

ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 23 December 2014 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 23 December 2014 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-ppsai-20141223-en.mp3>

Attendees:

Frank Michlick – Individual
Justin Macy - BC
Val Sherman – IPC
Theo Geurts - RrSG
Stephanie Perrin - NCSG
James Bladel – RrSG
Griffin Barnett – IPC
Kathy Kleiman – NCSG
Osvaldo Novoa – ISPCP
Phil Corwin – BC
Sarah Wyld – RrSG
Richard Leaning – no SOI
Darcy Southwell – RrSG
Don Blumenthal – RySG
Todd Williams – IPC
David Heasley - IPC
Paul McGrady – IPC
David Hughes - IPC
Carlton Samuels – ALAC
Tatiana Khramtsova - RrSG
Volker Greimann – RrSG
Chris Pelling - RrSG
John Berryhill – RrSG – not listed as PPSAI WG member

Apologies :

Lindsay Hamilton-Reid- RrSG

Steve Metalitz - IPC
Graeme Bunton – RrSG
Vicky Scheckler – IPC
Holly Raiche – ALAC
Kiran Malancharuvil – IPC
Jim Bikoff - IPC
Marika Konings

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Nathalie Peregrine: Good afternoon, good evening everybody and welcome to the PPSAI Working Group call on 23 December 2014.

On the call today we have Sarah Wyld, Val Sherman, Richard Leaning, Osvaldo Novoa , Tatiana Khramtsova, Todd Williams, James Bladel, Don Blumenthal, Darcy Southwell ,Phil Corwin, Griffin Barnett, Theo Geurts, David Heasley, David Hughes, Frank Michlick, Stephanie Perrin, Kathy Kleiman, Justin Macy, and Volker Greimann.

We have received apologies from Lindsay Hamilton-Reid, Holly Raiche , Kiran Malancharuvil , Victoria Sheckler, Steve Metalitz, Graeme Bunton and Jim Bikoff. And from staff we have Mary Wong, Danielle Andela 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 Don.

Don Blumenthal: I appreciate it. Yes, I appreciate everybody who called in today. This wasn't on our original calendar when we went into the holidays but figured it was good - it was worth taking some time.

We still have some unresolved issues or I'm not even sure how unresolved they are. But I think they need to be clarified a bit on G, a little bit may be on F. Although I don't want to get too deeply into that because I understand there is some discussions going on between some interested constituencies

trying to come up with some acceptable language for all, maybe a lingering issue from E that I'll get to if we have some extra time.

In any event though what I suggested yesterday in my email was rather than go through point by point if you look at the - I'm trying to - well I don't have to go page, specified pages necessarily because it would depend on what people are looking at.

If you look at the potential recommendations that Mary laid out here that I think capture our discussion really well I think we can cover it by giving an overview maybe rather than going through it piece by piece.

The registrar processes I think provide a very good model for a privacy proxy (means). But the privacy proxy customers are not necessarily or may have - that's hoping the discussion may have considerations that are very different from register, registrants and registrars, registrar relationships.

So overall I guess what I wanted to do is just ask for thoughts. I mean we've got a number of points here where there is clear overlap and just ask for thoughts on where people think that the registrars the accreditation processes as they've been laid out in calls will not cover privacy proxy requirements.

I'm trying to see the - oh, okay, James?

James Blumenthal: Hi Don, James speaking. Are we just because I may be a little confused, maybe I need some coffee but are we specifically discussing now the model procedures for registrars for the accreditation of termination of a privacy proxy service provider or are we talking about something broader?

Don Blumenthal: Well we're talking more I think - no I think well we're talking yes. We're talking say the extent - well no, we're talking about the registrar the accreditation and

the extent to which those procedures are appropriate for privacy proxy provider's D accreditation.

James Blumenthal: Okay, I thank you for clarifying. I had some thoughts on that but I will stand down because I see Mary has her hand up and so if you'd rather to go to her first I'll wait my turn.

Don Blumenthal: Okay, Mary?

Mary Wong: Okay. Thanks Don and thanks James. Just to say that at the moment in the draft report we have basically a statement that says the, you know, registrar model could be a good starting point.

And there's a couple of specific points that we're picking up on. But essentially this working group has not designed in accreditation or a D accreditation model.

So essentially what we're saying is that the registrar model could be a good starting point. And here are a few points that we would like to see in the accreditation model for privacy proxy service providers.

