

ICANN Transcription Privacy and Proxy Services Accreditation Issues PDP WG Tuesday 11 August 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 11 August 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
Val Sherman - IPC
Kathy Kleiman - NCSG
Stephanie Perrin - NCSG
Terri Stumme - BC
Todd Williams - IPC
Vicky Sheckler - IPC
Volker Greimann - RrSG
Lindsay Hamilton-Reid - RrSG
Griffin Barnett- IPC
David Cake - NCSG
Sara Bockey - RrSG
Don Blumenthal - RySG
Roger Carney - RrSG
Frank Michlick - Individual
Holly Raiche - ALAC
Steve Metalitz – IPC
James Gannon - NCUC
Sarah Wyld – RrSG
Osvaldo Novoa – ISPCP
Darcy Southwell – RrSG
Rudi Vansnick – NPOC
James Bladel - RrSG
Chris Pelling – RrSG
Susan Kawaguchi – BC
Paul McGrady - IPC
David Hughes - IPC

Apologies :

Dick Leaning – Individual
Carlton Samuels – ALAC

Phil Corwin - BC

Don Blumenthal - RySG
Marika Konings -Staff
Amy Bivins - Staff

ICANN staff:
Mary Wong
Nathalie Peregrine

Coordinator: The recordings have started. Speakers, you may begin.

Nathalie Peregrine: Thank you very much. Good morning, good afternoon, good evening, everybody, and welcome to the PPSAI Working Group Call on the 11th of August 2015.

On the call today we have Val Sherman, Graeme Bunton, Steve Metalitz, Holly Raiche, James Gannon, Todd Williams, (Sara Wild), Chris Pelling, Terri Stumme, Darcy Southwell, Franck Michlick, James Bladel, Vicky Sheckler, Paul McGrady, Susan Kawaguchi, and Roger Carney.

We have received apologies from Phil Corwin, Dick Leaning, Carlton Samuels, and Don Blumenthal. And from staff we have Mary Wong and myself, Nathalie Peregrine.

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

Graeme Bunton: Thank you very much. This is Graeme. I'll be chairing the call today. The agenda's pretty straightforward. We're going to hear from the team that's worked on Annex E, and they've produced an impressive document that I think we all got last night about 9:00 pm Eastern Standard, so probably not too many of us have had a chance to go through it yet.

And then assuming that we conclude that discussion and we're ready to move forward from there, we'll go back to our - the public comments on recommendations one through nine, and hopefully get to as many of those as quickly as possible. And we'll be doing that at a pretty high level.

It occurs to me that I should ask if there's any SOI updates before we get going. Going once, going twice, not seeing that. So maybe let's hear from our Annex E sub team. Who is convening that one?

Todd Williams: Hi this Todd. I'm happy to kind of work through the document, if that will help.

Graeme Bunton: I think that's a great place to start, if you would Todd. Thank you.

Todd Williams: Great. Thanks, Graeme. Todd Williams for the transcript. So we have the document here in front of us, and basically just to summarize, in order to kind of divide the work conceptually as we were reviewing the comments that addressed Annex E, we first divided them into two broad buckets, those that accepted the basic premise of Annex E and those did not.

And by that, all we meant was those that assumed that there were some situations where disclosure could follow absent a core order or subpoena, and then those that did not. And so that's kind of the conceptual framework as we worked through it, and then of course we dove down deeper within that.

So just going through the document that's in front of you, we started with a general summary of those comments that accepted the basic premise. We have a paragraph here on the safe domain privacy petition, and I'd prefer if we could to just come back to that end. From there we go into kind of general statements of supports, input of statements of support in the comments, by which we meant comments that did not refer to a specific section of Annex E but expressed support for general concepts which are reflected in Annex E. And those are kind of enumerated there.

And then from there we went to okay those comments that accepted the basic premise but still suggested changes to the details within Annex E, which were pretty much all of them. Every comment we looked at had some sort of suggested change to the language, which we've here tried to summarize for the working group to then review as a whole and decide what to do.

So we started by substantive changes that go to points that the commenters felt Annex E left out, so things that need to be added, and we enumerated those first. From there we went to suggested changes that the commenter made to specific sections in Annex E. We started those with comments that suggested changes essentially that were on a specific change to a part of Annex E for which we didn't necessarily have comments on competing sides.

And then we concluded with those suggested changes to Annex E for which we had comments on both sides of an issue, so for example, 3F of Annex E, the cost recovery provision that it's in Section 2 of Annex E. And for those we tried to, A, reflect the who commented on either side but then, B, give a very brief summary of what arguments they presented on either side, again to kind of help the working group as a summary to then decide what to do in response to these comments.

