

**ICANN Transcription Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 1 September 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 1 September 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

Attendees:

Graeme Bunton - RrSG
Stephanie Perrin - NCSG
Terri Stumme - BC
Todd Williams - IPC
Sara Bockey - RrSG
Roger Carney - RrSG
Frank Michlick - Individual
Steve Metalitz – IPC
Volker Greimann - RrSG
Sarah Wyld – RrSG
Darcy Southwell – RrSG
James Bladel - RrSG
David Hughes - IPC
Phil Corwin – BC
James Gannon - NCUC
Holly Raiche - ALAC
Paul McGrady - IPC
Dick Leaning, Individul
Susan Prosser RrSG
Susan Kawaguchi – BC
Alex Deacon - IPC
Luc Seufer RrSG
David Cake- NCSG
Michele Neylon - RrSG
Carlton Samuels – ALAC
Kiran Malancharuvil - IPC
Osvaldo Novoa – ISPCP
Lindsay Hamilton-Reid - RrSG
Christian Dawson - ISPCP
Chris Pelling - RrSG

Apologies :

Val Sherman - IPC
Don Blumenthal - RySG

ICANN staff:
Mary Wong
Amy Bivins

Nathalie Peregrine

Coordinator: Your recording has started. Speakers you may begin.

Nathalie Peregrine: Thank you very much (Anna). Good morning, good afternoon good evening everybody and welcome to the PPSAI Working Group call on 1 September 2015.

On the call today we have Steve Metalitz, Alex Deacon, Graeme Bunton, Holly Raiche, (Sarah Wilde), (Scottie Snugwell), (Sarah Vorhe), Volker Greimann, Christian Dawson, Dick Leaning, James Bladel, Todd Williams, Michele Neylon, Phil Corwin, (Suzanne Foster), David Cake, James Gannon, (Karen Montalvo), (Unintelligible Carne), and Osvaldo Novoa.

We received apologies from Val Sherman and Don Blumenthal. And from staff we have Mary Wong, Amy Bivins and myself Nathalie Peregrine.

I'd like to remind you all too please state your names before speaking for transcription purposes. Thank you ever so much and over to you Steve.

Steve Metalitz: Thank you very much. Welcome everyone. We have the agenda that's been posted on the upper right of your screen which starts with updates to Statements of Interest. Does anybody have any updates that they wish to share?

If not we're looking forward to a report from Subteam 2 dealing with Section 1.3.3 on use of proxy services for commercial transactions.

So let me - I'm not sure who is going to present that report but I'm happy to turn it over to whoever from the Subteam wishes to kick it off.

Mary Wong: Hello Steve and everybody this is Mary from staff on staff supporting the Subteam. And (Kieran) was going to be on the call to present the update to question one but she's not able to do so at the moment so she's asked me to do that on her behalf.

I note that Christian Dawson who worked with (Kieran) on one very significant update is also on the call as well as a few other Subteam members so I'm sure they will put me right if I miss (unintelligible) anything.

The first thing I should say is that this document as I noted in my email to the group if you've had a chance to read it is a consolidated combined document.

You might recall that at the first initial report meeting from this group which was something like three weeks ago question one was presented in two documents.

And the reason for that really was that because of the sheer number of responses to question one something like 80 or so or maybe 90 two people did the work.

So what we've done in this document you see is basically combined the two. This essentially means that on the analyses of the individual responses which you see in this consolidated Section 1 and Section 2 there has been no changes except for some slight formatting and so forth.

So I won't propose to spend any time on this because this was already presented to the group the last time around.

I should note at this point that it was pointed out to me that the document that I sent around about an hour or so ago actually incorporated an earlier version of one of the previous documents.

So what you actually see here and what I've put on the wiki is actually the latest greatest version. So it should have all those specific 90 comments for question one captured.

So with that what I will then focus on is actually Section 4 because that is the substantive significant update since the first report from the Subteam.

And this update was based in large part on the discussion from, and by and with the working group on I think it was 4 August or something like that.

So the Subteam took the discussion had a meeting in some discussions amongst itself. And as a result (Kieran) and Christian supported by me worked up a set of paragraphs of proposed language which you see here as Section 4 which in our view deals with the comments that were submitted as part of the Respect our Privacy Web site as well as the Same Domain Privacy Petition.

