ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 24 March 2015 at 1500 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 24 March 2015 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at: http://audio.icann.org/gnso/gnso-ppsa-24mar15-en.mp3

Attendees:
Frank Michlick – Individual
Justin Macy - BC
Val Sherman – IPC
Griffin Barnett – IPC
Kathy Kleiman – NCSG
Darcy Southwell – RrSG
Todd Williams – IPC
Steve Metalitz - IPC
Graeme Bunton – RrSG
Jim Bikoff - IPC
Holly Raiche – ALAC
Kiran Malancharuvil – IPC
Volker Greimann – RrSG
Alex Deacon –IPC
Sarah Wyld – RrSG
Stephanie Perrin – NCSG
Tatiana Khramtsova – RrSG
Susan Kawaguchi - BC
Terri Stumme – BC
Phil Corwin – BC
Luc Seufer – RrSG
Chris Pelling – RrSG
Paul McGrady – IPC
Susan Prosser – RrSG
Michael Palage-RySG
Vicky Sheckler – IPC
David Heasley – IPC
Carlton Samuels - ALAC

Apologies :

Don Blumenthal – RySG
Richard Leaning – no soi
Osvaldo Novoa – ISPCP
James Bladel – RrSG
Lindsay Hamilton-Reid – RrSG
James Gannon - NCUC

ICANN staff:
Mary Wong
Danielle Andela
Yolanda Jimenez
Terri Agnew

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

Terri Agnew: Thank you (Francesca). Good morning, good afternoon and good evening. This is the PPSAI Working Group call on the 24th of March 2015. On the call today we have Frank Michlick, Griffin Barnett, Michael Palage, Philip Corwin, Stephanie Perrin, Graeme Bunton, Holly Raiche, Tatiana Khramstova, Chris Pelling, Kathy Kleinman, Val Sherman, Sarah Wyld, Steve Metalitz, Justin Macy, Susan Kawaguchi, Volker Greimann, Paul McGrady, Justin Macy, Todd Williams and Vicky Sheckler.

I show apologies from Osvaldo Novoa, Dick Leaning, Don Blumenthal and Lindsay Hamilton-Reid. From staff we have Mary Wong, Yolanda Jimenez, Danielle Andela and myself Terri Agnew.

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

Graeme Bunton: Thank you kindly. This is Graeme for the transcript. I'm going to be your fearless leader for today. I see David Heasley is on the audio bridge. Is there anyone else that's audio only?

Terri Stumme: Terri Stumme.

Susan Prosser: And Susan Prosser.

Graeme Bunton: Susan Prosser. And sorry, who's that first person?

Terri Stumme: Terri Stumme.

Graeme Bunton: Welcome both of you. If you wish to chime in, find a suitable place to interrupt and I'll put you in the queue. Thanks. Does anybody have any updates to their SLI as per usual? Seeing none, we'll continue moving forward.

Thanks everyone for joining us. Some fun topics on the menu today. First up though will be a little bit of a chat around face-to-face in Buenos Aires. Then we'll move on to Category F and the disclosure framework and that's probably going to eat up the rest of our time.

Before we get to that though face-to-face. We've certainly been talking about this for a bit. My impression is that no one is clamoring for the face-to-face. But there is a sense that it could be useful. If we're able to get our initial report prior to Buenos Aires, then we should be able to be looking at some of the feedback for that.

And it could also be that we're not there and we're still working through some, you know, topics that we're having difficulty on and it still may be worthwhile there.

There's also a sense that ICANN meetings are long and they're exhausting. And we were sort of looking at two shorter sessions in the evening or a longer one on the Friday before.

And one of the - one of the options that we - that Chairs have discussed yesterday was moving to just a single shorter session at some point as an opportunity to maybe, you know, not exhaust everyone. It would be earlier in the week. But still have the opportunity to get some work done.

Mary, maybe you can update us on where the poll stands right now if that's okay.

Mary Wong: Yes. Of course. Hi everybody. This is Mary from ICANN staff. So as you know, we had a second doodle poll. Some people responded by that way; some by email.

Basically we have a preference for doing something on the Friday. And if you count the email and the doodle votes, that would be nine people expressing a preference for Friday the 19th with six people expressing a preference for the two session solution.

We note some comments that came in and thank everybody very much. I think the issue for the Chairs as Graeme as noted is trying to make sure that we do have the ability to get work done without exhausting people and noting also the attempt to try and get some representative group as possible given the activity and the participants. Graeme, did you want me to go ahead and talk about the Friday option?

Graeme Bunton: Yes please. That'd be great.

Mary Wong: So to pick up from where Graeme has left off. And so Steve, I noticed your comment. So basically I guess that means we have nine to seven for the two options.