From there we then went to like I said the second kind of big conceptual bucket that we were dealing with which were those comments that argued that disclosure could only follow a court order or subpoena. And we broke those actually into four kind of smaller categories along a spectrum.

And so the first would be comments that argued for no disclosure or publication ever. Second would be those that argued for no disclosure or publication unless following a court order. Third would be those that argued for no disclosure or publication unless following a court order or other legal process. Some kind of distinguish, for example, a UDRP or something like

that. And then the last would be no disclosure of publication unless following a court order or other legal process but with some kind of minor exceptions for cases of abuse.

And so working with that spectrum, we then kind of categorized the comments and outlined a summary here again for the working group to kind of review.

Finally we had a general bucket of comments that we kind of labeled miscellaneous but that we just really didn't quite know what to do with. And so we essentially just summarized those here at the end of again for the working group to kind of review and decide where to go from there.

So that was the purpose and kind of overall structure of the document was to take what was a very large breadth of comments and kind of information and try to summarize it in a useful form for the rest of the working group members to kind of look over and then certainly to the extent that we as a whole want to dig deeper into any of these, you know, it should be relatively easy to do so. But that was what we were aiming for.

So that's the overall summary. I'm happy to kind of answer questions on that. But to go back to the first point that I said I wanted to uphold for the end, the big substantive disagreement in our sub team that we ultimately just decided to bring to the whole working group was what to do with the 10,042 submissions from the Save Domain Privacy campaign.

So specifically, you know, when we're looking at the language of that petition, which these 10,000-plus people signed onto, it said that privacy providers should not be forced to reveal my private information without verifiable evidence of wrongdoing. And when we looked at that language and tried to figure out what the 10,000-plus people who signed onto that meant by that, we as a sub team really debated what did verifiable evidence mean.

And what I was hoping to do this morning was to kind of outline the three positions, you know, that we kind of debated and then, you know, certainly as a bigger working group we can take it up from there. I see that (Kathy)'s joined, and I was going to let her kind of outline her position.

I'm not sure if Sara Bockey, who was the other member of the sub team who I was going to let kind of outline her position is on or not. So that one may have to be a later time or if somebody else on our sub team wants to try to summarize Sara's position for her. I don't necessarily want to do that.

But in any event, the position that I and a couple other members of the sub team took was that verifiable evidence was essentially what Annex E outlines. Certainly sections 2A, B, and C, of Annex E outline in very specific detail the type of evidence that a requester will need to submit in terms of information on its ownership of the IP in question, on the location of the content or domain name in question that it's complaining about, on attestation, on any number of different points.

And then sections 3A, B, and C outline the process by which the provider, having received that information, can go about verifying it by giving notice to the customer, by reviewing whatever information it gets back from the customer, and so on.

Contrary to that, you know, one of the arguments that we looked at was well no verifiable evidence actually mean a court order or subpoena, and thus these 10,000-plus submissions should go more in the kind of second general bucket of rejecting the basic premise.

You know, my view on that one and the one that I kind of articulated in our discussions was basically if the petitioners had wanted to say that they would have said that. I mean certainly we reviewed many, many comments from people who said court order or subpoena. The fact that this petition and the people that signed onto it didn't, to me it's persuasive.

Moreover when we look at the idea of a requester coming to a privacy proxy provider with a subpoena or court order, well at that point the evidence has already been verified by the court. And so verifiable, as opposed to verified, really assumes that there's going to be some verification being done by the provider.

So in any case, that is kind of my position, and I don't want to speak to anybody else's, but that's kind of the outstanding issue, among others, as far as what to do with the comments. But that's the big kind of outstanding issue for the working group as a whole to debate. So I'll turn it over to (Kathy).

Graeme Bunton: Thanks, Todd. That's a good introduction. I think we're going to probably dig more into the document shortly, but I see James has his hand up and he was one of the - yes I think he actually did write that petition text, so we'll hear from him first I think. And then it sounds like we might go to (Kathy). James?

James Bladel: Hi Graeme. James speaking for the transcript. And I would defer to (Kathy) on this since she participated in the sub team and I would defer to (Kathy). And then I just wanted to speak in place of Sara who's not able to join the call. It would be more of a question than a comment or a representation of Sara's position, because again I was not a participant on this sub team. So I'll step down and I'll just let (Kathy) go. Okay?

Graeme Bunton: Sounds good. Thanks. (Kathy)?

(Kathy): Actually that's funny because I was going to urge James to speak first because he and Sara worked together, so. Okay well verifiable evidence - okay so the petition statement says the provision, one of three provisions, signed onto and commented on by over 10,000 people, say privacy providers should not be forced to reveal my private information without verifiable evidence of wrongdoing.

