

**ICANN Transcription**  
**Privacy and Proxy Services Accreditation Issues PDP WG**  
**Tuesday 08 September 2014 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 08 September at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-ppsa-08sep15-en.mp3>

On page:

<http://gnso.icann.org/en/group-activities/calendar#sep>

Attendees:

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Todd Williams IPC  
Sara Bockey RrSG  
Roger Carney – RrSG  
Frank Michlick Individual  
Steve Metalitz – IPC  
Sarah Wyld – RrSG  
Darcy Southwell – RrSG  
James Bladel RrSG  
David Hughes - IPC  
Phil Corwin – BC  
James Gannon NCUC  
Paul McGrady IPC  
Susan Prosser RrSG  
Alex Deacon - IPC  
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Christian Dawson - ISPCP  
Chris Pelling – RrSG

Val Sherman IPC  
Justin Macy – BC  
Kathy Kleiman - NCSG  
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Apologies :

Terri Stumme BC  
Holly Raiche ALAC  
Graeme Bunton RrSG  
Don Blumenthal – RySG  
Lindsay Hamilton-Reid RrSG

ICANN staff:

Mary Wong  
Marika Konings  
Gisella Gruber

Coordinator: Recording has started. You may begin.

Woman: Thank you very much. Good morning good afternoon and good evening to everyone. Welcome to the Privacy and Proxy Services Accreditation Issues PDP Working Group on Tuesday, the 8 of September. On today's call, we have Stephanie Perrin, Todd Williams, Sarah Bockey, Frank Michlick, Steven Metalitz, Sarah Wyld, Darcy Southwell, James Bladel, James Gannon, Susan Prosser, Alex Deacon, Luc Seufer, David Cake, Michele Neylon, Kiran Malancharuvil, Chris Pelling , Val Sherman, Justin Macy, Kathy Kleiman

We have apologies today noted from Terri Stumme , Holly Raiche, Graeme Bunton and Don Blumenthal. From staff, we have Mary Wong and myself, Gisella Gruber  
And if I may remind everyone to please state your names before speaking for transcript services.

And apologies; I left Phil Corwin off the attendance. If I have left anyone's name off the attendance, if you'd kindly speak up now. If not, over to you, Steve, thank you.

Steven Metalitz: Thank you very much, Gisella, Welcome, everyone, and thanks for getting on the call. Again, I think most of the people are on the phone bridge here rather than the Adobe so I will - I'll make sure that we walk through what is (unintelligible) here on the screen.

We've got a good agenda today and we'll start as usual with any updates to the statements of interest that people want to mention. Are there any updates? Okay, if not, we'll - our first agenda item, we - as you saw, over the last few days, there were some outputs from two of our sub-teams for discussion today.

Thank you to the sub-teams for producing that. The first one was from Sub-team 1. We had a partial discussion of Sub-team 1 output a couple weeks ago and one question was reserved because they were still working on it.

I think that question, having to do with escalation of relay requests, they're now ready to report on that. So I don't know if (Alex), are you reporting or (Lindsay), on this Question 1? And I'd ask the staff to put that up on the screen -- the Question 1 report.

Alex Deacon: Yes, Steve, it's (Alex). I'll be reporting.

Steven Metalitz: Okay, why don't you go ahead and get started?

Alex Deacon: Great. So this is (Alex), for the transcript. Just to bring everyone up-to-speed, this is the report of Sub-group 1.3.2, Question 1, which had to do with the mandatory forwarding of further form of notices when a system delivery failure is to bounce. If you remember, this section basically discussed and outlined issues which the working group did not come to agreement on.

And so we asked the public for further input and comments in the hopes that we would - that they would provide guidance one way or another. After going through the comments and analyzing them, the sub-group found that,

unfortunately, the answer was no; there was no clear consensus on the issue. And so, I think what I'll do is I will just kind of jump right to the recommendations - this is the section at the end - and we'll start there.

So the sub-group recommends that the working group discuss this issue one more time -- discuss if the mandatory forwarding of a further form of notice should be mandatory or not to see if we can come to consensus. If not, what I did was I modified the language from the report, which you'll see at the bottom of the document -- specifically, the third bullet that outlines or that discusses this issue.

And you'll see that what I did was remove the bracketed text - the text that we couldn't come to agreement on, and also made this obligation, if you will - should, instead of a must. And so those were our preliminary recommendations for the working group. Clearly, additional discussion is required, especially from this whole working group.

But maybe what I'll do is I'll just leave it there and take questions and we'll take it from there.

Steve Metalitz: Okay, thanks, (Alex). Before we do that, I have the sense that the Adobe chatroom is not functioning correctly here because I'm not able to use the chat function. We only show three people in the room - three participants in the room - and we don't have the text up on the screen, which I'm sure the staff has been trying to do.

