

**ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 02 September 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 02 September 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-20140902-en.mp3>

On page:

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

Attendees:

Steve Metalitz - IPC
Graeme Bunton – RrSG
Griffin Barnett – IPC
Tatiana Khramtsova – RrSG
Frank Michlick – Individual
Volker Greimann-RrSG
Don Blumenthal – RySG
David Heasley-IPC
Jim Bikoff-IPC
Alex Deacon – IPC
Chris Pelling – RrSG
Tobias Sattler – RrSG
Todd Williams – IPC
Kathy Kleiman – NCSG
Phil Corwin – BC
Justin Macy - BC
Susan Kawaguchi – BC
Kristina Rosette – IPC
Darcy Southwell – RrSG
Amr Elsadr – NCUC
Paul McGrady – IPC
Libby Baney – BC
Phil Marano – IPC
Holly Raiche – ALAC
Sarah Wyld – RrSG
Christian Dawson – ISPCP
Susan Prosser – RrSG
Victoria Scheckler - IPC

Apologies :

Lindsay Hamilton-Reid – RrSG
Stephanie Perrin – NCSG
Michele Neylon – RrSG
Carlton Samuels – At-Large
Sean McInerney – no SOI

ICANN staff:

Mary Wong
Marika Konings
Amy Bivins
Maryam Bakoshi
Nathalie Peregrine

Coordinator: Good morning, good afternoon and please go ahead. This call is now being recording.

Nathalie Peregrine: Thank you very much, (Francesca). Good morning, good afternoon, good evening everybody, and welcome to the PPSAI Working Group call on the 2nd of September, 2014.

On the call today we have Tatyana Khramtsova, Graeme Bunton, Holly Raiche, Steve Metalitz, Keith Kupferschmid, Tobias Sattler, Justin Macy, Sarah Wyld, Alex Deacon, Darcy Southwell, Todd Williams, Volker Greimann, Chris Pelling, David Heasley, Frank Mishlick, Phil Corwin, Christian Dawson, Susan Prosser and Kristina Rosette.

We have apologies from Stephanie Perrin, (Shehan McCanahi), Carlton Samuels, Michele Neylon, Lindsay Hamilton-Reid and Don Blumenthal. And from staff we have Marika Konings, Mary Wong, Amy Bivins, (Marion Bacushi) and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you ever so much and over to you, Steve.

Steve Metalitz: Thank you very much, Nathalie. This is Steve Metalitz for the transcript. And thanks to all for turning out. This is a very good turnout especially considering it's right after a holiday weekend -- for North Americans anyway -- so thanks all for joining us today.

As Mary mentioned, I'm chairing in Don's absence today so why don't we just get started. Our first item of course, as always, is to ask whether anyone has any updates to their Statement of Interest that they want to share with the group in addition to of course making changes on the Statement of Interest form. So let me just ask if there are any updates that people want to share?

Okay, if not we'll continue with the next agenda item. Before we do that let me just make a couple of announcements about some of our future sessions.

We're going to schedule, in the next few weeks -- we don't have a date yet -- a block of time for ICANN staff to - who will be working on the actual framework for the privacy proxy service accreditation process to meet with us and get their impressions and any questions they have or we might have of them that might, as far as the mechanics of the accreditation process and the framework that will be used that might influence our work. So we will get that set up in the next few weeks.

And we'll also have joining us at some point in the next few weeks the facilitator for our face to face meeting October 10 in Los Angeles so that he can get - his name is - I think (David Marvin), and so he can get a flavor for the discussion within this working group; so watch for that in the next few weeks.

I don't think there are any other announcements that we need to make unless Graeme has any or the staff. So let me - let us turn then to continuing our discussions on Category F of our list of questions or our grouping of questions which has to do with reveal or, as we're now discussing it,

disclosure and publication of the contact details of customers of privacy and proxy services.

So yesterday Mary circulated a document that's up on the screen now kind of representing a new grouping of the Category F questions. And since this was a pretty extensive document, although it's mostly organizational, not new - not new content in it, I thought it would probably make sense for Mary to walk us through it and explain what the purpose of this document and how it will - how it can help provide a framework for our discussions going forward .

Someone is on - is typing and does not have their mic on mute. Please put your mic on mute.

So, Mary, let me ask you to walk us through this document.

Mary Wong: Thank you, Steve. This is Mary for the transcript from ICANN staff. And hello everybody. And as Steve mentioned, this document is not new. The genesis of this document really is the last couple of discussions this group has had.

And we noted last week specifically that with the number of questions in this Category F, there are inevitably going to be some overlap. And it was clear in the last couple of weeks' discussion that those overlaps have already occurred.

Additionally, the sub questions that this working group had agreed on back in February, while pretty detailed and going beyond what some of the discussions have covered, it seemed to us that a couple of the points that folks had been raising might also have been thoughts they had earlier on in February.

