

ICANN Transcription Privacy and Proxy Services Accreditation Issues PDP WG Tuesday 09 December 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 09 December 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-20141209-en.mp3> On page: <http://gnso.icann.org/calendar/#dec>

Attendees:

Steve Metalitz - IPC
Graeme Bunton – RrSG
Frank Michlick – Individual
Chris Pelling – RrSG
Justin Macy - BC
Susan Kawaguchi – BC
Kristina Rosette – IPC
Val Sherman – IPC
Volker Greimann - RrSG
Theo Geurts - RrSG
Stephanie Perrin - NCSG
James Bladel – RrSG
Griffin Barnett – IPC
Alex Deacon – IPC
Kathy Kleiman – NCSG
Paul McGrady – IPC
Osvaldo Novoa – ISPCP
Phil Corwin – BC
Sarah Wyld – RrSG
Vicky Scheckler – IPC
Kiran Malancharuvil – IPC
Holly Raiche – ALAC
Christian Dawson-ISPCP
Carlton Samuels – ALAC
Michele Neylon – RrSG
Don Blumenthal – RySG
Dick Leaning – no soi
Phil Marano - IPC

Apologies :

Lindsay Hamilton-Reid- RrSG
Darcy Southwell – RrSG

ICANN staff:

Marika Konings
Glen de Saint Gery
Nathalie Peregrine

Woman: Thanks very much, (Andre). Good morning, good afternoon, and good evening everybody and welcome to the PPSAI Working Group call on the 9th of December, 2014. On the call today, we have (Beth Weebing), Steve Metalitz, Holly Raiche, Alex Deacon, Graeme Bunton, (Teal Gip), Sarah Wyld, James Bladel, Michele Neylon, Justin Macy, Griffin Barnett, (Asvalda Nezoa), Val Sherman, Chris Pelling, Kathy Kleiman, and Phil Corwin.

Don Blumenthal will be joining us shortly. We have a seasoned apology from (Dr. Sodwell) and tentative apologies from (Lindsay). From staff - we have (Mickey Kenning) 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 and hello to everyone. I guess we can start by asking if anyone has any updates to their statement of interest that they want to bring forward. If not, you can see the agenda on the screen if you're on Adobe. It's - we're going to start with trying to finish up on Category E, which is relay.

And then we've got Category G, which is termination. So that's the agenda that's before us.

So, on your screen, I think you will see Category E. And if I'm not mistaken, Don had had some suggestions that are down on the second page of the document. Again, just to put this in context, we've - I think we've done most of E already; we've got preliminary conclusions, we have our perennial issue of what should happen or what should the obligations be when electronic communication is not possible - electronic forwarding, I should say, or relaying of a request - an inquiry is not possible.

And I think you can see, on the screen, some suggestions from Don. And I think in the - on the right-hand column, you see his analysis of the open issues. That's under Category E, remaining questions. So I'd ask folks to look at the two bullets on the second page, which attempt to formulate what is the circumstance that we're talking about - a timely affirmative notification or a persistent failure of delivery.

And see if there's any comments first about those wording changes that are reflected on the screen. Okay. Hearing none...

Man: I see a hand.

Steve Metalitz: I'm sorry, there's a hand from James.

Man: There's a...

Steve Metalitz: Go ahead, James.

James Bladel: Hi, Steve; James speaking, for the transcript. So, you know, overall, I think this is progress. I just can't shake the feeling that perhaps we're all overcomplicating this a little bit. I think that there's angst on all sides of the equation.

I think, from a provider perspective, we certainly don't want to have to regurgitate months and months of e-mail logs to ICANN compliance to track down the same goal message -- delivery failure. And I think on the other side, there was - there's certainly some desire to have some reliability in the process that a provider is going to make it good, safe, and a reasonable and best commercial efforts to deliver these communications.