Mary - or (Diesel) - do you know what the status is on the chatroom here in the Adobe?

(Karen Massetschuraville): Steve, it's working for everybody but you. So I think you probably need to refresh it. This is (Karen).

Steve Metalitz: Okay, then it's just me; sorry. Okay, then let's open the floor to questions - questions or comments - on (Alex's) report. I guess, first of all, if there are any other members of the sub-team that - on the call - I'm not sure there are - I think there are - I guess (Sarah) and David, (Val) - if any of you have any comments to add, this would be the time to do it.

But if not, I can't see who's got their hand up. So if you would just let me know if you want to be in the queue.

Mary Wong: Steve, James Bladel has his hand up.

Steve Metalitz: Okay, James, go ahead.

James Bladel: Thank you, Steve. James, for the transcript. And thank you (Alex) and the sub-team for putting this together. Just a question regarding the first recommendation, and I am still kind of skimming your report. I apologize if it's mentioned further up in the document.

But when it says, "all (RE) electronic requests alleging abuse by a Privacy Proxy Service customer", I mean, do we - in other areas -- for example, in Annex E, we established that the complaints should contain certain elements or follow a certain format. And are we saying that in this particular case that it really is just anything or do those elements and requirements also flow through to these requests as well or something is missing, then it's not considered a valid alleging - you know, allegation of abuse?

Alex Deacon: Sorry, this is (Alex). I think it's important to note, James, that that first bullet there was the recommendation that I think there was (unintelligible) agreement on. So this is new from the subgroup. This is text copied from our report.

The only change to the section on this topic was the third bullet based on the input.

James Bladel: Okay, thank you. I guess that establishes that I didn't recognize something that's been in there for a while, so apologies for that. But I - am asking the question, I guess as - when it says, "all third-party requests", are we saying that, you know, somebody sending something on the back of a napkin saying I don't like this website, shut it down or - I mean, really, there's no bar that have to - or no threshold that has to be crossed; we're saying all requests.

Steve Metalitz: Well, James, this is Steve. It does says electronic requests, so unless we scan the napkin...

James Bladel: Correct, electronic; yes, I got you. But really, it could contain anything or not (unintelligible).

Steve Metalitz: It has to allege abuse. I see (Kathy's) hand and then Mary.

Kathy Kleiman: Glad you can see me know, Steve; thanks.

Steve Metalitz: Yes.

Kathy Kleiman: Great. Hey, question, (Alex), and thanks to the whole team for the - you know, comprehensive report. Okay, so one of the commenters - and I don't know who - said something about the abuse allegation itself being abuse. So - and I thought that was really, really interesting.

So what happens here if the electronic requests themselves appear to be spam, so that it's - you know, if it's not coming in, say, to one of the domain name registrants, but to 100 or to 1,000 or to 10,000, that the Proxy Privacy provider might have? You know, harkening back to what James said, you know, should it be all or should it be all, reasonably? You know, how do we deal with that comment about that the abuse request itself -- the electronic request -- might be spam or something else? Thanks.

Alex Deacon: Yes, thanks, Kathy. This is (Alex).

Steve Metalitz: Yes, Mary. Mary is next; go ahead.

Mary Wong: Hi, Steve; hi everybody. Thank you. And actually, (Alex) provided the specific answer and I just wanted to provide a bit of context. In the report, this particular language comes after, you know, the other consensus recommendation about what it is that the provider has to forward.

And this one is about escalation when there is a - system delivery failure. So, as (Alex) said, this is the language in the report. Having said that, I think the other point that I - the working group, I think, noticed when we were talking about all the different recommendations was that, obviously, they have places where we talk about illegal activity.

There are places where we talk about abuse or abusive activity and other places where we talk about malicious conduct. So we don't actually define abuse, so maybe James's question is something that folks might want to think a little bit about. But (Alex) is right; that comes from the report.

And so maybe looking at the context of the report can help folks think through whether you want any more refinement to this particular sentence. Thanks, Steve.

Steve Metalitz: Thank you, Mary. Just - I'll just add on to that that if you look at the Recommendation 16, it has two options for what type of electronic communications, beside those required by the RAA and ICANN consensus policies must be forwarded. One is any electronic request received containing allegations of domain name abuse, so that would kind of conform with what we have - what was in the - the issues we put out for public comment.

The other is Option 1 about all electronic requests received, but the provider may implement commercially reasonable safeguards to filter out spam and

other forms of abusive communication. So that really, I think, covers the situation.