I don't know if everybody has had a chance to look at that language. It is in the last two pages of this document if you'll scroll down to Section 4.

And I won't propose to read through it in the interest of time but what we have done here is highlighted in bold sort of the overall feeling of the Subteam including the fact that they believe this should be more fully discussed by the working group.

And in some part it may also depend on the working group's discussions of question two which (Terry) will come on to present.

So Steve like I say I don't propose to read through this addition but I wonder if anyone is any questions for the Subteam at this point?

Steve Metalitz: Any questions? Mary based on what you - the end of your comments should we have the report on question two also before we open for discussion?

Mary Wong: Steve I think that might be helpful in part to basically bring the full working group back to sort of looking at it from an overall perspective and maybe reminding all of us on where things stand. Although I see that James now has his hand up.

Steve Metalitz: Okay James, go ahead.

James Bladel: Thanks Steve, James speaking. Thanks for presenting this Mary. I have a question about and is and I think Christian I think is on the call so maybe he can help me with this note that the statements that for the two campaigns in Section 4 the statement did not provide any additional insight into or direct response specific considerations and legal issues highlighted by the working group.

But I note that, you know, I think just from reading through and granted just skimming some of the vast numbers of comments and submissions received that many of the folks sending in their thoughts did actually I think lend some specific insights about, you know, for example their use of privacy service as a small business, or, you know, use to separating a business from their personal lives.

And I just I'm wondering were those then moved if you - if the working group identified one of those were they moved up into Section 2 is that where those kind of landed or did they stay in Section 4 because it seems to me that either they need to move out of Section 4 or that sentence about not adding providing additional insight needs to be modified because I'm not sure that both of those can be true.

Steve Metalitz: Okay thank you James.

James Bladel: I guess my question...

(Kieran): This is (Kieran). Can you - I'm not in Adobe Connect but if you want to put me in the queue after Christian or whoever else is in the queue then I should probably add additional insight.

Steve Metalitz: Okay. Well once James is done we'll go to Christian, and then to (Kieran), and then to James Gannon. So James did you have anything to add James Bladel?

James Bladel: Sorry I was finished.

Christian Dawson: So this is Christian. And am I next in the queue?

Steve Metalitz: Yes you are. Please go ahead.

Christian Dawson: So as one of the people that were working had been working on this comment I believe the James has good insight here.

And I would support the challenge to that particular comment within this, you know, my position all along was that I don't believe these seat inclusion should be qualified.

And - but entered into a process in the effort to support an effort to come to a broad consensus within the group and try to drive it - help drive it in the direction that would meet - that would familiarate all parties.

In fact the fact of the matter is that James makes a good point here and I would support that we modify that language because indeed this group could

not talk about moving those to the other section. Those - we simply did paint this with a broad brush and perhaps too broad a brush.

Steve Metalitz: Okay thank you Christian. (Kieran) you're next.

(Kieran): Hi. Thanks Steve this is (Kieran) for the record. So that's - Christian comments are sort of interesting to me as an initial matter in a little bit (unintelligible) thing.

I always find it a little bit strange when you work on something, and you approve language and then you come to the bigger group and disclaim your support of it.

I guess I would have appreciated when the Subteam was working on the language specifically that if there were objections to it that the co-drafter of the language would have expressed those objections and attempted to compromise the language at that point.

But I guess that means we have to go back to the drafting board on this language if Christian has now claimed that he does not agree with it which is a new position to me.

As far as James's concerns I -I disagree with Christian I believe that as a Subteam we did deal with those kinds of qualifications.

I think that (Terry) and (Lindsay) when they went kind of (unintelligible) comment did take into consideration those kinds of insights and caveats.

But what the language of the statement speaks to qualify is additional insight and clarification around the legal issues specifically to not the issues that James highlighted which are of course very corporate I'm looking for very real and, you know, we should take them into consideration that the concerns the small businesses, it concerns the individual proprietors.

But rather I think that, that statement was more specifically directed towards the language of this petition which said that all commercial and noncommercial use of privacy proxy services for all legal purposes that was I think where the Subteam got a little bit caught up because the attempt in the larger group to discuss the legal issues around (Maxim) who is legal and contact information was actually something that was not disposed of and the language of the petition did not dispose of it either.

