

**ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 6 May 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 6 May 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-20140506-en.mp3>

Attendees:

Luc Seufer - RrSG
Graeme Bunton – RrSG
Tim Ruiz – RrSG
Steve Metalitz - IPC
Kathy Kleiman – RySG
Darcy Southwell - RrSG
Justin Macy – BC
David Heasley – IPC
James Bladel – RrSG
Phil Marano – IPC
Christian Dawson – ISPCP
Griffin Barnett – IPC
Valeriya Sherman – IPC
Alex Deacon – IPC
Laura Jedeed – BC
Sarah Wyld - RrSG
Osvaldo Novoa – ISPCP
Carlton Samuels – At-Large
Kristina Rosette – IPC
Holly Raiche – ALAC
Tatiana Khramstova - RrSG
Maria Farrell – NCUC
John Horton – BC
Michael Palage – RySG
Jim Bikoff - IPC

Apologies:

Don Blumenthal – RySG
Roy Balleste – NCUC
Amr Elsadr – NCUC

Susan Prosser- RrSG
Kiran Malancharuvil - IPC

ICANN staff:
Marika Konings
Mary Wong
Amy Bivins
Nathalie Peregrine

Coordinator: Welcome and thank you for standing by. I would like to inform all parties that today's conference is being recorded. If you have any objections you may disconnect at this time. Thank you, you may begin.

Nathalie Peregrine: Thank you very much (Ashley), good morning, good afternoon, good evening everybody and welcome to the PPSAI call the 6th of May 2014. On the call today we have Graeme Bunton, (Pat) (unintelligible), (Dale Sherman), James Bladel, Holly Raiche, Steven Metalitz, (unintelligible) (Wild), (unintelligible), John Horton, Phil Morano, Kathy Kleinman, (Luke Soysa), Tim Ruiz, (Dustin Maycee), (Lo Jadeed), Michael Palage, David Heasley, (Christian Lawson), Jim Bikoff, (Griffin Bonet) and (Stephanie Parra).

We have apologies from (unintelligible) Susan Prosser and Don Blumenthal. And plus we have Mary Wong, Amy Bivins, (Joe Fitzpano) and myself Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. I know that (Alice Beacon) has joined the connection, thank you very much and over to you Graeme.

Graeme Bunton: Thank you very much Nathalie. So we have got the roll call on the SOI done. Does anybody have any questions about today's proposed agenda before we move forward with that?

The gentle plan is to continue discussion on the threshold question for category C and we'll discuss that as long as it seems to be fruitful and then

we may move on to actual category C question one and maybe even possibly if that goes well into category C question two.

So to backtrack a little bit and make sure that everybody is on the same page we had some of this discussion last week and please feel free to chime in if I'm characterizing this incorrectly.

But we had a relatively divided camp of parties on this where some people felt that there was no point in distinguishing between commercial and non-commercial and there were people that wanted to dig into this, it got a little heated so apologies were offered.

But what we want to do today is I think dig into some of those questions that were raised and from the people who really wanted to dig into them I hope we are going to hear some of their sort of proposed answers or solutions to these questions that we raised.

So unless there's anything else let's get into it. So maybe perhaps it's best to first reiterate the threshold question, which we phrased as currently proxy and privacy services are available to companies, non-commercial organizations and individuals.

Should there be any change to this aspect of the current system in the new accreditation standards? So that raises all sorts of issues and we've got James Bladel in the queue already. So perhaps James if you wanted to kick this of that would be great thank you.

James Bladel: Thanks Graeme, James speaking and just a question. We keep referring to this as a threshold question and I'm wondering if we could be more descriptive because I actually thought we were talking about something else.

I've been referring to this as an eligibility test or an eligibility question or something like that. I don't know if it makes any sense that - if the group is set on calling this a threshold question then I'll just lower my hand and shut up.

But I felt like it was kind of confusing or ambiguous and I was just going to offer the idea that we call it something else, thanks.

Graeme Bunton: (Steve).

Steve Metalitz: Yes Steve Metalitz here, I...

Graeme Bunton: Was it on that?

Steve Metalitz: ...yes, I'm not sure that is what we call it but I think the reason it's posed this way is that the answer to it may determine the answers to the next couple of questions.

And specifically if the answer to the question is no there shouldn't be any change to who can use a privacy proxy service let's put it that way. Then the next couple of questions either become irrelevant or less - more peripheral let's put it that way because they're all directed to how do you distinguish between commercial, non-commercial, individual, entity and so forth.

So that - I think that's why it's called a threshold question. I would defer to the authors of the question but I think that's what's meant by that.

Graeme Bunton: Thank you Steve, this is Graeme, that tends to be my understanding of, you know, the nomenclature there as well, Kathy.

Kathy Kleinman: Just stepping in very quickly, good morning all. To agree with Steve that it is - that the idea was when we were adopting this as part of kind of the working group planning of the questions that we might not need to talk about some of

the more detailed questions of differentiations among the categories abusers if there's general agreement that we don't want that differentiation.

So that's the thought but James feel free to call it anything you'd like and whatever makes it make more sense as kind of an initial question and the value - and value (inventory) something like that question, thanks Graeme.