So the idea was to consolidate all the existing nine questions in Category F into a single document along with two things, one is a listing of all the agreed sub questions to, A, you know, jog folks' memories if there were issues that

you or your group had in mind when you were answering those questions a few months ago; and, B, obviously to facilitate the discussion.

So, for example, it may be that some of these sub questions you may feel are either unnecessary at this point or have already been answered or can be subsumed somewhere else.

The other thing that we added to this document is the origin of each of those questions again, because I think there were some queries that came up in the last few weeks. And so you see that each of these charter questions have their origin mostly either in the recommendations of the Whois Review Team or an earlier drafting team that the GNSO and the ALAC constituted.

So while we won't need to go back to the document we thought that it might be helpful again for you or your group if you needed to see where that recommendation - or sorry, where that question came from and the context behind that question that would help guide further discussion.

So, Steve, I don't know if you would like me to go through each of those questions. I guess I can stop here and just note, as I did in the email, that we therefore grouped these questions, their origin, and the agreed sub questions into several categories.

The general one you see here, the first question in this category we started with, and that we have a tentative conclusion for the next few are divided into disclosure and publication and even within disclosure we have attempted to sub divide that into disclosure to law enforcement authorities and disclosure to other third parties because this seemed to be something that came up in the last discussion as well.

So, Steve, I'll hand that back over to you unless you or others have questions or follow up.

Steve Metalitz: Okay, Mary, thank you very much. I think that is helpful. And you'll see that, as Mary just related, if you look at the Roman Numerals, 1 is the general question, 2 is about disclosure to third party requesters other than law enforcement, 3 is law - disclosure to law enforcement, 4 is the publication question and 5 is the question, again, closely related to publication about termination of the service.

So think that's, hopefully a helpful way of organizing these questions and guiding our discussion going forward. Are there any questions about this document?

Okay, well in that case let's get back into the substance of the discussion here. I think, as I recall, during the last call, the - on behalf of the Intellectual Property Constituency, I walked through some of the tentative responses, the provisional responses that we made to these questions that were in our charter and we had some discussion based on that.

And there may have been other folks who would like to similarly jump in on some of those points. And certainly the floor is open if there are any other organizations or individuals that submitted provisional responses they're welcome to come in at this point with any clarification or amendment of those or explanation of those.

Kathy Kleinman: Steve, this is Kathy. I'm not on the Adobe Connect.

Steve Metalitz: Oh go ahead, Kathy.

Kathy Kleinman: Okay, I just wanted to - I also walked everybody through the NCSG response as well so - and I think we had some modifications to that; just expansions in light of some of the issues that have been raised under Reveal. So, you know, lots more nuances that I think Mary did a good job capturing in the document.

Steve Metalitz: Okay. Thank you. Well, are there any other questions at this point? Okay well then in terms of the general question the baseline minimum standardized reveal processes, we've already talked about making the distinction between disclosure and publication and I think that's pretty well understood.

And we've had some discussion about what would trigger a disclosure in terms of a complaint from a third party about abusive activity. And, as I recall, there was some discussion last time about, you know, what would be needed - what would be the requirements for that complaint in order to trigger the reveal.

And the IPC position was if you had a complaint that on its face alleged that this abusive activity was occurring with respect to a domain name that had been registered through a privacy and proxy service provider, that that should be enough to trigger the reveal process, excuse me, the disclosure process, but that also there could be some notice to the customer and some opportunity for the customer to object to that.

Now one other approach to that would be that there would be some type of screening process or evaluation process by the provider before - even if a complaint came in that alleged some type of abuse and that that evaluation would have to take place before the disclosure process, including notice to the customer would be triggered.

Obviously I don't think we've reached consensus on that question yet but I wonder if there are any views on whether if a complaint comes in from a third party that alleges abusive activities, and we have our indicative list of abusive activities, whether that should be sufficient to trigger some action toward disclosure or whether there should be some evaluation process by the provider before that occurs.

So let me just tee up the question that way and see if people have thoughts one way or the other.

Kathy Kleinman: This is Kathy. I'd like to join the queue.

Steve Metalitz: Kathy, you - at the moment you are the queue...

((Crosstalk))

Kathy Kleinman: Okay.

Steve Metalitz: ...in Adobe chat feel free to raise your hands and we'll get you in the queue but Kathy is kicking it off. Go ahead.

Kathy Kleinman: Terrific. Well thanks. The NCSG discussed - in our comments we discussed due process and that - and I'd love to hear from the proxy privacy providers because we understand there's an evaluation now by proxy privacy service providers particularly about whether the allegation is something that is illegal within their boundaries.

So I want to raise several questions here, not answers but more questions, which is, one, do we care what the allegation is about? So third party coming in and alleging an issue related to the domain name, that's one category so trademark infringement.