So I think that I would accept the challenge to clarify what we mean more specifically and what language in the petition we were talking about specifically with our statements.

But I don't accept the conclusion that we did not deal with the comments or the context provided in the comments of the kind of individual commenters they came from the respect our (unintelligible) Same Domain Privacy Web site space.

Steve Metalitz: Okay thank you (Kieran). James Gannon has been waiting patiently so let me recognize him.

James Gannon: Thanks Steve. So I have a bit confusing question around how certain conclusions were drawn. And I suppose this actually bleeds slightly into question two's response as well.

So at the top of Page 18 we have a suggestion from the Subteam that we first need to go off and develop workable definitions whilst at the same time we're recognizing that we have over 20,000 comments saying that this isn't something that the working group should be going down the route of looking to place restrictions or qualifications on the use of privacy proxy around.

So I think we're kind of are we not going in circles here by saying okay now look the public comments are, you know, by a huge majority saying no this

isn't something that and we should be placing restrictions around but then at the same time we have the recommendation here from the subgroup that - and it comes into question two as well I believe the language is broadly similar that we need to develop definitions of this before we can look at it. So I think we're kind of going around in circles here.

Steve Metalitz: Yes thank you James. This is Steve. I'll put myself in the queue at this point. I kind of have a similar question which is look this was an issue 1.3.3 like 1.3.2 what were topics on which the working group couldn't achieve consensus?

And so we asked the public what they thought. And the question that was presented to them was should registrants with domain names associated with commercial activity and used for online financial transactions be prohibited from using these services?

Obviously it seems to me that regardless of how you characterize the mass comments there some - a lot of public comments that answered that question no they should not be prohibited.

So I recognize that the significance of that may depend on how you define some of those terms but the way we put this question was should these be prohibited?

The answer was no. And question two only came up if you thought it should be prohibited. Then the question was how would you define it?

So did we make a mistake in how we presented this question or are we now in a situation where we couldn't reach consensus and on a question and the public comment is overwhelmingly on one side of that question.

I think we're in the latter situation but I would welcome the input from members of the Subteam to if I've misunderstood what their report says here.

I'm going to call on James Bladel because he was in the queue. And I see (Kieran) is next. So maybe she will respond to that question. James?

James Bladel: Hi. Thanks Steve. And surprise maybe not surprisingly that was very similar to the question I was about to raise what you just - your just last intervention there which was that, you know, this was not a narrow legal consult this was a public comment.

And we phrased the question for a public response and we got one. And I won't comment on the our privacy Web site but the Same Domain Privacy Petition, you know, contained I think an overwhelming response specifically to this question as it was phrased to, you know, describe the impact on the general public and not necessarily looking for legal definitions.

So it may have been an error either in the way that the question was posed in the initial report, or in the call for public comment or in the, you know, in one or both of these public outreach campaigns.

But I don't believe that it's the case that they were - that the response was ambiguous at all at least for the large volume of respondents that were submitted. Thank you.

Steve Metalitz: Okay thanks James. (Kieran) is next and then we'll go to Mary was been waiting patiently also, so (Kieran) please go ahead.

(Kieran): Sure thanks. I there is something interesting was actually said in the Subteam meeting yesterday and I think it was from Stephanie who said it about this group in an effort I think to kind of understand whether we've made progress on this issue as far as consensus is concerned with these public comments to kind of take the comments and to try to lump them into whose saying it.

And I think that her point was that, you know, you would say okay INCA is a member of the IPC, you know, the IPC is obviously the IPC.

The, you know, these comments are coming from civil society and to kind of look at it that way. And, I think that that's an - I don't I'm not sure that I necessarily agree with that but I kind of wanted to kind of pose that to the group to see if that's one way to look at it because yes there is a volume of comments that say one thing but then there's also a volume of comments like from INTA and IACC which are organizations that represent thousands upon thousands of brand owners and consumer protection organizations.

And, you know, they're asking the question, you know, how are we defining this? And without a definition how could we possibly come to a conclusion?

And they think it's sort of disrespectful to those groups and to kind of the multi-stakeholder decision making process in general for us as a Subteam to just totally dismissed that.

Now whether or not we're going to come to this conclusion of, you know, that petitioners or the commenters from the Web site, you know, we don't know.

