

ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 08 April 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 April 2014 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-pps-a-20140408-en.mp3>

On page:

<http://gnso.icann.org/calendar/#apr>

Attendees:

Luc Seufer - RrSG
Graeme Bunton – RrSG
Tim Ruiz – RrSG
Sarah Wyld – RrSG
Steve Metalitz - IPC
Kathy Kleiman – RySG
Darcy Southwell - RrSG
Libby Baney - BC
Phil Marano – IPC
Valeriya Sherman – IPC
Roy Balleste – NCUC
Holly Raiche – ALAC
Susan Prosser – RrSG
Kristina Rosette – IPC
Justin Macy – BC
Jim Bikoff – IPC
David Heasley – IPC
Amr Elsadr – NCUC
Michele Neylon – RrSG
Don Moody –IPC
Marie-Laure Lemineur – NPOC
Alex Deacon – IPC
Osvaldo Novoa – ISPCP
Emily Emanuel – BC
Jennifer Standiford – RrSG
James Bladel – RrSG
Volker Greimann – RrSG
Gema Campillos – GAC
Tatiana Khramtsova – RrSG

Apologies:

Carlton Samuels – ALAC

Maria Farrell – NCUC
Paul McGrady – IPC
Tobias Sattler – RrSG

ICANN staff:

Marika Konings
Mary Wong
Amy Bivins
Margie Milam
Mike Zupke
Terri Agnew

Coordinator: Please go ahead, this morning's conference call is now being recorded.

Terri Agnew: Good morning, good afternoon, good evening. This is the PPSAI Working Group call on the 8th of April, 2014. On the call today we have Libby Baney, Graeme Bunton, Holly Raiche, Steve Metalitz, Valeriya Sherman, Darcy Southwell, Sarah Wyld, Tim Ruiz, Steve Metalitz, Justin Macy, Alex Deacon, Kristina Rosette, Osvaldo Novoa, Don Moody, Roy Balleste, Jim Bikoff and Kathy Kleiman.

We have apologies from Carlton Samuels, Susan Prosser, Maria Farrell and Paul McGrady.

From staff we have Mike Zupke, Marika Konings, Amy Bivens, Mary Wong and myself, Terri Agnew.

I'd like to remind all participants to please state your name for transcription purposes before speaking. Thank you very much and over to you, Graeme.

Graeme Bunton: Thank you. This is Graeme Bunton speaking and I'll just reiterate what I was saying for everyone who's joined that Don's not with us today so it's up to Steve and I to carry through today's discussion. I think there's going to be a gentle change to our agenda in that I think we're probably not going to spend too much time on Category B, Question 2 but instead try and move onto Category B, Question 3.

But I thought I'd start it off with a brief recap of the Singapore meeting and what happened there for those of you who couldn't join us. It was good. We opened up the floor to the Expert Working Group survey results and I believe that was Margie from ICANN who talked us through it.

I would encourage the group - or every individual within this group to go and read through that summary; I think it was pretty interesting. What it highlighted for me, and others are welcome to comment here, is that there was, A, not a lot of responses; there were only 11 that went through the whole thing.

But within those 11 there was an awful lot of variety displayed within those responses. So it - to me, seemed difficult to draw any sort of generalizations from that survey aside from there is a whole lot of different implementations going on. So, again, maybe I'll see if I can put the link into the Chat. But I would encourage people to read that.

Moving on from the survey update we then sort of got into a discussion around the scope of what it is to be a privacy and proxy service. And that was an entertaining and lively discussion.

And one I think we need to have more of as a group but we'll probably park that for a little bit and work it into a schedule because I think it's an important discussion and one we haven't really had yet aside from that one meeting. So we'll get there in the near future but I'll sort of discuss that I guess with Steve and Don about when we want to put that on the table. If someone else has an opinion on that feel free to share it.

And that leads us now into where we were on Category B, Question 2. And so I spent some time last night going through that discussion that we were having and going through the notes. And I think - and we'll open this up for discussion in just a moment - where I think we got to around that was that there was a reasonable amount of discussion had and there were certainly some differing opinions.

We've sort of got a preliminary - I'm not going to call it consensus but a preliminary idea that the 2013 RAA requirements should be used but there was some substantial disagreement there. I think what we've decided to do - is that we're going to make note of that disagreement and we're going to move on with that footnote that we may need to come back and readdress this issue of what would be the checks beyond the 2013 RAA.

Steve's raising his hand, go ahead Steve.

Steve Metalitz: Yeah, thank you, Graeme. I agree with that approach. I think we should, on our preliminary conclusion, note that there were - there was support for additional steps a lot of it having to do with how this ties into reveal or publish standards once those are worked up. So I'm comfortable, you know, I'm not sure we have a lot to gain from further

discussion on this issue at this point but I do think we'll be coming back to it. So I suppose that approach. Thank you.

Graeme Bunton: Thanks, Steve. Anybody else have any thoughts on moving past Category B Question 2 for the moment? Can see people are typing in the Chat so maybe I'll give that just a sec.