Another would be alleging that there is content on the Web site they don't like. Another is alleging that they're part of a divorce proceeding and they want to know where their spouse is - spouse who may purposefully not be visible.

And then the further question, is it actually an activity that's illegal in the country of the registrar, registry, registrant? Because we know, you know, there's just a lot of political activity going on.

I also wanted to raise one that wasn't on the list yet, and I'd love for Mary to add it, which is in my experience I've actually seen a lot of allegations that actually come up - boil down to different kind of anticompetitive activity. So, you know, somebody new comes out -- a new competitor comes out and some of the purpose of reveal is to find out where they are so you can hit them over the head especially small businesses.

And so just how do we evaluate - how do we help the proxy privacy service providers choose the path of evaluation that they would like before there's a reveal and that's consistent with their own laws? Thanks, Steve.

Steve Metalitz: Thank you. See if there's anybody else in the queue. I don't see anyone at this point.

((Crosstalk))

Steve Metalitz: Oh, excuse me, I see Holly. So, Holly, why don't you go ahead, and others if you're in the chat please raise your hand or otherwise just speak up. Holly, please go ahead.

Holly Raiche: Thank you. It's Holly Raiche for the transcript records. I would probably add to Kathy some of - it's really questions in terms of from the registrars themselves how difficult is it to actually screen, how automated is the process now? And how difficult would it be to evaluate if something - a genuine complaint of whatever nature -- and Kathy, thank you for listing those -- how do you tell that from something that may be harassing?

I'm, you know, to me there's some very, very difficult questions particularly since you may have the complainant from one jurisdiction and the actual privacy proxy server in another jurisdiction and it may actually be handled in a third jurisdiction.

So I think this is a really difficult question. I'd be really interested to know - say how Graeme or Volker actually handles these issues. And I think we probably have to understand how it's handled and how difficult it will be before we can come up with an answer. Thank you.

Steve Metalitz: Okay, thank you Holly. Let me see if there are any other hands up.

Holly Raiche: Graeme had his hand up.

Steve Metalitz: I see Graeme has his hand up.

Graeme Bunton: Yes, there we go.

((Crosstalk))

Steve Metalitz: So, Graeme, go ahead.

Graeme Bunton: Sure. I'll just respond - sorry, this is Graeme Bunton for the transcript. Let me just respond to Holly's questions there. No, we have a compliance department and our head of compliance has been operating our service or, you know, increase into the privacy and proxy service now for 10 years so he's got - maybe not quite that long but a very long time, let's go with a long time.

And has considerable expertise and experience and so it really is -- for us anyway -- ensuring that we have someone who knows what's going on, knows the type of request we get and is smart and capable enough to look at the complaint, look at the domain and what it's being used for and decide if it is, you know, a content issue, which we shouldn't have anything to do with, if it is a legitimate issue with the domain, if it's harassing or not.

Mercifully I think we get very few requests that are, I would say, sort of inappropriate in nature in that they're used to, you know, squash free speech

or something like that or they're a frivolous complaint. But it does happen from time to time and for us it really relies on the expertise of our people in compliance.

Holly Raiche: Thank you.

Steve Metalitz: Thanks, Graeme. So if I could just - this Steve Metalitz again. So in other words your compliance person looks at every request that comes in for a reveal or for a disclosure and then...

Graeme Bunton: Yes.

Steve Metalitz: ...using their expertse...

Graeme Bunton: That's coming to our...

Steve Metalitz: Yes.

Graeme Bunton: Yes, we do that all by hand and there is a lot.

Steve Metalitz: Okay. All right, thank you. I see Volker has his hand up so Volker, please go ahead.

Volker Greimann: Thanks, Steve. Volker Greimann speaking for the listeners. Yes, for us it's mainly the same thing, there is no way to automate these kinds of requests. And we have to look at them, look at the merits of the request. And in most cases we reach out to the registrant and try to figure out more on the background of the complaint and if there is no reason that can be provided and we see that there is a legitimate request then we provide the data in some cases.

In more cases we just refuse the request because we do not see a legitimate request. But everything is looked at manually by human beings who have to be paid.

Steve Metalitz: Okay. Thank you. Are there any other providers who want to weigh in on this?

Graeme Bunton: Sorry, this is Graeme. Briefly, I think we're...

Steve Metalitz: Yes.

Graeme Bunton: ...we're low on providers today.

Steve Metalitz: Perhaps a bit but I see Chris's hand is up so, Chris, go ahead.

Chris Pelling: Good afternoon, all. Chris Pelling for the transcript. Essentially we're the same really as Graeme and Volker. Anything coming in to our abuse desk or along the lines of notices, et cetera, it's a totally manual process, there's no automation at all because you can't automate it.

