out. This is from James Gannon who's part of the NCSG. And it says, "Okay, on a philosophical level I support Kathy's points. And on a practical level I support the other James," meaning James Bladel, I believe. "We need to avoid word-smithing here even when it's from a position of good faith. There is a world outside of IP and I'm very much a supporter of IP rights, by the way, that we need to be able to respect. We can't put the providers into a position of having to have a team of lawyers working on these requests as may be the case in larger providers that may be dealing with large volumes of requests. I think that we need to be as practical as

possible here. Let's go back to the original language that was largely agreed on and had broad support."

Mary also pointed out that we've had the word "adequate" versus "sufficient" and "compelling" in there. You're welcome, James.

Alex is wondering if Kathy's example would not be covered by Val's language. And that's worth discussing too. James Bladel, back to you, please.

James Bladel: Thanks, Graeme. Other James speaking for the transcript. And so going back to Steve's comment, and unlike my friend Kathy, I'm not going to assume that both parties are acting in good faith. I'll just assume that they're both bad actors. I think that makes things easier.

But, you know, I'm thinking that, you know, we had a kind of a solid and I believe elegant bit of language here, you know, we use the word "compelling" it's when we tried to extend and expand C - I believe it's C3 and C5 where we started to add these different cases on here that I believe that it just really muddied the waters from a provider's perspective.

To Steve's point, I think that, you know, what would be the communication when a complaint is rejected, it would be, you know, we don't see the infringement. We don't see the, you know, the connection that you're claiming exists between the ownership of intellectual property versus what's being displayed on a particular attached service to a domain name.

Maybe, you know, something that is, you know, something that warrants a deeper dive from a legal perspective but we're just not going to have the time or resources to invest in that.

So I think that it's really a question of, from my perspective, going back to a simpler and perhaps more elegant approach. And I understand the concerns

of Kathy and others but that leaves way too much to chance for those who are concerned about privacy.

But I think it's perhaps the only way to achieve that balance that we're looking for and still be something practical that providers can operate on on a day-to-day basis because, you know, as we've mentioned some of the larger providers expect to receive 50, 75, 100 of these a week. So the speed and scale of our industry has to be a factor in what we're building. Thanks.

Graeme Bunton: Thanks James. And speaking from the provider perspective I tend to agree with what you're saying there, scale is important. I see Todd's hand up and then I'd like to hear from Todd and then we can give this conversation a few more minutes but I think it would be useful to turn to some of the other questions that are outside of the disclosure text and put this aside for the moment. And it could also be that we leave both versions in here for the initial report and we point people towards it and get public comment on it.

So, Todd, back to you.

Todd Williams: Sure. And I'm more interested in listening to again some of the answers on this because the answer is that we are just now discussing on what would be an example both get to there is no encouragement. I think James explicitly said, our response to the requester would be, we don't think there is an infringement.

But I don't understand why that wouldn't be covered by what Val has proposed. There seems to be some sort of sentiment that a request can be denied even if the requester has shown the prima facie case of infringement for some other reason and that that is what is covered by whether it's adequate or compelling or whatever but that is not covered by Val's language.

And I guess I just don't understand what falls in that bucket because again when we were just now talking James's point was well our response to the requester would be there is no infringement, which I think is completely contemplated by what Val has put forward. Thanks.

Graeme Bunton: Thanks Todd. I see Stephanie and then James. James, did you want to respond directly?

James Bladel: Yeah, you know, quickly and it's a - I hate to get nuanced here but it is an important distinction I think between a provider saying there is no infringement or no infringement exists versus there may or may not be entrenchment but we don't see it.

I think one is offering, you know, a kind of a legal position that a provider could be exposed to were saying that, you know, there is no infringement and then in fact later there is, you know, we're not going to have lawyers reviewing these things so we can't say whether or not there is or is not infringement; it's only a question of whether or not, you know, a reasonable, you know, layman-type person spots the infringement and if they don't see it, they don't see it, it doesn't mean it's not there.