One way we might deal with this issue is to - instead of saying, "all electronic requests", we'd say, "subject to the" - you know, "Point 16" or "as defined in Point 16, all", - you know, "all electronic requests qualifying under Point 16 will be forwarded" because we provide two ways - I think we - certainly recognize that there could be abusive communication appearing to be complaints about abusive activities and I think we tried to deal - give two different options for dealing with that.

Michele, go ahead. You've been very...

Michele Neylon: Thanks, Steve. Michele for the record. I think we're - this kind of working on the language there I think is important because I thought there was a point - I mean, you do get some people who seem to have a huge amount of - spare time on their hands and they're quite happy to use that time just to harass people, or who just simply refuse to listen to reason.

But speaking as a service provider, we have had to (Deep 6) reports from some companies for the simple reason that they just wouldn't actually acknowledge, you know, things that we're saying just about what was the correct place to send them to, what we need, etcetera, etcetera. So leaving some flexibility here so that you don't end up in a situation where somebody abuses the abuse is important.

And I appreciate that, you know, you obviously want a situation where the registrar and the service providers are still accountable, etcetera, etcetera, etcetera. At the same time, you don't want - I don't think anybody wants a situation where you enabled abuse via the abuse reporting tool because that, obviously, is counterintuitive. Thanks.

Steve Metalitz: Okay, thank you, Michele. Okay, so we've had some discussion - I think helpful discussion about, actually, a point that was not one that the sub-group was asked to look at or address a question. Let's - if we can get back to the issue that this is part of the sub - excuse me - this sub-group was asked to look at, which is whether the - there should be a mandatory process when there is a persistent delivery failure of a notice that is appropriate to be forwarded must be an - provider upon request forward or further form of notice, and if so, who should pay for that?

So as (Alex's) report indicated, there wasn't really a consensus among the comments received on these topics. So the numbers, at least, didn't provide us with any - give us a lot of help. I guess I would ask, again, members of the sub-team, if there are particular comments that were received. Kathy already mentioned one, which I think we've dealt with.

But if there were other comments received that would shed light one way or the other on the - on this question, or if there's, in other words, any new information to be brought to bear on this question we discussed at some length several months ago about the alternatives forms of forwarding, if any sub-team members have any that they would like to point to, this would be a great time to do so.

I see, now, that most people are in the Adobe room, but if you're not - and what (unintelligible), just speak up. Okay, hearing no further comments on this, again, the sub-group recommended the working group discuss this further and I'm not hearing any further discussion on it. So I don't know, did the document just disappear from the screen for other people too?

Mary Wong: Steve that was me. I was too quick on the trigger. This is Mary. I was putting up the other part of Sub-team 1. Yes, I'll put it back.

Steve Metalitz: Go back; thank you. Great, thank you. So, now, if you scroll down to the third page here and you look at the third bullet, this is the - they're saying if there

can't be any - if there isn't any progress made through further discussion, then they - then the sub-team suggested we look at this language, which James chooses should rather than must makes it - so it's not mandatory to further form of notice.

And it also lines out everything about the fee, because if it's not mandatory, I guess the reasoning was then there's - you don't need to deal with who pays for the mandatory change. And then, they added a few words at the end of the last sentence about a reasonable limit on the number of requests made by the same requestor for the same domain name. So I guess, to distinguish the circumstance in which there is one requestor, but there's concern about multiple domain names.

So, let me just ask if there are any comments on this or any concerns about making the changes that are put forward here as part of the sub-team recommendation. I see (James Gannon); if anybody else wants to get in the queue, please speak up if you're on the phone or put your hand up in Adobe. (James), go ahead.

James Gannon: Hi, James. I'm - so I just have a quick question response for (Alex). Sorry for the background noise. And was there any discussion in the sub-team around differentiating between the same domain name and the same registrant (unintelligible) because you could have a registrant with multiple domain names and end up in the same situation where it may become a very repetitive exercise.

So should the limitation actually be on multiple requests from the same registrant rather than the same domain name? Was there any discussion around that?

Steve Metalitz: (James), just for clarification, by definition, we don't know who the registrant is at this point (unintelligible) the requestor, do we?

James Gannon: Yes, but the provider will.

Steve Metalitz: So you're saying that the provider would disclose that these are all...

James Gannon: Yes, I suppose that's a good point. Yes, no, I understand. Yes, okay, forget the question.

Steve Metalitz: Thank you. Okay, any other comments on this? Okay, if no further comments, then I think we're moving on the path of making these changes. Obviously, if people think about this then have other points to add in the next couple of days on the list that would be great.