So, you know, one question is if this working group wants to delve a little bit deeper and develop policy recommendations it certainly could. And we may have some time to do that. But at the moment that's what we have and that's all we have.

Don Blumenthal: And do we need more or different? Okay James back to you.

James Blumenthal: Well thanks Don and thanks Mary for clarifying, James speaking for the transcript.

So I had some thoughts here about some different ways we could approach this. Some I think track very closely to existing registrar, the accreditation or termination processes, but some are a little different.

And I think that, you know, I would love to have like a brainstorming session. I don't know if it's appropriate for this call but, you know, some ideas might be notification like you have listed here.

One potential way to do this would be mass cancellation of a privacy service. Now I don't think that translates into a very good customer experience but it is one way to address this. If the registrar is going to standing with the privacy proxy services losing their accreditation.

A third approach might be to have some sort of interim contact so that, you know, ICANN or some other similar to the EBORO for the Emergency Backend Registry Operator where all of the affected registrations would be listed under this sort of neutral proxy until they had an opportunity to choose a new service or as a temporary basis or holding position.

And then another one would be to actively seek out a successor service to take over each of those registrations. And I think that, you know, it's kind of a sliding scale.

Some are easy but kind of, you know, not a very good customer experience, not a very good - not very maybe desirable from the point of view of the consumer that purchased the service, not a good protection of the private information.

And then others are a more robust protection of the private information but are going to cause, it's going to take more time, going to be more complex and going to cost them money.

So my thinking here was rather than include the recipe in our recommendation would it be possible to require a privacy proxy service as a condition of its accreditation to have a transition plan on file with ICANN as part of their accreditation as an addendum to their accreditation agreement and say, you know, look if you are ever, you know, if you are ever de-accredited or terminated we will execute this transition plan whether they designated a successor or whether they just cancel service or whatever and that they would have to post that somewhere or something and let the consumers choose.

It's just a thought here rather than actually trying to solve this problem we simply require that there be a solution at the ready in case this scenario, you know, in case this scenario develops.

So that's just something I'm just throwing out there because I can tell you that from personal experience when a registrar is de-accredited or terminated ICANN I think has a fairly solid plan in place.

But we have seen that finding that successor registrar to take over management of those domain names is not always straightforward.

And even when it works it sometimes takes a little bit longer than anticipated. And for the customers that are affected, you know, they've done nothing wrong maybe they just chose, you know, the wrong service provider they, you know, they can experience lengthy interruptions in the management of their domain names.

So I think that, you know, it's just something to keep in mind and make sure that when we're putting these things together that we are putting ourselves in the shoes of the people who have signed up for these services and, you know, don't want to, you know, have one of those experiences where they're shut off from their domain names for extended periods of time.

So that's my little spiel there. I don't know if it's 100% useful but I just wanted to get that on the record. Thanks.

Don Blumenthal: Appreciate it. I'm not going to put a percentage on it but I'll just say it's very helpful. It I think has potential to remove a lot of complexity in what we wind up presenting for comments.

You know, we've talked quite a bit about terms of service and this is just that it could present customer choice. And this is another example of it. Any other any other thoughts generally or comments on James' proposal there?

Okay. Mary?

Mary Wong: Thanks Don and thanks James for all the suggestions. I guess I just had a question for the group generally and of course for James too because one of the potential recommendations we have here is that in the event of the accreditation of a privacy proxy provider someone has suggested that the customer might be able to choose its own new provider.

So my question is if we do recommend that in a creditor provider has a transition plan on file with ICANN would that preclude the customer choosing its own new provider?

Don Blumenthal: Okay. I was going to provide a thought but James?

James Blumenthal: Oh Don, please go ahead.

Don Blumenthal: No, no.

James Blumenthal: All right, you know, I don't think...

((Crosstalk))

Don Blumenthal: I'd be glad to hear your answer.

James Blumenthal: James speaking for the transcript. And Mary I don't think anything - and again we're still sort of in brainstorming mode and I don't think any of those ideas preclude that of ability.

There may be an intermediary step where an ICANN designated or a successor service provider is managing the privacy proxy service on an interim basis to provide continuity of access to the domain name.

You know, and that may be a temporary situation until it's - until that's resolved. But nothing would stop a customer from choosing ultimately a different one and then moving to that.