This seems to me to be higher, much higher in fact, than the Annex 3 standard right now. What we have is indeed a lot of information that's been put forward but it's an assertion. It's an assertion of infringement. It's certainly not a finding of infringement. It's certainly not a verification of infringement.

And so I think all these people - it's my sense and I'd very much like to talk, you know, with the people who worked on the petition, but that there's a call for something much more here, that what we're doing, you know, with assertions of infringement, with insertion, you know, trademark or copyright, and of abuse, isn't high enough.

Verifiable evidence is a higher standard, and so I think that's where the exploration should go in the working group and in the sub team is what more is being asked for by Annex 3 or if Annex 3 is even the right standard at all. Thanks.

Graeme Bunton: Thanks, (Kathy). James?

James Bladel: Hi thanks, Graeme, and thanks, (Kathy). James speaking for the transcript. So just a thought or a comment and a question. You know, the question being that - well the comment being that, you know, as I some folks I think have pointed out, I did draft this language and I think there is perhaps an amount of parsing going on perhaps of what is - what falls under verified versus verifiable and whether or not there is some standard recognized legal connotation between that. And certainly that is not - was not part of the drafting process or the intention of drafting that.

You know, what I had in mind at the time was more along the line of what we see in the RAA and other ICANN contracts which requires -- and in country codes as well -- which requires providers like registrars to use something other than the claimant of a registrar that yes my, you know, my information that I'm providing is fine, and we actually go and verify that with some third party source.

And I think that the same standard is being asserted here that it's not just the word of the person submitting, the person or organization submitting the claim is the, you know, the basis for determining whether or not the claim is authentic and accurate. But, you know, be that as it may, I think that, you know, Mary made a point that well, you know, if the commenters didn't understand that when they signed onto the petition, then, you know, then can we reasonably interpret that that's their intention as well.

I don't know that there's any way of knowing that one way or the other. I certainly would had to see us write off these submissions because we've just assumed they didn't understand that to be the case but I - so the question then that I would put to the working group as a whole, and perhaps the sub team specifically, is were there any qualitative comments?

Because a number of submitters to the campaign did offer their thoughts and reactions to specific elements of, you know, or topics that they felt were particularly applicable to their situation. And I wonder if we reviewed those for anything that was specifically targeting Annex E and whether any of those could be filtered out of the bulk of comments. Thanks.

Graeme Bunton: Thanks, James. I see Vicky and then Todd, Holly, and (Kathy), and perhaps Todd can take that question when we get there, but we'll hear from Vicky first. Vicky?

Vicky Sheckler: Thank you. And thanks, James, for your explanation as the drafter of that petition of what you mean. I think that is helpful to hear. But I strongly disagree with the approach that (Kathy) has suggested and then in hearing what James said, I more think that the concept of verifiable evidence means a finding of a court is not appropriate.

The language that was used is verifiable evidence. When we think about the RAA, if we're going to use that as an example, ICANN has said that in

investigating abuse, you don't have to wait for court order to investigate abuse. So I think that leans further credit to the idea that verifiable evidenced should be given its plain meaning and doesn't mean a finding by a court.

That being said, to James' point, I believe that there was a small minority of comments within this 10,000 that did say something about a court order, and I think that that has or will be addressed in the statements here. I think Sara knows the exact number but I have it in my head that it was 68 or something like that.

Moreover, there was a separate petition that, you know, directly addressed never without a court order. And I think that if people wanted to say that, they would sign that petition instead. Both were publicized. Thanks.

Graeme Bunton: Thanks, Vicky. Just in listening to that, it occurs to me that there's a difference between you don't need to wait for a court order to investigate and wait for a court order to act, but I'll let Todd speak to James' question and whatever other response he's got in there. Todd, please.

Todd Williams: Thanks, Graeme. Yes, three different things. One on kind of James' point of well we're looking at this interpretation question and we don't want it to mean that we don't consider the submissions, which are certainly substantial in number. I just wanted to clarify that, you know, I advocated for what I think the meaning of verifiable evidence means, but that's not to say that we then don't consider these comments at all.

I actually think they're quite clear in that we should consider them as statements of support for what Annex E outlines in Sections 2A, 2B, and 2C, in addition to Section 3.

You know, to (Kathy)'s point, which is kind of related to that, of well they argue for some sort of enhanced standard in Sections 2A, B, and C, and 3, I just don't see evidence of that. I mean like I said in the beginning, when we

were going through the comments we received and reviewed 28 or thereabout comments that went into very specific detail about changes to the standards in Annex E, either up or down, and I just don't see any evidence of that in these.