But if not, I think we want to thank Sub-team - this sub-team for helping us move this forward and close out at least some language here. We also have had a good discussion about the first bullet there and making sure that that conforms with the other recommendations as far as the - what communications need to be forwarded. So that would conclude that part of the Sub-team 1 report.

Now, the next document that's up there now, which is a revised version of the summary and analysis from - on Question 2. We had a discussion about Question 2 a couple weeks ago. Let me just ask if someone on the sub-team wants to present this document or walk us through this and tell us what changes have been made to this document.

Val Sherman: Steve, this is Val Sherman speaking. I'd be happy to do that.

Steve Metalitz: Okay, (Val), go ahead.

Val Sherman: Okay, great. So - well, we had a pretty good discussion and, you know, Question 2 is composed of four sub-questions on - quite a few comments really supported the idea that there's a - great support for conceptual deference to the context between providers and their customers.

So Question 1 should be mandatory for accredited providers to comply with express request from LEA, not to notify the customer. The person to the working group discussion we should clarify, we recommend that we clarify in the final report that express LEA request not to notify to be complied with where it is required by applicable laws, and also clarify that any all working group recommendations in this topic that are not intended to prevent providers from adopting any more stringent standards in their terms of service, which is simply cooperating voluntarily with LEA where they see so fit.

So that is the - that appears to be the outcome of that particular sub-question. Question 2 should be mandatory publications of certain types of activities -- for example, malware, viruses, or other types of violation of terms of services relating to legal activity. You know, again, a lot of the comments demonstrated a deference to contractual agreements and in so doing, the response has really supported the preliminary recommendations 6 through 8 of our initial report on provider terms of service.

It was also noted in the working group that providers, generally, and already have the discretion to terminate service for breach of their terms, which frequently would, hypothetically, result in publication. And, again, the working group noted that there should be no restriction on providers being able to so do, subject to how any other specific limitations or recommendations by the working group.

For example, we may (unintelligible) whether certain types of behaviors could require that there be some sort of other action, like a suspension of the domain name pending an investigation or something of that sort. It was also noted that it's probably not possible to create a general policy that would, in all cases, prevent publication where the customer is ultimately shown to have not been in breach.

But we finalize our recommendations for the final report the working group may wish to consider that a provider be required to first notify the customer if the alleged grounds for termination with malware, for example. So with regard to Question 3 -- remedies from warranted publication -- again, the response which supported the preliminary recommendation 6 through 8 terms of service deemed to be sufficient to provide any remedies from unwarranted publication.

It may be useful to clarify the language in the final report to refer, expressly, to the possibility that in many cases, the provider's terms of service and the applicable law will provide for the remedies, or should be referred to for the remedy. Now, questions - Sub-question 4 shared a similar framework and other considerations apply to requests made by third-parties other than LEA or intellectual property owners.

We decided, based on our discussion a couple weeks ago, that we will kind of loop back around to this question or reconsider it in light of recommendations from Sub-team 3, which is evaluating Annex E. We also wanted to note that there was a comment provided by Black Knight Internet Solutions that suggested that the working group look to establish policies around disclosures already in place by some country code managers -- for example, (SIRA), which runs the Canadian state country code.

So this suggestion may be of interest to some of the questions, but, again, may be appropriately first analyzed by Sub-team 3. One example, for example, for Canadian - the country code - the closure procedures, there is actually several that provide for specific ones to be filled out, like, (CA), for example, requires there sort of be a (unintelligible) dispute with the registrant requires the provision of certain information is required that the - that certain criteria be complied with, essentially, safeguards privacy wall also that was in the interest of the - whatever other interests may be a hand of whatever - (IP) or others.

And we do want to note that quite a few months ago, the ICANN staff had prepared a summary of selected (CCPRD) processes and those are also posted on our Wiki page and I believe - Mary, correct me if I'm wrong - has been sent around more recently.

Mary Wong: (Val), I don't recall when it was sent around, but you're right; that's posted on the sub-team Wiki Page. And, of course, depending on what the working group wish to do at this particular point, I'm happy to send it around or send it around to the point people. Thanks.

Val Sherman: Thank you. So that's - that really is where we are with Question 2 of the particular...

Steve Metalitz: Okay, thanks very much, (Val). I appreciate your walking us through those recommendations and I also appreciate the - your sub-team giving us some concrete, fairly specific recommendations here. So in - you suggest some clarifications on Question 1.

Val Sherman: Right.

Steve Metalitz: You suggested, I guess, perhaps, the same in Question 2, I - if you want to come back to that. And then, on Question 3, again, just referring to the provider's terms of service and applicable law, I think that just kind of runs throughout here.