One of the things that the Chairs discussed with staff yesterday was that if we did a session on the Friday 19th and it would not be a full day. It would be perhaps Friday afternoon starting after lunch for say three or four hours. We

may be able to get a lot accomplished in that period if the agreement is that we will focus on the more difficult or more contentious issues because, as Graeme noted, by then we would - the public comments come in.

The idea then is to do that one short session on Friday or shortish, three to four hours Friday afternoon with a backup that we can book a room for - for the Sunday evening, maybe another two or three hours.

So in other words I think the Chairs are trying to accommodate the preferences and the difficulties as well as the limitations that everyone has talked about. Graeme.

Graeme Bunton: Thanks Mary. That's a pretty good summary of where I think we're at. Happy to hear feedback from people. I see Paul's hand up. Paul, go ahead.

Paul McGrady: Hi. This is Paul McGrady for the record. And sorry to keep asking the same question but - I just - I'm - I generally in regular day-to-day life don't commit to meetings unless I know how the time will be spent.

We're talking about a lot of time and schedule disruption for everybody. And I know that I've asked the question in the past, what's the agenda and I've not been able to get a suitable answer.

What are we going to cover? Hat's this meeting going to be about? How do we deal with the fact that some have expressed that they don't want any decisions being made; just discussions? How will this advance discussions in a way that the LISTSERV won't? I really would like for us to examine whether or not this meeting is necessary and makes sense.

And if it is necessary and makes sense, what's the topic? And are we going to be able to actually advance the ball or is it going to be us talking to each other?

Graeme Bunton: Thanks Paul. I think some of that is a challenge at the moment because we don't know exactly where we'll be at that time. I don't think there's any disagreement though that we should be as focused as we can and ensure that time is used wisely. No one's particularly interested I think in sitting around in a room hanging out.

So I don't think we're going to - I'm not seeing anybody - oh, Steve's got his hand up. We'll hear from you Steve.

Steve Metalitz: Yes. This is Steve Metalitz. I just - I think Paul raises a very good question. And I think the answer is as far as we know that we will be discussing the community comments or the most contentious, if you will, community comments on our draft report.

The draft report will be out. There will - the comment period presumably will have closed. And we will have all these comments. And at that point we can say, all right, this subset of the comments is what we're going to talk about.

The problem that I think Paul is raising is since we don't know quite what those will be, although we might be able to make a informed guess that it might have something to do with (unintelligible).

The - we don't know exactly how much time we're going to need to devote to it. And the idea that we would block out a full day meeting or even two half-day meetings just is - and as he said, it's not just that, you know, we're there or already there for, you know. This is causing people to come in two days early from North America and a day early perhaps from some other parts of the world.

So that's a pretty significant disruption. So I guess the question is how likely do we think it is that we will need to have six or seven hours to - or eight hours to discuss these comments that have come in and try to figure out how to incorporate them in the report.

I don't really know the answer to that. I'm not - but I think it's a little bit - maybe that gives a little more specificity as to what the agenda of the meeting is going to be. Thank you.

Graeme Bunton: Thanks Steve. And that's helpful. Does anyone else feel strongly or have an opinion to share on that? I think we can certainly take the - what Steve is saying and Paul was saying onboard. And we still need to make a choice I guess about how we proceed but it's tricky because there's, you know, different inputs coming in here.

I see some discussion in the chat but most of it looks to be a little lighthearted. All right. So let's take that back and we'll keep stewing on that. I think - I don't think it's quite baked yet.

Which brings us to Category F in the draft disclosure that we've been working on for a bit and still requires a bit of room though I, you know, does feel like there's progress to me. And I think we're getting somewhere and we're not too far apart on a whole bunch of issues.

The way I thought we'd try and tackle this today is we'd start out with Section 3c5 although we might go through some of the edits prior to that. And then if we wrap that up, we can go on to a discussion of the annex. I think there was a bit of confusion about what it is and what the purpose was of that annex and appeals mechanisms.

And then following that if we get there we can talk about authorized agents, which has been the sort of bulk of the discussion on the list over the past 24 hours. That's still stewing a bit. So I wanted to save that for last.

So let's look at the document. Everyone should have scroll control. I see that there is a title change and a discussion requested. I think that's from Kathy. I

don't honestly know what the title was changed to. Did you have a sense of what you wanted to discuss there Kathy?

Kathy Kleinman: Sure Graeme. Hi everyone. Yes. (James) had raised some questions just - at some point we should say whether the title is an illustrative example of intellectual property requests or whether this is the policy for intellectual property requests as opposed to other types of requests that may come through like law enforcement that might be working on.

It seems to me this is the bracket around the intellectual property request. But again, compared to some of the other issues we're debating, this one may be for a later time. Thanks.

Graeme Bunton: Okay. Thanks Kathy. You're right. We may not need to solve that at this particular moment. But people can now have a bit of clarity on what that edit was and what it means and have a think about it unless someone else cares to weigh in.