So I - is there any way we can collapse the bullet points on this page and then the previous page into something that just encapsulates that idea that, you know - that we understand that e-mail or, you know, other communication

channels can be unreliable, but that providers will make a good faith effort to deliver them and - you know, I just feel like we're getting very microscopic. And I don't know. I feel like maybe we need to pull back here and just look at what we want to occur. Thanks.

Steve Metalitz: Thank you, James. Other comments on this - should we just throw this out and say service providers, do your best?

James Bladel: Well, I - sorry, Steve, to jump back in, I wasn't saying, you know, just do your best. I - you know, I feel like there should be some guidelines here, but I just feel like the more we try to draw boxes around this, the smaller and smaller the boxes get. And I think that's where we start to run into trouble with definitions and things like that.

Steve Metalitz: Okay. Thank you. Do you have any - a wording change to suggest here or would you just suggest getting rid of these bullets?

James Bladel: So, you know, off the cusp, I would probably want to collapse the entire thing into, you know, something along the lines of a single paragraph that complaints received from outside parties, complaints of abuse or allegations of abuse from - you know, would be relayed promptly - and we can put some, you know, timeframes around that that would be reasonable - and that delivery failures of those communications would be reported back again, promptly to the complaining party.

And we could say something - we could add something along the lines of delivery failures that - you know, that the provider becomes aware of. Because I think that one of the concerns that providers have that I heard on the last call was a whole bunch of failure conditions that could happen that we wouldn't be aware of. And they certainly don't want to be on the hook for something that they don't have knowledge of.

So I'm just wondering if - and again, I don't - if I'm going against the grain here and the group wants to continue in the direction we are, that's fine. I just - it felt like we were at a bit of an end path and so, I just was trying to offer some - you know, some way out.

Don Blumenthal: Steve, I'm on the call if you want to - I can let you off the hook.

Steve Metalitz: Okay. Don, I'm happy to turn the gavel over to you.

Don Blumenthal: Okay. Sorry for being late. I'm at the ICANN offices in D.C. and it took 25 minutes to get 10 blocks in a cab. I'm getting a reminder of why we left Washington a few years ago.

Okay. I caught a bit of - I think I've got a good chunk of what James was saying there. I guess where I'm not clear is exactly which part is complicating the process here? We just got, I think, a few small pieces to still iron out - or am I missing something? Or did I not tune in early enough?

James Bladel: Was that question directed at me, Don, or...

Don Blumenthal: Yes, I'm sorry. I should've said that.

James Bladel: Okay. So, you know, it's just a general sense that I thought that from a - and I may be out-of-date on this issue - is that from the e-mail thread previous weeks, it felt like we were just kind of going down a number of rabbit holes on things like what is a hard bounce versus a soft bounce and which ones are going to be - how soon can you be aware that one of the two has occurred and how things should be treated differently.

And it just felt like we were getting very deep into the weeds on the communication failure scenarios. So I was just offering a way to pull back and look, again, at the macro level and the concerns of all the interested parties

and see if we can drive at something that was - that would sort of address the overarching problems.

Don Blumenthal: Okay...

James Bladel: And if I'm going, you know, out-of-school on that, that's fine or the issue could pass me by. That's fine as well. I just - I was just trying to find us a way out of the weeds.

Don Blumenthal: Okay. That's helpful. I had the same feeling about a couple of e-mail threads. So you just focus on the language that we've got in front of us, you know, the amendments that I made tried to just barrel by those and just focus in on the issue of - you know, the issue of affirmative - trying to get away from the word bounce at all. And again, trying to get out the - some of the maze of the e-mail threads.

My screen is brutally small. Steve? I think that's the name in front of me.

Steve Metalitz: Yes, thanks. I'm fine with (James)' formulation as (Mary) has transcribed it for the first bullet. I think it basically says the same thing but I - in - more concisely, so I'm fine with that. But then there comes the second bullet. So you tell the requestor, hey, we've had this delivery failure of the - of the, you know, request you sent - the communication you sent, then what?