Graeme Bunton: Thanks Kathy, James.

James Bladel: Thanks Graeme. So based on the explanations from Kathy and Steve it makes a lot more sense now why we're calling it that and I will withdraw the proposal that we rename it but thanks for that.

Graeme Bunton: All right, thanks James. All right so maybe we can get this going a little bit with perhaps one of the more focused sub-questions here around this threshold, which is, you know, what is commercial versus non-commercial?

I we want to make the distinction how do we begin to define those differences? And I'm looking here to - I don't think (Karen) is on the call perhaps someone who is on board for the - for ensuring that we have that distinction could talk to this.

John Horton: This is John Horton with (legit script) I can go ahead and raise my hand or I can just start talking. You know, I think there's been a couple of ideas thrown around.

One that I personally think may be difficult to implement is to look at the status of the registrant are they registered as a corporate entity or are they not. I think that probably is actually not helpful and is difficult.

Where I think some of the thinking and I don't want to speak for (Keron) but we've talked about this a little bit. Is to really look at not only the use of the

domain name but very - mostly the specific question of whether payments are processed for a good or a service.

Either within the web site itself or is I'm sure we've all seen before sometimes you have what's called sort of the, you know, the affiliate marketing or the, you know, the sales web site but it directs to yet another web site to process the payment, that would be a common sense test.

But, you know, in that analysis it really wouldn't matter whether the registrant was a commercial entity or not. The registrar would not or the - excuse me the privacy and proxy service provider would not really need to look at the status it would just be a question of is a good or is a service being sold on the web site.

I am sure there are potentially some other ideas maybe even better ideas about how to make that distinction. But as we've talked about this it has seemed like that is the cleanest way to approach it if in fact they're - we're going to be such a distinction between commercial and non-commercial. At least that's one idea.

Graeme Bunton: Okay thanks John. Tim.

Tim Ruiz: You know, that sounds simple but it's really not because if someone, you know, registers a domain in the, you know, it's not always, you know, or wants to have privacy it's not always on an existing in use domain name that you can go and check the content.

If that - if content and use were even in ICANN's purview, which I would argue that it's not but then, you know, so if it's a new domain name how do we - so everyone who registers a new domain name gets privacy and then we have to monitor it down the road so that if they decide to use it for commercial purposes then we remove it.

So that, you know, creates, you know, an enforcement issue that I think we - that, you know, a road we have not gone down for some time unless John's implying that, you know it's not something that ICANN has to check or that registrars have to check.

We just have to respond at a later date if someone happens to report it or complain or whatever. And I'm not sure that it really serves a purpose in that regard. So I guess I'm still confused about how that simplifies things because and the other thing is, is that, you know, charitable contribute - charitable organizations at times take contributions online.

So does that - do then we have to distinguish between, you know, someone using - taking payments for profit versus taking payments for non-profit. So how simple this sounds its very, very complicated.

John Horton: Tim great questions and I was just typing I don't want to jump the queue I think a couple other people have their hand up but maybe if I can just respond to those points quickly and then I'll be quiet.

So I think first, you know, the background point about whether the use of the domain name is in sort of ICANN's and the registrars purview and I know there's been a lot of discussions about this over the years.

And I think, you know, various people feel different ways. What I would note is in the 2013 RAA Section 3.18 certainly does impose some requirements on registrars to respond to abuse notifications based on use of the domain name.

So I would argue that that is already something that - there is some precedent about now under the 2013 RAA about there being some circumstances where use needs to be considered.

Tim I would totally agree with you I do not think it would be reasonable for a registrar to actively monitor for whether a, you know, any domain name with the registrar is being actively used for commercial purposes.

It seems best and simplest for it to be responsive for example if you receive a complaint. And I think the other thing that could happen is maybe it's a little bit like the Whois accuracy requirements where when a registrant registers a domain name and as you correctly point out they may not know at the time are they going to use it for commercial purposes or not.

They are simply, you know, notified with a little pop up on the screen. If you're going to use this for commercial purposes, you know, please be advised you can't use the privacy and or proxy service.

And then, you know, as with Whois accuracy and a lot of other terms and conditions the registrant needs to be trusted that they are going to adhere to that and then if the registrar receives a complaint I would actually argue it's even easier to verify than for example a falsified or an inaccurate Whois, which, you know, having talked to registrars before I understand there's maybe some cases where it's pretty easy to verify that.

But in some cases, you know, how do you know does this address exist or not. This would be a pretty simple task. It would be, you know, is there something being sold or, you know, a good or a service via the domain name.

So, you know, as we get into some of these other questions, which I think are important like what about a charitable organization. That may be a little bit more in the weeds than maybe I should respond to now.

I think you're right it's a really important question but I think that those questions can be resolved even if we don't necessarily get into the details on that right now.

So hopefully I answered the questions that I think you just posed and if not let me know and then I know other people probably want to weigh in as well. So I'll stop there.

Graeme Bunton: Thanks John, James.

James Bladel: Thanks Graeme and I think Tim. This is James speaking for the transcript. And Tim covered some of the things that I wanted to raise regarding the difficulty in determining use and then of course we just keep continuing to presume that it's a web the domain is being used for web services but certainly could be used for email or apps, mobile apps or, you know, other types of services maybe that haven't been developed or deployed yet.