Oh no hands, okay so I think then what we're going to do is move on to Category B Question 3. Rapidly moving through the topics this morning. So let's - Marika, if you would be so kind - give us an introduction to where we're at on Category B Question 3 please.

Marika Konings: Thanks. Sure, Graeme, thanks. So this is Marika. So Question 3 basically reads, "What rights and responsibilities should domain name registrants that use privacy proxy services have? What obligations should ICANN-accredited privacy proxy service providers have in managing these rights and responsibilities? And clarify how transfers, renewals and PDNR, post-expiration domain name recovery policy should apply."

I think we probably have here two separate questions that we may need to want to look at. The first question really relating to, you know, what rights and responsibilities should there be for both registrants as well as privacy proxy service providers? And I think the separate question relates to how do these rights and responsibility interlink with existing ICANN consensus policy such as those that relate to transfers and renewals?

What we've done in the template basically is first of all provide the links to the existing - some of the existing policies that were mentioned here,

so the transfer policy as well as what is now called the expired registration recovery policy. And there may be other policies that we may need to think about so again I think that's something to keep in mind for working group members.

Then included some of the relevant information from some of the other documents that we've been looking at such as the Whois Review Team final report which notes that, "ICANN should ensure that the requirements for accurate Whois data are widely and proactively communicated including to current and prospective registrants and should use all means available to progress with accuracy including any internationalized Whois data as an organizational objective. As part of this effort ICANN should ensure that its registrant rights and responsibility document is proactively and prominently circulated to all new and renewing registrants."

And it also noted that, "In considering this process to regulate and oversee privacy proxy service providers consideration should be given to the following objectives," and I've just taken out the one that relates to this one here, "Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders and how those should be managed in the privacy proxy environment."

Then we also included a link to the existing RAA rights and - registrants rights and responsibilities document which may give you a model of what you may be looking at in this context.

And then you'll see as well that, you know, several comments have been submitted in relation to this topic (unintelligible) expressed what they may want to see included or discussed in this context not only

from those that responded to the working group survey but also from the stakeholder group and constituency statements that we've received so far so that includes response from the IPC and the NCSG that were specific to this question.

If it's helpful I don't know where we exactly want to start but what I did as well I think before we actually went off to Singapore is in relation to, you know, the second part of this question on how this relates to some of the existing policies and where those may intersect with what we're discussing here.

I actually put a couple of questions together that the working group may want to look at or think about. And again I think the question on the broader level is, you know, how high level or how deep into some of these issues does the working group want to go.

And it's, for example, looking at the renewal policy there was a requirement that a registrar send, on a regular basis, renewal notices to the registrant or the registered name holder. I think one of the question here is should there be an obligation for example for the privacy proxy service to relay those messages to the privacy proxy customer or is that up to the discretion of the privacy proxy service provider.

Or is at this stage, you know, the working group (unintelligible) they note that there are certain linkages between the requirements under these policies that may need - may have an affect on privacy and proxy service customers that will need to be factored into the implementation discussion.

So again I think those are some of the broader questions the working group will need to think about as you dive into these questions. So, Graeme, I don't know where you want to start if you just want to maybe run through the comments that have been made and see where we think members, you know, agree or disagree or whether there are other points people would like to add to that or how would you like to proceed on this one?

Graeme Bunton: Yeah, maybe the comments is a good place for jumping off; maybe that will stir people up.

((Crosstalk))

Graeme Bunton: Would you be so kind as to go through those for us? Did we lose Marika there?

Marika Konings: Sorry, Graeme, my line just briefly dropped so I missed your question.

Graeme Bunton: Oh I thought that going through the comments was probably a good way to facilitate some discussion and that it would be good if you would walk us through them.

Marika Konings: Okay great. I'll start with the first one then. So the first one was made by Jim Bikoff, David Heasley and others from (unintelligible) all of them. So basic responsibility of customer should be to not use privacy proxy service to reveal intellectual property infringement.

"Basic right of customers is to have their privacy protected and anonymity maintained for legitimate purposes of free commerce and speech. Privacy and proxy service providers should preserve the

privacy of their customers subject to the relay and reveal procedures described in 2 above." Two above relates to the other question that we'll I think be coming to later in our deliberation.

Do you want me to run through the other ones as well or pause at each comment. I see Steve has his hand up so.

Graeme Bunton: Yeah, go ahead, Steve.

Steve Metalitz: Yes, thank you. This is Steve. You know, I think this response illustrates one of the things we need to focus on here. Obviously we haven't gotten to the relay and reveal procedures, you know, what would be the minimum standards for relay and reveal procedures for accredited service providers.

Once we get to those, once those are in place, then clearly one of the things that the - both the proxy service provider and the customer should do is, you know, carry out their roles that are defined in that - in the relay and reveal procedures.