But it's a point well taken I think by the subgroup. And that's what we're attempting to do as the Subteam is to kind of present that there are holes in the work of the group that, you know, that kind of prohibited entire groups of stakeholders from effectively answering the question.

And I think that that that's where we're at. And maybe Stephanie has a point that we need to kind of exit outside of kind of the raw numbers which I think is what we also did with the .triple S issue. We didn't just kind of take mob justice but we looked at like what was being said by who?

And we're attempting to get to a conclusion that actually respects the stakeholder problem to just go inside the numbers. Thanks.

Steve Metalitz: Okay. Thank you (Kieran). And that is helpful. I don't think this is just a head counting exercise in any case but I think that's helpful to understand why that there were commenters who raised that point.

I'm going to ask Mary to who has been waiting and then Michele. And then I'm going to suggest we go on to this question two and see what the Subteam has produced on that which may help us on here on question one. So Mary, please go ahead.

Mary Wong: Thank you Steve. A couple of points one is just to pick up on something that (Kieran) said that in phrasing this Section 4 the idea here was well two things.

One was not to prejudge conclusions on question two which, you know, I agree I think we need to move on to that.

It might be helpful because as you may recall on the last call that we talked about this topic, you know, the question was raised as to what would be necessary to go into question two and the subsequent questions if the answer to question one was overly yes.

The Subteam thought that while the answer to question one was clearly, you know, a strong yes there was still some comments that they looked at that they thought pointed to the interconnectedness of questions one and two particularly that merited them looking at question two. So that's one point. And so this language is meant to feed into that discussion.

Secondly the sentence the James Bladel pointed out and, you know, looking at it again I can see why it could have been phrased perhaps a little bit more sharply because the Subteam did going to quite a lot of detail about what we're saying specific considerations and legal issues.

For example the whitepaper that was circulated at the time and some of these specific details that was in the initial report this was not intended to in

any way denigrate the many comments that came in on top of the Same Domain Privacy Petition was sent in by those signatories rather I think the intent here was to say that they did make specific comments but those specific comments, you know, may not have directly addressed some of the legal issues that are still outstanding. And I agree that obviously it is not for our public commenters to do legal analysis for us.

Nevertheless and when we come to looking at everything over all as the working group and Steve and Graeme I think that as we go through the remainder of the public comment tool this may be something we want to look at more holistically.

A lot of the comments from the signatories of the Same Domain Privacy Petition had indeed not been removed but summarized.

And, you know, in as put that summary into what is part four of our review tool. So at that point maybe we can take a look to see whether that does sufficiently describe many of the specific concerns that were raised by the commenters or whether we need to come back to either this Subteam or some other Subteam because there may be gaps we haven't covered sufficiently. So hopefully that's helpful Steve.

Steve Metalitz: Okay thank you Mary. I've got Michele next. And then I would ask that we move on to question two and then we can come back to the queue. Michele, go ahead.

Michele Neylon: Thanks Steve, Michele for the record. I was just - I'll keep this very brief. I mean frankly I am disappointed, shocked and plus and even a little disgusted that yet again people are referring to comments from the public on an important issue using language which in this instance is referred to as mob justice which to me is just incredible. Thanks.

Steve Metalitz: Okay thank you Michele. Let's go on to if we can to question two. Was (Terry) going to report on that or is there - or is someone else from the Subteam going to report on that?

(Terry): Yes this is (Terry).

Steve Metalitz: So then go ahead please (Terry). And then we'll...

(Terry): Okay so during our meeting the Subteam discussion yesterday in short we determined that we couldn't come to an agreement on how to proceed.

So I - there was a concern that the commenter who the commenter was in the summary that I prepared wasn't listed.

So I did go back yesterday and I asked who the commenter was for the summary and the items I thought that may come up for a discussion or that the working larger working group should discuss should indeed this issue move forward based upon question one.

We never did determine what the threshold question should be. You know, again as everyone knows if the answer to question one was no we don't think that commercial or noncommercial entities should be based using privacy proxy services than what number two is do we need a definition.

So in the summary that I gave for before which hasn't changed is that if indeed we move forward with this that yes folks believe that we need to have a definition.

And it would be difficult at best and most believe in our assembly even impossible to come up with a definition to fit every factor that needs to be considered.