And what we have on the screen is that you have to provide some further form of notice but I don't know whether - James, what your reaction is to that. But I think that kind of goes - you know, what you've proposed kind of leaves things hanging that, all right, you've told the requestor, hey, we've been unable to deliver your message. Is that the end of it or should there be any further responsibility? Thanks.

Don Blumenthal: James - or is that...

((Crosstalk))

James Bladel: Yes, so just to - well, I didn't have a moment to respond to Steve. But, you know, one of the things that I was just going to put out there is when we throw things into the pile, like, you know, hard bounce, soft bounce, and affirmative response and things like that, the challenge, I think, from a service provider perspective is that ICANN is going to take these tests - or let's say not fully-based definitions or perhaps ambiguous terms, and they are going to define them for us.

And I think that's where maybe some of the angst is coming from - from providers, is that when we go to contract with some of these terms is that they start to look like fill in the blank exercises and the compliance does their best. You know, I'm not blaming them. But then they come away with very different interpretations of what the intentions of the work group were.

So that's the other reason why I think we should bend the curve towards simplifying wherever we can. As to Steve's question, you know, I admit I don't have an answer. What happens when - you know, when someone refuses to respond?

Do they have the right to refuse to engage in communications? And if so, what are the providers' obligations and what are the options for the complaining party from that point on? I - I'm starting to wonder if that is such a fundamental point that it doesn't belong in the relay mechanism anymore, that it really almost warrants its own - you know, its own question, which is, you know - is silence - do people have the right to remain silent or is that an indication that they're not operating in good faith either?

I don't - you know, I don't have an answer for you, Steve. Sorry.

Steve Metalitz: Well...

Don Blumenthal: Oh, and - go ahead, Steve; I'm sorry.

Steve Metalitz: No, I'll go - I'll just get in the queue. Thanks.

Don Blumenthal: Oh okay. But just to toss this out, if it doesn't belong here, where would we move it? To termination - that's a rhetorical question to think about particularly since we're going to be talking about termination later in the call.
Paul.

Paul McGrady: I guess I got confused towards the end of what James was saying because I don't think that we were talking about - I don't think the second bullet point paragraph talks about a situation where somebody's refusing to respond to a communication. I think it's talking about what happens when there's evidence of a consistent problem with delivery.

And - I'm sorry if I'm not following the conversation correctly and, therefore, missed (James's) point. Was that - James, did you mean to respond to this paragraph or were you just raising an - sort of a broader issue?

James Bladel: I had mistakenly co-mingled the two issues so the confusion's on my end,
Paul.

Paul McGrady: Got it. Okay. Thank you.

Don Blumenthal: Kathy.

Kathy Kleiman: Hi, all. Can you hear me, Don? Good morning.

Don Blumenthal: Hello

Kathy Kleiman: Good, I'm on. Okay, I find myself agreeing with Paul - which is not surprising - that I thought that the issue here was not the failure to respond by the individual, but the delivery failure - the technical failure that we were talking

about. So of course, I believe people have the right to remain silent; I also believe they have the right to talk.

And - but that's not what I thought we were dealing with here. And, you know, we've talked about the obligation of the customer, many times, and there is no obligation to respond to a (unintelligible) and it never is, you know, from a legal perspective. But that's - I agree with Paul and now, with James, that that's not what I thought we were dealing with here.

So I'm okay with the wording changes; thank you.

Don Blumenthal: Okay, appreciate it. Steve, will you - not going to get back in queue after all.

Steve Metalitz: No, I'll pass, thanks.

Don Blumenthal: Oh, okay. So it was - let me ask. Did we kind of just wrapped up bullet one here? You know, that's my impression but I just wanted to make sure. Okay. What about bullet two, which we really didn't get to very much last week because of the, you know, delays on point one to the audio issues?

You know, we kind of moved away from the should versus must in bullet one, here. So I guess the question is do we still need to focus on it in the second bullet? I think the more substantive issues are what are we going to do about cost recovery? And if we allow for cost recovery, who's going to pay it - the requestor or the provider?