Kathy Kleinman: I just set it back to the original because (James) had raised some concerns last week because he had been - he had drafted the original and he's not here now, so. Thanks.

Graeme Bunton: No problem. Thanks Kathy. Steve.

Steve Metalitz: Yes. This is Steve. I agree with starting with 3c5, which is obviously a significant provision. And I wonder if Mary could - since what we have in front of us is Mary's kind of compilation of the discussion that's taking place the last week or two, I wonder if should could just walk us through what the changes are here and it now stands.

Graeme Bunton: Sure. That seems like a good idea. Mary.

Mary Wong: Yes. I'm here. Thanks Steve. Thanks Graeme. So essentially this document as Steve says is a compilation. I have not taken out any of Kathy's recent changes. So most of what you see here would be the changes and comments from Kathy that came out on Sunday and also the ones that she sent last week on the 16th.

So those have been preserved in this document as the blue line I suppose if you're seeing blue on your screen. What I've done is that with respect to the earlier changes prior to the 16th is accept them so that the document is easier to read and to allow us to focus on the topics that seem to have the most difficulty including C5 as Steve noted.

So those are the two things. The one thing that staff didn't do in C5 I think it was, was to try to capture some of the comments from last week's discussion. So for example, removing the language around the slam dunk working and the examples and offering there the phrase clear and convincing evidence from the URS.

So there was one major change from the last version that you saw that staff did. But that was based on the discussion from the last working group call. And so you should see all that in the document in front of you. Thanks.

Graeme Bunton: Thanks kindly Mary. And that's helpful of you. So here we are at 3c5. It's sort of the middle of Page 8 if people are scrolling. And it's helpful that that slam dunk text I think was removed.

And in looking at this, you know, I think what we're trying to do here is cover a bunch of bases, making sure the providers have the discretion. Also that we're considering human rights and also that, you know, like all of this that intellectual property concerns have a reliable process.

You want me to - Kathy's requesting that someone read the current 3c5 text. I can try and do that if I can distinguish...

Woman: (Screen).

Graeme Bunton: ...what is currently the core. Before I do that, the other thing that occurred to me is we have this a little farther down the draft language on disclosure and human rights and this sort of addendum to this text. And I wonder if we're able to bake some of that into C5 in a way that reduces the need for that text farther down so that we're covering a number of bases here.

So the text reads as - that the requester has not provided clear and compelling evidence of trademark or copyright infringements or that the customer has provided a reasonable defense for its use of the trademark or the copyrighted content in question.

And I see Todd Williams' hand is up. Please kick it off for us Todd. Thank you.

Todd Williams: Well just a basic question is C5 is now drafted; how is that not redundant form what C2 and C3 already say?

Graeme Bunton: Question. That the customer has objected to the disclosure and has provided adequate reasons against disclosure is where C2 is. And C3 is that the provider has found adequate reasons against disclosure. Kathy, I see your hand is up.

Kathy Kleinman: Yes. It's a good question. I think the response is and the reason for the insertion was to create a standard by which the disclosure - the provider's disclosures measured.

Right now there's an appeal mechanism for - well first, as I understand it and this is one of the things I hope we discuss is that, you know, initially the provider does the evaluation, makes the decision. Then there's a petition for reconsideration to the provider. And then there's an appeal that appears to be

open for anyone who is - for any requester who is refused by those previous two steps.

So C5 - so 3c5 the language we're looking at gives whoever reviews this later an ability to know what the standard was and also with the providers that, you know, what the standard is for evaluation in clear and compelling evidence, which was not my language, but that is indeed the language of the URS, is what we were talking about and what we seemed to be embracing last week.

And I think it provides clarity and guidance both for the providers and their evaluation and for anyone looking at it from afar later on. Thanks.

Graeme Bunton: That's a helpful bit looking at it, you know, after the fact. Todd, does that clarify that for you? I see Vicky's hand up and I also see Todd's. So I'm going to put Todd first because I suspect it's a response and then we'll come back to Vicky and Val.

Todd Williams: Sure. What goes into the question I raised on the list that I don't think we've talked much about yet, which is I thought the genesis of addition of C5 was to address this concern about pretextual complaints and at risk groups. And I'm not sure how this gets to that. Or to be more precise, I'm not sure that there isn't a better way to get to that concern by focusing on C2 and C3.

Graeme Bunton: Okay. Thanks Todd. Perhaps we can look at those. I've got Vicky and then Val. Kathy, your hand is still up.

Vicky Sheckler: I agree with Todd. And then also, you know, quite frankly I don't think that standard is appropriate in this case at all. We're talking about the very beginning of the process. And all we're talking about is disclosure so that we can further investigate what is going on with the problem.

And if we compare it to other legal systems at this stage, that is completely the wrong standard. It's one thing to say that the service provider must

disclose this clear and convincing evidence and quite a different one to say they may not unless.