And so I think it's an important distinction to say we don't see the connection between the claim of infringement versus the content on the site versus saying there is no infringement. And I'm sorry to feel like I'm, you know, taking a pair of tweezers to the language here but, you know, I think there is an important difference. Thanks.

Graeme Bunton: Thanks, James. That's helpful at least for me. Stephanie.

Stephanie Perrin: Thanks very much. I just wanted to remind us, unless I'm so buried in this that I've totally lost where we are in the overall document. But we're talking about more than copyright and trademark infringement here. I mean, someone can come after the service provider for the (unintelligible) post of

reasons cloaked in all kinds of language, I don't mean cloaked necessarily any negative way.

But, at the end of the day what you're doing is providing informal access to the identity of the registrant who has paid for a service based on a good faith acceptance of an argument. And the more we walk down redefining the language the more it seems to me we are telling the service providers, and the people that are working for them, you guys have to make a decision and this is like a court of law.

And they're not a court of law; there is another answer if they don't give it. And frankly if a good faith quick read doesn't say a yeah, that looks like a slam dunk, I wish we had a better word for that, then they shouldn't reveal. Thanks.

Graeme Bunton: Thanks, Stephanie. James, I'm going to assume that hand is old.

James Bladel: Yeah, sorry.

Graeme Bunton: That's okay. All right, so that's some good discussion on that. I feel like at least I've got a good handle on what James is saying there and I find that useful. This may be one we'll take offline. We can continue on the list and - but it also may be that we just need to put in both versions into the initial report and highlight it.

Let's move on if we can to the other questions that we have to deal with. I see Kathy's hand up. Kathy, a quick one?

Kathy Kleiman: Hi, sorry, quick point, quick point here. When we put in can - if we're going to put both in is there any way that we can highlight the language that's been there for so long and then that a new addition has been proposed? Right now it's been revised to kind of give them equal weight. And I don't think that's the way we've handled things in the past, you know, things went in if there was

consensus for them to go in. So can we weight them a little differently and let the public know so they can comment?

Graeme Bunton: I haven't the foggiest how that in particular would work. And that might be the place - the place for that might be within an attached opinion. I see (Paul)'s hand up.

(Paul): Yeah, I'm concerned about that because I think to be fair then we'd have to go through and look over the last three or four weeks, find everything else that everybody else thinks is new. The - I understand why Kathy is asking it but I think that the ultimate end result of that would be to give the impression that one particular position had momentum and others didn't.

And, again, that may or may not be the case but we would have to, I mean, it would be an enormous amount of work to go through and decide what positions had momentum before new ideas were brought up. And I'm just not sure the staff is interested or has time to do that nor does this group necessarily have a lot of time to go through and, you know, have a debate about whether or not - how things are characterized or accurate. Thanks.

Graeme Bunton: Thanks, (Paul). Okay let's put that one aside for the moment. And Mary, if it's possible can you bring up the other questions we need to try and tackle? These I don't think they're going to be outrageously contentious but we do need to discuss them. But we should be able to get through them relatively quickly. I see Mary hand up. Mary.

Mary Wong: Yeah, Graeme, I put the suggestions that you and Steve provided to the group on the right hand side. I can put up the draft report while folks are thinking through the questions on the agenda pod just to save a bit of time. And I think the other thing I wanted to note was just that in addition to this there is the annex where I think between Steve, Graeme and ourselves we feel we've captured where the group is but if the group can look at that after

this call as well. So I'll bring up the draft report but the questions are posted on the pod on the right.

Graeme Bunton: Great. Thank you, Mary. I see them now. I had scrolled too far down on the right hand side. So we have the questions we need to tackle over there on the right. So perhaps after this call what we make sure to do is highlight the homework that everybody has got and the discussions that we still should make sure continue and take place.

So these questions are from a couple different sections within the initial report draft. Steve and I were talking about them the other day. There doesn't seem to be much in here, which is going to be particularly difficult to get through I don't think so we can just cover these relatively quickly and see if there's any discussion that we need to have.