Question 4, you point out that this overlaps - may overlap considerably with what's happening in Sub-team 3. So we'll be - I think we'll be hearing from Sub-team 3 a little bit later in this meeting. Let me just open the floor to any questions or comments on the - these recommendations from the sub-team that (Val) has just walked through.

I see (Kathy) has her hand up. Anybody else please get in the queue?  
(Kathy) go ahead.

Kathy Kleiman: Hi. A question for (Val) and for anyone else on the sub team regarding question two the mandatory publication. I agree that, you know, I agree with one of the findings and have a question about the other.

The finding that it should, you know, that we should follow the terms of service that providers should follow their terms of service makes sense.

But the requirement to notify a customer before a publication of their data in the Whois before it's globally available seems to me to be one that was amplified by the comments.

There were a number of comments that talked about once it's done it cannot be undone this type of publication and becomes part of the public record.

And that you can't put a rabbit back into a hat. And the dangers we heard a lot about the dangers a lot, a lot about the dangers of the type of information that might be published.

So the idea of notifying a customer for all publications seems to be something that logically arises out of a number of the comments we received kind of in the thousands. Can you - I'd be interested in your responses on that. Thanks. And whether we can move towards that finding?

Steven Metalitz: Okay thanks (Kathy). (Val) do you want to respond?

Val Sherman: Sure well (Kathy) I, you know, without having the benefit of the thoughts of others in the group at this moment I don't really see any issue with it.

I think it's certainly something that we as a working group may consider. I personally don't see a problem.

So unless somebody else can offer a reason why that might be a sticking point I think that, that would be - that is something that's at least several of the comments have mentioned.

And like you said if it's something that provides, you know, really our goal is to resolve issues not to kind of create additional problems or to violate any rights without any kind of justification. So I don't have a problem with making that a recommendation.

Kathy Kleiman: Great thanks (Val).

Steven Metalitz: Thanks (Val). I see (Vicki) and Michele, so (Vicki) go ahead.

(Vicki): The only caution that I would raise and forgive me because I'm not sure it fits in here or not the only caution I would raise is with respect to law enforcement. And I don't know if that applies here or not but I heard (Kathy) say always.

And so I just would want for us to reserve assuming we're going to hear from law enforcement at some point if we haven't already on how they - what they think about that issue.

Steven Metalitz: Okay thank you (Vicki). Michele, go ahead.

Michele Neylon: Thanks Michele for the record. Two things one on the law enforcement matter I think that's covered by the jurisdictional issues.

I mean ultimately if an American law enforcement agency wants us as an Irish company to do something they better make sure that they're asking it via their Irish counterpart because otherwise we're just going to ignore it and that's the reality.

To (Kathy)'s point there's an issue here in that it's what, you know, if you want me to inform a client that I'm going to do something what's that going to - what's the consequence of that?

I mean what are you expecting to happen once I've informed them that's my question? I mean if I'm - if you're - if you have breached our terms of service for any number of different reasons we are going to terminate the service we provide to you in terms of Whois privacy or any other number of services that we may or may not provide to you.

You know is - does - if I terminate that - if I inform you I'm terminating the service what do you expect that you're going to be able to stop me from terminating the service or is it that you simply just want to be told that I'm terminating the service because I'm trying to understand what that notification what's the purpose of the notification because I can assure you as a service provider there's no way we're going to continue to provide you with the service if you're in breach.

((Crosstalk))

Kathy Kleiman: Happy to respond. It's a good question.

Steven Metalitz: Go ahead.

Kathy Kleiman: (Steve) okay?

Steven Metalitz: Yes thanks (Kathy), yes go ahead.

Kathy Kleiman: Okay. So Michele you may have just solved the problem. If you're notifying a customer that you are terminating the proxy privacy service you've solved the problem right there, you've notified them.

What I would want to do is, you know, there may be other issues, there may be infringement allegations, there may be a joint venture I had with my ex and we're fighting over who owns the intellectual property -- it happens every day in divorce court -- but what I would want is notification that I need to put armed guards in front of my house because my personal address that I've kept from my ex is about to go up on the Web.

So it's really more - any form of notice that allows the customer to know that their address is about to be published, or their companies address, or their organizations address is about to be published at least gives them a heads up of whatever they may need to do.

And given some of the cases we've talked about, you know, there may be people who will need to go underground.

Michele Neylon: (Kathy) just coming back on you very, very briefly if you've now opened up another can of worms because...

Kathy Kleiman: Why?

Michele Neylon: ...if you want to put armed guards in front of your house since we want to use that example if I - how much time are you going to want between us informing you that we're removing the service and us removing the service this is Michele for the record (Gisella).

How much - because this is where the problem for me would arise is that if for example and it happened to us a couple of years ago somebody was using it domain name for a particular purpose and we ended up with being potentially dragged into a couple hundred thousand euro worth of, you know, court case over something we knew nothing about.