At least that's how it works for domain names and transfers. You know, nothing stops you from transferring after an ICANN mandated transfer.

The only thing I would put out there is we would have to look very carefully at these. And if we require service providers to put plans together the two issues that immediately come to mind that makes this a little different would be any pending disputes or UDRP or any of these other mechanisms that we built in about contact and relay and reveal would have to be we have to figure out where in the sequence those are executed before these contact information changes.

And then we'd also have to be very, very careful about those new contacts authorizing any transfers. Because I could see if - and I don't mean to kick ICANN when they're down a little bit but if there was any ever any sort of intrusion or data breach into this system that it could cause a mass set of domain names if there was some sort of interim proxy established.

So one recommendation would be that route would automatically lock names against any kind of transfer.

So but to answer your question directly Mary I wouldn't expect that ultimately there may be a delay in consumers executing that choice but that wouldn't be precluded.

Don Blumenthal: Thanks, appreciate that. Yes you covered at least part of what I was thinking so it's always best to have like you said it was your idea just have your answer. Volker?

Volker Griemann: Yes. Thank you Don. Just one question, I think it hadn't been covered yet but I joined late but so I might have missed it.

One problem that I also see with an automation to take over by another entity is the question of the registration agreement with the registrar.

Keeping in mind that many of those privacy service providers are not registrar affiliated they would actually be the party that the registrar knows who is concluding the registration agreement with.

So basically we would have a situation where the registration agreement in place would automatically if we had an automated transfer of domain ownership or suppose domain ownership of the - by the privacy proxy service provider the registrar will suddenly be faced with having a registration agreement with the party that he has not agreed to with that registration agreement or registration agreement would simply not be valid because the other party has never agreed to that with the registrar unless that's part of the stakeholder process. So that's something that would have also be looked at.

Don Blumenthal: Okay. I didn't catch all of that. Does - forgive me if this sounds like a dumb question...

Volker Griemann: Not at all.

Don Blumenthal: ...so we're taught...

Volker Griemann: There has to be...

Don Blumenthal: We're taught...

((Crosstalk))

Volker Griemann: ...(unintelligible) in place with the registrant. And in some cases where the privacy proxy service provider is not affiliated with the registrar the only entity that the registrar knows that he has an agreement with is the privacy proxy service provider who in this - customer relationship with the registrar acts as registrant and the party that has the contract.

Now they might be under that contractual obligation to an unrelated party but for the registrar in certain situation all effects and purposes the privacy proxy service provider would be the registrar - registrant.

And having an automated transfer from one privacy proxy service provider to another in case of a de-accreditation or going out of business sale or whatever else there may be as underlying cause for such an automated transfer the registrar might be faced with a situation where the entity that he has the registration agreement with changes and that may not be desirable in all cases.

Don Blumenthal: Okay. I'm glad you raised that because we have at times tried to identify where his views are going to be different for unaffiliated privacy proxy providers. Do you have any thoughts on how we would address that and how were putting this together?

Volker Griemann: Quite honestly this is a bit of a puzzler for me as well that only arises when you do have an automated takeover by an entity however that might work.

If you do not have that automated takeover procedure then that would be a situation where the registrants would be able to choose whether to delete or the underlying registrant in this case be able to choose or to delete or transfer to the domain to a different privacy proxy service provider which may cause also a registrar transfer.

So in that case it would be a situation where new registration agreements could be concluded. And just for the automated one I have a bit of an issue with it.

Don Blumenthal: Okay. And I'm just hesitating here because I'm thinking this through just a second. When you say automated and anybody else please feel free to jump in. I'm just glancing over to Frank's comments here. When you say automated transfer without when we're talking about a de-accreditation there would be a process.

And there would theoretically...

((Crosstalk))

Don Blumenthal: Well right, I need to think out loud here for a second.

There would be a process and theoretically I would think that for following de-accreditation model for the registrars would be the ability of a privacy proxy provider to refuse to pick up the registrations. So I guess where did the issues arise I guess on the registrar end?

Volker Griemann: Exactly. I mean when we're talking about an automated process similar to the registrar process where a registrar takes over the registrations of the accredited registrar in bulk then that would be - conversely that would be - were to be adapted to privacy proxy provider the new privacy proxy service provider would automatically take over the domain name in bulk and

regardless of what the registry agreement between the former registrant or privacy proxy service provider and the registrar in place.