(Susan), Stephanie and (Kathy) particularly (Kathy) wanted me to ensure that I express they have strong concerns that the process would be a huge waste of time.

They do not think that we need to move forward on to define commercial and noncommercial. And so I just needed to put that out there to have their voices heard on this.

And again I think that the question is, is we never said what is the threshold question and do we need to move forward with this?

We've looked at all the comments and their overwhelming response was for one was no. And so what do we do with number two? And that's pretty much my summary.

Steve Metalitz: Okay thank you (Terry). And looking at the conclusion here I think this - what this summarizes what you just said this last paragraph.

But let me open the queue now on this. And I have Stephanie and James Gannon. Stephanie go ahead.

And by the way if there's anybody on the phone who would like I'm sorry I couldn't...

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. My apologies for being late I - my first point was with respect to what (Kieran) was quoting me on from the other day we had a sheet that didn't have the identification of who made the comments.

And I had indicated that it was useful and customary to know who had made the comments partly so that you could go back and check them and partly so that you could figure out the dispersion of the comments.

I mean if we all agree on something if six stakeholder groups say something then you can be pretty sure that it's a widely held view.

On the other hand if all the people who say one thing are from a particular group -- and I include my own on that -- then, you know, you might still have not consensus. That was my point.

And I don't think it has much to do with not taking peoples - not lump - it was not about lumping people into groups that's what it was.

Anyways my point that I'd like to raise on this question -- and thanks (Terry) for the excellent summary -- I keep raising it and I believe we debated it at some length in the working group to my mind to my definition for something when in fact ICANN has no remit to figure out what people are doing on the Web I make a distinction between what they're doing on the Web and what they're doing when they registered the domain name. Then that's outside the remit. And so why on earth would we dig a deeper hole in this area? Thanks.

Steve Metalitz: Thank you Stephanie.

Stephanie Perrin: And one more point it belongs to national governments to determine how to protect their consumers with respect to what's going on, on the Web. Thanks.

Steve Metalitz: Okay. There was someone who I thought who wanted to get in the queue that is not on the Adobe but I couldn't understand who that was.

Let me just ask you is there anybody on the phone bridge who wants to be in the queue at this point? Okay if not we'll move ahead. James Gannon is next.

James Gannon: Hi James Gannon. So taking a step back from person from this just as a matter of workload management I think we need to, you know, look at this pragmatically.

The introductory text says at the top if you agree with this position do you think about blah, blah, blah.

So this is based off of question one. We have determined quite conclusively that question one was a no we do not want this distinction to be made by a huge majority.

And I would suggest that we don't really have spare cycles to be spending on coming up with definitions for something which the working group should not be moving ahead with because we have determined that the public comments have indicated it's not going to be supported.

So while it's great work and, you know, it was important to have that analysis done I don't see how we can support anything further being done on this given the response to question one it would be a waste of very few cycles that we have left.

Steve Metalitz: Okay thank you James. And I think - I appreciate you bringing up the practical pragmatic issues here. And I guess I'm just putting myself in the queue I think there's some merit to what you say.

I guess I would differ on I guess I'd like to draw two distinctions here. First I think that we can treat differently the questions there where we couldn't reach any kind of tentative agreement over the previous 18 months of discussion and where we asked the public here are two options what do you think?

I think 133 clearly falls in that category. And there I think it is a little bit I feel more justified in kind of looking at the trend of the public comments rather than necessarily delving into all of the details of them because we tried to reach agreement on this and were unable to do so. And I don't know whether the prospects for that have changed at all I suspect not.

I distinguish them from the other, you know, the questions one through 20 and Annex E where we had reached a tentative conclusion on most points.

And there I think it's quite - I would look at it quite differently. And I'm not - I don't think that counting heads is very significant. I think it's more important to pull out whether there are topics that we need to re-examine or that we overlooked the first time around. This is not a topic that we overlooked the first time around we had a pretty full discussion about it.

So that would be one distinction. And then I think (Kieran) raises an important point too which is that even though if you look at the - if you do count the heads there are a lot more heads on one side of this than the other.

We do have to recognize that some of these are representing organizations with lots of individuals or institutions in them and that they raised an important point about the fact that the answer to this question might be different for some people based on what the definition of commercial transaction is.