With regards to revealing that (unintelligible) is tricky. We discussed it with the complaineer -- i.e. the person sending us the request. If we deem it to be specifically to do with content then we really do not get involved. We don't do any hosting, we never had done and we'll never host actual Web sites. So from our point of view it comes down purely to what the domain name is.

If it's something to do with a domain name that obviously - that's, sorry, it's just, 100% rogue from the perspective of - pick something out of the hat that's a hot topic these days - child pornography - then it makes our purpose exceedingly simple. But, you know, it's somebody who looks at a physical request and then deals with that physical request on its merits. That's about it.

Steve Metalitz: Okay. Thank you. Any other insights from providers at this point? Okay, well what I'm hearing then, if I can sum this up, is this is a manual process as it is played out today. Disclosure is a manual process. It often or sometimes anyway, involves some dialogue with the - either the complainant, which I think Chris brought up, or with the registrant, the customer, which Volker brought up. Is that - did I catch that correctly that you might have contact with either or both of those?

Volker has his hand up so perhaps he can correct me.

Volker Greimann: Yes, that's absolutely correct because as a provider we do not know what might be behind this; the complaint may be trumped up just for other purposes and in such cases the registrant is the only person that would be able to tell us.

So we reach out to the complainant, show them the complaint that we received and if he can provide background that would allow us to reconsider if we should provide this address or not then we will take that into account - into our deliberations and we'll of course also communicate with the complainant in case we have made a decision either way.

Steve Metalitz: Thank you. Okay, and then, again, if I could just follow up with any of you, so as you mentioned, Volker, if you - presumably if you decide not to disclose then you will tell the complainant that and do you give them an explanation or provide any recourse for them or just - or would you simply say no we're not going to disclose what you've asked for? This could be to Volker, he has his hand up or any of the others feel free to join in. I see Chris after Volker.

Volker Greimann: The minimum that we tell them is that we will not disclose the information. We usually provide more information but it's kind of a case by case decision because in case there's, for example, a case of spousal abuse and that's given as the reason, we may not - we may not include that in our reasoning but give some more vague reasoning because we do not want to get involved

in that dispute or we do not want to provide the complainant more hints than needed to make a conclusion out of that.

So it really depends on the situation and what we are getting back from the registrant, at least that's our case how we do this. But in most cases we tell them yes, we will not give you the information because X or we will give you the information - well if we give them the information we usually don't provide a reason for that.

Steve Metalitz: Okay. Chris, go ahead.

Chris Pelling: Very similar to Volker. If it's something we won't determine, i.e., we look at the merits of the case, we don't believe that there is a reason to provide information to the complainee then what we give them as an alternative option, we would also follow, for instance, UK law in respect to if we get a request from the police in the UK then we will give and relay the information to the police (unintelligible) if they wish to then relay that to the complainee.

We give that as an option and we tell the actual complainee that is the only option they would then have going forward.

Steve Metalitz: Okay. Thank you, Chris. Before going to Holly I just want to point out Libby's comment in the chat and this is I think something we should turn to next about legitimate requests and evaluating on its merits so it's really a question of what is the standard that's being used here. Holly, I think you hand your hand up. Did you...

Holly Raiche: Thank you, yes, it's Holly for the transcript record. And I was just going to ask Libby's question, is there something - from what I'm hearing it may be very hard to categorize the situations in which a decision to disclose or not may be made. But are there some, I don't know, baseline things that can come out of the discussion tonight or - tonight or whenever.

And I think - I look at Volker's comment, difficult, and - from what I'm hearing it will be difficult. I'm just wondering if there's a baseline that we can work with or some kind of categories that may help this group understand even just examples would be useful. Thank you, Steve.

Steve Metalitz: Thank you, Holly. Let me follow up on that. I don't see any hands up at the moment but I would - so Libby's point and Holly's is that there is some standard that's being applied now. Is there a way to make that more concrete as what the baseline is?

And then it seems like the job of this group is to consider whether there should be a kind of codified or stated standard that should be applied as a minimum if you wish to be accredited as a provider in this space. So that seems to be part of our charge. And obviously it would be helpful if we knew what the - if we could articulate what the baseline standard is.

I'm not necessarily asking people to do that right now on this call but if I could ask the providers to think about how they would articulate the standards that they are now using. And I'll just give one example, as we look through some of the terms of service that were compiled, a lot of them say that if you're violating our terms of - if you, the customer, are violating our terms of service, we will in fact publish your data; we will kick you out of the program if you will.

Those terms of service, again, they vary but that certainly would be one standard that could be used in the disclosure environment, I suppose, as well as in the publication environment. I don't know if that's a useful standard or but it is a standard that seems to appear in some of the terms and conditions that have been posted or that have been compiled - that have been compiled by the staff.

Let me just see if there are any other people wishing to be heard on this question. Can't get into a set of rules, Chris Pelling says in the chat, and that if that's the case then we have a problem that we have to figure out how to

deal with here in this group since we were charged for saying what are the baseline minimum standard reveal processes and that could include whether there should be a common standard as well.