So, you know, to Todd's point, if this is the deal with the pretext of a human rights thing, that is very different and a different standard. And we're happy to talk about that. But using that as a justification for this I just don't think is appropriate. Thank you.

Graeme Bunton: I see - thank you. I see Mary's got her hand up and is putting something in the chat. I'm going to put her ahead of you Val if you can hang on for just a sec. Mary.

Mary Wong: Thanks Graeme. And so it is as I put in the chat and for those who are not in the chat, given what Todd and Vicky said, I wonder if what we could do is take the - some of the phrasing from C5 here.

For example, the fact that the customers provide a reasonable defense for its use of the trademark copyrighted content and put that in C2 as an illustrative example in which case we could rephrase C5 if the group felt that there's a need to specifically address the human rights concerns and make C5 address that directly.

Graeme Bunton: Thanks Mary. That might be the way to go. Val.

Val Sherman: Hi. This is Val for the record. Val Sherman. So I hate to be repetitive. My point was essentially what Vicky just so eloquently stated. But I would agree that clear and compelling seems really inappropriate in this - at this stage in this context.

And (the real stage) of the requester naturally lacks some information about the customers and is really using in our experience the request as a preliminary step to decide whether further action is justified or can be

prevented perhaps either as a result of some new information or direct communication with the customer.

And this seems to raise the bar far too high. We've always thought from the beginning that the reveal should be provided where the requester can make a prima facie case (from Frenchmen), which can be provided for example by (defenses) provided by the customer or the provider.

And to, you know, echo again Todd and Vicky the standards already provide plenty of discussion for providers to (refuse) to disclose, you know, if the request is insufficient, does not indicate a likely infringement or there's evidence pretext, for example, under C3 I believe. Thanks.

Graeme Bunton: Thank you. Vicky, your hand is still up. And I see Kathy's got a response.

Woman: (Unintelligible).

Graeme Bunton: Kathy, if you would.

Kathy Kleinman: Yes. Thanks Graeme. There was really a sense in last week's call that in order to - that if we were going - if you page down on the document there's extensive paragraphs and language on the draft language of disclosure and human rights.

That we thought long and hard about some of these complicated cases where it's complex and where in the - and so the idea of allowing the provider, making it very clear that the provider has the right to say no reveal under these complicated cases.

This is what the standard - I'm not crazy about the clear and compelling evidence. We had, you know, we had lighter language earlier. Obvious clear-cut, you know, infringement is lighter language. But the idea that there's a

standard here is very important to hold out and that the providers making it based on the standard. Thanks.

Graeme Bunton: Thanks Kathy. I see Steve.

Steve Metalitz: Yes. This is Steve. Just two points here. One is picking up on Mary's suggestion. You know, we already have C2 that says the customer can - disclosure can be refused based on a customer objection. C3 disclosure can be refused based on adequate reasons that the provider has found.

So I guess the - it's a question of a reasonable defense. I'm not sure what that necessarily adds but maybe there's a way to work that in. I think this is distinct from the situation that Kathy just raised again, which is the pretextual human rights issue, rather the pretextual request that has a human rights impact. Let's put it that way.

In those cases there may not be a defense. You know, there may be - what if you have a very clear-cut case but if you think that, you know, if you just look at the intellectual property issue in isolation. But the concern is that because of the nature of the customer it's being pursued for a totally different reason.

That's not necessarily a recent, you know, a defense to a infringement case. It's saying even if there is infringement, we shouldn't be revealing here because of the vulnerability of the customer or something like that. So I just think that's - that may be a separate issue and let's not confuse the two.

My second point was that again a bit of context; let's remember that in every case the provider has to communicate what the reason is for non-disclosure. It could be a customer provided reason and so if it is going to be the customer saying I have a reasonable defense, that has to be spelled out in the refusal by the provider so that the requester can seek reconsideration for example.

And if it's going to be a situation in which the provider concludes that this is a pretextual request, then again that needs to be spelled out too. So I think it is important that the reason be communicated in some detail so that the requester is able to evaluate it.

This whole system assumes there's a lot of discretion on the part of the provider to refuse disclosure. It's not unbounded discretion. But there is still a significant territory of discretion here. And I think for that to work we've got to have some pretty specific reasons given for why disclosure is refused once you fulfilled that the prima facie case, if you will, that the template provides. Thank you.

Graeme Bunton: Thanks Steve. And I think what you're suggesting there seemed reasonable. Looking at responses to that whereas we can beef up two and three and perhaps provide in there some examples that might cover the bases that Kathy was discussing.

And then on five we can shape that into your point was where if it, you know, there may be no defense but there is still a need not to disclose. And so we can cover that scenario there. Stephanie, I see your hand.

Stephanie Perrin: Thanks Graeme. Stephanie Perrin for the record. I just wanted to make a couple of points. Number one, with respect to removing the human rights language, can we leave it in if only for the moment because quite frankly, human rights defense and (competional) protections (color it) all of this work and I think it's premature to take it out.