But obviously those are important but I would suggest we probably put those to one side and focus more on kind of some high level questions. And I think the first two sentences of this comment kind of go to those maybe - I mean, there'll be others as well but I just wanted to say that I think the way that this comment approaches the relay and reveal is the right one to say once, you know, it should certainly be within the rights and responsibilities to conform to those minimum standards but we should discuss those minimum standards separately. Thank you.

Graeme Bunton: Thanks, Steve. Do you want to take a crack at suggesting what those minimum standards are?

Steve Metalitz: Well, I'm happy to once we get to that question in our matrix.

Graeme Bunton: Okay doke. So looking at Category - sorry, this is Graeme Bunton. So if we're looking at Category 3, which seemed to me this - Question 3 rather. It seems like we really actually have three questions there, rights and responsibilities for registrants for the people that operate these privacy and proxy services and then this separate issue about how the existing policies are going to work in.

Sorry, I'm enjoying Bladel's comment there. So does anybody have thoughts on those sort of three components of that Question 3? Or should we continue down with the comments? I worry that some of the subject matter is a bit new to the group and no one's had time to really ponder it yet and develop an opinion. So maybe let's move through those comments some more and we'll see if anything occurs to anybody.

Marika Konings: So this is Marika. So going to the next comment, second comment from (unintelligible), "Private individual registrant should have the right to protected information that will not be shared without substantial evidence of a breach of contract including violations of applicable law."

"Privacy and proxy service providers should have clear policies from real unmasking transfers and renewals. Two separate forms of transfers may occur. The first would be a transfer of the registrar which may or may not be the privacy proxy service provider. And second

would be the transfer of information from one privacy proxy service provider to another."

"Both forms of transfer should occur without revealing registrant data. If a registrant has pending allegations or violations against them the domain and/or privacy proxy service should not be transferrable until the claims are resolved."

Graeme Bunton: James, please go ahead. James, are you on mute? Oh he's dialing in. Kathy, would you like to go ahead while James dials in?

Kathy Kleiman: Well I would have wanted to hear what James said first but okay. Hello everybody. Graeme, thanks for moderating this. Let's see, it just seems that - I'm looking forward to the discussion of all the comments. And I know we're going to get NCSG's later.

I think I'm supporting Steve on this a little bit which is that I think we're delving into the details early on whereas some of the big picture issues I think may be what Category B Question 3 should be addressing kind of big picture, due process.

And I'm not sure how we go from looking at the weeds and the details to looking at the higher level but I just wanted to kind of signal everybody that one of the issues when we get to the NCSG comments later on will be how we create due process in this very special situation of not just registrants but registrants who are proxy privacy customers and who have sought that extra level of protection. So I'm not sure how we weave it all together but I thought I'd give that preview of coming attractions. Thanks.

Graeme Bunton: That you, Kathy. Well perhaps what we do is to spur some discussion is skip down to the NCSG. But let's here from Michele first.

Michele Neylon: Has James managed to dial in? If so he wins.

James Bladel: I'm here.

Michele Neylon: James wins. Go on, James; go on.

James Bladel: Yeah, I just want to lend my one star endorsement review of the audio features of Adobe Connect so if we can pass that along to staff that'd be great. So - and I missed part of Kathy's statement although I seem to be on board with what I did hear.

But I just wanted to point out the challenges that are associated with what we're talking about here. And I wanted to lend support for the idea that the discretion of the service provider should probably be preserved rather than attempting to create burdensome and ultimately not very valuable standards in this regard.

And let's just look for example at transfers. In an era of thin registries it would be extraordinarily difficult to facilitate a transfer of a domain name that is engaging in one registrar's affiliated privacy or proxy service and have it arrive at the gaining registrar also protected by their affiliated and different privacy and proxy service with no exposure of the underlying customer information and yet somehow have that be verified by the gaining registrar.

I think that's a, you know, that starts to look like the old cup and ball magic trick a little bit, you know, in finding the actual contact data. And

one of the selling points of these privacy and proxy services, at least for a number of our customers, is the fact that it does offer an extra layer of protection against that invalid domain name transfers like hijacking.

So I think that, you know, allowing the different providers to have some degree of discretion here and how they implement their services I think would be - would probably be the simplest path through some of the spider web that we'll uncover here. So that was my comment. Thank you.

Graeme Bunton: Thank you, James. Michele.

Michele Neylon: Hi. Right well okay private individual registrants - well one could argue that private individual registrant rights are being violated by ICANN on a daily basis since ICANN's contracts are basically illegal under European law since they force private registrants to reveal all their data with no right to any level of protection which I would view as being completely illegal but since ICANN Legal doesn't understand EU law I'm kind of bashing my head against the wall.

Specifically with respect to this thing around the transfers while I can understand where the guys from LegitScript are coming from on this the - that might work for a proxy you couldn't deny a transfer to a registrant through some other third party service. I don't see how that would work with the IRTP. So, I mean, if you want to make changes to the IRTP that's going to trigger something completely different. Thanks.

Graeme Bunton: Thank you, Michele. Marika.