So I think we need to maybe keep our options open. But I wanted to perhaps throw out an idea I think it's building on what John raised here about the registrars have a duty to investigate reports of abuse and I think that is correct and that is sufficiently vague as to allow I think both, you know, both the service providers and those reporting, you know, some flexibility in what constitutes abuse and what the registrar should do based on, you know, their jurisdiction, their terms of service et cetera.

And, you know, if the ultimate destination for this thread is that we're going to have something similar in an accreditation program or an accredited privacy proxy service has to investigate claims of abuse I think that's, you know, probably not unreasonable.

But I just wanted to perhaps put out for the group something I was thinking about this morning, which is this idea of a three point test on this question, which if we acknowledge for example and I'll be quick I'm sorry but if we acknowledge that the status quo today is that you can use these services for this type of use and there are no restrictions.

Then I think that the burden to some extent is on those proposing to change that for the tens of millions of people who use these - people in organizations who use these services before their products or services that they've purchased or might lose, you know, changes that we need to demonstrate a compelling case that there is a clear harm occurring with the status quo.

And that that harm can only or I'm sorry that that harm outweighs - fixing that harms outweighs any sort of inconvenience or disruption to the, you know, the folks the millions of customers and users that currently have these services.

And then finally that this is the only way to solve those harms. I think we have to make sure - this is kind of the, you know, the Hippocratic oath or whatever test to this problem is that we have to demonstrate the status quo is completely unacceptable and that this is the only way to solve it before we yank the rug out from under that existing user base.

And I would like to put that out to the group as something that we should consider when we're talking about building any new restrictions and to these services that don't exist currently, thank you.

Graeme Bunton: That's interesting thanks James, (Stephanie). (Stephanie) you appear to be muted, there you go.

(Stephanie Parra):Hi there can you hear me?

Graeme Bunton: Yes.

(Stephanie Parra):Very good okay, I - James just made some of my points. We have been kind of beating this one to death in the EWG group and I understand that just because we're going to come down from the 10 commandments in June doesn't mean you folks have to listen to what we've come up with.

But I do get a sense of déjà vu. I guess I'd like to make about three points. The first one is that this is I would say extremely difficult to implement because of legal persons and the difficulty in figuring out who is selling a commercial, you know, selling off the Internet.

The evolutionary nature of the Internet at this point where all kinds of people may be doing small things from their web sites and, you know, we can hardly come up with some preemptive strike to stop that right now.

But I wanted to come back on a point that James made. We have a risk, we have an identified risk that you're going to be dealing with someone who is abusing the privilege of a privacy proxy service, right.

We now - we're working on an expedited take down, we're working on reveals, we're working on processes that hopefully will deal with that risk. So we don't need every single possible - I'm forgetting the word for how you look after a risk - explored in this round.

We try a couple of them, you have an expedited system now that's gone to work, you don't need a preemptive. Anybody that could possibly be using the web site for commercial services is not entitled to a privacy proxy service remedy, you don't.

Now let's see how the other ones work because we're moving from a system that really doesn't work at all to something that I hope is going to provide you a reveal when there is a (unintelligible) case.

And that's my next concern is that we wind up with a whole pile of semi-serious reveal cases for reasons that are not necessarily valid that are just exploratory and are not necessarily valid abuse cases how do we deal with that risk. Thanks I think that's it.

Graeme Bunton: Thank you (Stephanie) and I see an agreement there from Holly. Kathy bounced herself out of the queue so I think you ended up at the back let's go to I think that's Mike Palage.

Michael Palage: Yes Mike Palage, thanks. I just wanted to follow up Tim on some of your comments and while I agree with what some of the fundraising that non-profits do I do think ICANN is changing and I know you and I have been around for a while.

But when you look at this current round of new gTLDs and the use restrictions that are hard coded into many of the registration agreements and how ICANN are going to be required to enforce them I do think there kind of is a fundamental paradigm shift from back say 2000 when, you know, ICANN and more registrars were really just administering databases.

We - whether we like it or not I think there is a growing realization that the use of a domain name is quickly entering into data-to-day decision making. And whether that crosses over into some of our discussions I just think it's important to note that historical evolution within the name space, thanks.

Tim Ruiz: Can I respond just briefly? You know, I - this is Tim Ruiz - I don't disagree completely Michael the issue though is that we're talking about individual TLDs who could if they decide push - well like dot U.S., which is a ccTLD that we don't allow privacy or proxy registrations.

So, you know, those gTLDs could certainly do the same thing based on what their use is. But, you know, a new gTLD that has, you know, a restricted use from the outset is different than doing something like a, you know, a add on service or whatever you want to call it privacy and proxy service is our - it's not exactly the term I'm looking for but it's been in place for nearly a decade.

And now to say we're going to back out, you know, the millions of users who had been using it perfectly legitimately for all this time they're not longer eligible.

You know, we need to identify what the problem is that we're trying to solve and also ask ourselves, you know, expanding ICANN's purview in this particular case does it really make sense and I guess that's where I'm at I just don't - I haven't heard any argument that says it makes sense.