You're just inviting people to comment in the comment period about threading it in everywhere, which I think will get messy. So I'm holding out for that.

Secondly, with respect to this business of reveal is of course what we're talking about, (indemnification law) under the circumstances you would disclose only to the requester. You would not put it in the Whois.

So and bear in mind that once it's in Whois, it will immediately be gobbled up by some of the value added service providers so that it'll be in who was for the rest of eternity even if that person wins his case and goes back to using a proxy service provider and he'll have to change his address and cell phone and all the rest of it. Right.

So there's a certain irrevocability about this unless we're going to (new all) what disclosure means as opposed to reveal in all of this text here. Because as Steve has just pointed out, there's a fair amount of discretion involved here and frankly the easiest thing is to dump into Whois.

And that's one of the things that on the privacy side we're concerned about is how is that discretion being operated. The service providers that are on this particular working group we worry less about them. It's about all the others.

So those are the two points I wanted to make. Thanks.

Graeme Barnett: Thanks, Stephanie. My understanding, and I think what Steve is saying in the chat, is all of this document we're looking at should only be disclosure to the requester. And I believe the annex, which we should come to later hopefully, is meant to provide some recourse for providers if a requester then abuses that disclosure request and so they, you know, say it publically all over the place or something. It should be their own private purpose was my understanding of what we're up to here.

So hopefully that's helpful. All right so you're saying in the chat that we should make that crystal clear, and that's fine. Perhaps you can suggest a place for some of that language, and that could be up top at the top of the document.

See below. I'm going to stop reading the chat, and I'm going to go on to Paul McGrady.

Paul McGrady: Hi there. Paul McGrady for the record. Just to comment about standards, and I put some of this in as questions last night on the chat, but I'm a little concerned that we have different standards evolving here where a complainer has to have a clear and convincing (unintelligible) case, a little better than slam dunk I guess, but the - a customer who objects their standard as reasonableness, which I guess is perhaps less than clear and convincing.

You know, we also see this disparate treatment evolving in, you know, the templates. My question about if we're going to stick with a perjury-based standard for the complainer, which is, you know, comes out of the ZMCA, which by the way I think is highly criticized by lots of free speech folks, I'm not really convinced that we should be recreating that thing here. But even if we do go down that path, you know, again the customer doesn't - there's nothing in here saying that their response needs to be under perjury.

We see evolving standards as well with some of the having proposed that the VP or principle level serve as the complainer, but we don't see that same standard appearing for any customer who objects to disclosure. So I just - just a word about equal treatment for everybody in the process, and as we go through when we see these sort of disparate standards, I'd like for us to really question why they're in there.

If they're in there for a good reason, I'd like to have a discussion about that so I can understand it. If they're not in there for a good reason, if they're just in there by default or because, you know, because that's just how it came out in the first draft or something like that, I don't think we should necessarily just leave them as they are without a discussion as to why.

Sorry this was so long-winded.

Graeme Barnett: Thanks, Paul. Stephanie, your hand is still up. Putting on my registrar hat for a sec, I'm not sure that, you know, on all sides of this everything needs to be

equal because, you know, different parties have different responsibilities, different stakeholders there. I think the point is well taken, that we need to be careful about if we're making this entirely lopsided, but, you know, ensuring that it's all equal doesn't necessarily make sense to me.

There's a lot going on in the chat. I'd encourage you to discuss it over the audio. Stephanie, is that a new hand?

Stephanie Perrin: Yes. I was going to respond to the invitation to clarify in the text where the distinction between disclosure and reveal needs to be made. And I think it's in the sentence at the very beginning in the opening paragraph where it says it aims to provide requesters a higher degree of certainty and predictability as to if, when and how they could obtain what level of disclosure.

That's kind of a big bundle in there that remains opaque, you know, a lot of questions. And I would point out that to whom is left out and that's certainly key from the point of view of the registrant or the, you know, the beneficial registrant. So I think we need to break those down into like, A, if ; B, when; C, how; D, what level of disclosure; and E, to whom.

Because it's only disclosure to the folks who need to figure out whether they've got a case, it is not disclosure to (unintelligible), you know? So that's where it could be helpful, and I'll go away and draft something if that's of any interest. Thanks.

Graeme Barnett: Thanks. We'll see what Steve and Vicky how they respond to that and then - and Kathy, and then we can send you on that mission. Steve?

Steve Metalitz: Yes this is Steve. I think 3b1 answers every one of Stephanie's questions. This is about disclosing to the requester contact information that would otherwise be in Whois. And then if you note in the templates, all of these requests have to state that the information can't be used for purposes other than resolving the intellectual property issue.