I don't want to be dallying around waiting a day, or two days, or three days whilst giving you time to go off and get your armed guards or whatever I

mean not that I want you not having your armed guards (Kathy) but, you know, the thing is what's - are you expecting a certain amount of time between the notification and the action is I suppose what I'm asking? Thanks.

Kathy Kleiman: That's a really good question. Can I throw out there whether there is time now? And also say this is something that would require some research. This isn't something I should probably answer off the top of my head.

It's a really good question but I think some time is definitely in order especially given what we've now heard from 21,000 plus commenters of the importance of proxy privacy registration which...

Steven Metalitz: Well look this - I'm sorry were you done (Kathy)?

Kathy Kleiman: Yes, no I'd love to one know what other, you know, how it's done now and then also kind of think about it and research it, you know my gut sense is at least 24 hours notification.

But there may be precedent that we have in unlisted phone numbers and other things that before something becomes listed that there's a certain amount of time that we wait in certain countries. So I would want some time to take a look at that so I could present it to the working group. Thanks.

Steven Metalitz: Okay so let's just to be just to specify what we're talking about here and I'll call I see (Mary) had her hand up and I want to also get to James.

We're talking about regardless of what's in the terms of service should there be some requirement to notify a customer of the service before he or she is - has that service terminated for whatever reason I guess we're talking about. (Mary) I think you had your hand up then we'll go to James.

Mary Wong: Thank you (Steve) and thank you James for the reference in AC (Chad) and reality. So this is not a specific answer to (Kathy)'s question because I don't

have one but if it will be helpful to this discussion way back I think it might have been September staff did a sample and a survey of privacy and proxy providers. And we did get back some responses which I believe we circulated to the working group.

And what I recall from that exercise is that there is a variety of practices thanks James yes September well last September yes.

And so a year ago that there was a variety of practices across the providers for example some would include on what notice they give.

And some of these basically said well some grounds of notification will give you notice others either did not have a clause on notice at all or said, you know, we may give you notice et cetera, et cetera.

In addition I think some providers said that they do tell their customers what the consequences of publication are and some don't.

So I guess the sense that we took away from that discussion last September was that, you know, there's already provider practices out there so it's a question of how much the working group wants to make something mandatory or common. Thanks.

Steven Metalitz: Thanks Mary. James Bladel.

James Bladel: Thank you. James speaking for the transcript. And I think going back to our practices we do in fact provide notice that, you know, that a customer has violated our terms of service and that we were terminating that service in accordance with our customer agreement.

And that provides sufficient window for some of things that (Kathy) was discussing or raising and I don't know that, that, you know, basically instantaneous or how quickly you can check your email.

I just want to maybe put out there the idea that as a service provider we're much more likely to let's say, you know, these services are once again set up to protect private information from falling into third parties who would use them for abuse, spam, marking and spurious claims of infringement.

They're not designed to provide a safe harbor from which to conduct the legal activity. And I know that, you know, there's some distrust or suspicion of LEA on some levels.

But for the most part if an applicable law enforcement agency is making a request I mean I think that most providers are simply going to comply and not necessarily, you know, put them - insert themselves between their customer and law enforcement. And, you know, I'm just raising that, you know, as just a matter of general principle. Thanks.

Steven Metalitz: Okay thank you James. James Gannon, go ahead.

James Gannon: Hi. James Gannon. I think if we're going down this route there's kind of some complexity involved. So I think well others have said particularly (Kathy) I would be broadly in agreement with and I think it would be a useful exercise to try and collate at least a representative selection of what's in current provider terms of service to give the working group some reference to work off of.

But I think this is an important distinction as well we have to make between voluntary and involuntary issues with domain names.

So if we go down the route of let's say for example having example of a site that's hosting malware there can be many instances where that registrant is a genuine privacy proxy user and is not intending to use the domain for illegal purposes but through that security or any number of other things will end up hosting malware unknowingly.

So we need to make sure that if we do go down the route of having a paragraph in the policy around notification and to allow the providers to have the flexibility to - I personally prefer to see us having some type of sufficient window given to registrants to make sure that, you know, at risk registrants are given sufficient time to put in place risk management measures for themselves.

But we need to be able to differentiate between blatant and knowing abuse and possible voluntary abuse.

And I understand that that's going to introduce complexity but it's an important distinction that we'll have to make as we go along.

And I want to know thanks (Mary) in the chat if that's what you're talking about (unintelligible) or not?

Steven Metalitz: Thanks James. I'll take - I see David Cake's hand. And we - it just went down. I don't know if you wanted to speak David but if you do put your hand back up.