Oh, I'm sorry. Marika.

Marika Konings: Yes, this is Marika. I think it - it's still on the first but I'm just trying to confirm. So the group is happy to reward it on the lines as James has suggested and has been captured in the chat or are we staying with the languages that's currently on the screen? Just trying to confirm.

Don Blumenthal: I think what I was hearing is we're going to work with the - what James was suggesting.

Marika Konings: Okay. Thank you. All right.

Don Blumenthal: And given the screen I'm using here, it's so small I can't read it. So I guess I'm going to just ask to what extent we can use some of the re-wording there to cover bullet two? You know, it won't address cost recovery or - well, the cost recovery issues.

Any thoughts? Steve.

Steve Metalitz: This is Steve. I think this gets back to the issue I raised like ten minutes ago which is after you notify the requestor, then what? And now that we're clear that we're only talking about the repeated delivery failure circumstance and not the right to remain silent circumstance, I guess I just think there needs to be an obligation to try something different to deliver the message if you've got another way of doing it.

So that's what this bullet now says and it says the provider can select the most appropriate means. And then the third thing it says is that - is the dispute over who would bear the cost?

Don Blumenthal: Yes.

Steve Metalitz: In terms of the three points in this second bullet - and - so I'd be interested in people who think that they - there shouldn't be a requirement to offer an alternative means, people who think that the provider should not be allowed to choose what that means is, and then, the third question, you know, we could turn to. Thanks.

Don Blumenthal: Dang, I thought I was going to get away with just one question. But good point, thanks. Susan.

Susan Kawaguchi: So, it may just be my confusion but I just wanted to clarify what the definition of electronic communication - so in some ways I'm asking just to take a step back for a second. But you know, I read that as an e-mail but would this - would a web form on a proxy provider's website, if they're restricting your communication to a web form, would that be considered electronic communication also?

Don Blumenthal: You know, so I'm not...

Graeme Bunton: This is Graeme. I'm going to jump in.

Don Blumenthal: Okay.

Graeme Bunton: Sorry. I'm going to jump in quickly - I think that does count. I think we need to leave this open considerably past e-mail. At least for lots of varieties, I can imagine a reality where the primary method of interaction with your service provider is through a mobile app. You know, that's not common today, but I could certainly see it being common in the next few years.

So it could be e-mail, web forum, SMS text - you know, the API through your app, there could be lots of different electronic mediums that we just need to be flexible about, I think. Thanks.

(Beth True): (Unintelligible), it's (Beth True). And, you know, I have been on a lot of these call that I'm obviously losing track of definitions. But we should define it that way somewhere. And maybe we have and I just lost track of it, so. Okay. Thank you.

Don Blumenthal: Let me just - let me go to the queue and then sort of follow-up there. James. Oh, I thought there was James. Was there? Kathy.

James Bladel: Oh, I'm sorry; I'm sorry. I had the mute, sorry. So, James speaking for the transcript. So, following up with Susan's question and expanding on that, I think it would be helpful if we identified not only what our electronic communications, but also what would be - what would qualify as a non-electronic communication.

So I think that, you know, for example, a physical postal mail or a fax - is fax electronic or - you know, I think that's an interesting question. Telephone call, I think, probably would not be non-electronic if you - if it were automated versus a human telephone call.

So I think, it might be helpful if we put together a little grid perhaps that said, you know, these are the electronics and these are the non-electronics, and then opening - leaving the door open, as Graeme indicated for, you know, future interactions that we can't anticipate yet, like the little notifications that might come up on a mobile app or in a queue on an API.

I wanted to put something out here which is that I - I think it's going all the way back to what Steve was saying, I agree that if there had been some repeated delivery failures - not non-response, but just delivery failures of electronic communications - that there should be some mechanism to move, then, to something else. I think where we get into a sticking point here is, you know, that those - the reason providers tend to favor electronic communications is because they work on the large-scale/large-volume and they're economical at those volumes.