Michael Palage: And so - Mike Palage again. So again I'm not disagreeing with you I'm just trying to take a look at again the change in ecosystem and to your point Tim let's take - let's look at the PICs, which were basically mandated on all TLDs.

So this was all the new TLDs, this was not something that registered operators voluntarily did this was something that was mandated by the GAC and ICANN and said you will all do this.

And some of them go to use, are you engaged in fraud and a number of other fraud things, which I think we're still waiting to see how that evolves. But what's important here Tim and this is something that if you look at some of the work we did when we did with the fee tasting component.

Where it was first (Ophelius Newstar) that did the (RSTEPS) and then how that became the basis of a consensus policy. What happens right if some of these PIC requirements that are now in the, you know, now the majority of gTLDs do they get imposed on the legacy gTLDs.

And again when you begin to impose these on the legacy gTLDs you now have ICANN starting down - whether we like it or not it appears...

((Crosstalk))

Tim Ruiz: You know, Michael I think the point is that no one is saying that we can't say well if you have a privacy and proxy service you can't - maybe we shouldn't

pose the idea that well if you're engaged in a fraudulent activities and blah, blah, blah you're going to lose it, that's what I'm saying.

But what we're saying is while you're engaging in a perfectly legitimate legal operation now we're going to get into your - what you're doing and tell you, you can't do things. That's the difference and I don't see where we've backed off from that anywhere.

You know, ICANN doesn't determine what's fraudulent but we have to respond to such things. That's a whole different story than to say this is a perfectly legitimate thing and now we're going to start getting into what people are legitimately doing with their web sites.

Graeme Bunton: Okay thanks gentlemen, just a note let's make sure we're queuing I think people like John Horton have now been waiting for quite some time to speak.

John Horton: Thank you (Steve) this is John Horton again and I'll again my apologies if I'm taking up to much of the oxygen on this call but James really a thoughtful way I think to present the what I think you referred to as a three-part test.

I wanted to offer sort of a different point of view on some of those comments. I think and James correct me if I'm wrong but I think you sort of said - part of what you were saying is that the burden would be on those who had proposed to make a change from the current system in which commercial entities are allowed to use privacy proxy services.

The burden would on those of us who propose that to justify why that's needed. Let me actually turn that around and suggest that actually offering privacy and proxy services to commercial entities is the change from what exists in the off line world and has for a long time and preceding the Internet itself.

As we have tried to take a look at what our entities engaged in the sale of goods or services around the world are required to do in terms of their registration, disclosing their location, their identity and so forth.

And look just as a side note I understand the Internet is different from the off line world. We can't always make the argument that we should, you know, reflect the way that things work in the off line world on the Internet but just to make this point.

We are - I am not aware of any jurisdiction in which a seller of goods and services is able to conceal their identify, their location. I mean it's sort of a truism that obviously if you have a brick and mortar merchant by definition the customer can, you know, walk in and see where they are and obviously see the identify of the merchant.

But, you know, the principle that I think exists pretty much everywhere at least as far as I can tell is that an entity that is engaged in the sale of goods and services needs to register to be transparent and, you know, part of the reason for that obviously is consumer protection.

And, you know, I think that sometimes, you know, those of us either in the registrar world or those of us who work with registrars a lot, you know, tend to see sort of Internet policy through the prism of looking at what do registrants need since those are the, you know, a lot of the folks that we deal with but of course registrants are only one type of Internet user, they're really outnumbered.

I would suggest by the vast number of Internet users who never register a domain name but in fact use the Internet for information and for often buying goods or services.

And I would argue that just as off line those Internet users have the right to be able to have some transparency into the identity and the location of the

business that they are dealing with that that should be reflected on the Internet.

And so the point I'm making is I think that if you look at what is required of sellers of goods and services in longer-term offering the ability to conceal in a Whois record their identity and location is actually more of a change in a historical sense.

Graeme Bunton: Thanks John. Kathy you've been waiting very patiently.

Kathy Kleinman: Great thank you but I also like the give and take I like when people get back on and kind of - there's a little more debate so I guess because I was an old debater so thanks Graeme I like both combinations.

The word conceal is such a loaded term. Sorry John it just is. I thought and that's why I bounced the queue was to go back and look at some of our prior work but I swear we came to the conclusion that as a working group that registration as a proxy privacy service in and of itself is not a stigma, is not an admission of guilt, it's not an admission of wrongdoing and that we came to that conclusion on behalf of all existing users, commercial, non-commercial, individual.

So to hear that - I have a web site I raise money it's an educational and research web site and I raise money to make the ENIAC programmers documentary, which by the way is made and going to the Seattle International Film Festival later this month.

So I had to share that with everybody. But there were donations that were handled by a third-party and so the idea that I would not - that I would have to reveal my home address in order to raise money to do this historical work and the role model work with women in technology is kind of crazy.

So let me review a few points that I'm saying. One is that Tim raised the question last week why, why are we looking at this. And I think we got the answer this week, the reason we're looking at it is to eliminate a class or category of current registrants, which would fall somewhat under the quote on quote commercial.

