

ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 13 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 13 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-ppsa-20140513-en.mp3>

Attendees:

Luc Seufer - 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
Alex Deacon – IPC
Laura Jedeed – BC
Sarah Wyld - RrSG
Holly Raiche – ALAC
Tatiana Khramstova - RrSG
John Horton – BC
Jim Bikoff – IPC
Don Blumenthal – RySG
Roy Balleste – NCUC
Kiran Malancharuvil – IPC
Volker Greimann – RrSG
Libby Baney – BC
Michele Neylon – RrSG
Chris Pelling – RrSG
Frank Michlick – RrSG
Stephanie Perrin – NCSG
David Cake – NCSG
Valeriya Sherman – IPC

Apologies:

Graeme Bunton – RrSG
Amr Elsadr – NCUC
Susan Prosser- RrSG

Tobias Sattler – RrSG
Don Moody - IPC

ICANN staff:
Marika Konings
Mary Wong
Amy Bivins
Joe Catapano
Terri Agnew

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

Terri Agnew: Thank you. Good morning, good afternoon and good evening. This is the PPSAI Working Group call on the 13th of May, 2014. On the call today we have Volker Greimann, Holly Raiche, Christian Dawson, Steve Metalitz, Libby Baney, Michele Neylon, Laura Jedeed, Don Blumenthal, Tatyana Khramtsova, Chris Pelling,

Terri Agnew: ...David Heasley, Sara Wyld, Darcy Southwell, Roy Balleste, Tim Ruiz, Kirin Malancharuvil...

Man: Yes.

Terri Agnew: ...John Horton, Alex Deacon, Kathy Kleiman, Griffin Barnett and Jim Bikoff.

We have apologies from Tobias Sattler, Graeme Bunton, Susan Prosser, Don Moody and Amr Elsadr. From staff we have Mary Wong, Amy Bivins, Joe Catapano and myself, Terri Agnew.

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

Don Blumenthal: I appreciate it. I was - yeah, never mind, I'll send it offline. Like I said we've got a lot to cover today. It's been an interesting discussion on email list since yesterday. Let's dive right into it. I would like to get through this and still reserve some time to discuss Item D.

Now first, this was kind of discussed a little bit before the call formally started. Just really appreciate the work that Kathy and James put in on the reveal issues concerning the privacy proxy. I'd like to put - discussion that's all for now just so we can focus on C. But, again, really appreciate what you guys did over last week.

Why don't we, I've said this, why don't we jump right in? I think at the end of the last call there was - and I'm going to use the word consensus by my definition, which is overwhelming majority; some people have different definitions for it. So apologize to anybody - did somebody just jump on with - there, okay. I was getting an echo for a second.

Apologize to anybody who thought that I was suggesting that the group agreed overall; that wasn't my intention. Given how important this issue is though to the - to our work I wanted to just provide one last opportunity for everybody to...

Libby Baney: Thank you.

Don Blumenthal: ...weigh in on the issues, in particular the, for lack of a better term, the (Yes) group, that has not been as active as some others so I openly invited more discussion from that side.

It certainly has generated more discussion. Where that leads is I guess what we're going to conclude with today. So I guess it strikes me that we're all still in agreement that, just a second, let me - I'll get right to you - we're all in agreement, and correct me if I'm wrong, that even if we do come up with

categories that there isn't a push that's all commercial activity, no matter what it is, would be the overall split out categories.

But beyond that we still have some discussing to do. And with that I will call on Libby who really kind of kicked things off by distributing the paper yesterday.

Libby Baney: Thanks, Don. Can you hear me?

Don Blumenthal: Yeah.

Libby Baney: Okay well great. Well thank you for teeing up the issue and for everybody weighing in via email on that paper I distributed. I do appreciate the dialogue and I think it illuminates a number of the issues that are outstanding. And I guess that's one of the reasons I would urge the group to continue to debate the issue and to talk about some of the nuances that have been raised whether via email or off-line in side conversations.

And I just think there's a lot to unpack here. And James and Steve and others over the course of the last couple weeks have raised some really important questions about how does this work and whether it's appropriate to do it all.

And I think that's a worthwhile debate. And the paper that I issued this week was intended to lay out the opportunity and to describe the issue from the consumer's perspective, you know, recognizing that there is a real value in having consumers understand who they're doing business with.

And I think, you know, as we noted in the paper it's important to strike the right balance. And certainly understand the privacy needs and the real rights that people have in various jurisdictions on full privacy purposes but to otherwise showcase, you know, the real simple fact that, you know, if you're doing business and - the countries that we surveyed you are otherwise

transparent; you have to register using the, you know, the legal term register otherwise be listed with a government body.