And I think when you get out of that situation is when - you know, when they start to bend the cost curve a little bit. So I think that that's where we probably should be looking next, is, you know, how we - how do we provide those facilities? Is it up to the provider to give some choices or some options?

And then, you know, I think that we're struggling with this idea of cost recovery only because, you know, that could be a way to nickel and dime

either a provider or a registrant with small fees (unintelligible) 5,000 cuts. So anyway, I think that - I think it would be good to define the different types of communications, and then, the path - the installation path - from electronics and non-electronics.

Don Blumenthal: Oh okay. And I'm going to just jump in because I don't want to forget. Yes, I had thought our original discussions with cost recovery weren't so much nickel and diming as having to send out, you know, 100-page documents by mail that are going to run up cost rather than when - well, when the PDFs - e-mail with PDFs hasn't received a response.

So it was more of the large cost of - individual large costs fees which you're suggesting is - could be part of it. But I'm just going back to the basics of where the discussion came up. And I'm just going to throw something out here as my confusion.

You know, if we are talking about a situation where there's an affirmative - you know, I'm going back to old language - an affirmative lack of response, how do you tell that there's an affirmative lack of response when you're dealing with things like web forums? So I'm just not sure how this whole discussion we've been having up until now plays out in any context except the - except e-mail communications.

I'm going to look at (unintelligible) and go on but I just wanted to get the question out there. (Holly).

Holly Raiche: Yes, just a question. I think - and I'm not going back to your comment, I'm following on from the chat and where - I thought we were going. I think we are assuming a rule that says that there should be one other mechanism - not defined, maybe just examples given - whereby a privacy proxy provider can contact their customers.

Now, that can be any number of things and we can leave open new technologies. But I think what we're all assuming is that there is more than an e-mail contact. And maybe we should actually - instead of starting with that assumption - actually state it somewhere.

Don Blumenthal: Okay. I see what you mean. Kathy.

Kathy Kleiman: I'm moving onto a slightly different point. So I don't want to interrupt the discussion here.

Don Blumenthal: Okay, does anybody want to pick up on what Holly suggested there? Okay, no.

Kathy Kleiman: Okay.

Don Blumenthal: Then let's move onto another point.

Kathy Kleiman: Okay, great. Thanks, Don. This is Kathy for the record. I agree with what Michele is saying in the chat - that we should talk about existing technologies and future technologies - that makes sense. My point is a little different.

As I look at the two bullet points - this is kind of a drafting point - it looks like - and Steve helped me understand this web (unintelligible) - it looks like on page two, first bullet point, it looks like we're defining the failure there. And yet, then in the second bullet point, we try to do it again. So I'm going to make the suggestion that the second bullet point focus more on cost.

So - and I'll put this wording in - but as part of - so rather than redefining affirmative persistent delivery failure and timely affirmative notification of a persistent failure and trying to copy those words or try to figure out what the difference is some day in the future, I think I would say as part of an escalation process, when the - this is the second bullet point.

As part of an escalation process, when the conditions of delivery failure have been met, the provider should/must - something like that - so we're not defining the delivery failure twice. I'll put that in the comments. Thanks.

Don Blumenthal: Okay. Sorry about that. Any reactions there? All right. I just sent a personal text to Graeme, but this might be - not the most efficient way to deal with this. (Steven), Graeme, can you pick up here? The space I've got in the offices here is just because of the setup is making it very hard to concentrate. So it might be better for me just to bow out or else the call is going to get - well I won't be able to advance anything because like I said it's hard to focus on what's being said.

Steve Metalitz: I'm happy to pick up the baton for now.

Don Blumenthal: Okay. Sorry about this. This was a good idea on paper for me to work from the ICANN offices but between delays getting here and this cubicle, well not cubicle, but the glassed in walls and stuff, it's just a problem. So I will follow up chat and transcripts and be in a better spot next week. Thanks.