And it sounds like commercial would be expanded to anyone who takes donation the dollars and cents. There might be differentiation but it will take us a long time to get to that.

The second is that there is a stigma associated with proxy privacy registration for commercial entities and that somehow you're concealing your identify by not wanting to show where your planned parenthood clinic is or that national laws that require, you know, in Germany you're required to put your name and your address and contact information on the home page of a trading site that somehow those are insufficient.

And so I want to take us back to the threshold question, is there a consensus for us to move to this type of detail, to this type of differentiation of categories of goods and services or are still at the place where we think most users, most registrants are good.

It seems to be where we were the last week or so but are good they're using this for legitimate purposes as a Whois review team found and that we really have to get - show that there's a problem that needs to be solved in order to go past where we are now, thanks Graeme.

Graeme Bunton: Thank you (Kathy), (Stephanie). (Stephanie) are you muted? You're definitely...

(Stephanie Parra):Okay, can you hear me now?

Graeme Bunton: Can hear you now. Thank you.

(Stephanie Parra): Okay good. Sorry about that. (Kathy) made at the threshold point that I think needs to be reiterated. Why would we move to this? Is there a compelling need?

To get back to the question of whether ICANN was already started down the slippery slope of international regulatory activity, just because there's something in the RAA does not mean that that camel's nose under the chin means that ICANN should jump in with both feet.

And determine that it is the body, through the control of the main name system that should be setting out the regulatory requirements for people doing business or having any kind of commercial purpose on the Internet.

And I think that's a really critical point. If we see this as an engine for growth in developing countries, who is ICANN to determine what's consumer protection in small African countries, for. Are they well represented on this call? I would suggest not.

If there are women doing education and tutoring in a country that doesn't allow girls to go to school, are you going to make them expose themselves and expose themselves to harm? I think this is unacceptable.

We have mitigations that we are busy instituting to solve the risks that various of our members have eloquently express. Let's try those mitigations before we start tackling a really difficult problem in determining who's in enterprise and who isn't, who's in commercial activity and who isn't.

I think it's an insoluble problem unless you are going to load a massive front-end to getting a domain name. And I don't think we have the mandate to start talking about a massive new front-end for the privilege of getting a domain name on the Internet. I don't see it in terms of (often). Thank you.

Graeme Bunton: Thank you (Stephanie), Steve.

Steve Metalitz: Yes this is Steve Metalitz. I think we're shedding some light more than heat here, which I think is great. I'm drawing four points from the conversation so far, which I'd like to put out there and see if people agree.

First is we don't seem to be talking about what I would call an (X ante) or a threshold requirement here. I think John took that off the table to begin with. So in other words you wouldn't - if you wanted to be a proxy - to have a proxy registration, you would not be denied because you were a company or because you have LLC after your name or Inc. or limited or something like that.

So it - I think we're talking solely about people that are using the domain name for a particular purpose. And that's where obviously there's a lot of questions about what that purposes. But we're not talking about an (X ante). We're talking about a - something that would in effect allow you to be kicked out of the program if you violated it. So that's the first point I'd make.

Second, I think I just want to emphasize that we're not talking about what a privacy or proxy service might do voluntarily. Some services now have prohibition on commercial activity. I think I remember we had that presentation a couple of weeks ago from some of the services.

And I assume we're not talking about forbidding that. We're just talking about whether it would be mandatory to have - to restrict the eligibility or to make people that are using a domain name for commercial purposes in applicable, so - ineligible. So I wanted to put that out there as well.

Third, in terms of the change in the status quo, yes that's correct. But there are going to be a lot of changes in the status quo as a result of any accreditation program. So let's not exaggerate what the burden should be. I agree, the burden should be on those who think the answer to this threshold

question should be yes, there should be a change. But let's not - and I think we have to be careful not to overstate it.

And my last point is I would basically agree with - I think (Stephanie) said this and others. At this point I'm not persuaded that being engaged in commercial activity by itself should be a mandatory reason for ineligibility for a proxy or privacy registration.

I get it that in many countries that is the law, or at least certainly the bias would be against that. But I think because of the practical difficulties that several people have talked about, I think from my perspective anyway, I don't think that burden has been met yet. Thank you.

Graeme Bunton: Thanks for your summary Steve. Those are interesting points, Tim.

Tim Ruiz: Yes, the, you know, the idea that certain governments, you know, or jurisdictions require commercial entities to reveal who they are so that people who are doing business with them know who they are, you know, that is a perfectly legitimate thing.

I personally wouldn't to do business online with somebody I couldn't figure out who they were. But when even me, with everything I know about ICANN and Whois and all that, when I'm looking to find out, you know, when dealing with, I don't look at Whois. When I look at is what's on the web site and on the contact us page or about us page and those kinds of things. And I think that's where most users look.

And I think that when you talk about these laws or requirements in different jurisdictions, in most cases that's what they're talking about. But on the web site, you know, these companies have to reveal who they are to some extent. But that doesn't necessarily correlate to what's in the Whois.