I mean it's all of the templates. I'm looking at 2C 6B, but it's in all three of the templates. The requester will use the customer's contact details only to determine whether further action is warranted to resolve the issue to attempt to contact the customer regarding the issue and/or in a legal proceeding concerning the issue.

So I think these questions - yes that language that Stephanie read was negotiated like everything else in here to explain the scope of this, but I think all of those questions are answered. This is not about putting information in Whois, although the service providers are reserving the right to do that because they can enforce their terms of service. But that's separate from this. This is about disclosure to the requester for a specific purpose. Thanks.

Graeme Barnett: Thanks, Steve. I think you're right. It does seem to cover those scenarios in the templates. Stephanie, you can feel free to respond either now or in the list if that meets your needs or what your concerns are. I might let you respond directly now and then we'll come to Vicky and then Kathy.

Stephanie Perrin: Thanks, Graeme. I think my argument -- Stephanie Perrin for the record -- would be that I mean nowhere in here is there a discussion of the extension law and what law applies, okay? So I think that while I agree that one could clarify the language down there buried in 3C, what is that Steve has correctly pointed out, it needs to be upfront.

We are basically in the process of balancing a person's arguably legally enforceable right in a global environment where a person has had to resort to a privacy proxy service provider because they have no faith in the enforcement of (unintelligible) law. I'm editorializing as you can tell. So I think it is reasonable enough that we reinforce the safeguards that are actually there that we are not paying much attention to, and that we do so explicitly at the beginning of the document. That's my argument. Thanks.

And quite frankly given the global nature of how Internet services run, we have an enforcement problem anyway, because we don't know where the person requesting the data is coming from at this point or which court a person could address their privacy claim to. And it's not likely to be the one in the individual's jurisdiction, I'm betting. Thanks.

Graeme Barnett: Thanks, Stephanie. So it sounds to me like you're looking for some sort of broader principles upfront and then we have this specific language further down. And it could well be there's room for that.

I see Vicky and then Kathy. Vicky, thanks for your patience.

Vicky Sheckler: Sure. Several items. First I agree with Steve that this about disclosure and I'm the one that probably misspelled earlier, so I apologize about that when I used reveal rather disclosure. But meant disclose. So hopefully that helps resolve some of the concerns that were raised.

Second with respect to the privacy issues that Stephanie just said, I agree with you, Graeme. There might be some room to put something in the beginning, but let's remember that privacy is not absolute and that what we're trying to do here is find a reasonable balance between everybody's interests that, you know, sometimes are in conflict.

But we're trying to find that balance between the different interests, which is why I raised my earlier comments about the standards and what are the right standards in thinking about or setting the bounds, if you will, for required disclosure and prohibiting disclosure, again, giving a lot of discretion to the registrars but setting these outer bounds. Thank you.

Graeme Barnett: Thanks, Vicky. Kathy?

Kathy Kleinman: I find myself agreeing with Vicky, so this is great to follow up, which is that we do need to set the bounds. And that's really what C5 was about. So there

may be better language, but looking - just look at C, 3C, it says, "Disclosure can be reasonably refused for reasons consistent with the general policy stated here and included."

And the first question everyone's going to ask is, "What is reasonable? What does reasonably refused mean?" And I have to say one, two, three and four don't give that to us. It's five where we're talking about some of these difficult nuances that the providers are going to wrestle with. So earlier - so we do need to set it out.

I'm not sure how clearly we can set it out. In everything else that we do, UDRP and URS, we use standards, we use general terms like clear and compelling evidence. But here it may be more nuanced. Going back to what Steve said earlier, this is the place for the human rights discussion.

This is the place to say that in this particular case the copyright infringement allegation does not outweigh the privacy infringement allegation because it's a person's ex-husband, maybe they co-own the business, and he's stalking her. I'm not making these examples, guys.

And so when you're dealing with human rights organization, individual with data protection laws, C5 is where the standard goes that protects, that allows -- that clearly allows -- the protection I think we all agree with. And so if we find the wording together, I think we'll get through this section. Thanks.

Graeme Barnett: Thanks, Kathy. So what I've heard so far is that we might be able to beef up CQ and C3 a little bit more but also we need to take another crack at what C5 is trying to say so we can spend some more time on that -- that might be over the list -- to make that a bit clearer, a bit narrower, and we can get everybody agreed and on side.

Vicky, is that a new hand or an old hand?

Vicky Sheckler: I'm sorry, Graeme. I keep forgetting to put my hand down.

Graeme Barnett: That's okay. Todd?

Todd Williams: Just in response to the last point you made, Graeme, you know, I raised this question on the list and I'd be curious now that we're on the call to hear what people have to say. Again, the hypotheticals that we are struggling with here, the tough cases, all are centered on this idea of pretext and, you know, I've outlined I think three or four or five different places in this document where we deal with pretext.

And my question is whether we think we need to look at those again and somehow beef them up or whatever and why we think that C5 is the place to do that rather than these other places. I'm just curious what everybody else has to say on that.