So these are open questions other than Category F. And the first one is from the on contactabilty and responsiveness of accredited privacy and proxy providers. The question is - or the outstanding text is, "The standard for maintaining a privacy proxy provider's designated point of contact the person or team must be capable and authorized for the transfer emergency action contact under the IRTP." So it's whether capable and authorized is language we can live with.

And that feels perfectly acceptable to me. I see Steve's got his hand up.

Steve Metalitz: Yeah, just - this is Steve, just to support that. Obviously if you have a contact person you want that person to be able to carry out, you know, all the other steps that are necessary after reported abuse comes in. So it sounds like capable and authorized is a phrasing that's been used in other contexts and makes sense here. Thank you.

Graeme Bunton: Thanks, Steve. James.

James Bladel: Just adding my plus one to capable and authorized. That language was set up in the TEAC to avoid, you know, run around or deferral or kicking the can to other departments and things like that so I think capable and authorized is what we're going for. Thanks.

Graeme Bunton: Great. Thanks, James. Mary, is that an old hand or is that a new hand? Yeah, guessing that was an old hand. Great so Point 1 is off. And these questions were sent out to the list. If you have a nagging doubt or something feel free to bring it up on the list.

But we can move on now to the next one which was, "The level of responsiveness required of a privacy and proxy provider once an abuse report is made to the designated point of contact while the requirement under Section 3.1(a).1 of the 2013 RAA taking reasonable and prompt steps to investigate and respond has been suggested previously this is no longer needed as it has been superseded by the working group's specific recommendations on relay and disclosure."

So briefly we had some language in there from the RAA which is also somewhat notorious language. And Steve and I both feel that we've sort of moved past that language and we have more specific text in our work already and obviates the need for that bit of the 2013 RAA. And Mary is giving a page reference there in the chat.

Any comments on that? Everyone agrees that we've been more specific and provided our own text which I think is clearly the case.

Great, I'm going to move on from there. Kathy, I'm reading out of the far right hand side of Adobe Connect. And I might let Mary see if she can control the doc to get it in the right place if she's able to do that while I look at this particular text.

Mary Wong: Graeme, this is Mary. Thanks, Kathy and Alex. We can go to the pages where the actual discussion takes place in the report. But what we have now on the screen corresponds to the bullet points that Graeme is reading out. In other words, the fuller context in the report was summarized in what you see on the screen here in Section 1.3.2 as open questions. And what Graeme is reading out is his and Steve's suggestions on how the working group might want to answer these open questions if that helps.

Graeme Bunton: Thanks, Mary. Hopefully that makes that a little bit clearer.

Kathy Kleiman: Graeme, this is Kathy. Maybe not because I'm still in control of my screen so I'm not sure I'm looking at the language or that we're looking at the language of the initial report that the questions on the far right beside the notes are trying to address.

Graeme Bunton: Steve has said Pages 51 and 52.

Steve Metalitz: Yeah, if we're up to the third bullet here that's - this is Steve - that's right at the bottom of Page 51. And the working group, you know, the question of what should be required for providers to make their contact information available. The report notes that we got a few other recommendations that are - that affect this, for example that ICANN publish a publicly accessible list of providers and that Whois entries be clearly labeled if they are those of a privacy proxy provider. These are preliminary conclusions we reached long ago.

So then the question is is anything else needed I think in this area. I'm not sure that it is but, I mean, you know, 2.3...

((Crosstalk))

Kathy Kleiman: ...every other word that Steve is saying.

Steve Metalitz: I'll repeat what I said is that is on this third bullet which is the one we're up to, the bottom of 51, top of 52, it notes the other recommendations we make that are relevant here, I think the question is should we also say that the standard that's in the interim specification apply. And I think it basically we're in agreement that - or at least it seems as though people agree that accredited providers should be contactable and these are various ways that that could be achieved. Thank you.

Graeme Bunton: Thanks, Steve. It could be we need to spend a - or leave this out on the list for a little bit more time but hopefully this will be a useful context for what that discussion is but, you know, looking at these bullet points it's relatively straightforward that privacy and proxy service providers should be contactable and capable and authorized people.