Okay, so I've thrown out there the idea of violations of terms of service. Again, those are phrased somewhat differently. Could I also come back to a - and try to unpack another question, another line, if you will, that's been raised by a couple of the comments from the providers, which is whether the complaint involves content.

So content could be the content that appears - I assume the references, for example, it may not be the only example, the content that appears on a Web site to which the domain name resolves. We've heard about child pornography, which is content, and how that might be treated.

We - in our indicative list of abusive behaviors that we've been working with we have examples like malware that's available for downloading from a site, that would be content I assume.

We have pirate material, unauthorized copyrighted material that's available on a site; that would be content. We would have sale of counterfeit goods or services on a site; that - is that content? I guess I'm just trying to draw out here what the dividing line is that some of the providers have mentioned between content and non-content claims.

Volker has his hand up so, Volker, please go ahead.

Kathy Kleiman: And if I could join the queue too, Steve. This is Kathy.

Steve Metalitz: Okay, Kathy after Volker. Go ahead. Volker, are you with us?

Volker Greimann: Sorry, I had myself on mute. It's usually not that difficult for us to determine.

There is two kinds of complaints really that we usually get. One is registration-related and one is content-related.

And registration-related is everything that is, for example, rights holders or trying to find out the registrant for some other purpose that has nothing to do with what the domain name is doing and but rather with the registration of the domain name itself. That's domain name registration stuff and the other things are content-related stuff. So anything that's about hosting email, spam, use of the Web site is content. That's at least how we differentiate it.

Steve Metalitz: Okay. And does that - well let me just - I guess Kathy's next in the queue so, Kathy, please go ahead.

Kathy Kleiman: No, go ahead. Ask Volker the question and I'll queue up after.

Steve Metalitz: Yes, so I was just asking so is there a sharp dividing line that you would - you would disclose if it's a registration-related complaint and you would not disclose if it's a content-related complaint or is that just simply a way of defining those two categories and each one is handled on a case by case basis.

Volker Greimann: Volker Greimann speaking again. Yes, it's pretty much on a case by case basis. So we do not differentiate whether to disclose or not disclose on either if it's content-based or if it's registration based. Because in each of those cases there may be reasons why we would feel it legitimate to disclose or to withhold disclosure.

These reasons are independent of the nature of the complaint. They are mostly based on the merits of the complaint and the response of the registrant that we get.

Steve Metalitz: Okay, thank you. Kathy, go ahead.

Kathy Kleiman: Great. Thanks. I actually want to expand it maybe to three categories. And this is based on my experience when I was director of policy at dotOrg. And I was mostly dealing, of course, not with reveal but with takedown requests. And they came in largely in three areas: One was registration-related, one was content-related and one is a category that I'd expand to kind of abuse of the Web site for lack of a better term, the malware, the botnets, the pirated material especially if it had to do with malware.

That was something different. And, by the way, often the registrant didn't know especially with botnets, they have no idea what's going on. So to reveal someone based on botnets or some kind of malware that they might not know - anyway I think we've got three categories here.

And some may be suitable for reveal, some may be suitable for takedown, some may be suitable for more investigation. You know, I think one of the keys is that ability to have due process to allow the proxy privacy providers to investigate.

And I'll raise another question, Steve, which is mere allegation sufficient? Just become someone alleges there's a problem is that sufficient for reveal or should we be raising the bar a little bit?

And I'm not quite sure how to put this in but how one phrases it or how we factor it in but I think we have to which is currently there's somewhat of a trusted network so if certain parties come in and say there's malware on the site they'll probably have a, you know, if they're some of the experts in the world you respond differently than if someone you don't know comes and makes the same allegation.

So let me pose different things, more categories, whether mere allegation is sufficient and how much - whether there should be some investigation to the

party making the allegation. Should we - should proxy privacy service providers know something about that.

Steve Metalitz: Okay, thank you. All good questions here. I see Volker's hand is up. Go ahead, Volker.

Volker Greimann: Yes, thank you. Not as much to the categorization, I think abuse of the domain name registration would still fit into my content definition. But your mileage may vary, so we might want to look at that as well. But as to, how to say it, concrete evidence being necessary, it's always helpful to include evidence. And in many cases we've said without evidence you will not get anything.

So if somebody who just makes a claim then unless - when we look at the domain name we also look at the domain name for any complaint and if we see something blatantly obviously illegal then we will of course take action in accordance with our terms and conditions and that may include a reveal - an immediate reveal. But unless that's not the case then no evidence will get you nowhere.

Steve Metalitz: Thank you, Volker. This is Steve. First of all I don't see anyone in the queue but we would welcome further input from the providers or others about these issues.