Graeme Barnett: Thanks, Todd. I think we just heard from Kathy and what she was hoping to get into C5. Would anybody else care to respond? No? Okay. So I think was some pretty good discussion on C in general, and I think that gives us a bit of work to do to continue moving forward. Was that someone going chime in? Nope. Okay. So yes, I think that gives us some more to go and some work to do, and that's great.

We've got about 15 minutes left, and I don't think we're done on the list having a discussion about authorized agents, and that's probably a longer than 15 minute discussion. So maybe we can see if we can talk about the annex, and it seems like there was some confusion about what the annex is, what's it about, who it for, is it an appeals mechanism or is it not?

And I think it was Volker who wrote it. And Volker, if you're available can you maybe give some clarity on what you wrote the annex for?

Volker Greimann: I don't think I wrote that. I think it came out of something that was proposed by me and that was then pushed into the annex. So the annex itself is not my work.

The point in there are something that I just threw out there for discussion because I thought it would make sense to have in the policy, especially the second point which relates to jurisdiction. Because I feel that a service provider needs a certain protection against false requests, and similar to the way that the URS and the UDRP are set up where the location of the service provider, or registrar in this case, becomes valid, of course of a valid venue of - following up against a complainant. This should also apply here.

So if someone by making an invalid complaint, by making an invalid request causes damage, then he better prepare to defend this where the service provider is located and state that in the complaint and agree to that, similar to the way that they would agree to the registrar's location for jurisdiction for any complaints against their UDRP complaint.

The second one is the trust sender. I think it would be very helpful, especially for those trusted senders, to be included on that list and to have such a list available, because it would just cut through a lot of red tape that would make the process otherwise very repetitive.

So having this list would be very helpful for both the service providers and vendors just for a lack - just for reducing the bureaucracy and making the process that much more streamlined. And it would also encourage good behavior, because once you're on that list you would of course be removed if you make bad complaints, and therefore it always encourages the complainant to keep a good track record.

And finally the arbitration, that's the point where I think we need to look at what venues are available for resolving a dispute between service provider and the requester. I think arbitration is a good venue, better than a court, but

I'll turn it to suggestions. That was just something that I thought would make sense to be able to have a preliminary venue for disputes that would not directly escalate to ICANN compliance and make their working day a living hell.

Graeme Barnett: Okay. Thanks, Volker. I see some concern in the chat that we're not going to talk about - or I phrased it earlier the, you know, authorized agents. So maybe we can make sure there's clarity on what that annex is for. I see Steve's hand up so maybe we can get a quick comment there, and then we can spend a few minutes on that. Steve?

Steve Metalitz: Yes I'm sorry -- this is Steve -- I think Volker has spelled it out well. These were alternatives. Volker's original suggestion I think probably was more in the jurisdiction line. But these were alternatives that were being presented. So I'll just defer further comment on the annex so that we can get back to the agency issues. Since we've already had some discussion of that on the list, let's see if we can make some progress in person. Thanks.

Graeme Barnett: Thank you, Steve. Kathy, I see your hand. If we can make it quick on the annex.

Kathy Kleinman: Yes please. I'll try. I appreciated Volker's discussion of this. This is a question to the co-chairs and well specifically to you and Steve, which is what happens next with the annex? (Mary) keeps writing about closing category F, which means that this language that - in the annex, which is a little difficult I think for people to understand, I mean, not difficult, but it raises concepts but not procedures. It's not detailed the way the other parts of our category F work are.

So the question is what happens to it next? Is it really in a state for us to share it with the world in a report? I don't think so, because I think they're going to ask what do we want, what are we recommending. And I think there's still a lot of work to be done on that.

Also with the appeals. So what is kind of the process for going forward to put this into the kind of detail that it would need in order to release it to the public. Thanks.

Graeme Barnett: Okay, Kathy. Thank you. And I think you're right there. There's more work to do. We've got about eight minutes left. So let's try and take that annex work to the list, and we can figure out the weak points there and see if we can get that into the place it needs to be.

The topic that was on the list, and I suspect it will continue to be on next week's call as well, was this idea of authorized agents and who could submit a complaint, who can request a complaint of a service provider. And I think Kathy's suggestion was that the bar is quite high, and there seemed to be considerable response to that.

My -- if I'm going to editorialize for a second -- I think there's some fear that an industry is generated that is where third parties are pumping out, you know, reams of disclosure requests on behalf of some other company and they're unable to take responsibility for those requests. And perhaps that's what that language was trying to get at, though I did not write it, so.

I see Paul's got his hand up, and then perhaps we can hear from Kathy or others on that. Paul?

Paul McGrady: Thanks. This is Paul McGrady for the record. I'm sensitive to that concern but at the same time the way that it's written now essentially will preclude anybody from asking for a disclosure. It's - the standard's so high that it's completely impractical. The level that's being asked to participate in this, our strategy of people for companies, they're not in the weeds on issues like this.