So that third bullet point that Steve was just mentioning is to ensure provider contactabilty privacy and proxy providers should be required to publish contact information on their Website modeled after Section 2.3 of the interim specification on privacy and proxy registrations in the 2013 RAA which is a pretty straightforward way of saying that privacy and proxy providers should have to publish their contact details and in an obvious place on the Website.

And I don't think we have too much disagreement that that's a thing that we can agree to. I see Steve typing. I see (Luc) typing. (Luc) agrees to agree. Well hooray. Thanks, (Luc).

So the next bullet point, and our suggestion is on the escalation of relay requests on minimum mandatory requirements for escalation of relay requests in the event of persistent delivery failure of electronic communications is we should retain the current language in the draft initial report included the bracketed options for public comment. So do we have a page reference for that? Middle of Page 54. Thank you, Steve, with your page references, that's very helpful. And I see your hand is up, Steve, please.

Steve Metalitz: Yeah, just to say that if you look at that bullet and what we're suggesting is let's leave in the brackets and let the public comment on this because we've had a lot of discussion about this several months ago and did not reach an agreement. But the question is when there's been a persistent delivery failure, which is defined in the preceding paragraph, should there been a obligation to provide another form of notice or another form of relay.

And I think the options are kind of set out there in the brackets. So what the proposal from the two vice chairs is that let's keep this paragraph as it is in our draft report and ask the public to weigh in on whether it should be - should provide an alternative means or must provide an alternative means and the issue of cost is in there also. So that's our recommendation.

Graeme Bunton: Thanks, Steve. And so I guess the comments here on this call right now would be whether we should or should not be leaving that paragraph as it is in our initial report and if there's any opinion on that as opposed to getting into the content of that paragraph at the moment. I don't see anybody weighing in on that. Great.

So I think that's the questions that we wanted to put out there or our positions on those comments. I see Stephanie Perrin put her hand up. Stephanie, we've got three minutes left, please go ahead.

Stephanie Perrin: I don't want to burn your three minutes but I'm just a little worried about leaving something that contentious for the comment period particularly when there's no reply comment period. What is likely to happen if we get the same kind of disagreement that we had in the working group particularly over matters like cost and back on that issue remembering it well.

Graeme Bunton: Thank you, Stephanie. I think what happens is we get, you know, contentious comments in on that and we've kicked the can down a road but now we've walked back up to it and we need to take another crack at it I guess and

hopefully something new comes in with those comments. Mary, I see your hand is up.

Mary Wong: Yes, thanks Graeme. And thanks, Stephanie. Yeah, just to echo that Graeme, that's exactly what we will do and the public comment review tool that I mentioned earlier in the call is hopefully something that will help the working group organize the comments that will come in. I think we said some time ago that some of these proposals, especially where they may not yet have initial consensus might attract quite a lot of comment so hopefully the two is helpful.

And of course the other thing is that when we publish this initial report hopefully what the staff will be able to do is try and organize it particularly in the executive summary in such a fashion that it makes it clear that there are certain areas where the group might be particularly desire for public comment, for example, these areas where there isn't yet consensus. Thanks.

Graeme Bunton: Thanks, Mary. So that just about brings us to the top of the hour. It was good to get through those few points. That was useful. Puts to bed some of our outstanding tasks that we had to do. I think we still have a bit of homework and we don't have a lot of time if we're, you know, trying to get this out as we've discussed before Buenos Aires around the 3C 2 and 3.

Let's try and continue that discussion on the list and wrap this up or at least decide to put out both the - both possibilities. I'll discuss with Mary and Steve what other homework we want to make sure everybody's got and we tackle in a timely fashion. And I think that's it for today. Thank you everyone for coming and have a lovely Tuesday.

Kathy Kleiman: Thank you.

((Crosstalk))

Steve Metalitz: Thanks.

Terri Agnew: Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines. (Francesca), if you can please stop the recording.

END