Getting back to Kathy's two points, one is the definitional one. I guess it bears the question about what in my mind as well about whether the abuse category is really a subset of content in many cases but I suppose if we go by Volker's earlier response it's not providing a bright line test anyway so we're not, you know, it's not a definitive test between we will disclose or we won't disclose so it may be helpful for our analysis but it may not be determinative as to whether we have two categories.

And then Kathy raised two other questions. One was is mere allegation sufficient? And I think Volker's response is - again, describing the status quo is no, there is some investigation done. And I think that's somewhat common across what the other providers said that they look at the allegation and they may talk to the complainant, they may talk to the customer.

So I guess you could say that's some level of investigation or going beyond the mere allegation I suppose one could say again if that's a fair characterization of the status quo.

And then finally she raised the question about a trusted network of complainants. And maybe we can get into that. But I see Graeme's hand is up so, Graeme, please go ahead.

Graeme Bunton: Thanks Steve. This is Graeme for the transcript. Just going to agree there. And I think it ties back to what I was saying earlier about the sort of - our reliance on a trained and smart compliance team is that they get an allegation and we do investigate. And there's, you know, almost always a back and forth with the registrant and sometimes with the requester but it is a sort of laborious manual and experience intensive process.

Steve Metalitz: Okay thank you. Volker is back in the queue. Does anybody else want to get in the queue please raise your hand if you're in the Adobe chat or speak up if you're not. Volker, go ahead.

Volker Greimann: Thank you. Volker speaking. Just one more point that I forgot to raise earlier. There is a third category of how we react. Of course there's this - we contact the registrant or we contact the complainant for more evidence and there is the - it goes straight to the bin, which is usually the case when, for example, we have duplicates, we have duplicates over time, we have purchase inquiries, we have clearly obviously harassing communications.

In such cases we will not go through the motions, we will not provide a response; we will directly trash the request and I think rightly so.

Steve Metalitz: Okay. I see Susan Kawaguchi has her hand up. Susan, go ahead.

Susan Kawaguchi: I was just wondering, Volker, when you throw those requests right into the trash can do you respond to the requester at all?

Volker Greimann: Again, this is a pretty much case-by-case. If we have a duplicate of something that we already answered we will not respond usually; if we have repetitive complaints, we will not respond usually. If we have something that is obviously harassing the registrant we might tell the complainant that, no, we will not provide any data and please don't bother us again.

It depends on the nature of the complaint and the reason for our reaction of denial. But in most cases we will provide at least a token response to the complainant.

Susan Kawaguchi: Oh okay.

Volker Greimann: Unless it's spam or it's purchase inquiry, those are directly going to the bin.

Susan Kawaguchi: So we purchase inquiry doesn't get relayed at all?

((Crosstalk))

Susan Kawaguchi: This is reveal, sorry, I'm confusing.

Volker Greimann: Exactly. I mean, we get...

((Crosstalk))

Volker Greimann: ...reveal requests for purchase intentions and then that's not what the abuse line is for.

Susan Kawaguchi: Right. Yes, I agree.

((Crosstalk))

Volker Greimann: ...communication goes away.

Susan Kawaguchi: Right. Okay thank you.

Steve Metalitz: Okay, thank you. This is Steve again. We seem to have some audio issues on the bridge. I don't know how widespread they are but perhaps the operator could check into that. I'm just basing this on what's in the chat. Thank you, Nathalie.

Okay, are there others who want to be in the queue at this point? Do any of the providers want to - oh I'm sorry, Susan, is that a new hand?

Susan Kawaguchi: That is a new hand if nobody else has anything.

Steve Metalitz: Go ahead.

Susan Kawaguchi: I was interested in Kathy's point about knowing who the requester was and how much information the requester has to provide. I mean, currently -- in my experience -- I have to identify myself and also provide, you know, trademark registration numbers, those kind of things and attest to the fact that I have a right to represent the company and make this request.

So I was curious to know if others thought that there would be a more detailed or are we going to ask requesters to provide more information about themselves than that?

Steve Metalitz: Okay, good question and I'd welcome any responses including from providers as to what their practices are now and what information - how does the information that the requester provides about itself how does that influence your decision on whether or not to disclose so just in terms of the status quo today or also on whether this would be something that ought to factor into our - into whatever standards we come up with here.

Based on what Graeme is saying in the chat we may have to do for that question but I would encourage if there are any providers who wish to weigh in on it now that would be great but if not perhaps they could do a little due diligence and get back to us later on what they require as far as information from the requester.

Graeme Bunton: If I can jump in briefly, Steve?

Steve Metalitz: Yes, Graeme, go ahead.

Graeme Bunton: This is Graeme for the transcript. Specifically for a new requester I'm going to have to go back to compliance and ask them how they do that and how they approach that and verify people.