This has been a good discussion. And I would ask for people to think about this and let's continue this discussion on the list.

And again just to be clear what we're talking about here is there should be some requirement that service providers regardless of what's in their terms of service provide some advanced notice -- how much to be determined -- before terminating service?

This is a publication this is not disclosure on a one off basis this is publication to the world and should they be required to do that should that be a minimum standard for accreditation?

So I'll be particularly interested to hear from the providers about how that might affect them as well as from all the other members of the working group.

David did you have something else on this topic or another topic that's in the sub team recommendation?

David Cake: Oh yes can you hear me?

Man: Hey (Steve).

David Cake: Can you hear me?

Steven Metalitz: David.

David Cake: Can people hear me?

Steven Metalitz: Yes I can hear you David. Go ahead.

Man: I can hear.

David Cake: Oh good. Okay yes I just to take up James's point about the yes there's voluntary and involuntary we did get a couple of comments in the sub team that suggested that actually dealing via the domain name system entirely is often inappropriate particularly for malware where it may be as James said involuntary someone has placed it on the Web site.

And a lot of it was said most of the time for these issues you should really be dealing with the hosting provider rather than the DNS at all.

But there's a whole lot of uncertainties there about what kind of malware. We've got to talk about, you know, future kinds of malware we may not have even seen in the wild yet and issues about whether it's even possible to contact the hosting provider without going via the DNS and so on.

So there's a whole bunch of issues here that people talked about where often, you know, if it's involuntary no useful purpose is served by reveal at all well publicly, you know, it may be useful for to be able to contact them but it doesn't mean to make them public. And...

Steven Metalitz: Whoever is typing please mute your microphone. Thank you. Go ahead David.

David Cake: And we may be getting into a sort of realm where rather than some recommendations for, you know, well rather than some policy we may be getting into sort of best current practice territory.

Steven Metalitz: Okay thank you good point there. So let's move on from...

David Cake: What is an appropriate way to behave in response to certain kinds of complaints?

Steven Metalitz: Right. Let's move on from that topic then and let's ask people to discuss on the list whether they should be an additional accreditation criterion or is it better in the realm of best practice? And if it is a criterion how would that be?

Let me ask if there are any other comments at this point on the other recommendations from this document from sub team one particularly items one through three because on number four they're mostly referring over to Subteam 3. Any other comments on this at this point?

If not then let me - let's ask folks to review this over the week. I know people have had it only since Friday and it's been - it was a holiday weekend for some people. So please take a look at this and let's see if we can get this also closed off next week.

I'll turn now to the next agenda item which is the report or partial report from Subteam 3. And we have two documents up there one is a summary of their analysis and the other is a revised illustrative draft disclosure framework in other words revisions to Annex E.

This Subteam had a tough assignment and we appreciate the time and effort the folks have put into this.

Let me ask you if there is someone from the sub team who'd like to walk us through these documents.

And we should maybe all we have time for today but if you could kind of let us know what we're looking at here. Is there someone from I see Todd has his hand up, so Todd why don't you go ahead.

Todd Williams: Thanks (Steve). Todd Williams for the transcript. Can everyone hear me okay?

Steven Metalitz: Hear you fine.

Todd Williams: Great. So that's all right two documents here just a general overview of what they are. One as you noted is a revised summary of what we presented several weeks ago to the broader working group had a lot of context, a lot of direct quotations from some of the comments that we were analyzing to give a broader picture.

The second as you noted is a revised disclosure framework that attempts to incorporate comments that we reviewed the substantive suggestions that the comments made either additions or edits.

And two broad points as the working group reviews these and perhaps over the next week I mean we can talk about them in more detail next week.

One is that the revised disclosure framework does not represent something where the members of the sub team went over the substantive merits of the comments that we were reviewing and said yes this will work no that won't work or did any kind of reached consensus or anything of that nature rather this is just taking the summary that's in the first document and simply for kind of illustrative purposes folding it into the language that already exists to say okay if the working group decided that this particular comment has substantive merit and that we wanted to make certain edits or additions this is one particular formulation of how that might look.

So I just wanted to make that clear from the outset it's more of a tool to facilitate further discussion and not necessarily a finished consensus product or anything like that.

The second broader point is that if you'll recall when we presented our initial summary to the larger working group several weeks ago there was a lot of discussion about what exactly verifiable evidence from the domain privacy (unintelligible) looked like and what exactly that term meant.

And one idea that we as a Subteam had was to kind of sidestep that debate at least for now as to whether what was already in the disclosure framework would have met verifiable evidence or not.

And instead, you know, fold that term into the revisions that we are doing and then as a whole as a working group once we've looked at the new revised language then discuss whether that meets verifiable evidence.