And so the point was to show, you know, business is already transparent based on many, many laws. And so to the extent that you are engaged in commercial activity there's an overriding, I would argue, overriding public interest in having that commercial activities, Whois information be transparent, you know, analogous to the business registration requirements in various jurisdictions.

And so to source that out and show that there is, I think, and appropriate force fitting analogy to existing brick and mortar businesses consistent with laws. And the hope is to have a more robust dialogue about how we make the distinction and with the recognition that we should make the distinction.

And I think the first question is, you know, can we come to a consensus that we should make this distinction? And it's worthwhile. A number of folks chimed in on the list that they do think it's worthwhile to make the distinction that there's difficulty in doing it. And so maybe we could start with that, you know, can we come to a consensus that it's worthwhile to make these distinctions?

And then I think we can work on the detail of how do we do it and what cases are there exceptions or nuances that we need to carefully consider? But just as this group has worked in earnest and I think in really good faith on a number of other very technical tricky issues, I think you're too, we can put our, you know, pen down and work on the difficult tricky part.

But the consensus I would argue should be that there is a value in making the distinction for consumer trust services as we've argued in the paper. And I'd be interested in other folk's thoughts on that. I understand there's diversity of views on this. But at least I've heard - or have seen from the communications

and email but there are some folks that do believe that it's a worthwhile distinction to be made.

And if we can discuss that fundamental point and then work on the tricky parts of how to do it and when there might be exceptions, those rare cases I don't think should be the rule rather let's create the rule based on public trust and transparency and then work on the harder part. Thanks.

Don Blumenthal: Okay, I appreciate that. I don't see any other hand up here so let me just toss a thought out. You suggested whether it's worth - raise the issue of whether it's worthwhile going through the effort, and that's my characterization...

Libby Baney: Yeah, and I would argue that it is worthwhile to go through the effort...

((Crosstalk))

Don Blumenthal: ...let me finish my thought.

Libby Baney: Oh yeah, sure.

Don Blumenthal: Let me finish my thought. How do we measure that? Now in the paper it suggested that proxy privacy studies have roughly the same numbers over time which is roughly 18% to 20% of registrations our privacy proxy. Studies have also shown that maybe 65% to 70% of those are commercial. So now we're down to 14% of all registrations in the gTLD studies.

Is that a valid way to look at it? Or is there some other measure of the point at which it's worthwhile to start making these distinctions? Let me jump to - answering that question out just for consideration but basically how are we going to decide what's worthwhile or not? Michele.

Michele Neylon: Thanks, Don. I think I'm not on mute. Can you hear me?

Don Blumenthal: I got you.

Michele Neylon: Okay sorry. My headpiece decided to die a painful death. This entire thing is - I just find totally exasperating because this - ICANN is not a consumer protection agency; registrars should not be acting as proxies for consumer protection agencies.

If the Irish government passes a law saying that domain names are going to be controlled in a particular fashion then as an Irish company, which is happy to abide by Irish law, we will do so. And I suspect that most of the other registrars and others on this call would feel similarly. Now of course they could disagree with me. But I think this is completely out of scope.

This is going way way way way beyond what we are meant to be doing. We are meant to be defining accreditation criteria for proxy and privacy services. I don't think it's within scope for us to decide who should be using proxy and privacy services and I consider this entire conversation to be a massive waste of time. Thanks.

Don Blumenthal: Okay that was pretty clear. James.

James Bladel: Hi Don. James speaking. And just wanted to perhaps echoes some of what Michele has mentioned. You know, this is a difficult issue because I can tell that people feel very passionately about it. But I think that, you know, their passion in particular by bringing some of these issues into, you know, into this PDP in particular but ICANN in general is misdirected.

You know, there is no way to wade into these waters without ICANN and by extension their contracted parties becoming enforcers of content regulation. You know, it's unavoidable. If we say that we're not the pivot point or the breakpoint is not the type of registrant then we have to look at the Website and we have to look at what the Website is doing and how people are using the Website.

I think that there are, as I think Volcker and others have pointed out, there are certain jurisdictions that already require these things on the Website. There are jurisdictions that require transparency in a financial transaction.

Trying to centralize all of that and used registrars, Web hosts or privacy proxy services as a sort of a choke point for bad things that are happening on the Internet, you know, I believe it is just kind of, it's trying to solve or use the wrong tool to solve the problem.