Marika Konings: Yeah, and this is Marika. And I think that was one of the (unintelligible) I had as well (unintelligible) transfers and just trying to get some clarification from David. I think he's (unintelligible) correctly I think he's trying to say that there should be discretion for registrars to either impose or not impose specific requirements when it comes to transfers.

But in looking at, you know, some of the terms and conditions as part of the (unintelligible) exercise we did there was, for example, I think one service provider that said that there cannot be a transfer of a registration if the name is protected by privacy or proxy or held as a privacy proxy registration. At that moment the information would need to be revealed in order to actually enact the transfer of that information is needed for the registrar, indeed, to confirm whether they're dealing with the registrant and, you know, prevent illegitimate transfer.

So my question is actually indeed is that something that should be specified or clarified or did I understand James correctly that it should just be noted that there should be discretion for registrars and privacy proxy services to require - or not require certain things to happen in relation to, for example, transfers?

James Bladel: Graeme, can I respond..

Graeme Bunton: Thank you.

James Bladel: ...perhaps to clear up?

Graeme Bunton: Please, James.

James Bladel: Okay so thank you, Marika. And, yes, I think it's specifically with our service we state very clearly that as long as the service is in force it will, on behalf of the underlying customer, reject any transfer requests. And this is done primarily for security reason and that we advise these customers that if they do wish to transfer the name that their first step would be to voluntarily cancel the privacy service prior to initiating the transfer.

So I think that is one way to do it. I'm certainly open to the idea that other registrars may have come up with, you know, other methods or other approaches. I think where it gets tricky is that - the handoff between registrars particularly in an era whether it's still thin registries, you know, would create a number of problems if we want to - I'm going to LegitScript's comment here about transferring from one privacy service to another in between registrars without any exposure of the customer's underlying data.

I think that's where it gets very tricky. So right now unfortunately privacy proxy services are tied to the registrar and changing registrar means changing the privacy proxy service. And it may not be the case in the future so that's why I think discretion is encouraged here to allow the commercial providers to kind of address and solve some of these problems.

Graeme Bunton: Thank you, James. Before I move on to Justin - I'm sorry, Graeme Bunton - saying that Tucows also explicitly states that in order to transfer a domain that the privacy service needs to be disabled and discretion would be extremely useful in that too. Justin.

Justin Macy: Hi. This is Justin Macy from LegitScripts. I just wanted to I guess couch the comment that we've submitted suggesting that we think if someone is paying for a privacy or proxy service it's best if they can get the most of it, transfer or not technically feasible to do that in that situation, we understand that. We just want to make sure that whatever options are feasible the registrant could proceed.

Graeme Bunton: Thank you, Justin. Michele.

Michele Neylon: I'm going to be really boring and go to a me-too comment. Yeah, we have run into a lot of issues with inbound transfers where the registrant has some kind of Whois privacy or proxy enabled with the losing registrar so we generally tell them that they need to remove us in order to do the transfer because more often than not it'll fail miserably otherwise. Thanks.

Graeme Bunton: Okay thanks, Michele. So it sounds like we have some agreement on how transfer policy would work there. Unless there's anything else specifically on transfers perhaps we do move down to the NCSG comment that Kathy was talking about because I think that might get us back up to a sort of higher level around rights and responsibilities that's worth tackling. Marika, can you walk us through that comment please?

Marika Konings: Sure. This is Marika. And I'm happy to read out the comment but I'm sure that Amr or Kathy or any other representative from the NCSG will hopefully clarify any questions or further additions that need to be made.

So, "Customers, registrants should have the rights and responsibilities as set out in their agreements with their proxy or privacy service providers. They should have the rights and protections of privacy and due process as afforded by national laws and incorporated into the service provider's contract."

"In relation to access NCSG submits that in the gTLD system privacy proxy is needed and legitimate service for non commercial organizations, including public interest groups, (unintelligible), educational organizations, charities and hobby groups as well as individuals, entrepreneurs and small businesses we would like to see that right of access protected and ensured."

"In relation to due process the NCSG submits that the privacy proxy customer should be assured of the rights engaged in a dialogue with the proxy privacy service provider before content data is released or published one needs to be allowed. And given the opportunity to show if the request for contact data is intended to harm, harass, damage competition or diminish freedom of expression or assembly rights."

"Further, the NCSG comments discussed as reflected in the current template, the importance of allowing registrars to follow their national laws and practices and incorporate the privacy and data protection and due process of their laws into their privacy proxy contract with customers."

"What is illegal in one country is not illegal in another country, be it speech activities, religious activities, political activities or even comparative and for advertising in which a particular product or service

specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it."

"These robust differences must be taken into account when drafting a general set of accreditation principles for rights and responsibilities of registrants."

Graeme Bunton: Thank you, Marika. Oh there we go. Kathy, you just beat Steve so if you'd be so kind.

Kathy Kleiman: Okay. Thank you, Marika, for reading all of that. Appreciate it. And so this is kind of the big picture overview which is what types of balance should we be building into the system at a big level, one that still preserves, of course, the proxy privacy service providers' discretion and response to national law.