The second point, to James' question on well did we look any of the additional comments that were submitted along with the petition to try to glean what it was that the commenters understood they were signing, the answer is yes. And the statistics that we found were 68 mentioned people subpoena, and 138 mentioned court order, which when viewed in, you know, relation to 10,042 total people who signed it, it's not very substantial and is not really significant and further supported our interpretation of understanding that the vast, vast majority of people who were signing this document didn't understand it to mean that.

And then the third point, which gets to some of the points that have come up in some of the comments, you know, the intent of the people who drafted it is less what we were focused on gleaning than the understanding of the people who signed it, right?

And the kind of analogy I used is that I draft a petition that says Donald Trump should be president and I get 10,000 people to sign it, and then afterwards when we're trying to analyze what that means I say oh no when I said Donald Trump I really meant Hillary Clinton, the people who signed it are quite rightly going to say well wait minute that's not what I signed. And so that was really our kind of guiding I guess a touchstone in trying to figure out what this term ought to mean is well what did it mean to the people who are signing it and how do they understand it.

So I'll kind of stop talking at this point. I've actually got a hard stop at 10:30, and I apologize. I'm going to have to jump off. But certainly this is a topic that we're interested in hearing input from the rest of the working group. Thanks.

Graeme Bunton: I feel like we're into a almost constitutional debate whether you're a, what is it, originalist or interpretive. It's going to be interesting to sort out. I think Vicky's hand is old and I'm going to go to Holly.

Holly Raiche: Thank you. Holly Raiche for the record. I have a slightly different take on it, and probably doesn't fit into any camp. But I do agree with both Todd and Vicky that the fact that people did sign something that said verifiable evidence is different to the people who took the trouble to say either no not ever, or no not ever except by court process, court order, subpoena, something that indicated an actual finding, a traditional finding had made.

Now verifiable is not verified. So it means something that it credible. And I thank you James for saying what's verifiable in your mind. I'm not sure that people were actually thinking Annex E when they said that. The way I read that was something additional to just a court finding of some sort of UDRP finding of some sort.

It's probably a higher test than Annex E, it may not be the same process in Annex E, but it is to my reading is something additional to the buckets that Todd talked about, which is the no not over, or no not never plus a court finding of some sort, and then that no not ever court finding plus a view. It's something additional, and I'm not sure that people necessarily saw that as Annex E.

So it's somewhere else. It's something additional. And it may be that we actually think in terms of the RAA, which is what James is thinking about as something else that has to happen so it isn't just an allegation, there's something additional and we haven't decided what that is. But that's just my interpretation of what people - of how I would read that. Thanks.

Graeme Bunton: Thanks, Holly. I have some concern that we could spend a long time on deciding what to do with these comments. And the decision that we come to informs how we look at the rest of the work on Annex E. So I'm going to listen

to people talk for a minute while I sort of ponder how we might be able to come to sort of conclusion on that.

And I know Steve's coming up in the queue and he might have some insight there too, because, you know, we need to move forward on this and we need to figure out a way to come to understanding of what those comments mean for us. I see (Kathy), Steve, James, and then Paul. (Kathy), please.

(Kathy): Great. Thanks, Graeme. So first I wanted to say clearly you can see there's a good faith effort going on in the sub team to understand the comments coming in. And I'm glad this is a draft report and I appreciate Todd presenting it, and overall I think our understanding is cloudy. So we'll be taking back the discussion here in the working group to continue the discussion taking place. And maybe other people want to join our sub team as well.

But I think we're short and - I think we are short in Annex E of verifiable evidence. If we look through what's being required -- and I'm just reading it here, I called it up -- what's being required to reveal a good faith statement, under either penalty of perjury or notarized or accompanied by a sworn statement, that provide the basis for reasonably believing that the use of the trademark and the domain name allegedly infringes the trademark holder's right and is not defensible.

This is what we presented as a framework. I think what we're seeing collectively in the comments coming in asking for court orders and these comments coming in asking for verifiable evidence of wrongdoing is a higher standard. So I just think we should start processing that we're being pushed for something more in Annex E or in another framework that we might create. Thanks.

Graeme Bunton: Thanks, (Kathy). Mary is a making a suggestion in the chat that it may not be possible to have a single characterizing of what the signatories as a group supported or not. Perhaps the working group can consider highlighting or

noting that there was a petition signed by 10,000 people that spoke to the issue and include a further analysis summary of what additional comments were said.

That's a possible approach. Steve, your thoughts?

Steve Metalitz: Yes, this is Steve Metalitz. First of all, in a sense this discussion is not, you know, we don't need to conclude necessarily on this discussion because we know that the issue of no disclosure without a court order that's already on the table because one petition clearly said that. So we need to respond to that in some way.