So not surprisingly I do agree with what Michele said that we had a very narrow scope and target here which is to define, you know, the practices and the requirements of how these services are delivered. And I think, you know, expanding that into, you know, creating classes of categories of customers and uses I think as well outside of the scope of what we're trying to do. Thank you.

Don Blumenthal: Okay. I'll just point out though that I think that GNSO charged us to look into the issue. So this issue of whether there should be categorization or not is part of what were supposed to be doing. Kathy.

Kathy Kleiman: Hi. Let's see, I wanted to comment that I thought we had reached agreement largely last week and even the week before that in general there was agreement across the - across a number of stakeholder groups represented on this working group that we didn't - did not want to create categories of registrants upfront for proxy privacy services, that every group that we know, it seems to be the working group's reflection as well as the Whois Review Team's reflection that every group, commercial, noncommercial and individual, all have legitimate legal reasons for seeking proxy privacy registrations.

So it's interesting to look at this paper and see that it's not just even the type of registrant that were looking into, it's almost like - because one of the areas

that I don't think we've touched on, if we have we've barely touched on it, is that commercial entities engage in noncommercial speech. And it happens all the time at dotOrg, for example, lots of commercial companies will register dotOrg domain names for their foundations or for educational and research material that they're publishing.

So that whole really really screwy line, commercial entity engaged in noncommercial speech does not appear to be what this white paper is addressing. It dives rather into the purpose, how the domain name is being used.

And so I'm going to agree with Michele and James who said that this is outside our scope. And also that the gets us into something that will keep us here for the rest of our lives. It's a really - the purpose and then to changing purposes and is this what ICANN should be doing with the registrars were going to be doing.

So I'm going to push back up, I think we had agreement on the threshold question and that this wasn't the direction we agreed on. Thank you.

Don Blumenthal: Well, let me just suggest that by looking at last week's transcripts and reading - and listening to the call there clearly were some individuals who did not agree. So I think it's a stretch to suggest that we had agreement.

Right now I think we need to look at the work of this group and not go back to the work of other groups and how they looked at the issues. Steve.

Steve Metalitz: Yes, this is Steve Metalitz. Just had a couple of points. First, I tend to agree; I don't see how this could be outside the scope because we were asked these questions and they're in our charter. So obviously we don't all agree on the answer is although I think it is fair to say that up until today the vast majority of the people that had been discussing it on the calls have agreed but that obviously isn't everybody.

But I'd like to focus and just make sure we know which questions we do have to discuss. I know that Question C2, and I don't know if that - I'll just read it. It says, "Should the use of privacy proxy services be restricted only to registrants who are private individuals using that domain name for noncommercial purposes?"

And as I look at this paper, and this was echoed to some extent in the - in some of the discussion online, Page 27 says, "The question should not be whether a registrant is a commercial but rather whether they are using the domain name for commercial purposes irrespective of whether the registrant is registered as a legal person or is simply an individual."

So if that's the position of Libby and the others who don't want to answer the threshold question, who have a different view about the answer to the threshold question, could we at least take the C2 question off the table?

Because it sounds as though we have agreement that the use of privacy proxy services should not be restricted only to registrants who are private individuals using the domain name for noncommercial purposes because this paper seems to indicate it could also be allowed for corporations that are using the domain name for noncommercial purposes. Is that correct?

So in other words are we in agreement that the answer to C2 is no? Thank you.

Don Blumenthal: I would tend to think so yeah.

((Crosstalk))

Steve Metalitz: Well I'm really asking, you know, well maybe Kiran is next. Kiran and Libby and others who have a different answer on the threshold question do they agree about C2?

Don Blumenthal: Okay that's fair. Yeah.

Steve Metalitz: Thanks.

Don Blumenthal: I see what you mean. Kiran, you want to dive in on this or something else? Kiran, are you on mute? I'm sorry, Kiran, you're not coming through at all. Oh having computer issues, okay. Does anybody else want to chime in here? Holly.

Holly Raiche: Yeah, I tend to agree with Kathy and surprisingly I suppose with Michele and James. I thought the question was, as Michele - sorry, as Steve put it - do we want to limit or not? And we said not. And part of why we said no we don't want to limit is it became far too difficult to even think how we would distinguish given the breadth of national laws, given the breadth of what various countries will defined as commercial or noncommercial.

I'm at a loss to understand how you could actually, if you wanted to say yes or for that matter no, to somebody registering with a privacy proxy service how you would do it. And I think that's one of the reasons that we said no.