So the registrar should at least be informed and given the opportunity to refuse accepting registration from a certain provider or have a say in that.

By the way this is also a problem that I see with the automated takeover in the accredited registrars because in many cases the registrants are only informed after the transfer had occurred.

So basically you would have registration in place with no registration agreement - you do have registration in place with no valid registration agreement between the current registrar of record who then holds the domain name and the registrant whose domain has just been auto transferred.

So this is something that's also in place already a problem in my view the current takeover process for these registrars. And I hope we would not make the same mistake in this one as well.

Don Blumenthal: Okay, appreciate it. And that's helpful. And you're in the afternoon. I'm in the morning. I guess I just haven't quite woken up. Now so we've got a two layer issue here of wanting to accept a change, the new proxy privacy and potential new registrars. I see, I appreciate it.

Any follow-up on Volker's point there, on James', other thoughts? Okay we had one - a couple - well one very clear issue here in terms of where we might have a problem which is as a secondary obligation. And we've got a nonaffiliated registry nonaffiliated privacy proxy provider. That's it.

You know, James has presented a really interesting suggestion in how we address, potentially could address the issues. The word complexity and gives again go back to customers having maximum leeway, maximum choices in the providers that they use and informed consent I guess.

Now (Carlton) no that's the point. We assume that Volker's point was a good concrete example of where a registrar and a proxy provider are not affiliated. Well let me throw something else out here that I'm not sure we've discussed. If a privacy - if a registrar is de-accredited is there some experience on what happens with an affiliated privacy proxy provider?

Would it go under also, not go under but would you stop providing privacy proxy services James?

James Blumenthal: Hi Don, James speaking. You know, I'm thinking about that as well. And while it certainly makes less and less common sense to have a, you know, I don't think - I think the answer is not necessarily.

If the privacy proxy service is still in good standing and hasn't run afoul of any of its obligations then that essentially becomes an independent or an unaffiliated privacy proxy service it probably needs to figure out what it wants to do with its life either to exit the business or, you know, orderly, in an orderly fashion or to become a reseller of a registrar or something that it would need to do to, you know, replace the fact that it's no longer an accredited registrar.

I don't have an answer but I don't think that the - that losing one would necessarily cause you to lose the other accreditation.

Don Blumenthal: Thanks. That was my instinct but as a follow-up though would we want to recommend an affiliated - and maybe this isn't different, but affiliated privacy proxy also has statements of, you know, following the model you suggested has statements of what happens if the affiliated registrar loses accreditation or leaves the business for whatever reason but it might be the same situation. James?

James Blumenthal: Yes Don, James speaking. I think it would be the same situation. I think we should also while we are of course focused naturally on what happens

when ICANN as an enforcement action takes away or suspends or terminate its accreditation I mean it's possible that an existing let's call it combination entity, a registry, registrar and privacy proxy service provider would voluntarily want to stop being a registrar and move to an unaffiliated model. And I think we should allow for that.

Don Blumenthal: Right, makes sense. Yes useful in just looking at the practical side of things.

Volker you're following the chat here but in the meantime are there any other issues in this list of potential recommendations where we might have to address some issues that aren't present in the registrar de-accreditation?

Volker Griemann: Okay. Let me just point to one and just maybe we have addressed it. We've had on a few calls the issue raised about the ability of a stronger need for privacy proxy registrant to choose a new provider, you know, a greater interest in having that ability than there would be for a registrant to choose a new registrar or for whatever reason.

Have we addressed that here sufficiently to be confident that the privacy or whatever concerns that have been raised in the past can be addressed in the language we're suggesting? Okay, excellent. And times we all participate from a tough spot Kathy and that's even when we have good connections.

Now here's where and my guess going to Kathy's question in the chat I guess that's what I'm trying to ask do is what we have here sufficient to cover those concerns? And again to some extent we're sliding into F. Yes F as the end of the document that Mary distributed.

Now in Mary's wording, you know, would recommending in escrow model for accreditation or I guess yes for accreditation be helpful? And would that address any of these issues that we're concerned about? Does it tie it all into the semi-EBORO concept that that you voted James?

Or really is escrow irrelevant consideration here in terms of protecting privacy proxy registrants in the case of the accreditation? James?

James Blumenthal: Hi Don, James speaking for the transcript. I don't - yes I think it's going to be an important resource but I don't know that it's going to make a determining - determination one way or the other. I think that it will be useful in all scenarios.