I think Kathy was touching on this briefly as well but there is a - sort of a network of compliance teams at the providers that I think they interact with each other and they have a fair amount of personal trust with each other and then also trusted networks of organizations like Stop Malware where, you know, they've been operating in the space for a long time, you know, if they send a notification or they get in contact with compliance usually directly, you know, will respond to those requests differently because we have that relationship.

Their information is usually the highest quality and then we can act a bit differently because that relationship has been built. But how we codify something like that would be quite a challenge. Thanks.

Steve Metalitz: Okay. Thank you, that's helpful as far as the current practices are concerned. Volker points out in the chat that anonymous complaints gets tossed so if there is zero information about the complainant then that is obviously a factor against - a conclusive factor against disclosure from his point of view.

Okay let me just ask if there are any others who wish to weigh in on this question?

Jim Bikoff: Steve, it's Jim Bikoff.

Steve Metalitz: Jim, please go ahead.

Jim Bikoff: I was just going to go back to something Susan said and asked if the providers will reveal when they get an allegation of trademark or copyright infringement where the requester is the registrant or the attorney for the registrant and the details are provided as to the registrations that are being infringed, whether there are treaties that are being violated, etcetera.

If the information is provided by the trademark or copyright owner in this fashion, what is the practice of the providers?

Steve Metalitz: Jim, before we open that up just to clarify comment your question when you say the registrant you mean the trademark registrant? You're not talking about domain registrant.

Jim Bikoff: Yes.

Steve Metalitz: Okay.

Jim Bikoff: Yes.

Steve Metalitz: Does anybody want to respond to Jim's question? Okay, if not then we'll ask the providers if they could look into that also and see if they can come back with a response before the next call. Obviously we can continue this discussion on the list.

I see Graeme has his hand up so Graeme, go ahead please.

Graeme Bunton: Just to respond to Jim briefly. I think, and again I would have to clarify that I think that's a pretty clear-cut case for a UDRP in which case, as part of our terms of service, then we would probably disclose. But that would be for a - where it's the domain that is infringing on the trademark, that's UDRP. If it's content on the Web site different story.

Steve Metalitz: Okay, Chris, you're next.

Chris Pelling: Yes, Chris for the transcript. Similar to really Graeme, if it comes down - if a domain name itself, not the content that's on the Web site, as any form of trademark, letters words whichever, then normally we'd (unintelligible) straight for UDRP. It wouldn't be a case of reveal to the complainee.

We would certainly push the complainee's information to the registrant because obviously at some point they're going to hear about it anyway, and ask the registrant to contact the complainee because if they are obviously using (unintelligible) trademark that in the country that the trademark is valid, then certainly it comes down to those two talking to each other to resolve it.

And, you know, should no resolution come from that then the goes down the UDRP route which is already in ICANN (IA) terms.

Steve Metalitz: Okay thank you, Chris. Well let me just see if I can - this is Steve Metalitz again. So if the complaint like that comes in you tell the registrant, in other words the service provider's customer. And then I understand that if any UDRP complaint is filed then there's other steps that happen. But I think Jim's

question was - at least I think Jim's question was in the absence of a UDRP complaint being filed how is that handled? So you're...

Chris Pelling: Okay...

((Crosstalk))

Steve Metalitz: ...it sounds like you're doing a relay but then do you then do a disclosure to the complainant of the contact details of your customer?

Chris Pelling: Chris for the transcript, sorry. That comes down to where the trademark is filed. If it's a US trademark and the customer and the domain and the information is all inside Europe then there's no reveal at all. So the complaine, we will state the complaine that we have passed on and relayed the complaint to the registrant certainly. That's only, you know, respectful.

However, certainly from our point of view if it's a European trademark and it's a European customer, registrant, and it's a European complaine then although we wouldn't disclose, we would certainly urge the registrant to be cautious because obviously they are living in the same territory as the complaine, and suggest that they contact their lawyers to initiate some form of contact with the complaine because that way then it's all from a level playing ground and keeps us completely clean and out of the action as a registrar.

Steve Metalitz: Okay so...

((Crosstalk))

Chris Pelling: ...does it then come down to UDRP.

Steve Metalitz: Okay so in that case you do a relay but you don't do a reveal.

Chris Pelling: Correct.

Steve Metalitz: Or a disclose, I guess, is the term we're using. So let me just - before we get back to the queue let me just see if Jim has any further follow-up on that because I think that's - Chris has answered his question.

Jim Bikoff: Well it sounds to me that - it sounds to me like...

Steve Metalitz: Jim, okay.

Jim Bikoff: Yes?

Steve Metalitz: Go ahead.

Jim Bikoff: It sounds to me like the service provider in that case is really standing between his customer and let's say the trademark or copyright registrant and shielding him from the violation of law that's made clear in the cease and desist letter or whatever letter was sent. And I'm just wondering it didn't sounds to me - I thought Graeme had said that it sounded like a pretty clear-cut case that he would reveal in that situation whereas I think Chris is saying he wouldn't.