I think - I'm quite persuaded by Todd's arguments that the better way to view this petition is basically supporting the concept of Annex E and what we try to do - I think it's fair to say what we try to do with Annex E is define what type of verifiable evidence was needed in order to cross the threshold to the point where the provider has to make a decision about whether to release or not. Remember, crossing the threshold does not necessarily mean that there's disclosure under Annex E. It gets you to the point where unless there's a defensible or some answer to that verifiable evidence or some evidence that it's pretextual and, you know, then there would be a basis for disclosure.

So I think my suggestion is that the best way to approach to this is to look at what we have in Annex E and decide if that - how that matches up with the verifiable evidence standard. I think it matches up pretty well, but I think there if there are suggestions about how to improve it, you know, this would be the place to make them.

But we have to acknowledge that a lot of people I don't think it includes the Save Domain Privacy signers but a lot of people who signed the other petition think it should only be on the basis of a court order, so we need to respond to that.

I'll just make two comments about that, and really just from the perspective of an American lawyer. One point is that every American lawyer what a verified complaint is in a lawsuit. It is actually pretty much exactly what we have in Annex E. A verified complaint means when it's made under penalty of perjury. It sets out the facts that are the basis for the claim. So from that perspective, that's one gloss we could put on this.

Second, let's also remember that court order or subpoena does not necessarily mean that the court has made a finding about whether an infringement in this case has taken place. So people should understand how the legal system works that a subpoena does not necessarily mean, in particular, does not necessarily that a finding has been made, and even an order has not necessarily mean that a final decision has been made. It can come at a very early stage of the case.

So let's not - let's try not to mix up apples and oranges here and let's take this call for verifiable evidence and kind of match that up against what we have in Annex E and taking into account all the specific changes that were suggested to Annex E. And that's at least one of the jobs that we have before us. The other job is to respond to those who say that Annex E is just totally the wrong approach and you should simply not require disclosure without a court order. Thank you.

Graeme Bunton: Thanks, Steve. And you've posed some good questions there for the group around what our response is to the court order only, and I might put (Kathy) back on the hook as a member of the sub team to help us understand some of the other comments that are in there and what they're saying and how we should begin to respond to those. But first I've got James, Paul, Stephanie, and Vicky. James?

James Bladel: Hi, Graeme. James speaking for the transcript. And just there were a number of points, both comments made and also some things in the chat that I wanted to touch on, but I'll just try to summarize my thoughts in one sense.

You know, I think, you know, when you're presented with, you know, a mountain - an outpouring of responses, I think, you know, there's a couple of dangers. I think the first one is to say that, you know, these folks are speaking the language of attorneys in the US or other jurisdictions or they don't really, you know, understand the ICANN jargon or how PDPs work so therefore, you know, we should throw them out.

And the other - I think the other extreme would be that they - to hold the, you know, the comments up to a mirror and say this is exactly the most favorable interpretation is to support exactly what I've been saying all along for many years, so therefore we should count this is overwhelming support for my position. I think that both of those extremes there's inherent danger in, you know, in following either of those paths, and I would commend the sub team and Todd for their work in trying to thread the needle between those two cliques.

You know, I just - I wanted to point out a couple of things though. You know, we said that there were a number of comments that clearly identified a position on this and that it was, you know, I think it was 130 on one and 60 on another or something like that, and I think that that is correct to say that that is a minority of the folks who executed the - these, you know, these - submitted their signatures to these campaigns.

But it is still a very large number. I mean if we received, you know, set the campaigns aside and received 200 comments on something as specific as Annex E, I think that we would have to take that onboard. So I would recommend to the sub team and to staff that we put those particular comments under a microscope and call them out separately from this campaign or the other campaign, or however we want to do that.

And then just a final reminder that to the folks perhaps that are not contracted parties or intending to be, you know, on this working group that what we're

trying to establish here is the minimum mandatory standard, or the maximum I guess if you look at it from a different perspective, the mandatory standard where action is required on the part of a service provider.

What we've seen in think in most cases and even in the status quo is that many service providers choose to provide other services over and above the minimum standard of - for action, and I think that that would continue to be the case under the new framework. But, you know, I think we're trying to establish a backstop here not a, you know, to capture exceptional cases and not necessarily the, you know, the standard routine for all cases.

And I just wanted to put that out there as that's the point of having an accreditation framework. We do this for registrars and I think it's a point for privacy services as well. Thanks.

Graeme Bunton: Thanks, James. And you're right, we could be punting some of this work back into the sub team for more discussion in a future week. I've got Paul, Vicky, Holly, and Stephanie. And then I think we'll hear more from (Kathy). Paul?

Paul McGrady: Hi. Paul McGrady for the record. This has been a great discussion and I really appreciate the civility in how everybody's approaching this. I just wanted to lend my thoughts to the idea about what to do with this overwhelming majority of these comments which call essentially for no disclosure absent court order.