You know, there's a lot of sole proprietorship's, mom and pops if you will, you know, in various countries that, you know, what they may want in their Whois to be so that they are contactable 24 hours a day to make sure, you know, they don't lose their domain name. They might have their cell phone number. They might have their personal home address. That might be one thing.

What they want to put on their web site and display to the people they're doing business with might be another. It might have something to do with trying to obfuscate who they are. That's just - that's a reality of life and business in the world today that you may not want to have both - that both may not necessarily be the same thing.

So I don't think, you know, having privacy and proxy services on a domain name necessarily negates them fulfilling that requirement in jurisdictions that have it.

So but in the end I agree with Steve that I think so far we've heard really nothing that says that there's any, you know, overriding reasons why we should distinguish between commercial and noncommercial entities as far as privacy and proxy services go.

And then just finally, you know, I don't think anyone is saying - I haven't heard anyone say yet that if a privacy or proxy customer is engaging in abusive, fraudulent, illegal activities that they should somehow be able to keep the privacy or proxy.

It's not likely they'll even get to keep their domain name. That's already dealt with. And if that's going to flow down to privacy and proxy services, I don't think anybody would argue with that. Thanks.

Graeme Bunton: Thanks Tim. We're going to go to James, but we might close the queue after this unless there's anybody who feels urgency (unintelligible). So James.

James Bladel: Thanks Tim. Can you hear that echo there? Oh no, somebody's got - in mute if you're not speaking please. Thank you. Okay. So I wasn't going to jump into the queue, but I wanted to respond to two points that we're made, one by (Kathy) and one by (Steve).

You know, just in general, Steve I agree with you that we need to make sure that we understand the distinction between commercial activity versus abusive commercial activity.

I think, you know, banning all commercial activity is kind of like shutting down a marketplace because there were some pickpockets running around. I think that that's a, you know, a blunt approach to what is, you know, in effect a problem that needs a more targeted solution.

I didn't want to disagree however, with Steve's point about the status quo. I think the status quo has to have some standing and some inertia when we have these policy discussions, particularly when we have, as I've indicated, millions, if not tens of millions of unrepresented consumers on the services that are, you know, that will be affected, materially affected.

And to some extent may have off-line repercussions if they were to lose this privacy service. And I think that so in this particular case, and maybe it's just a subject matter, but I think the status quote does need to be given a fairly significant degree of respect because if we talk about unveiling someone's identity that currently enjoys their protection that is pretty serious.

I wanted to come back and circle back and reinforce what (Kathy) was saying about the stigma associated with - by using words like conceal or hide. I think that that is not serving our debate. I think that there is no more stigma associated with use of the privacy or proxy services that would be without obtaining an unlisted telephone number, appeal box or pay for a purchase at a grocery store using cash instead of a credit card.

I think if there's, you know, legitimate desire to not necessarily want to, you know, throw your breadcrumbs into the, you know, into the big data machine and always leave footprints and fingerprints everywhere you go, whether it's online or off.

And I wanted to kind of just, listening to some of the discussions about commercial use, I realized that what we're really talking about here, and I think a couple of folks raised this is, you know, when an online transaction goes south, whether it was, you know, this agreement between two parties in good faith or whether it was genuine fraud or deception was involved.

I think that, you know, we would be overburdening the domain name system to I think try to address some of those issues when infected those are probably more correctly targeted to the payment - whoever is processing that payment. Whether it's a - because you can't exchange cash, even a big coins are, you know, clunky online and other virtual currencies.

What you really - we need to be focusing a lot of this discussion on, you know, how someone gets a, you know, readdresses a transaction like that or harms that are occurring through the credit card processors or online payment systems or payments platforms.

You know, I think all of those probably are closer to this issue than the registrar, sorry, the privacy service who's affiliated with the registrar who's affiliated with a web host, who feels like maybe two or three steps removed from a bad transaction.

So I'm just putting those in the queue. And I agree, I'll just, I'll drop now. But I wanted to echo some of those statements that were made earlier. Thanks.

Graeme Bunton: Thanks James. I was sort of thinking that it might be useful as we try and get a sense of what the consensus is on this particular issue, when people are speaking they could sort of indicate whether this is the perspective of their

particular group or their constituency so we can sort of see how broad that opinion is, if possible. Thank you, (Holly).

Holly Raiche: Thank you, Holly Raiche for the record. I tend to agree with (Stephanie) and with (Kathy). I think certainly my experience with (Stephanie) and (Kathy) is we have been privacy advocates. At the same time, I have not heard the how in fact you're going to differentiate amongst commercial users.

If we're talking about a commercial user, it could be a girl's school in (Gunner). It could be bullies. It could be anybody. And in fact, within some of those situations privacy proxy is absolutely critical. So how do we draw the line if it's a critical issue facing this group?

And I don't know how we can do it realistically. Even if it's (posted), I don't know how we can do it. And I would strongly urge we go with what (Stephanie) is saying, which is it really is too hard, whether it's this group or the AWG.

So the next step, which is what do we do about it? How quickly do we respond? Do we take away the domain name? Those are the issues that we ought to be worrying about because I really am not sure that we're going to be meaningfully engaged in conversation when we haven't come up with a way that even if we can pretend that there is some stigma. And I agree with Kathy. There isn't.