And my also understanding was somewhere in there we were thinking about where the Expert Working Group is going. And I think we were happy to notice that where they were going was saying well basically the issue is about accreditation of the privacy proxy server.

It's about the privacy proxy server gaining sufficient - well gaining correct Whois information such that either the handover the information or they cut the service off if there was a legal activity.

Now I thought that's sort of where we were getting to. I'm apparently wrong but, you know, I seem to be corrected. Thank you.

Don Blumenthal: I would say you're wrong, I just think some other folks...

Holly Raiche: I know.

((Crosstalk))

Don Blumenthal: ...differences of opinion.

Holly Raiche: Yeah.

Don Blumenthal: And let me just suggest that - we - and I'm referring to a lot of people - someone on the same page, considering where the conversation left off, but I think now a standard by which to differentiate the mechanism has been - a standard, not the mechanism - has been suggested.

And I guess part of what we need to look at today is even that approach feasible? Again, part of the purpose of this call is just to make sure we kicked this subject exhaustively. Chair has had some concerns about that in relation to (unintelligible) so pivotal to proxy privacy.

John.

John Horton: Hi, there, Don. Can you all hear me?

Don Blumenthal: I got you.

Holly Raiche: Yes.

John Horton: Okay. Great. I'm on a new headset. I just wanted to respond to the question that I think you posed to Kiran that I think she wasn't able to respond to possibly because of technical issues.

You know, I think a strict reading of Question 2, and then if you look at the paper that Libby submitted, is that that's correct, as you summarized that a proposed solution was to try and be as narrow as possible and recognizing that some commercial entities may not be engaged in the commercial use of a domain name.

So strictly speaking the answer to Question 2 would be that it wouldn't be restricted only to registrants or private individuals. But I don't think it would really make sense to just say, oh, there's a consensus to Question 2 that the answer should be no because I think the real purpose of the paper was to try and dig into the meat and the bones of how differentiation would work and to - and really try to narrowly tailor a solution as narrow as possible. So hopefully that's the direct answer to your question.

Don Blumenthal: Appreciate it. Sorry, mute there for obvious reasons for a second. Kiran.
Kiran.

Kiran Malancharuvil: So this is Kiran. I'm sorry for earlier. I don't - I guess my microphone on my computer does not work. I - first of all I agree with...

Don Blumenthal: I apologize for picking - just going to say apologize for picking up the wrong pronunciation there. Go ahead.

Kiran Malancharuvil: Oh fine. No one ever gets my name right, that's okay. So the question that - or the answer that John just gave us is pretty - mirrors what I would have responded to with Steve, although I do think that even his questions merit a little bit more exploration before I shoot off the hip.

But what I did want to respond to initially was the - on the question of whether this is in scope I think that that's - it's a very strange argument because the entire rights protection mechanisms all of the - all of the, you know, work that went into the new gTLD program in that regard is all based on consumer protection.

And I also agree with your statement, Don, about it being in the charter and therefore it being in scope. I also wanted to just quickly touch on the issue of content regulation.

I would say that in a lot of ways a lot of what we do as far as examining rights and legality and illegal activity and all of these issues requires a certain amount of content examination. It's not possible to draw a super clear line.

For example, if we, you know, if, you know, when ICANN - when ICANN develops the rules for the URS, for example, whether or not we are looking at whether trademark is being used illegally you have to look at how it's being used, what's the content of the Website? Is it a noncommercial free speech Website?

Well then, you know, it's not appropriate to file a URS or a UDRP at that point. So I think, again, we're drawing these really black and white lines between this is, you know, this isn't within our scope, this isn't appropriate, this isn't what ICANN is doing. But historically it is what we do and it is a necessary part of what we do.

And I think all of that is a red herring on the real issue which is that this is complicated, it's worthy of discussion. And I think that we should not be throwing this away at the threshold level and we should be exploring it more in depth. Thank you.

Don Blumenthal: Okay. Let me suggest that we're not throwing anything away as I suggested in email no matter how today's call ends this issue is going to inevitably come up again in some of our other topics.

And what we're doing now is just preparing templates that are ultimately going to be used for a parallel report. So can somebody go on mute there please?

So to - so really everything we talk about over the next however many months is going to be revisited, nothing else when we write. I was going to say something else but let me defer - let me go to Kathy and then James and see if I need to or not. Kathy.