Of course this would be the end of privacy and proxy services as we know it because privacy proxy service would not be able to terminate for failure to pay, among other things, without a court order. Going in and getting a court order because your customer didn't pay, will destroy the economic - the current economic model, in any event.

And so as a practical matter, these thousands form comments, we can note what they say but, you know, our scope as a group is to work out

accreditation standards not to do away with privacy and proxy services. And so they unfortunately are not terribly helpful unless we're prepared to tell providers that in order to terminate service for any reason you've got to get a court order.

So that's unfortunately what they - what the comments say and we're stuck with that. And I'm also very hesitant to begin writing comments and commentaries about what we wish they said instead of what they actually do say. And so - and again claiming that they support this position or that position by adding what we wish they said to them, I don't think really does justice to what the comments actually say.

So with that background, I think that the - sort of the thread that's emerging here of looking at what the non-automated comments may have said about the current way that this annex is being approach is terms of verifiable evidence of harm, I think that's the right way to think, and I'm glad to hear others thinking that same this morning and just look forward to being part of the effort. Thank you.

Graeme Bunton: Thanks, Paul. Reacting to your early part of the comment, I don't think anything we're doing here precludes a service provider from exercising their own terms of service. I don't think that's the intent or the place that we're getting to. So I don't have that concern. But let's carry on and hear from...

Paul McGrady: Sure. Since you addressed me directly, can I just respond to that?

Graeme Bunton: Sure.

Paul McGrady: Which is that's not - I mean again that - while I appreciate that and I don't disagree that at the end of the day that's where we want to be, that's not what the automated comments say. The automated comments don't say no termination except for court order or of course unless the privacy or proxy

service is acting on its terms of service, right? That's adding something to them, and I think that that's a, you know, that is a reasonable thing, right?

We should absolutely allow proxy and privacy services to terminate service based on violations of their terms of service, but when we look at what these comments say rather than what we wish they said, they don't say that. And so for that reason, I think that we need to focus on the substance of whether or not Annex E gets it right rather than claiming the ownership over the ability to rewrite the automated comments. Thanks.

Graeme Bunton: Thanks, Paul. Point taken that we need to be careful with the language that we received. I'm seeing considerable objection to your use of the phrase automated comments, that none of those were fully automated. It always required someone to initiate that process. So we need to - we do need to be a little bit careful around that language there, but I don't know that we need to nitpick at the - around that at this particular moment. Vicky?

Vicky Sheckler: We spent at least the last four weeks discussing the comments that were raised by the two petitions and in my view not enough time or thought thinking about the other comments.

To Paul's point and to Steve's point in the chat, the comments say you can't disclose the information absent a court order period for the ones that deal with a court order directly. And from a realistic and practical perspective, that cannot be the case because just as you noted Graeme, you do have terms of service. It is a private contractual agreement with the beneficial registrant to have this. It's not some uber contract.

So given that in mind and given as James mentioned before, you know, we're looking for accreditation standards. You know, several privacy proxy services do more than that and do disclose personal information on verifiable evidence of abuse and things like that already. I would like to see the group get a little bit more practical and figure out what can we do.

You know, (Kathy) raised a point about do we have - do we all feel comfortable with verifiable evidence given the various comments that have come in, and I think that that is a topic that we want to raise. Personally I agree with what Metalitz said about that we've met that point, but I think that is a topic that's worthy of discussion.

And maybe it's not quite there. I mean I think it is but I think it's something that we've got to spend our time on, and that would be more fruitful at this point. Thank you.

Graeme Bunton: Thanks, Vicky. And you're right that we do need to spend some time on the other substantive comments that we've received especially in Annex E, and I think we're going to get there. I see Volker's hand and then I'm going to sort of close the queue there and we'll get (Kathy) to speak to some of the other work they've put in on this document and the other comments that they've received in here, and we can think about those a bit. Holly?

Holly Raiche: Really, really quickly and probably just to repeat myself, we never treated any comments as automated or not, so I do reject the concept of automated. We are dealing what everybody said. We did get stuck on a term verifiable, what that means. I would reject the fact that we've automatically said that verifiable means Annex E.

We are struggling with what verifiable does mean and it is probably a high standard. We are actually going through the process of asking everybody what they think it means, because we think it means something different. Possibly Annex E is a way through but it's - there's no agreement in the group that is the only way through.

So it is a - it's a separate element, we have to work through what it means, and James' comment about well seeing it in the context of terms it's used in

the RAA was helpful. But we've got to go back and come up with some more. And yes I'd like to go through the rest of the document. Thank you.

Graeme Bunton: Thanks, Holly. Let's hear Stephanie, Volker, if you could relatively quickly because we don't have tons of time left, and then we'll go back to (Kathy) for the rest of the document. Stephanie?