And so one of the things - there's a lot here. Let me highlight one which is this right of response before the data is disclosed. This is something we see in the United States with chat room identities, for example. Just because someone alleges someone's doing something illegal doesn't mean that the person - the person with the not yet revealed chat room identity - doesn't have a response. And now the courts require that that response be heard before the identity is disclosed.

So in this case, you know, if someone's really, you know, divorce attorneys go after a lot of information including the location of where the undisclosed spouse is. And one can see proxy privacy service providers being used for this as well as for a range of disclosures on public interest groups and other types of things.

So, you know, an outreach, you know, if it's an ongoing legal investigation there may be limits to this but otherwise the quick outreach to the customer, the registrant, if it's within the proxy privacy service provider's rules to do so to say hey, you know, if you have a response here something we should know ahead of time might be an easy way to find out if harassment is really the intent or if there's something, you know, underlying that the proxy privacy service provider wouldn't know that they should know before the identity is revealed.

So let me just share that as one highlight of the long comments that we provided. Thank you.

Graeme Bunton: Thank you, Kathy. Steve.

Steve Metalitz: Yeah, this is Steve Metalitz. Actually I agree with Kathy on a number of the points here substantively as far as, for example, that various registrants should have access to privacy and proxy services and that - and as you'll see in our responses - the IPC responses to the questionnaire that we're interested in discussing the circumstances under which there would be this type of dialogue that she's talking about in the reveal situation.

But I think this gets back to the point actually I think Kathy made earlier that those are specific questions that we'll be getting to farther along, specifically if my - if the organization is still the same as it was this would be Category 5 Question 1 for reveal; Category 3 - excuse me, Category B, Question 5 and 6 for - or 4, 5 and 6 as far as whether commercial organizations or noncommercial organizations should have

access to privacy and proxy services. So we're about to get to some of these questions as we move through.

I think at this point what we're focusing on here aside from the specific questions about transfer and so forth and renewals I think we're looking for here are kind of high level points. And I would include there a point that was made in the previous comment that was looked at from the LegitScript people that the policies regarding reveal and relay ought to be clearly stated in the agreement that the customer enters into with the privacy and proxy service.

You know, we - there also - down the road there will be some minimum standards for that. There will be some discretion in some areas. But I think the point I'm focusing on here is that the customer ought to know what those policies are at the time he or she or it signs up for this service. And they ought to be clearly stated. I think that's kind of the gist of what this Question B 3 gets to.

And then, as I said, B 4, 5 and 6 get to who is eligible to participate in a privacy or proxy service; Question D gets to the relay situation; Questions under E gets to the reveal situation and we will get to those I hope soon. Thanks.

Graeme Bunton: Thanks, Steve. James.

James Bladel: Hi. Thanks. James speaking. I want to lend my support for Steve's statement there about making sure that rather than drawing increasingly smaller boxes for service providers to operate in that we provide them some degree of discretion however require that their policies and procedures are, you know, clearly disclosed and that

customers of these services have some awareness before they enter into these agreements, you know, what their service is offering and how they will respond to these situations.

I wanted to address one point that Kathy raised and I think that was made in the comment which was this idea of whether or not - and I want to make sure I'm understanding it correctly is whether or not a registrant or a customer has the - has visibility to whether or not others are making requests of the service provider as to their identity.

And I just want to point out that that may not always be feasible depending upon the jurisdiction of the service provider and whether or not they have, you know, various court orders or law enforcement actions that are precluding them from disclosing the details of an ongoing investigation.

So I think that might vary from jurisdiction, you know, between jurisdictions and it might be one reason why one - a privacy service in one area might be more desirable than a privacy service based in another area. So I just wanted to say that, you know, I would caution against trying to build rules regarding that into any kind of policy or accreditation program because it might set it on a collision course with local law.

Graeme Bunton: Thank you, James. This is Graeme. That's an interesting point. So then there's a differentiation in services between regions. And I suppose when someone's going through the terms and services of what they're agreeing to that piece may or may not be in there depending on where the privacy and proxy service is located. Interesting. Michele.

Michele Neylon: Hi. Who am I agreeing with and who am I disagreeing with? I think I'll just disagree with everybody because that's easier. No, but jokes aside, I think being overly prescriptive about what the service providers need to offer is going to be problematic. I think the concept of publishing clearly on their Websites, in their terms of service, etcetera, etcetera, what they will and won't do is one thing. But mandating all these different things is a very, very bad thing.

You know, if Kathy wants to use a privacy service then I'm sure she's going to choose one that will offer the kind of services she wants to have. However, that service is going to cost so let, you know, let free market forces decide.

If I want to offer a very, very light service where I will reveal or relay very easily and do so - and just provide that service for practically nothing that should be my choice and it should be their choice when they're entering into it.