Kathy Kleiman: Great. Thanks, Don. You know, it's hard - when a paper comes down the day before a meeting it would have been nice to have more time but it's hard to know - and, Don, let me ask this to you as the chair and to others in the group as well, you know, there are things in this paper that, you know, if we do have to delve into this, you know, it just doesn't make sense.

So the idea of applying the same rules to Internet only businesses operating in their jurisdictions as for those with brick and mortar presences, well what about the millions and millions of businesses that don't have brick and mortar presences, that are protected by an array of different legislation including home-based businesses run by seniors, run by women, you know, mom-owned businesses.

You know, where do they fit in all of this? I just - I think there's no - I think the threshold question was designed to see if we needed to go into all these other questions. And so I'm still not sure where we are on all of that. But there was a lot of agreement on the last two calls, the one that Graeme chaired last week and others and I think the one Steve chaired the week before.

So we've been on this issue for a while. And I really thought there was a lot of agreement that we're not about categories and classes and where the comments came out as well from the stakeholder groups. So I just wanted to ask that all that be revisited as well if we might. Thanks, Don.

Don Blumenthal: Well as a - Kathy, you know, appreciate what you're saying. But as I suggested before, I didn't see quite the unanimity. And I'm going to avoid the

word "consensus" now. Baffles me we spent so much time talking about that term. But I didn't see quite the unanimity that you're suggesting.

And I saw a distinct lack of input from a fairly significant viewpoint. And now we're getting that today and this will conclude the discussion, you know, direct discussion under Question 3 of these issues.

As to the paper, you know, whether you agree with it or not, you know, the comments there is legitimate to enter in as if they were said verbally on today's call.

So but obviously, you know, there's plenty of room to agree or disagree with what was said or the logical steps or whatever else you want to in there, James.

James Bladel: Hi Don, James speaking thanks. I have really a question that I'm struggling with and I would maybe pose it to you and to ICANN staff and to the group. But the question is that, you know, we've having a fairly spirited discussion on this list and this group and then, you know, we have some papers being submitted.

My question is that, you know, just looking only at our service we have millions if not tens of millions of customers and some significant coercion 30%, 40% I don't have up to date figures, our commercial entities and then they are engaged in some sort of commercial activity.

My question for you is how do we best go and get the - reach out to those stakeholders who might not be aware that this work is ongoing and that their service, continuity of their service may be in jeopardy or how do we measure their value of this service whether it's something maybe they sign up for explicitly or maybe they didn't know or maybe they use it and forgot it but they bought it and forgot about it or something like that?

I mean do you have any - is there any precedent within ICANN when we're discussing something that has the potential to impact millions of businesses, you know, globally how we would go out and ensure that we are responsibly gathering the other side of these absent stakeholders and ensure that their, you know, their voice on these issues.

And particularly if there's something we haven't thought of or covered, you know, it gets captured in this dialogue because I'm concerned that we have a very small, very vocal core of folks within ICANN, which ICANN itself is a very small and vocal organization but, you know, it ripples out into the larger Internet economy.

And I think that, you know, perhaps that's something that we can - and with the help of staff to measure or to gauge some of that feedback.

Don Blumenthal: Interesting point I kind of wondered that myself. For what it's worth I gave a talk on what we're doing last week and if nothing else had all sorts of informal feedback.

But other than the formal comment periods once we get rolling I don't know if there are other mechanisms, Marika or Mary, Marika?

Marika Konings: Yes this is Marika, not specific to James question but it did, you know, bring to mind indeed there were outlining options and I think, you know, possible (top) forward on this issue noting that, you know, there is disagreement with what the answer may be.

It would be to still walk through the different charter questions that would allow your staff to record the different viewpoints and, you know, possible point of contention on those.

And specifically call this out as one of the items on which public input is requested as part of the initial report noting that, you know, the working group

didn't reach agreement, these are the different viewpoints that have been expressed on this specific topic, you know, challenges identified, you know, like the one James just suggested.

And then, you know, work with the different I think groups within ICANN as well to for example try to, you know, encounter or encourage input on that for example through (ALAC) when, you know, they're representing a large segment of end users.

And, you know, reaching out through their networks, you know, specifically talking about that question and trying to get input from groups on the specific question may help gather additional information and viewpoints on where our different groups stand on this.

And it may also be a way forward on our current conversation so we can actually document as well what the different positions are on the questions in this category and indeed specifically highlighting as well the challenges, which may help, you know, get additional input as part of the initial report public comment forum, just a suggestion.