Don Blumenthal: Escrow or the EBORO idea or the same...

((Crosstalk))

James Blumenthal: I was latching onto one part of what you said, the escrow data, having that data.

Don Blumenthal: Okay. So does escrow go even beyond and I'm branching off here a bit. Does escrow even protection even go beyond even the accreditation and termination issues that are here? I'm thinking out loud because we haven't really looked at this that much. James?

James Blumenthal: So I'm not - if I'm understanding - this is James speaking for the transcript. If I'm understanding your question Don, I believe that I was assuming that there would be an escrow deposit requirement for privacy proxy service providers similar to that or registrars. If we haven't explicitly said so and I apologize if I missed this but then we should probably make sure that that's included.

Don Blumenthal: Okay. So recommend and then - as part of our accreditation model with reasons we're not necessarily tying to the specific section. Great. Before I jump back to the chat is there any other thoughts on these last two points in the document that went around this week, last week EBOROs?

You too as well thanks for dialing in. I had to scroll up in the chat. We can -let me go back to the chat here. I just want to make sure I understand the points. Is there - is it that we have not addressed privacy protections sufficiently in terms of the mechanisms or that we have to just make it clearer in the language?

And Kathy, you know, this is - I mean this is the meeting of the working group today. I mean you can continue by email but, you know, I'm not sure about pulling it out for separate discussion later. Kathy?

Kathy Kleiman: Can you hear me Don? Let me see if I can participate...

Don Blumenthal: Yes.

Kathy Kleiman: ...from here. Okay great. Hi everybody, Happy Holidays. And so I think escrow I think we talked about it early, early on in the Working Group and I'm not sure how much we've gone from there.

But this will - one of the things that I was thinking of was not for the larger group but something we need to think about overtime is this idea of creating an escrow for proxy privacy may raise different issues in creating escrows of for a registrar of the traditional Whois data.

And one of the things I'm thinking of in particular is the moving wholesale of this data that's under data protection laws say moving Volker's escrow proxy privacy data to James. That's moving across continents, that's moving across data protection regimes to a country without one.

And the implications there are more that I think we can think about right now but something we should start to think about because I think we've only touched on it.

Don Blumenthal: But fundamentally how is there any difference from moving registrant data?

Kathy Kleiman: Because the registrant data certainly when we're talking about the Whois data is already public. And this is data that's being protected under - I mean Stephanie hopefully is on line. She can speak to this much more authoritatively than I am.

But I think there is a huge issue. Once you've invoke that data protection the data protection under your national laws I don't think we can arbitrarily move that database to a country that doesn't have similar protections.

I think there are implications on that statutorily as well, you know, both from our perspective, you know, looking at it from a registrants perspective or registrant's perspective or a proxy privacy service provider's perspective but also from a national law perspective.

Don Blumenthal: Okay.

Kathy Kleiman: Thanks.

Don Blumenthal: So James?

James Blumenthal: Hi, James speaking for the transcript. Kathy raises an interesting point I think that needs to be addressed.

I think a couple of thoughts here just off the top was that while a jurisdiction may not have its own data protection, you know, regulations or structure or legislation that individual service providers may be acknowledged to be operating under some sort of Safe Harbor Provision or something like that.

But I think that, you know, we should keep in mind that this escrow stuff would have already moved if it were, you know, living in a ICANN provided escrow deposit system similar to what we're currently using for registrars with Iron Mountain.

So I think this goes to your point Don is this is already happening. The data is encrypted and it is deposited from -- and I'm going to pick on Volker -- from Volker's customers to assuming he, you know, his registrar uses Iron Mountain, you know, wherever their servers are located in presumably in the US.

So I mean to some extent this is already underway. But I agree it is something that, you know, we need to be - we need to consider but, I don't think it's necessarily a deal breaker. I think we just need to be very careful in our recommendation.

Don Blumenthal: Yes thanks. Stephanie?

Stephanie Perrin: Yes I - okay, I'm not sure if you can hear me?

Don Blumenthal: Stephanie it's real difficult to hear you.

Stephanie Perrin: Okay. Is this better?

Don Blumenthal: A little bit.

Stephanie Perrin: Better, okay. I'll give it a good try here. Number one I just want to point out that the Iron Mountain deal in my view doesn't respect any protection law. I believe we've already had a letter or two or three to that effect from the data protection districts in Europe.