Stephanie Perrin: Yes thanks. Stephanie Perrin for the record. James Bladel had a made a lot of the comments that I wanted to make. I wanted to raise a couple of things. I was thinking or trying to think of what is the procedure for disclosing the identity of a person who has an unlisted phone number, and I realized that even having worked this area and gone through the wretched comments on a government (unintelligible) notice on this issue years ago, I could not tell you the precise in order to answer an exam question, say, on a test, the precise procedure for disclosure.

So it's not at all surprising that people don't understand this. And it brings up an issue I've raised before that we don't write our reports in a way that is plain language enough for the average individual to comment effectively. So we've only ourselves to blame. And I don't mean this any criticism of Section E or the drafters of the comments.

But in order to get meaningful input from both the man in the street who's using this Internet and the copyright lawyers who work every day trying to get disclosure through a complex system that they feel is cumbersome but they've definitely got - know their law, we need to do better explanation.

So had we discussed Annex E more in terms instead of reveal and disclosure, which still confused me and I've been here for a year and a half reading this stuff, had we said this is what it takes for a registrar to go back on their deal with you, everybody can understand if they'd don't pay the bill, sooner or later something is going to shut off, you know. So you could walk people through that.

Now I think that's why we got such a strong response. They intuitively do understand that they've got a deal and all of a sudden somebody can come from outside and break that deal. And whether they understand what a court order is or not, I think this has to be even if they didn't comment, you have to take their numbers very, very seriously that maybe we need to do a better job of stepping through this more carefully. Thanks.

Graeme Bunton: Thanks, Stephanie. That's an interesting way to reframe. Volker?

Volker Greimann: Yes thank you, Graeme. Just one brief comment to what Paul said. If we actually have to interpret - if we follow this interpretation, we have to interpret these comments as meaning that notice should be possible and therefore making privacy services impossible, then we're done. If we decide that this is what the comments say and obviously there's a very outpour for this, then we're done. We don't need an accreditation system because we will not be able to come to any agreement here or any consensus.

If we are, on the other hand, look at what proposal will be the closest possible to this comment that we can come to a consensus on, then we're not done and we have a lot of work before us, but I think that's the way that these comments should be used, maybe not interpreted but used. We see that there's a lot of comments that say we do not want any disclosure; what's the closest we can come to that to reflect the will of 10,000 signatories.

Graeme Bunton: Okay. Thanks, Volker. So that's quite a bit of thorough discussion now on how to deal with those comments, but there are plenty of other comments as I think it was Vicky rightly pointed out that we haven't spent any time on yet. And so it's probably high time we do that. We've only got about 11 minutes left in the call.

(Kathy), I believe you're - I don't know if you're another co-convener of this working group or this sub team but perhaps, unless someone else would care

to speak up and work through some of the other - or talk us through some of the other comments that were received or the work of the sub team in more detail.

(Kathy): This is (Kathy). Graeme. I'm not a co-convenor. I came in late to the game. But let me - has anybody raised their hand? If not, I can try to kick it off and then urge other members of the sub team to jump in, because there are other issues of course that were raised in some of the comments.

One of them has to do with the appeals process and there were different views on the appeals process as it's been laid out as the framework's been laid out. But there also seem to be compromises coming in. And so there's a suggestion in the materials -- you can go down and take a look -- that there's some overlap between the noncommercial and intellectual property comments and some - similar suggested resolutions on the appeals.

So that would be good, because we spent a lot of time in, you know, in regular sessions of this working group talking about the appeals process, the cost recovery process, who pays for something that's a non-electronic notification is also, as you would expect, had different sides on it. And that continues to be an issue that we're looking at we'll be presenting.

And so let me turn back to the other members of the sub team to see if there's anything else we need to highlight as we go through. I'll just add in addition to kind of the absolutes about court orders, we're being urged in some of these general comments by people who aren't as in the details as we are for due process. So let's, you know, try to figure out what due process means as well. Thanks, Graeme.

Graeme Bunton: Thanks, (Kathy). I see Annex E team had Phil, Holly, Todd, Darcy, Vicky, Sara, and (Kathy) on it. And Steve is pointing out in the chat that the cost recovery process from this one is - oh this is a different cost recovery process from the one addressed in sub team 1.3.2. Would anybody else from that sub

team care to talk about the other issues raised or their sense of this - the whole issue having looked at it so far? I'm not seeing any hands.

All right so that brings us to an interesting place. I think we still have some work to do around this. We all need to spend some more time with this document, and it sounds like we're not quite through the debate on what to do with those comments, but we can take that to the list and hopefully settle that in relatively short order.