What can we do about it realistically? If we can't let's just move on to another question. Thank you.

Graeme Bunton: Thanks Holly, (Maria).

(Maria): Hi thank you. Can everyone hear me?

Graeme Bunton: Yes.

(Maria): Super, thank you so much. Great. Yes, I just want to somewhat preview what I think some of my constituency and people from (state) concerns (unintelligible). That in trying to make a distinction between commercial and noncommercial uses of a domain name, you know, I think that we probably discovered that commercial uses are not inherently trouble, some are stigmatized.

And I'm not trying to cut off your class of registration, rather than a type of behavior where we're really, you know, we're solving a problem that doesn't exist.

A question whether people who are offered this service are taking money on the Internet can hide their activity and (unintelligible). In Germany they're required to put it all online. It's a bit of (an unclear) because the actual legislation that's being referred to there is e-commerce Directive, which does require all service providers to provide contact detail on their web sites.

But of course, you also have with the data protection directive, which is, you know, in law and in practice. We are able to make something of a distinction between those two types of actors.

But of course the problem is that when we're using the Whois to try and do that is to really bring a blunt instruments. So it's really to - it's a very much within the Canadian context too complex to try and distinguish between the types of uses, the intention of use, what people have.

So I think when we do that we create lots of unintended consequences, right. And less the growth in Uganda or, you know, the Planned Parenthood centers. And so I think when they try to almost stigmatized a class of registrations rather than a type of illegal or unwanted activity, at least were trying to have a huge big fishing net, you know, trying to catch tuna. But we're actually catching a lot of dolphins in it.

So I think it's really, you know, I think for all of those reasons I think certainly on the noncommercial stakeholders constituency, you know, on our own clip and all the research and background we have on this issue is it's really, it's a poorly thought-out policy that would just create lots of - it would be too difficult to implement and create unintended consequences.

I just want to harp back very quickly to when we were in Singapore, we did have some discussion about whether people who use their lawyer, legal attorney as their perfected proxy should be included. You know, I think if we were to include all commercial custom activity, asking permission, realize you have a proxy service provided to them.

We should really double down and go really hard against the attorneys providing the service because it's hard to imagine very many attorneys providing that service for clients that are not doing so for commercial reasons.

So I think once you actually look at that, you know, this threshold question, I think it creates a lot more difficulty than it results. That's really it.

Graeme Bunton: Thank you very much (Maria), (Stephanie) last thought on this, perhaps briefly.

(Stephanie Parra): Yes, and I apologize for abusing the microphone repeatedly. My point was to respond to the point that someone raised. I'm sorry I forgot who. Not when you are engaged in commercial activity, you have to provide your data. You have to register the business or something.

The difference is in most circumstances for smaller business, there are means to limit the distribution of your identity. So I could be running a small business without being Incorporated, selling quilts.

Even if I were operating off of a farm, my farm information would be registered through farm data, not necessarily put out there for all to behold. So that if I were selling my products through a farm market, I would not necessarily have an identifier, but for every Tom, Dick and Harry that wanted to show up at the date.

So this is normal. And it is beneath the small business I think that the NCSG is also protecting under its umbrella of privacy. Those anti-competitive reasons, there's all kinds of reasons to protect small business, including privacy of the individuals engaged.

Graeme Bunton: Thanks (Stephanie). So we got a lot of interesting discussion in there. I think we heard an awful lot from the (three), offload is probably the wrong adjective to use. A lot of interesting points from the no, we should not distinguish between these two types. We can't. And that was very good.

And thank you to John Horton for standing up for the other side and maintaining that position because that's interesting. We're looking forward to that.

I would encourage the yes camp to this threshold question, to perhaps engage a bit more on the list. And we can see some of their specific examples and solutions to the problems that have been raised here so that if we need to discuss that anymore, we can do that there.

We are running a bit short of time because we need to discuss briefly the - how we're going to set up the subgroup that we've discussed previously. Maybe we should do that now before we run out of time. Mary would you be so kind?

Mary Wong: Sure Graeme. Hi everybody, it's Mary with ICANN Staff. This refers to the subgroup that was going to deal with I suppose an issue that came out of the Category B, Question 3 which is whether there was a practical way to make

sure that in doing a transfer or restoration for example that a registrant or beneficiary doesn't actually lose the privacy proxy service.

And we did have a few volunteers to do that. So to the extent that staff can help you with a bridge number for a call for example, please let us know. If not then I think what the chairs would like to see is probably something sent to the list within a reasonably short period of time, so that it can be discussed further or have given conclusions made.

This is the same sort of task that in other working groups we've had a few people go off and do work on a specific question like this one. And it's proven quite effective. So hopefully we can see some suggestions forthcoming from the little group.

And what I can do is follow up with those folks who volunteered and see how we can help you make that happen.

Graeme Bunton: Thanks Mary. I think James wanted to respond to that.

James Bladel: Hi Graeme, James speaking. And actually I had some discussions. (Kathy) and I were tasked to take a look at this question and not necessarily address the question, but put together an approach, or we didn't want to use the word charter, but just a description or an outline of what the sub-team specifically would be asked to address.