And there's a lot of data protection laws that just hasn't been tested with complaints. I mean I know I'm a pain in the neck and I've made that point a million times but this will be one of them.

I agree though with James that it doesn't have to be a deal breaker. What there needs to be is number one greater transparency for the individual and

number two commitment from the part of the second provider - well and the first provider for that matter as to what they're doing with the data.

So I'm - that is a matter that may be we might want some language that reinforces that requirement. Does that make sense?

Again that is something that I'm not sure that this working group would be specifying it we leave it up to the privacy proxy service providers to detail in their own arrangements. Then like everything else would have to do with privacy it's up to the provider.

Don Blumenthal: I didn't quite catch that last bit about the last two sentences. Clarify.

Stephanie Perrin: Okay. I don't know why I'm not coming in loud and clear. There must be a volume control on...

Don Blumenthal: Okay. Now you went on to mute there.

Stephanie Perrin: Okay. So...

Don Blumenthal: That's much better.

Stephanie Perrin: Yes it was down a little. Okay so basically do you want me to repeat the whole thing or just the last bit?

Don Blumenthal: I caught most of it but right at the end there it skipped it out more.

Stephanie Perrin: Okay. So I'm just wondering how deep we want to get into the details of what we require a privacy proxy service provider to have in their agreements?

If we take James's suggestion which I think is an excellent one that you have to provide a - almost like an official guardian for your data then it - we could specify the data protection requirements that travel with the data which is

certainly a requirement in many data protection regimes. So or we could leave it open. The question is does our group do this or do we leave it to somewhere else?

Don Blumenthal: Okay.

Stephanie Perrin: I'm reading this...

Don Blumenthal: If I could ask you and Frank asked to repeat the whole thing if you could. Could we paraphrase a bit your overall what you said there?

Stephanie Perrin: Well I know I'm going to forget something because I'm only operating on one cup of coffee which is I'm under-caffeinated here.

So basically I think what I was saying was agreeing with Kathy that there is a requirement on the part of the original proxy service provider to ensure that whoever they name as a custodian for the data and the event is their demise meets the same requirements. That's a requirement in most data protection law.

As you know there's current disagreements between Europe and the United States over whether something is Safe Harbor or not. But you can specify through contracts the level to which it is protected and who gets access and presumably where the data would be told.

And the original point that I made was that the - it was a response to the observation that the data is already being escrowed. Yes but we've already heard from data protection commissioners that that escrow is not legitimate and violates certain data protection law and constitutional rights.

So it is a fact that data protection law operates like traffic violations. You know, we slow down when we know we're going to get nailed and we go over stop sign arms all the time in order to execute a corner.

So don't assume that because something is already in practice that ICANN that it complies with data protection law. That was my basic original point.

Don Blumenthal: Okay great. Thanks. James?

James Blumenthal: Hi Don, James speaking in response or reaction to Stephanie. So, you know, it's interesting to think of I would have thought that if the existing data escrow requirements and model were somehow, you know, blatantly running afoul of data protection laws that we would have heard - I would have heard more of an outcry I mean from European registrars and other service providers that would be affected by this.

I think that, you know, as Stephanie indicated we should probably look at ways to address this via contracts.

You know, I think the key from a consumer perspective is to make sure that they are aware and they make an informed and effective choice and so that the service provider or registrar or a privacy proxy service provider are doing something with their data that they don't like or plans to do so that they can make a choice and choose a different service provider. I think that's key.

You know, from my perspective I think that just in practical terms we should be mindful of these things but again we shouldn't necessarily allow them to completely derail some of our work or efforts here.

Because I am concerned that the alternative in the scenario where service providers de-accredited or terminated is that they just expose all the private data in Whois because that will be simpler, and cheaper, and faster and they'll just do that.

And of course from the consumer's side of things that's probably much worse than having a very - having to deal with a very abstract problem of having data transferred from one jurisdiction to another.

And I think that having the data just, you know, here it is, you know, we're going out of business and we'll just dump it into Whois and walk away I'm concerned that that would become a much more attractive alternative for a failing service provider.

So I would just be very careful about overburdening this process simply because I think that the alternatives are something that the consumers would find much more or much less appealing. Thanks.