So I would be wary of mandating that all privacy proxy service providers need to do X, Y and Zed. And also as well, of course, there are local law things to bear in mind as to what you can and cannot do depending on where you're set up. Thanks.

Graeme Bunton: Thanks, Michele. That's also a good point that we need to leave room for different levels within the market or perhaps we need to leave that room. Kathy.

Kathy Kleiman: Sorry to disappoint everybody but I agree completely with James and Michele.

Michele Neylon: Oh.

Kathy Kleiman: With two points. So let me, you know, for James it's actually in our comments - and I wanted to point out that the legal aspects of the reveal are actually very important so obviously if there's an ongoing criminal investigation there may be local law or national law that precludes any sort of disclosure.

But what we're - what one of NCSG's kind of broad issues here is not precluding creative solutions; not precluding unusual ways that proxy privacy servicers might now and in the future want to operate. So in the past one of the things we've talked about is a take down rather than a reveal leaving open that possibility that kind of creative solution for proxy privacy service providers.

So to Michele's point that service providers should have lots of options and the thin and the thick and the all services and not all services one service that I'd like to see us not preclude among many is kind of - is the proxy privacy services who are willing to do more due process, willing to do more of an exchange with the registrant before revealing the information.

I think we really should leave open the opportunity for that. It will be a higher cost service but it will be one that some will seek. And so just kind of leaving - not precluding anything so that this point that we're working on, this Question 3, would run not just to information and transparency but also that opportunity for proxy privacy service providers to go farther and thicker or to go thinner and more expedited and streamlined with their services. So I think we're merging toward agreement. Thank you.

Graeme Bunton: Thank you, Kathy. Michele.

Michele Neylon: Just coming back on Kathy a little bit. Good. Nice to hear that there is sanity. Yay. Whoo. The other thing as well is that I think a lot of the positive kind of vibes we can all agree on are when we're working on the basis that the users of the services aren't up to any - aren't doing anything wrong. You know, that terrible thing that, you know, presumption of innocence concept which seems to be enshrined in a lot of legal systems.

The reason why I'm a bit cautious and wary about some of this stuff of course is that if you work on the basis that everybody is innocent and provide wonderfully high level of protection what the hell do you do when you have a scum bag that you need to act against quickly?

So, I mean, there has to be a balance there somewhere. So, you know, for example, if random blogger wants to write about something that's fine. But the fake pharmer peddler I should be able to pull him down really, really quickly because otherwise I'm going to be inundated with emails from LegitScript.

So I'm not sure exactly how the hell to solve that but, you know, the balance has to be reasonable. You know, I think James mentioned it in the comments something about - what did he say, what was that choice of words, it was very Jamesy way of putting things. Risk tolerance, there you go.

And I think it's not just a matter of risk tolerance. I think there's, you know, the thing is that protecting Kathy's right to free speech should

not be put on the same level as protecting quote unquote a criminal's right to free speech because I don't really see them as having a right to free speech. Thanks.

Graeme Bunton: Thank you, Michele. What I think you're getting at there is how do we find the balance between the terms of service that the privacy and proxy operator is providing and the minimum standards for the privacy and proxy services as a whole and that'll be interesting, I think, as we explore this question to figure out what that balance is because, you know, as a registrar we often find that there are bad actors doing things and we need to be able to act on those domains while also having the strong desire to protect registrants. Kathy.

Kathy Kleiman: Just a quick follow up to Michele and to everyone that I think this idea of the presumption of innocence is a really good one that the presumption that using a proxy privacy service is not in and of itself a showing of wrongdoing. I would love to see that codified as a finding, as a broadcast from this working group that - as a declaration. I think that would be a great step in and of itself and a great start for this question. Again, no presumption of, you know, that presumption of innocence that using a proxy privacy service is not a problem in and of itself. Someone will come up with a more eloquent way to say that.

But regarding the violation of criminal law let me just again raise the issue that we raised in the - in our comments that are now codified as part of this that what is criminal law in one country is not criminal law in another country. And I violate Chinese criminal law all the time,

And that's part of the problem is that the requests are going to be coming, the requests to proxy privacy service providers are going to be

coming from across national borders and from countries that bar the speech that others are saying that's completely legal in the country that they're operating in and in the country that the registrar and the proxy privacy service provider they choose are operating.

And I was wondering if we could have a bit of discussion on that. I know there's a lot more to be coming on this but if we could have a bit of discussion on that.

Graeme Bunton: Thanks, Kathy. I wonder what Michele has to say on that.

Michele Neylon: Michele is going to agree with Kathy. But he's also going to kind of shorten this slightly. As an Irish company we are not going to pay attention to stuff coming from law enforcement agencies outside the Irish state. It's very simple.

If you want - if you are a law enforcement agency or quasi-governmental agency or whatever the hell from Canada or the US or China or wherever you are going to have to go via the Irish - by Irish law enforcement if you want to get to us. I'm not going to act on anything from anybody else. I have no idea how other registrars would deal with these kind of things but that's our way of dealing with things.