Don Blumenthal: Well certainly I would expect us to document pros and cons in a template and our initial report will be out there for the comment but I guess in, you know, (unintelligible) what James just suggested are there other mechanisms where by which except in formal conversations we can reach out and try to get opinions before that point.

I haven't seen it done so I'm curious if there's any formal way to do that. Okay let me go to Steve.

Steve Metalitz: Yes thank you this is Steve Metalitz. All right, getting back to C2 I think I've been hearing that we're in agreement the answer to C2 is no and that commercial entities should be able to use privacy proxy services for non-commercial purposes.

This brings us to question one, which is really I think the nub of the disagreement about use for commercial purposes regardless of who is registering it.

I'd like to raise another point here to just clarify what the position of those who would answer yes to, you know, who would answer - who think that under question one there should be a distinction is that - would that distinction be imposed at the time of registration or would it be done retrospectively at the time of some sort of later challenge.

As I read the white paper, which I did skim admittedly I haven't had a chance to go through it in detail, the view seems - the proposal seems to be that you would be - you would have to say I don't intend to use this domain name for commercial purpose at the time you signed up for a privacy proxy service.

I don't intend to use this for commercial purposes and then if later it appeared that you were someone could come in and object to your use of the proxy service. In other words it would be kind of a reveal proceeding as opposed to the proxy service, privacy service conducting some type of investigation or making some type of presumption about how the service would be used.

So I guess I'm asking is that a correct characterization (Libby) or Kirin of your position or John? Again I'm just trying to see if we understand what it is you're proposing, thank you.

Don Blumenthal: Appreciate it, Kirin seems to be on board with the chat with what you just suggested. I'm going to cut this after John so we can at least spend some time on D, Stephane.

John Horton: I'm sorry go ahead Stephane.

Don Blumenthal: I said after - sorry I got you yes, Stephane.

Stephane: I apologize for driving us back to the white paper here but I just want to register my discomfort with having this paper dropped in and I of course immediately flipped into the Canada section because I had spent quite a bit of time talking to (Libby) a couple of weeks ago about the Canadian situation.

And I would just like to register that it's not accurate. So I think if we're going to be taking papers then we need to have a different process for putting it together and I can give you the chapter and verse on what's inaccurate in the section.

The entire omission of small business, which does not have to be registered except in the Province of Quebec and then only for some particular types of business, that's the heart of Internet commerce in the future particularly in developing countries.

So I cannot believe we're continuing to have this discussion in such a one-sided way. There are many other ways to deal with the risk of bad behavior on the - with proxy registration.

There's no need to try and preemptively try and figure out who is the bad guy up front. Thanks and I promise I won't bring it up again but let's take the paper off the table unless you're going to have a committee review it and check it for accuracy.

Don Blumenthal: Well let me just respond to that. Anybody is free to submit anything whether it's verbally or in writing as far as I'm concerned. Anybody else is free to correct it either on a call or otherwise.

You know, it would be different if we were up to crunch time on getting the report out but there is plenty of time for response as we go forward. You know, I think there are plenty of folks on this call who can see the strengths and weaknesses in that paper.

And I don't know how much that it needs formal discussion on the call, one person's opinion, John.

John Horton: Sure thanks. So let me first respond to the question of technically how this would work and yes this was addressed in the paper but to summarize it I think there is an analogy, not a perfect one but a rough one with the way that complaints about inaccurate or falsified Whois records have worked.

And one of the things that we've heard from registrars and I think this is a really good point is that you can't expect registrars to assign staff to actively monitor and look at and verify every single Whois record every day of the week.

Now I say that knowing there are going to be (unintelligible) environments that we, you know, recently have. But having said that I think that the way that it would make the most sense would be at the time of registration for the registrant to be informed at the point that you are going to actively sell goods and services and process a financial transaction on this Web site or, you know, one that the Web site points to like paypal.com or something like that.

You are no longer allowed to use privacy or proxy services but again the registrar wouldn't be responsible it doesn't seem realistic to me to require registrars to actively monitor to the point at which that commercial activity begins.

But then I think the registrar should have a mechanism in place and with the structure that we proposed to respond to any complaints. So to some degree it is an honor system, I think a lot of what we would call Internet governance is and honor system.

But that seems the most reasonable and doable way for it to work in my view and whether your - Kirin and (Robert) feel free to weigh in if I'm wrong on

that. I also just want to respond to Stephane's comments briefly on the paper since legit script helped with the paper.

We certainly stand by that, I would agree with Jaime's comment that the, you know, our paper is I think just like any other comment that is being submitted be it the chat or the email chain but we stand by that.