So I think there's a - it sounds to me like there's a discrepancy between those two service providers at least.

Graeme Bunton: If I can jump in and respond? This is Graeme. I wasn't saying that we would reveal; I was saying if it is a UDRP style issue we would say, file a UDRP and we will disclose.

Jim Bikoff: Oh so there wouldn't be a disclosure even if the...

Graeme Bunton: There's no automatic disclosure...

((Crosstalk))

Jim Bikoff: ...in the letter.

Graeme Bunton: If it's a content issue probably not.

Jim Bikoff: Not a content, a domain name issue.

Graeme Bunton: If it's a - then I guess I don't understand why you wouldn't then use the available process.

Jim Bikoff: Well, short of a UDRP if we want to get into contact with the registrant himself so we'd be able to understand and maybe resolve the question short of filing a UDRP. Many of our clients would prefer not to have to get into litigation where they can resolve something short of litigation.

Graeme Bunton: So I'd have to clarify with our compliance what we do in this scenario but I suspect that we may then engage in a process where we're operating as an intermediary to forward those communications along and provide that as an option.

Steve Metalitz: Okay.

Graeme Bunton: But there isn't necessarily a default reveal or a disclose.

Steve Metalitz: Okay, let's - let me turn...

Kathy Kleiman: This is Kathy, can I join the queue?

((Crosstalk))

Steve Metalitz: ...people in the queue - well we have five people in the queue and three minutes so we'll ask people to be very brief. Volker, Susan, Todd, Chris and Kathy. Volker.

Volker Greimann: Yes, just one comment there. We usually disclose when we are faced with a UDRP so when the domain registrant is faced with a UDRP the course of action in 90% of the cases is a disclosure. We have not had a case yet where we would not release based on the UDRP.

But I could imagine that there are some issues, some cases, some circumstances, where we would feel justified to stand in for the registrant and do not disclose at the time when we are faced with a UDRP even as a privacy service provider. So it's an option, we need not take it, we will usually take it.

Steve Metalitz: Susan. Susan, are you with us?

Susan Kawaguchi: Can you hear me?

Steve Metalitz: We can now.

Susan Kawaguchi: Okay, sorry. So I'm a little bit amazed that you would expect someone, you know, a business to file UDRPs against every single domain name registration that is infringing. And a lot of times our - when we're reaching out we're sometimes - sometimes those are our users and it's more of an education point. So to me this is not workable if the standard is oh you can file a UDRP, you don't need a reveal.

Steve Metalitz: Okay, thank you Susan. Let me just get to Kathy who is the last in the queue.

Kathy Kleinman: Terrific, thanks. I heard two really interesting things. One was - and I think it was Chris but I'm not sure - something I'm going to characterize as a high level relay. It sounds like under certain circumstances he relays information

from attorneys with some kind of caution or additional message to the registrant about being cautious or getting their own attorney.

I'm going to call that a high level relay for right now. And that's interesting that under certain circumstances the relay might be accompanied by some - by additional information. So that's an interesting idea.

And also I'm hearing different things about trademarks and copyrights even though they're intellectual property large as is patents. For our purposes we may want to treat them differently because trademarks, you know, run to the domain name themselves and copyright is so much more complicated because the allegations run to the content on the Web site. There's lots and lots of - there's fair use issues with both but they're very extensive with copyright.

And so I'd like to see us separate trademark and copyright. We may have to deal with them separately. Thanks, Steve. And thank you for chairing the session.

Steve Metalitz: Okay thank you, Kathy. I'll just, before we wrap up, because on that point I would agree that they're different and among other differences of course a lot of these jurisdictional questions that are raised about trademark don't exist in copyright because of requirement for national treatment involved.

The fact that copyrighted work originates in one country may be quite irrelevant to (unintelligible) jurisdictional question. Almost every country in the world is obligated to protect those copyrights.

So let's - I think we're going to have to wrap it up here because it's 11 o'clock. I think we've had - or it's top of the hour. I think we've had a good discussion. I was going to try to sum it up but it probably is not really time to do that but I think the we have made a little progress today. And hopefully on the list we can move this along further.

And I'll note there were a couple of areas where we asked the providers for further information and asked them to go back and look into something. I really do want to ask - to thank all of them, Chris and Graeme and Volker in particular for responding to some of these questions because I think it really has moved us forward in our discussion.

So with that we'll conclude this meeting and we'll look forward to speaking with everyone again next week.

Woman: Thank you.

((Crosstalk))

Mary Wong: Thank you, Chris.

Volker Greimann: Thank you, until next week.

((Crosstalk))

Nathalie Peregrine: And thank you very much, (Francesca), you may now stop the recordings.
Have a good day.

END