I again am a little bit concerned about time and getting this whole thing done. We've got about seven minutes and I think that's actually enough time to get through a couple questions on the one through nine. So we're going to - or at least start that process. And Mary it looks like you're doing it now. Thank you.

Great. So everybody should be very familiar with this document. It's been out now for at least a month I think, and we've looked at it a number of times and we certainly talked about it a bit as well. And the goal here is that we're going to step through the questions before us and theory and I'm sure in practice as well.

We've all read through the comments in each of these sections and we have a sense of what they mean, and so we're not going to go through them all. We're just going to ask for if there's any issues that were raised in there that people feel we need to discuss or address. If not, we'll carry on through this list. And I see Steve and (Kathy) already have their hands up and so let's go to them, but we're going to start shortly thereafter with number one there at the top. Steve?

Steve Metalitz: Yeah on question number one, I found two issues that are probably worth looking at. One is the application of these accreditation standards to lawyers and law firms, for example in comment five on this list. And the other is the definition of law enforcement authority, which some people did not - thought was too broad. Comment 30 says that, comment 35 said that, and 37. So

those are the two issues I found in the comments on question one. Thank you.

Graeme Bunton: Thanks, Steve. And those are good points. A lot of people from my reading, if I'm editorializing for a moment, had issue with the quasi-agency language, and that's a good point. I'm not entirely sure myself what that means and maybe we need to think about tightening that up a little bit.

There's been lots of talk around the - whether lawyers would be captured, lawyers registering domain names on behalf of their clients, would be captured by this accreditation regime. And the IPC proposal is interesting that you limit to people who specialize in the provision of such services and it's a primary business offering. And so I think that would exclude most lawyers, although I think if you've got a brand protection practice, then that might fall into this category. I'd be interested in hearing other thoughts there.

Primary business offering is also interesting. We might need to tweak this language a bit. Speaking from (Two Cals) experience, our privacy service is certainly something we do. I wouldn't - certainly say it's not a primary business offering for us. I don't think it's in the top ten things we do in terms of revenue. It certainly - it's not a focus for most of the people in the company, and so there might be a sort of better way to get at that, if that's the intent that we want to have.

I see (Kathy)'s got her hand up, and I thought I saw James in there but he appears to have disappeared. So let's go to (Kathy) first.

(Kathy): Hi, Graeme. Thanks. Mine is more a procedural question. I think Steve and you have identified the two issues of this list that are of concern and merit more discussion. Question two, law enforcement, and five, lawyers and the inclusion of lawyers, including those who practice this in this area almost exclusively.

So can we - rather than - I get the feeling we're all doing a lot of things all at once. So I'd like to see if we can move these discussions to a later time, kind of we've identified them - it's almost like the sub teams in the comments. We've identified something that's important that merits more discussion.

Rather than continuing it now, can we pull it off, table it, and move it to a later time for discussion and exploration, particularly in light of the fact that we're reviewing comments. So those of us, including in sub team four, the no comment left behind, can do some digging in this as well. And so let me flag that for others.

You know, looking at the definition of law enforcement, looking at the definition of who's included, who's going to become involved - who's going to be captured under the scope of the accreditation that we're working on, these are really important issues but I don't think we can resolve these right now. Thanks.

Graeme Bunton: Thanks, (Kathy). I don't - I wasn't quite so optimistic as to think we could resolve them right now, and you might have a point that we need to maybe put these two particular things aside and come back to them later on in our work. I'm - my hesitation there is that I worry we're going to end up doing that with every issue we come to at this point, and we do need to figure out a way to resolve some of this stuff.

I think perhaps the definition of law enforcement is that one that we should be able to resolve without too much effort. It seems to me like we can work, and it's going to be on the list at this point, given that it's 10:58, to come to a definition and there's certainly -- excuse me -- a number floating around within the ICANN space that we should be able to use or adapt or narrow in on that we should all be able to agree on.

As for how to address the lawyers and that application, we may need to come back to that one. I think aside from those two issues that are captured in

comment one, I think we can now quite rightly say those are things we need to sort out for question one we need to respond to, and we can move on next time we get to this onto question two.

So I think that's right. So Steve is saying issue spotting, and I think that's what we have just done. And so that's what's we need to respond to for question one and we'll spot some more issues I'm sure later on in this document.

But that now brings us to 11:00 am Eastern Standard. And Steve is very rightly with exclamation marks before I let you go saying let's spot the issues in two to nine ahead of time. Let's do that on the list and carry on that discussion there so we can move as far ahead as we can in the limited amount of time given to us.

Thank you everyone for participating today. That was some good discussion. We will see you next week. Thank you. And we can stop the recording.

Mary Wong: Thanks, Graeme. Thanks, everybody. Bye.

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