Don Blumenthal: Great. Excuse me. (Unintelligible) and I'm just thinking out loud. I do that a lot. There's this new move starting up in January that is doing overall look at privacy issues and conflicts and Whois and wondering if you should make a recommendation? And some of the usual suspects including me are on it is expand its mission to look at privacy proxy issues specifically.

It might be difficult since we don't have a report and it only has five months to do its work but the timing is interesting. It would be nice to get some progress and answers on the things we're looking at here. Stephanie?

Stephanie Perrin: Yes. I just wanted to say I basically agree with James. One of these sort of (callarily) problems about data protection noncompliance is where do you start?

And in the case of ICANN the question I'm doing research on where do you start? And I'm not sure that making life unbearable for the people who signed on as the custodian for privacy proxy services that are de-accredited would be the best place to start because, you know, there's some other more basic (unintelligible) ICANN is not in compliance with.

However one of the proposals we talked about that was kind of rejected at the EWG was finding corporate rules for transfers solves a lot of the jurisdictional problems.

And it's the kind of thing that would be appropriate for all privacy proxy service providers. And the better ones are already doing it. So if you want better behavior this would be a good place to start.

Don Blumenthal: I see that (Carlton) has said in the chat but the privacy proxy services is soon to be a set of conditions not necessarily related to data protection law. You may be you're not doing it to as a method of compliance with data protection law. You're hiring a proxy which is slightly different.

Unfortunately it's the preferred method of getting privacy protection right now at ICANN. So it has to be because of the state of noncompliance I don't want to get too down in the weeds here, it's the only one.

So it's bearing a lot of freight as it were but I think that that can be dealt with in a way that sort of takes on existing best practices. I don't think Steve's on the call today and I (unintelligible) probably the rash thing to say about (unintelligible) process.

Don Blumenthal: Okay great. Thanks. Yes James?

James Blumenthal: Hi Don, James speaking. And I know we're getting up to the top of the hour so I'll be brief. I just I want to throw a note of caution in here not to discount or diminish some of the concerns that are being raised just because I'm afraid of where this might lead which is that a privacy proxy service might be limited to customers in a similar, you know, data protection regime or, you know, I, you know, it would have to set up a European entity to offer in to European customers that a Canadian or Canadian customers and so on and so forth.

And I think that, you know, I would hope that we are not constructing those kinds of real world borders and allowing them to introduce friction into global service provider competition so that someone from Europe gets to choose an American provider or vice versa or whatever.

And I'm throwing that out there because I think the way that's done now is via contractual arrangement which is that, you know, in a contract that's it's very - or the terms and services it says very clearly hey, you know, just FYI if you - it doesn't matter if you live on an island in the middle of a - the Arctic Ocean if you are using the service provider you agree to be governed by the laws of, you know, Arizona for example. And that, you know, you agree to the data protection, you know, scheme or whatever that is in force in Arizona.

And then, you know, the consumer can say hey I don't like what's going on in Arizona or a consumer can say I, you know, I don't care. I'll except that and give them the ability to make an informed choice as opposed to baking these requirements into the accreditation (unintelligible).

And I'm concerned that that's kind of a tangent but a natural departure from the conversation that we're having now about taking over as well what about how did we get here in the first place with people, you know, having their data stored in jurisdictions that are different from where they are currently exist.

So, you know, I, you know, this data protection stuff starts to make my head hurt a little bit because I don't understand it and I'm certainly not an expert as both (Stephanie) and others on the call.

But I think it's something that we need to think about very carefully and that we need to make sure that we are presenting consumers with the ability to choose. Yes. Well we are right at the top of the hour so I'll hold off here. Yes this has been I think an excellent, excellent discussion.

We - I think we got beyond where I felt we would in terms of the privacy discussions. But I think it was - I think a lot of what was discussed here can - will be useful to look back at where the data protection issues have come up in other context in the working groups in working group's history.

And I also think the clarity that I think we picked up in terms of Apogee pretty well puts it to rest. So I again appreciate - well as always appreciate attendance.

But I know at least a couple of people are here when they normally - when they're officially on break. So to everyone thank you. And I look forward to continuing discussions but we will be off next week so talk to you only an email for a couple of weeks unless somebody wants to pick up the phone or Skype or something. Have a good holiday.

Man: Thanks Don. Everyone have a great holiday.

Woman: Thank you Don. Thank you everybody. Happy Holidays and talk to you in the New Year.

James Blumenthal: Thanks everybody. See you in 2015.

END