It's obviously perhaps would not be different for other people at least that's the input that we are getting.

But in terms of the practicalities of this the question is whether if there is going to be an effort to define commercial transaction and then kind of put a more detailed question out for consideration is that something that we can do now or is that something that has to go forward at some later stage in the process and we should move forward with the - without having this prohibition in our final report.

I think that's kind of the question that - the way I would frame the question. And I'd be interested in people's thoughts on that.

I see (Kieran) has her hand up so let me ask her and let me invite anybody else who wants to comment on this to come into the queue. (Kieran) please go ahead and then we'll have James Gannon.

(Kieran): I just want to make kind of one important clarification to what you said earlier about the question being debated in the group.

I think that what was debated in the group was whether or not it was a word file question but the question itself were any inference to reach definition was actually not discussed in the group at all.

And so I think that it was very effectively tabled repeatedly. And I think that there were - there was an attempt by members of the group which it scripts and (Libby) being user organization which I think she backs up (Stieger Baker Daniels).

Anyways she and some of her other groups I think (Aesop) was a member was a part of that, you know, even hard to put forth a whitepaper to further the discussion about definitions, you know, about legal issues and it just was it was tabled it was repeatedly tabled.

So I think I would just clarify like the issue was discussed in the group but only preliminarily. The actual meat of it never was.

And I think that that's what, you know, the BC, and the IACC and INTA and other seem to be responding to in their comments which is that, you know, the work wasn't done in such a way that allows us to actually reach a conclusion on this substance of the issue itself. Thanks.

Steve Metalitz: Okay. Thank you (Kieran). I've got James Gannon and then Christian. James, go ahead.

James Gannon: James Gannon, so staying in my practical mindset so at the end of the day I think it's pretty clear that we're not going to come to a consensus on including any form of different commercial and noncommercial user of the privacy proxy services.

I think everybody here no matter what side of the argument we're on is going to agree on that. And I think given the visibility and the level of interest in this not just within ICANN but in, you know, we had Fadi talking about it in Congress. And I'm sure that some of the Senators this and they're still interested but want to know why we brought a non-consensus recommendation to the board.

So I think we need to be - yes we're not trying to split up and say oh well, you know, one stakeholder is worth less than the other or just because we have a lot of comments with this.

No we need to be practical in this. Okay we push something out to public comment and we got an overwhelming response.

Now you can agree or disagree with how that response came in but it's a legitimate response to the question that we put out.

And as we move forward, you know, I think we're trying to create work for ourselves to try and spin things to the results that we want but we need to respect what came in.

We were told not to go ahead with differentiation between commercial and noncommercial users of privacy proxy services.

Let's out of both respect and practicality just agree that that's the reality of the situation and move on. We're wasting time trying to create work to make this a more appropriate or a slightly different definition that might meet or the other side of the argument.

But I think we're if we go ahead with this we're going to be doing ourselves a disservice on the working group.

Steve Metalitz: Okay thanks James. And just to clarify I think you're saying you're not saying that the discussion we're having today is a waste of time you're talking about one of the possible paths forward as being a waste of time?

James Gannon: Correct yes.

Steve Metalitz: So okay. Now let me turn to Christian and then James Bladel. And please if anybody else wants to speak on this please put up your hand. Christian I guess has put down his hand.

Christian Dawson: No I'm still up. I was just putting down my hand so I didn't leave it up after we finished...

Steve Metalitz: Thank you.

Christian Dawson: ...after I spent - finished talking.

So I actually I just wanted to give support to what James Gannon was saying. I was part of the group that was pushing against us spending time on definitions and it was exactly with that in mind.

I think that the answer to one is clear. And with it being clear the idea of spending time on definitions is definitely not worthwhile.

And that's why I spent time in the working group saying that we should avoid spending additional cycles on something that wasn't going to prove fruitful.

Steve Metalitz: All right thank you Christian James Bladel, James and then Mary Wong. James, go ahead.

James Bladel: Hi. Thanks Steve. James Bladel speaking. And, you know, to James Gannon's point and to Christian and I think just kind of I think you alluded to this earlier Steve is we've got some rough edges to sand off I think in other areas of work but this particular area is certainly turning out to be quicksand.