Steve Metalitz: Thanks, Don. So Kathy's made a drafting suggestion that it's in the chat and I don't think there's been any objection heard to that, so. But before - I mean she - again I think there's still three questions in this second bullet. One is, is the - must the provider offer an alternative means of delivery; second, must the - should the provider get to choose what that alternative means is; and third, who bears the cost or is there any rule about who bears the cost?

So do people - is there any objection to the concept that in the circumstance that we're talking about here, the providers should offer, must offer, an alternative means of delivery. And we could list examples of what that might be, but we - I don't think we would - not be an exhaustive list. I see James has his hand up.

James Bladel: Hi, Steve. James speaking for the transcript. So just off the cuff, it sounds like the second bullet point is really three bullet points the way you laid them out there. And my answer to all three is yes there should be an alternative mechanism, yes that should be offered at the discretion of the - or I'm sorry, the service provider should be able to choose the one that's most effective, and yes there should be some means of cost recovery for implementing that service. That's just off the cuff. I think the answer is yes to all three.

Steve Metalitz: Great. Thank you. I have Susan next and then Graeme. Susan, go ahead.

Susan Kawaguchi: And I don't disagree with those three points either, but -- and Susan Kawaguchi for the record -- but what I'm wondering too is whether this also the invalid Whois report or, you know, having the registrar involved with the registration find out why the e-mail address or the electronic communication is not working, you know.

Actually James brought that up earlier in the chat, and it made me think that, you know, maybe this - that would be appropriate if you can - if we have confirmed that the electronic communication has failed then I think that should also trigger -- and I'm assuming it's an e-mail address -- or when it is an e-mail address then we should also - it should also trigger that process so that two things are happening at once.

Steve Metalitz: Thank you, Susan. Graeme?

Graeme Bunton: This is Graeme for the transcript. Building on what Susan just said, I think that's reasonable that if the...

Steve Metalitz: Graeme, are you still with us?

Graeme Bunton: Sorry, sorry, talking on mute for minutes on end.

Steve Metalitz: Go ahead.

Graeme Bunton: This is Graeme for the transcript. Just agreeing with what Susan was saying that if the e-mail - if it is an e-mail communication and that does fail, I think it's reasonable that it kicks off that process. I think if another method is available then it's reasonable to expect an escalation there. Yes, as James was saying, the provider should have the discretion to choose what method if other alternative method they have at their disposal to use. And then I also agree that cost recovery is a good idea. We see these sorts of things abused all the time so making sure that there's a little bit of friction there is always a good idea. Thanks.

Steve Metalitz: Okay. Thank you, Graeme. So James I think you're next?

James Bladel: I think Paul is ahead of me in the queue or...

Steve Metalitz: I'm sorry, you're right.

James Bladel: Is that an old hand, maybe?

Steve Metalitz: Paul, go ahead.

Paul McGrady: This is Paul McGrady for the record, and it's a brand new hand. I just again with a question regarding the registrar escalation. We're talking about the e-mail address that is in the privacy proxy servers records, not the ones that are published in the public Whois record, how does the registrar confirm or deny the functionality of the e-mail address that's not public? I guess that's - sorry, I left everybody in silence, I apologize. Should I try asking it a different way?

Steve Metalitz: Could you repeat the question, Paul? How does... Could you repeat the question, how does...

Paul McGrady: Right. So when - as Susan suggests that, and Graeme agreed, that when we have an affirmative non-delivery event that in addition to the next steps on communication, different ways of communication and who bears the cost and all that, that that would also trigger the registrars' obligation to confirm the Whois record that the e-mail address is functional.

Are we talking about confirming what's in the public Whois, are we talking about confirming what's in the privacy proxy services record regarding their customers, and if we're talking about the second, how would the registrar do that? If we're talking about the first, then no problem, right? They can just try an e-mail and when it bounces they can respond. I just want clarity on which e-mail address we're talking about.