There are people within those companies that are fully authorizes and are in the weeds, and so I'm happy to have a conversation of course about that

issue, about this issue, but we're going to have to reset expectations. Because the way it's written now essentially undoes the work that we've been doing over the last several months.

Graeme Barnett: Thanks, Paul. So perhaps there is a simpler way to word that to ensure that the person submitting the complaint can also be legally responsible for that complaint. And that will reduce that high bar that was set there and be far less specific. (Karen)? (Karen), you might be on mute.

(Karen): You're right, I am on mute. I'm sorry. Can you hear me now?

Graeme Barnett: Yes thank you.

(Karen): Okay great. Thanks for allowing us some time to discuss this on today's call. I actually think that a lot of the concerns that are being raised, you know, by Kathy and others about the person having, you know, legal authority to make these kinds of requests and then also kind of ensuring that there is an appropriate kind of level of responsibility on the back end if for example, you know, you'd have to go after the requester, you know, for some nefarious activity in relation to this, you know, these kinds of requests.

But I actually think that quite simply the agency relationship legally provides that already. And, you know, the agency relationship is between the two parties, the trademark or copyright owner and the person that's given agency to act on their behalf, whether that's internally in their own company or whether that externally like with a company like (Merk Monitor) or others.

And that, you know, I think it's very inappropriate for us as a group to insert ourselves into that legal relationship, because it is already provided for in the relationship that the person acting is, you know, is responsible and indemnified by the trademark owner as a result of the agency relationship. It just, you know, more explanation and more detail can be provided about what agency really in this context, but it just seems to me like the problems that are

being expressed are actually adequately dealt with as a result of their relationship.

So I guess I'm just kind of confused. And, you know, like (Susan) pointed out on the list and Paul, you know, just pointed out, it just doesn't make any sense. So, you know, the - to request and to require the level of kind of I guess authority that is requested in this is just - it's way beyond the scope of what actually happens at the enforcement level. Thanks.

Graeme Barnett: Thanks, (Karen). I see Kathy and Volker. And we have two minutes left, so see if you can both keep your comments to one minute. Kathy?

Kathy Kleinman: Hi. It's Kathy. I look forward to having maybe a little more time to introduce this section later, but let me just respond. And I would ask that (Mary) and staff not make pronouncements yet because I think there's still a lot of work to be done here. Obviously per Paul's comment, there's no intention to stop anyone here from the Intellectual Property Constituency from signing these letters. This is about legal counsel.

This is about, you know, because the people, the attorneys on this list are expert in trademark and copyright infringement, they are counsel and they are the legal representatives of their companies, whether they're in house or outside counsel. So to the extent that someone's reading this as excluding anyone, you know, any of the attorneys on this list from not participating, that's not the intent.

But when you say authorized representative, that can be interpreted a million ways from Sunday and that's the problem, that here we have - look at what we're asking in the statement. Here we have a request, a good faith statement, perhaps under penalty of perjury, about an allegation of infringing a trademark owner's rights or a copyright owner's rights and the statement that it's not defensible. This is a legal pronouncement.

So someone with legal authority, legal expertise, legal background, and a legal connection to the trademark or copyright owner is the appropriate person to make this legal pronouncement. John Berryhill can tell us a great deal about this, as he deals with these types of letters and the computers that generate some of these types of letters -- not this one obviously because we're creating it -- that generate them every day and some of the actions that are taken.

And so that's what this is about is trying to bring this to someone who had - we're revealing someone's personal data, so someone should be making this pronouncement. Opening it up to officers of the company was really more if the trademark owner is so small or an individual that they don't have counsel, well then we don't want to exclude them from, you know, making this kind of reveal request. And that's where the officers came in. Thanks.

Graeme Barnett: Thanks, Kathy. Yes we're going to need more discussion on this. Volker, can you make it exceedingly quick?

Volker Greimann: Yes, I fully agree with what Kathy just said. This was not intended as a measure to ban a monitor from making these complaints. This is just intended as a measure of ensuring that the person or the entity behind the agency still remains liable for what the agent does. As long as that is maintained, we find language to cloak that intent within the policy, then I'm fine.

Graeme Barnett: Thank you very much, Volker, and perhaps there is a fair amount of common ground there. We just need to get to the language for that, and we can do that over the list. Sorry for taking everyone a little bit over today. Thank you everyone for participating. Have a lovely week, and we will talk to you next Tuesday. Oh, and continue the great activity on the list. Thank you.

Woman: Thank you.

Man: Thank you, everybody.

Woman: Thank you.

Volker Greimann: Thank you. Good meeting.

Man: Thank you very much.

Woman: Thanks.

Woman: (Francesca), if you can please stop the recording. Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END