I don't see folks coming together or necessarily swaying any minds to be changed on this. I - with concern of our timeline has been expressed numerous times on the list and in previous calls, you know, I think it's both the timeline and perhaps even the working group itself, you know, is jeopardized by the more cycles that we continue to invest in this particular issue. You know, I just in practical terms flag it as no consensus and move on. Thanks.

Steve Metalitz: Thank you James. Mary and then I think we'll wrap up and move on to the next agenda item. Mary did you have something...

Mary Wong: Oh thanks Steve. Thanks everybody two quick points.

Just two quick points actually, one is to thank everybody for this discussion because this is exactly why the Subteam returned with this question to the working group because I think as (Kieran) noted the chat there were a few responses to question two that caused them to think that that merited this fuller discussion.

Secondly Steve to go to your earlier question about whether there are specific subjects within this heading that might be appropriate to return to perhaps doing implementation I just wanted to note that there were several comments that did suggest possible avenues for research either as best practices or developing some kind of implementation framework as a learning experience.

I can highlight these for the group at the appropriate time but I thought I might just note them here to perhaps provide a way forward at some appropriate time. Thank you.

Steve Metalitz: Well thank you Mary. I think the appropriate time is right after this call. So - because I think if we can wrap up this item and move on that would be - that would show some forward progress.

And let me just also say with Subteam 1 I think my understanding is that they are also quite close to being able to deliver something to the group.

And that will be coming out this week. And hopefully we can discuss - look at that, and assess it, discuss it fully next week and wrap up that Subteam as well. So that would be the hope if we can move forward on these.

Thanks everyone for your contributions. Let me turn to Item 3 which is the Public Comment Reviewal excuse me Review Tool Part Three.

I think actually this was circulated on August 20 or 19 it's dated the 19th. Anyway it's been on for a few weeks.

And it's certainly timely to ask if people have identified in this people have had a chance to look at this and have you identified any issues that you think we need to put on our list for discussion whether in a subgroup or in the full group.

So let me open the floor to anyone who has any topic to offer on this. Okay well not hearing any, you know, again we may be in the sanding off the rough edges phase here on some of these questions.

But we've now had this document out for a couple of weeks. And I would encourage people to bring any topics that they think need to - need special

attention from this segment of the tool to the attention of the full working group before next week's call so that we can again move forward from there.

And in terms of the work on Subteam 2 I think we're at the point where hopefully we can circulate something from the co-chairs before next week's call, you know, some proposed language to be used here in the final report. We'll hopefully get to that point also on Subteam 1 after the discussion next week.

James you have your hand up. So please I don't know if it's on this topic if it's on the Part 3 of the Public Comment Review Tool or something else?

James Bladel: It was on Section 3 sorry Steve I'm this is James speaking. And I was a little late to raising my hand because I did want to point out just a note on Section 17 B are two service providers becoming aware of persistent delivery failures of email whether that's a relay of an important notification or something like that?

You know I don't really have anything to add. I just maybe want to flag up for something that we may want to come back to see - and I understand we're tying this and mirroring some of the obligations in the RAA. But we're finding that operationally there is actually more of a challenge than it seems on paper.

So maybe we can take a closer look at that, you know, and how you word that as persistent delivery failure or something like, you know, something like conspicuous clear and conspicuous indications that way delivery has failed or something like that.

I think that persistent delivery failure is not always clear, unambiguous or even auditable. And we're finding that, you know, getting that into a compliance framework is very, very challenging. So I just - maybe you can take a look at that language later on down the road.

Steve Metalitz: Persistent failure of delivery I think is the language that we used. And I think we had kind of defined that in the report if I'm - in the draft report if I'm not mistaken. So are you suggesting we relook at that definition or is it the label that is...

James Bladel: I just want...

Steve Metalitz: Sure.

James Bladel: ...to make sure that what we recommend ultimately is operationable, enforceable...

Steve Metalitz: Yes.

James Bladel: ...is auditable and basically something that we can all work with and the chapters what we're incenting.

Steve Metalitz: Okay. I think that's a good point. And I think it's - and let me just point out that we used that phrase several times and it triggers a couple of things.

First of all this in 17A2 it triggers notifying the requester that there has been a persistent delivery failure. In 17B it triggers obligation to verify re-verify in accordance with our other recommendation.