And at the same time Stephane knowing your (unintelligible) in this area and I know (Libby) already thanked you for the assistance you provided on discussing these issues with her, we would welcome I think we would all welcome over the email chain any comments you have on that but, you know, we would certainly stand by that paper, thanks.

Don Blumenthal: Okay, appreciate it. Like I said I was going to cut the queue at - after John, sorry Kirin if you want to enter in the chat that would be great. Yes I think we've covered the issues that were raised - well because it clearly has been expressed before in one way or another.

My people have been in favor of the same level of commercial categorization. Again we wanted to make sure that there was a full airing of those. Why don't we move onto D except I want to re-raise a question from the outset of the call for consideration, which is at what point is this - is it worthwhile to even be going through these processes?

And how do we measure that if it's even a legitimate question but since it was raised I want to toss it out there for reactions in chat or in the - later or ignore it if you don't think it's even something we should be - that should be part of the equation.

And if we could clear hands I would appreciate it to remove any uncertainty as we get into D. Okay if I can step back to save my voice a bit if Mary or Marika could pick up an outline in D.

Mary Wong: Hi Don and hi everybody this is Mary. So what we have on the screen here is the draft template for question one of category D and as you'll recall category D deals with contact points by the privacy old proxy service obviously different from the registrars as such. So as with all the other templates what we've done is put together some background information that we thought might be relevant as you consider this question.

This includes information from the various Whois studies or at least some of those as well as some information that we recently got in that we reviewed from the survey of PP providers that the EWG did.

We un-synched the document so you should be able to scroll through it and the (third) piece of information that we have is as usual from the Whois review team as well.

And finally here right before the chart there is a short insert from the status update form the EWG pending its final report. So hopefully all that is useful as you look through the responses earlier from the survey that various - you and your groups have provided.

And as we said category D is about contact or contact points and the question, question one here under consideration is basically what are the measures that should be taken to ensure two things.

One, contactability and two responsiveness of the providers and the (comment) here that providers mean privacy and proxy service providers. Don I don't know if it would be helpful to go through all of this in the time that we have or do you want to start the discussion more generally?

Don Blumenthal: Why don't we start the discussion more generally if - just a second. Yes start it more generally and I don't think it pays to read point by point. It's always

tough when you follow up a very contentious with one that doesn't seem to have all that much significance to it.

Bad word significance but - well let me ask are there - what - obviously if you are going to - well the first question. Contactability and responsiveness by whom from whom?

The people seeking information, the registrars and then I think the second question is - well no let me stop there. Who needs to be doing the contacting and that might help frame how we go with this, Steve appreciate it.

Steve Metalitz: Yes this is Steve, I think I don't know if this is entirely responsive to your question but I think one measure that should occur is that there should be a public register of the accredited providers just as there is a public register of registrars who are accredited.

And there's contact information for them there and if that contact information doesn't work then there is a - I think there's some remedy and potentially in terms of the accreditation of the registrar.

And I think there needs to be the same thing for a - for an accredited provider. So for example, you know, there needs to be - we're going to get to reveal and relay and so forth but they're, you know, if I feel that I have the grounds to ask that a customer's contact information be revealed to me and again we'll come to those criteria of what I would have to show.

I have to have someplace to go with that and some entity that will respond. And if I can't reach the service provider or the service provider just never responds that I think is a big problem in terms of or it needs to be a problem in terms of their accreditation.

So that's really one aspect of this that there should be a publicly accessible registry of accredited providers and the service providers should have to

respond to inquiries and that would be true even if the inquiry is coming from a different jurisdiction or not one of their customers.

Obviously they should be responding to customers to but if someone has a reveal request for example there should be a requirement that the accredited provider respond promptly. So I think that's part of the response on this question, thank you.

Don Blumenthal: Appreciate it, James.

James Bladel: Hi, I thought Stephane was ahead of me but I guess she dropped her hand. So James speaking for the transcript, I agree with Steve I think that there should be some requirement to respond to inquiries either from customers, law enforcement, you know, third-parties, you know, this is modeled after some of the requirement in the current RAA.

I think it's, you know, where we maybe would have a divergence of opinions is, you know, saying thank you we've received your inquiry but we've decided not to, you know, reveal this based on your standing or based on your jurisdiction.

I think that is a response so they may not get the response that they want but they should receive some sort of a timely answer, they should be - the privacy service provider should be contactable and should be reasonable in fielding those types of inquiries, thanks.

Don Blumenthal: Okay Kathy.