We worked on this on Friday and a little bit over the weekend. And (Kathy) was very diligent in capturing a lot of the notes from our discussing. And of course I got overwhelmed and completely dropped the ball in time for this call.

So I would say to the group that our work is ongoing. I think that we have identified some specific issues relative to transfers, renewals and other

functions where the privacy proxy service is acting as a critical intermediary on these issues.

And, you know, I think in some cases the answer could be as simple as requiring the service to relay ICANN critical communications, you know, of a certain type like Whois, data reminders and renewals and transfer authorizations.

And some of them get a little more complicated, particularly when we talk about transfers because, you know, I think that what we have identified as when you talk about what we're calling tentatively a protected transfer or a private transfer, there are really for cases.

There is the status quo today where the information is public at the beginning of the transfer and it's public afterwards. There is this idea that a domain name would transfer to a new registrar, but either stay with the same privacy service or moved to the other registrars affiliated privacy service.

And then there are all these scenarios in between where, you know, the domain name might be unprotected on one end, but move into a protected state after the transfer or vice versa.

And so I think that we need to, you know, make sure that we capture all of these and that the working group - the sub-team that's going to address these looks at them distinctly because, or I'm sorry discreetly because they will have I think different sequences in different procedures for exchanging that information to ensure that the desires or the intent of the use cases have held.

So it's very tricky. And, you know, it's just something that we need to think about a little bit more. So that's my update to the group. I'm sure (Kathy) has more that she might want to add because I think she's probably been contributing more of the substance of material than I have in this effort.

So not put on the spot or anything, but she's been carrying me in this effort.
So...

Kathy Kleinman: Well I don't know. I don't know who's carrying who. Can I follow up really fast Graeme? I see someone's in the queue. I don't want to cut him off.

Just what James is talking about, just to let everybody know we're looking for two kinds of concepts. One is that we're changing nothing about the transfer policy. This is about kind of working within the existing rules of the transfer policy to preserve information and choice as people are transferring domain names or in the case of a failing registrar or a registrar that's lost accreditation.

So this is just kind of about plugging holes. And we'll get back to you very shortly because I think we determined where they are. And we'll get back and see if we can kind of easily plug some holes with information and choice in the context of the existing transfer policy because we're not going to change that of course.

But thanks to James for the more detailed summary. He - it's perfect. And again, we'll be reporting back shortly.

Graeme Bunton: Thank you (Kathy). Tim you have one minute.

Tim Ruiz: I just heard James say required in part of his update. And I'm just concerned because I thought we had already pretty much agreed to the group that we weren't going to - that this wasn't going to be a required service, but something that was going to be looked at as a potential best practice.

Answer that, you know, the transfer is a different issue than a field registrar, at least in the way I look at it. So, that's the only concern I have. And to that

we weren't going to hold up the working group's progress while we wait for this subgroup.

And I think we have been. So I would assume that that's not going to happen as we go forward either.

Graeme Bunton: It sounds like James is saying that he misspoke, and that it's not required. And it also doesn't from the chat look like we're going to be holding up the working group any. (Maria) I'm assuming that's an old hand.

And that brings us just about to the end of the time we've got today. Next steps, next meeting, so we've got this little subgroup working away, which is great.

Next week I think we've had enough discussion on that threshold question. I think we've got a pretty solid sense of where people are. If there is more to be said, please say it on the list, especially from the yes camp. I would be very good to hear from you there.

If not, I think next week we're actually going to be digging into Category C, Question 1, possibly also 2 and 3 given I think the clarity that we've got on our threshold question. So unless there's anything else, I think that brings us to the hour.

Woman: Yes Graeme, Graeme, if we agreed on the threshold question, why would we be going into Category C, Question 1?

Graeme Bunton: I think we just need to check the box is what I'm suggesting.

Woman: Because I think it's a leapfrog over Category C, Question 1. But I guess we should talk about it on the list.

Graeme Bunton: I'm saying we're talking about Category C, Question 1. We're not jumping past it. We're going to, you know, we've talked about the threshold question. We're going to move on to the actual questions within there.

Woman: But that's exactly it. If there is consensus that we don't create categories of goods and services, why would we go into the questions to create categories for goods and services?

John Horton: This is John Horton. Maybe we...

((Crosstalk))

Graeme Bunton: Really hold off and make sure there's a consensus. I know there's a lot of voices on one side on this call. But I think there might be other members of the working group that may want to weigh in. And, you know, maybe we'll wind up the answer be no. But maybe we could give it a little bit more of a chance there.

Graeme Bunton: Sure. This is hence why the encouragement on the list. I don't want to - so we can take this to list too whether we actually have to go in and check those boxes of these are the questions we were given. We've answered this threshold question. We can move past them or not.

I'm not sure offhand whether we can do just that. But I don't want to take anybody else over past time. So we can continue this discussion on list. Thank you everyone for participating. Have a good week.

Man: Thanks Graeme.

Man: Thanks Graeme.

Woman: Thanks Graeme.

Woman: Operator can we stop the recording? Thank you.

Man: Thank you.

Coordinator: Thank you for participating in today's conference call. You may disconnect your lines at this time.

END