In one of the topics that's in Subteam 1 it could trigger, you know, some alternative means of delivery but that's still being, you know, that's still open as to whether that would be one of our recommendations.

But I think those are - if I'm not mistaken those are the two notifying the requester and re-verification were the two things that the persistent failure delivery failure would trigger under our draft report.

And I - this is pretty important I think because in all the discussion we had about escalation, and, you know, alternative means of delivery we heard a lot from registrars and others that said well you don't really need to worry about alternative means of delivery and sending - putting something in the mail because we're going to if this is a persistent delivery failure we're going to re-verify. And if that person we can't reach that person we're going to kick them out of the program as a breach of terms of service.

So if that's still what we're aiming at but we need to define this more clearly then, you know, by all means let's take a look at that.

But I know this wasn't queued up for discussion today but I just thought I would point out that this persistent failure of delivery has some consequences throughout a draft report. So we should be careful to keep all of those in mind if we're relooking at the definition. Okay James, go ahead.

James Bladel: Yes Steve I'm not proposing we change anything that we've done or revisit any of the conclusions, compromises or recommendations we reached previously.

I just want to make sure that the language that we have accurately reflects our intention and doesn't inadvertently create loopholes that...

Steve Metalitz: Right.

James Bladel: ...render these I think well-intentioned and reasonable requirements unenforceable because we are seeing or at least in my experience is that if we don't do this correctly that some registrars -- and I won't name names -- but they're in the (unintelligible) right now is that they can hide behind some of the ambiguity of the language if we're not careful. So I want to make sure that we are - we are being clear, crisp and concise in our recommendations.

And if that means taking a look at the definitions and narrowing them and tightening them up a little bit so it's exactly clear what constitutes this then I'm fine with that.

I - but again I'm not trying to reopen an issue here. I just I want to make sure that the issue that we have - that we've landed on is something that the compliance can actually...

Steve Metalitz: Right.

James Bladel: ...go out and enforce.

Steve Metalitz: Okay. So and it may be therefore that - yes thanks for that clarification. It may be therefore that we're flagging this is an implementation issue that the concept is where we want it to be but there may be implementation questions about how it's defined and therefore how it's enforced.

So let me - I'll as staff to add that to our list. We have about half a dozen topics now that we've pulled out of the public comment tool as topics we need to make sure to at least take another look at before we go to final. So we'll add that one to the list.

Let me just ask again if anybody has any others coming out of Public Comment Review Tool Part 3 and if you're not in a position to bring it up on the call then I'm going to ask that you do so by the end of this week or certainly prior to next Tuesday's call so that we can wrap that up and move forward.

We will also have okay - Mary I'm sorry, go ahead.

Mary Wong: Thanks Steve. Not so much about this part three of the tool but more generally because what we're doing here as you noted is basically collecting

the issues and the specific topics that people are flagging that came out of the public comments.

So what I wanted to add on to that was that in Buenos Aires we had planned to discuss some feedback on certain operational points that have been noted by our registrar and compliance teams.

We presumed that those can be also discussed when we come to run through the various issues that have been spotted.

So really this is more a reminder/placeholder. And James's and your comments reminded me of that. Thanks.

Steve Metalitz: Okay thank you Mary. And let me just remind people again that we please be on the lookout for something more from Subteam 1 this week. And hopefully we can get that wrapped up and perhaps have language out to look at from Subteam based on the report we've gotten from Subteam 2.

I know there's been a very active discussant in the chat here. I'm not sure whether it's generating more heat or more light but I think we've gotten some good comments on both sides of the issue today and hopefully we can continue with that focusing on the substance here.

And I agree, you know, that words matter but let's not get too distracted by the words or labels that people are using and let's focus again on the substance and the practicalities if we can.

Okay is there any other - anything else that people need to bring up for our call today? If not then we'll deposit three more minutes in our bank of saved time from our various calls.

I'm sure we'll have the need to use those at some point in the future. I'm sure that staff is keeping close track of this. So thanks everyone.

Woman: Thank you.

Steve Metalitz: For those who are in countries that have a holiday next Monday I hope you have a good holiday weekend. And we'll talk to everybody again next Tuesday. Thank you.

Woman: Thank you.

Nathalie Peregrine: Thank you. You may now stop the recording. The call is over.

END