Graeme Bunton: Thanks, Michele. I think that's easier the smaller and more local your registrar business is. I think things get a little...

((Crosstalk))

Michele Neylon: I disagree with you there, Graeme. That's a matter of law, it's not a matter of size.

Graeme Bunton: Well if you're operating in an awful lot of jurisdictions and you have an awful lot of customers in a lot of jurisdictions then law enforcement can make it difficult for you regardless of where you're physically located.

((Crosstalk))

Graeme Bunton: Sorry, you can respond if you'd care. No? Okay, Steve.

Steve Metalitz: Yeah, I was just going to respond to Kathy's comment. Again, I think we'll be getting into this when we get to Section E. But, yeah, I don't think that the issue is necessarily coextensive with what's legal or illegal in one country or another.

I mean, a lot of what goes on today involves conduct that may not be illegal but that people consider to be damaging to networks and so forth. And a lot of that conduct, frankly, is not illegal, at least it's not an international legal standard about it.

On the other hand there are areas such as intellectual property where there's a very high degree of harmonization among the laws of most countries and therefore the problem that Kathy cites, which is a very real problem, is less likely to occur there.

I think the challenge is going to be to try to figure out, again, what are the minimum standards? Under what circumstances should the provider be acting quickly based on what evidence to either reveal or publish or whatever the action is that we're talking about? And under what circumstances should they have discretion because, as I said in

the Chat, I think these standards should be minimum standards and there should be some flexibility given to service providers.

Another example of that is with regard to the question I think is coming up next which is whether these services should be restricted to individuals or to noncommercial operations and so forth. I happen to think they shouldn't be and that that should be the minimum standard.

On the other hand if a particular service provider, and I think we've already heard about some that operate this way, wants to say you can't register a domain name for commercial purposes and also put it in our proxy or privacy service I think they should be free to do that. So I think there - it is important to set minimum standards and then let service providers take whatever path they wish beyond those. Thank you.

Graeme Bunton: Thank you, Steve. Marika.

Marika Konings: Yeah this is Marika. If I maybe can try to recap what I think I've heard and I'll try to incorporate in a first draft (unintelligible) conclusion here is I think that there's - seems to be agreement that, you know, at a minimum privacy proxy service should be required to communicate information on the practices they have for relay reveal and then the other requirements in their terms of service that are communicated to the registrant.

But there are probably minimum standards that may apply that those will need to be further discussed as the working group goes through some of the other questions that will come to later down the road.

I think I also had the notice of, you know, there should be a presumption that, you know, views of privacy proxy services is not a proof of guilt or a bad thing, it should be, you know, one of the service options that registrants have.

And I think again I think the main thing here is just to note that we'll probably come back to this question once we have worked through some of the other questions I think that Steve specifically called out which may determine that there are certain minimum requirements that would apply but then would be brought back into this conversation.

So I think that's sort of noted down and, you know, if I've missed something and, again, you know, I'll of course try to capture that as well in the working group response and the note we - that I took down and as well in the draft preliminary conclusion for this topic. So if there's anything that needs to be added of course you have an opportunity there as well.

And I'm wondering if we then can still maybe turn to some of the specific questions in relation to the existing policies or whether you want - prefer to park that for now. And as said I'm happy as well to share that email again to the mailing list to give people a little bit more time to think about whether we need to go into more detail into some of those questions or whether for now we can park that and come back to that at a later stage.

Graeme Bunton: Thank you very much, Marika. I wonder if people have had enough heads up to actually look into some of those policies we might be touching here. It also strikes me that we as a working group seem to do better when we have more concrete focused questions to work at

and then come back to the bigger ones once we've got a better sense. So it could be that we find ourselves moving on here relatively quickly. Kathy.

Kathy Kleiman: Great. Graeme, my recommendation is that we don't quite leave this one yet because we didn't give much notice to others who aren't on the call right now who may have something to add. So once it's all written up I think our next call should revisit this a little bit and give people who weren't here a chance to add their thoughts and to reflect on the thoughts that we had.

I also posted a fourth point for Marika's consideration about the deference to national law. So but I think this has been a great discussion. So thanks, that's my thought is that we let others take a look at what we're working on.

Graeme Bunton: Absolutely, I certainly don't want to shut down any conversation. Steve.

Steve Metalitz: Yeah, this is Steve. I agree with Kathy on the point that since this really wasn't even in the advanced agenda we need to leave it open. I also want to come back to Marika's point about transfer renewal and PDNR. And just wonder what the best way going forward would be to be able to address those because we've had a little discussion about renewal - excuse me, about transfer - earlier today but haven't really gone into these other topics.

So I wonder if there some type of primer or link or something that the staff could circulate prior to the next meeting so that we know what those policies are. And I would certainly very much welcome the views of the registrars that are actually dealing with these issues now about

what areas they see as potential issues for the interface between proxy and privacy registrations and those policies. I think that would be helpful - again, as you said, Graeme, the more concrete questions we have I think the faster we can make some progress on these.