So in any event that's what this document includes, you know, subject to obviously further debate among the larger working group. So those are kind of the two broad points as everybody reviews. Thanks.

Steven Metalitz: Thank you Todd. And so just, you know, and that's very useful to - so these really aren't recommendations you're - of the Subteam you're just trying to incorporate into Annex E the thrust of some of the comments. And then to...

Todd Williams: Yes exactly.

Steven Metalitz: In other words - yes go ahead.

Todd Williams: No, no that's exactly right (Steve) just...

Steven Metalitz: Okay.

Todd Williams: ...as your reviewing I didn't want anybody to think that like I said we had debated the merits and come to some sort of final conclusion or recommendation.

Frankly, you know, that is something that the larger working group can do as we look through this document but this is just to kind of help facilitate that.

For example if you're looking at a particular comment this is where the substance is merits of that comment might come into play basically.

Steven Metalitz: Okay. So in effect would it be fair to say that when we look at this revised Annex E the second document here.

This is the Subteam's best effort to say this is what the document would look like if we took all the comments that say - or took the comments at face value and took them into account here not...

Todd Williams: Correct.

Steven Metalitz: ...again this is an area where we've reached a tentative conclusion, we had this Annex E but we obviously sought public comment on it.

And we're not, you know, counting heads here we're trying to come up with the best outcome but if we were to be guided by the specific comments it would look kind of like this. So I think that's - if that's a fair way to characterize this document that's up on the screen now.

Okay so let me open the floor to comments either from other members of the Subteam or from members of the working group. I see (Kathy) who is another member of the Subteam I believe...

Kathy Kleiman: Yes.

Steven Metalitz: ...has her hand up. If anybody else please wants to speak please get in the queue thanks.

Kathy Kleiman: Thanks (Steve). A quick note without getting into the merits of anything but that this revised Annex E is really based on my understanding of the summary it's based on the summary section 2 taking those comments that have support the basic premise of Annex E.

People as you read, you know, as you read through this people should really look at Section 3 which is those who I mean there were thousands of comments of those who opposition for the basic premise of Annex E.

We got over 11,000 comments that in some way or another fall into category of opposing disclosure publications some under all circumstances some want a court order.

But I'd really look at Sections 2 and three and this revised Annex E, you know, really is a reflection of the changes requested by those who responded in Section 2 that they like Annex E but they want it to go much farther. Thank (Steve).

Steven Metalitz: Great, you know, thank you that's helpful. Other comments on this? (Vicki) go ahead. If anybody else wants to be in the queue please, please raise your hand.

(Vicki): And there is some disagreement with what (Kathy) just said. I mean clearly the- that petition was no disclosure as a court order.

The other petition some argue that it generally supported Annex E and there was a question of what the (unintelligible) evidence means.

Steven Metalitz: Right.

(Vicki): I think (Kathy)'s description of it is debatable. Thanks.

Steven Metalitz: Okay. So that's right. And I think Todd would agree that changes to Annex E are assuming we will have an Annex E and look at the viewpoint of those who feel we should not have an Annex E and not have a - not provide any requirements for how to handle the request. So that's something we certainly have to take into consideration.

I'm - I see that we're nearing the top of the hour now and it probably is not that useful to dive into these Subteam 3 documents which are pretty extensive and just, you know, just were circulated a few days ago.

So let me ask that everybody take a look at these and let's be prepared to get into more detail on them on our call next week if possible.

And just to review what else we have we had a very good report from Subteam 1 very specific. And I think for the most part we've - we're - we've got some concrete recommendations.

And I would like to hear on the list particularly from anybody who has concerns about those. And one open question is this issue of whether there

should be some mandatory advanced notice before a privacy proxy service is terminated.

And we've heard from some we've heard some viewpoints on that but that's something I would ask people to think about and whether that should be an accreditation requirement or possibly a best practice.

On Subteam 2 I think we had a big discussion last week. And I said at the end of that, that we would try to get some language from the co-chairs out to the group.

And that's still my hope to try to do that for next week so please stay tuned. We've already talked about Subteam 3 which will be I think a focus of our discussion next week.

And then on Subteam 4 I think we're going to reach out to the co-conveners on that and see where things stand and what we can do to move that process forward so that's my brief snapshot anyway of where we are.

I think we're making - we made some good progress today. And hopefully we'll continue to do that in the next several weeks which will be quite critical.

So thank you all for your participation. And unless there are any closing comments I don't see anybody's hand up.

So please be active and vocal on the list this week if you possibly can. And we will all talk again next Tuesday. Thank you.

Woman: Thank you.

END