Steve Metalitz: I assume we're not talking about the registrar doing it, we're talking about the proxy service provider doing it, but maybe I misunderstood what some of the previous speakers were talking about. Because we already had this section on preliminary conclusions...

Paul McGrady: I think that somebody and maybe I'm not understanding it correctly but I thought somebody suggested that at this point in addition to whatever the privacy proxy service is going to do in attempting to take next steps or further communication that this - that an affirmative non-delivery event would trigger the registrar's obligation to look into the incorrect e-mail address or the inoperative e-mail address issue, which I don't disagree with but I'm concerned that I just don't know how the registrar does that.

Because if they write to the registrant who's the privacy proxy service, right, that's the party that's in the Whois record, and they say is this alias e-mail address that you published in the Whois record is that functional, the privacy proxy service says yes that's functional because it's the underlying e-mail address that's not functional, and the registrar can't get to that underlying e-mail address without a disclosure of that e-mail address from the privacy proxy service for the registrar. Does that make sense?

And so, you know, I'm all for the registrar, you know, getting involved in the process at this point because we know that the communications don't work. I'm just not clear on the process once that registrar's obligation, you know, and who verifies what in terms of what's working and what's not working.

Steve Metalitz: Okay. Thank you, Paul. Let's why don't we clear this up right now? My - I assumed, and I think this is reflected on the right-hand notes, that we're talking about the privacy proxy provider trying to verify the address that it has for the customer, consistent with the preliminary conclusions that we had before that said they have a similar obligation to what a registrar has. But let me just ask Susan or Graeme, is that what you meant or were you talking about the registrar having some obligation or were you talking about the service provider having some obligation to verify?

Susan Kawaguchi: This is Susan. And I was assuming in the scenario -- and when I stated this I knew there was definitely some issues with it-- but I was assuming that the proxy provider was related to the registrar. So you almost have to have that relationship. And I also would assume that if a registrar proxy provider takes information, collects information for the Whois record and then masks it with their own, that they should validate that information just as if it was shown in the Whois without some mask of the proxy information.

So therefore if the, you know, it's been affirmatively confirmed, the electronic communications have failed, that they should take it upon themselves to check the underlying e-mail address and run it through a process similar, maybe not the same process, as the invalid Whois process. But also I think someone should be able to state in an invalid - in the current invalid Whois process that, you know, we have - the proxy provider has affirmed that the e-mail address is not working, therefore ICANN please have the registrar check this. It's not an easy system and it doesn't fit today in how the process works today, but I think it should. So that's why I suggested it.

Steve Metalitz: Okay. Graeme, what did you mean when you supported this? Were you talking about what the registrar should do or what the service provider should do?

Graeme Bunton: I was talking about the service provider, but a lot of that made me question what I was saying. It was my understanding that or I was agreeing with the fact that if the privacy and proxy discovered that their main e-mail address for that particular customer was not working then they should have to do something about it.

Steve Metalitz: Right. That's kind of what I thought, but evidently we're not clear on that. Let me just ask, we've got James in the queue. James, did you want to address this or I think you've already addressed the three questions for this bullet point, so did you want to address this point about the additional obligation that people are talking about here in the case of the persistent failure? Go ahead.

James Bladel: Yes, Steve. James speaking for the transcript. This is coincidentally very similar to Paul's thoughts in that my understanding is that this would trigger the verification of the privacy proxy provider's customer data that they have on file if there is a known delivery failure, a repeated delivery failure.

And what I was going to add, because we're all not confused enough apparently, is that if the privacy proxy I think we are in agreement that the privacy providers should have some mechanism to verify that data when it's received, when the domain name is registered or when the privacy service is engaged and that there should therefore be some equivalent process to re-verify that when it is demonstrated or reported to be inaccurate.