Kathy Kleinman: A follow up to both Steve and James. Here the ballot, the contactability and the responsiveness yes of the proxy privacy service providers I think we'll see general agreement on that across the working group.

But also what's the balance if somebody has contacted you 20 times on the same issue, that the same attorney has reached out or if there's a level of frivolousness or some said if it's coming from jurisdictions with requests that may not be legal or legitimate requests in the jurisdiction that they're going to.

So a law enforcement in another country asking for information that they wouldn't be entitled to and the jurisdiction of the registrant or the registrar. This is where things get interesting and this is where I think that the diversity and background of the group of this working group will be very helpful in thinking about this but contact points make a lot of sense, thanks.

Don Blumenthal: Sorry, how much will the second point you raised there be part of our discussion in reveal? How much should we be focusing on just how do we make sure that they can be contacted and respond as opposed to the circumstances under which they should respond?

Kathy Kleinman: Interesting, I'm glad Magaly is in the queue.

Don Blumenthal: And with that Magaly.

Magaly Pazello: Thanks Don and thanks Kathy. Okay I mean first off I think there's no issue with, you know, the concept of responding but I have massive issues with the concept of doing anything beyond that.

If I get - if we get a court order issued by some random court in some foreign land and I don't care which land that happens to be we're not going to take action on it we're going to politely tell them to get us a court - give us a court order for an Irish court.

I mean the thing with what should - what circumstances should the proxy privacy provider respond, I would assume that in most circumstances they should respond but I think as James intimated I mean maybe the response that they provide might not be what the person contacted them is looking for.

But that's life I mean you can't force me - you might be able to oblige me under contract to respond but you can't oblige me under contract to, you know, for example I don't know sell a domain name or a respond to all queries for this, that or the other.

So I'm not too sure exactly where we can go with that but I think, you know, putting an obligation that the provider response shouldn't be too much of an issue, thanks.

Don Blumenthal: Well, let me ask this and I really don't know, should we be looking I mean are there similar provisions as suggested for just a list for registrars, are there provisions that we could look to for guidance on this entire question?

James Bladel: Don this is James mind if I weigh in on that question?

((Crosstalk))

James Bladel: In fact the - yes I'm sorry well I - okay thanks. In fact there is one in particular that comes to mind, which is a new requirement in the - one of the transfer policies it's called the transfer emergency action contact or the TEAC that registrars have published amongst themselves in the ICANN radar database. And the thinking there is that in the event of the hijack there should be someone as a registrar who is responsive to requests from other registrars in a transfer emergency where they have a claim of hijacks.

Registrars are required to respond I believe it's within a certain number of hours but, you know, it - I think the policy does state, you know, that doesn't necessarily mean that the registrar on the other end is going to agree with you that it is a hijacking or it's no guarantee that they will reverse the transfer.

But it is set up as an emergency sort of a red phone hotline that registrars can use in those emergencies and the other side has to pick up the phone.

Don Blumenthal: Does this have to be a named person?

James Bladel: Sorry it's an email address I should have - I used phone as an analogy but it is in fact an email address that's published in the radar database.

Don Blumenthal: Okay but is that - so it's - I guess a generic address or is it...

James Bladel: I can be an individual or a team it does specify that whoever is responding is authorized to - authorized and capable of addressing hijack issues so beyond that there's not prescription on who can answer the phone or who can answer the email.

Magaly Pazello: Don this is Magaly just adding to that because I mean this came out at a PDP that I happened to chair. I mean the idea behind the transfer emergency contact I mean it stemmed from dealing with very kind of time sensitive issues involving domain hijacks, I mean kind of scenarios where a domain would be transferred on like a Friday night to a small registrar who might not be working over that weekend.

And that would, you know, take amazon.com or something similar offline for, you know, 72 hours. I mean there is a precedent there but the key thing of course is that it's - the contact isn't published to the world and it's available to other ICANN registrars and it's available to ICANN staff and compliance, thanks.

Don Blumenthal: Okay, you know, I think we are remarkably close to being able to put something together here but it's 11 o'clock so I'm not going to say what it is. We'll send something out the next few days, I suspect that we'll spend a little bit of time on D next week when I again will be someplace else but I would expect we'll move on even past that.

Appreciate your time and your consideration and keeping things civil this has potential to not be but I think it was a - I hope it was a good discussion and we will continue on, thanks for your time.

Man: Thanks.

Man: Thank you.

Woman: Thank you Don, thank you everybody.

Man: Bye.

END