So for our continuing - if we're going to continue discussing B 3 I would encourage the staff to do that. And I see that you're putting up something that maybe you already have done that, Marika, but if so then let's make sure people are aware of that. Thank you.

Marika Konings: Yeah, and this is Marika if I may respond?

Graeme Bunton: Please.

Marika Konings: Yeah so this is Marika. So indeed what I put up on the screen is actually an email I did circulate on the 17th of March because having had a look at the policies, you know, the language themselves is referenced as well in the template. And if a more detailed overview of those is needed or helpful we can aptly plan for that as well.

But looking at the policies I actually already tried to draw out some of the specific questions that I think may be relevant to our conversation or, you know, where those policies intersect with, you know, privacy proxy registration.

But as you said, Steve, as well I think this is, you know, specifically where input from registrars will be very helpful because I think they probably have a very clear view of where there may be potential conflicts or where we do need to preview or anticipate that certain things may need to be addressed either as part of the working group

discussion or possibly just as a flag so that it's not forgotten as part of implementation that a clear link is made between, you know, what specific requirements are for privacy proxy service providers in relation to those policies if certain exceptions or differences are needed, you know, taking into account what we come up as well as part of our conversations here.

So, you know, as said I can circulate this email if you think that anything more specific is needed or helpful and we can definitely do that as well. And, you know, hopefully we can, you know, get some discussion going on the mailing list in relation to these topics as such.

Graeme Bunton: Thanks, Marika. It could be that we need to recirculate that. It was awfully close to the Singapore meeting and perhaps people have missed it. Speaking of hearing from registrars James.

James Bladel: Hi, Graeme. James speaking. And I think the conversation may have moved a little bit beyond what I was going to add there to Steve's question. But PDNR has since become the ERRT so those are not - just for clarity those are not separate policies, those are now one and the same.

But I think that, you know, it goes back to the nature of the service - that the service provider is offering and how they intend to support these products - these policies or if they have sets of policies in their terms of service that will govern now they respond on behalf of their customer - and I'm thinking specifically now of proxies versus privacy services.

But I think it goes back to what Steve was saying earlier about making sure that these - that the requirements are sound as far as disclosure of how it's going to work making sure that the support resources are there and making sure that the customer knows exactly what they're signing up for and how to, you know, how to change those services to get what they want in terms of renewals or transfers. So with that I'll zip it on this topic, thanks.

Graeme Bunton: Thanks, James. We're almost to the top of the hour so let's hear from Steve and then we'll wrap this up.

Steve Metalitz: Yeah, this is Steve Metalitz. Just to say that I think this memo will be very helpful that's on the screen now. And I share the hope that some of the registrar members will be able to shed light on how these issues are currently handled and whether or not these need to be factored in other working group recommendations. So I'd encourage registrars to respond to those bullets during the week ahead. Thank you.

Graeme Bunton: Thanks, Steve. So I think that's just about it for us today. I think we've got some direction on where we're going to go next week which is we're going to continue on this Category B Question 3, let people respond to the discussion we've had today. We're going to look at these specific policies and hopefully we'll get some registrars in there to respond.

Unless there's anything else I think that's it. Thank you everyone for joining us and bearing with me - oh, Mary's got a comment. Go ahead, Mary.

Mary Wong: Thanks, Graeme. Just real quick and not so much for next week but next steps is working group members could look at the EWG survey results. And as I posted in the Chat to the extent that there are findings or statements there that you or your constituencies think would be useful to either discuss as a working group or to fit in under one or more of the charter questions it'd be very helpful to point that out either on the list or by email to us so that we can prepare something for the working group if necessary.

Graeme Bunton: Thanks, Mary. Kathy's saying in the Chat that she's looking for a longer briefing on transfer policy issues. Would you be looking for that from staff or from registrar experience, Kathy?

Kathy Kleiman: I don't want to volunteer anybody for anything but to the extent that we're dealing - that we may be dealing with the nuts and bolts of the transfer policy would it be possible to have a really short briefing at the beginning of the next session? Would that be useful to others?

Graeme Bunton: Marika's about to respond.

Marika Konings: Yeah, this is Marika. We actually have I think a recorded session that James gave I think to the IRTP Working Group so I can already share that. And I'm hoping (unintelligible) and I'm hoping that maybe he will be able - want to do the same thing on the start of the call because I think he probably already has his slides and has done it before so I don't know, James, if you would be willing? And as said, I can share the recording so those that really want to - cover beforehand and come with very tough questions can do so as well.

Kathy Kleiman: That sounds great.

Graeme Bunton: Great. Thank you, Marika. James may or may not be willing to talk to it but we certainly have that so we can refer to it. All right that's it. Thank you everyone for joining us. We'll see you in a week.

Steve Metalitz: Graeme, thank you for chairing.

Mary Wong: Thank you.

Graeme Bunton: Thank you.

Steve Metalitz: Take care. Bye.

Mary Wong: Thank you, everyone. Bye.

Marika Konings: Bye.

END