My struggle is how will that ever be enforceable beyond the honor system, because no one has that data, no one knows that it's accurate or inaccurate except for the privacy provider, which I know that, you know, I work for a very

good privacy proxy provider and I know we would take that responsibility very seriously, but how do we encapsulate that into this accreditation program in such a way that it's enforceable or let's say detectable when that's not occurring.

Steve Metalitz: Well I think Marika has put in the chat what we have already preliminarily decided on that question. And of course the first bullet point here actually contradicts what you just said because in this circumstance the requester would also know that there's been a persistent delivery failure. And I think you agree that they should notify the requester of that. So there's...

James Bladel: They would know...

Steve Metalitz: ...transparent...

James Bladel: I'm sorry, Steve. They would know that it was invalid. How would they know that it was - that the steps were taken to re-verify it, either at the beginning or upon this delivery failure?

Steve Metalitz: I don't know that they would. Let me turn to - we have (Stephanie) and Michele in the - (Stephanie), is your point on this question of the additional obligation regarding verification or are you commenting on this last - the bullet point here.

(Stephanie): I'm commenting on it. I raised my hand at the mention of Whois because to me in my simple way of understanding this, the Whois work is across the privacy proxy services data in there, and we are assuming that you've contacted the privacy proxy service provider. So mentioning Whois kind of - I find confusing, okay?

If however what we're really doing here is setting up one or two levels of mini Whois requirements within the ecosystem that is privacy proxy service and registration because obviously if the privacy proxy service provider is also the

registrar, that's one mini Whois ecosystem. If they're different, there's a second one. But we're basically regulating the private contract between the individual and the persons who's going to perform the requirements for them in the Whois, right?

So I just wonder, I was under the illusion that the entire requirements of the Whois is would not then be just mirrored in the private relationship with my provider. In other words, I want an effective filter not a crapshoot. Do you see what I'm getting at? So what - to insist on the same kind of timely obligations of the privacy proxy service provider is really his business if he wants to take the load of hearing from the requester and I'm not responding. How he sorts that one out and makes sure that the customer actually takes on some of the obligations of having a domain name, isn't that beyond the reach of this group?

Steve Metalitz: Okay. Thank you, (Stephanie). Let me see, Michele may have a response to that. I see his hand is up. And then Paul.

Michele Neylon: Thanks. Michele for the record. A couple of things. First off, under the 2013 and I think it was introduced in the 2009 contract, but my memory might be off, there was an obligation on the registrar to escrow the underlying data for a domain name that's using proxy privacy. I pasted that into the chat. So the registrar should have access to the underlying e-mail address.

The other thing as well is that technically speaking I'm sure many different companies may implement things differently, but if for example you send an e-mail address, an e-mail to the address that's published in public Whois, that e-mail address is probably just going to forward the e-mail that it received onto the underlying e-mail address, whatever that might be. So if it bounces, it bounces and you know there's either problem with the system that's handling the forwarding or the e-mail address on the other side. But in either case, that should trigger the Whois accuracy thing that we've been discussing on the mailing list over the last few days. Thanks.

Steve Metalitz: Okay. Thank you. Paul?

Paul McGrady: Just two quick things. This is Paul McGrady for the record. The first one just to respond quickly to (Stephanie). Again, I think we're talking about situations where there's a notice, an affirmative notice, of non-delivery as opposed to a failure to respond to a message which otherwise appears to be delivered. And so I think that that's an important distinction here in talking about these paragraphs.

And just a question for Michele. It seems like the language that you've copied into the chat, which was very helpful thank you, would apply in situations where the registrar and the privacy proxy service are related entities. What happens if they're not related entities? Does the same rule apply that the privacy proxy service has to give that, their underlying customer information, to the registrar for the registrar to then escrow with ICANN? Or is it a more complex situation where the privacy proxy service and the registrar aren't related entities?

Michele Neylon: Paul, it's Michele. Well up until now there was no - there were no written rules or strict policies around proxy and privacy, so I don't - I can't answer it categorically because, A, I'm not a lawyer and, B, I don't work for ICANN Compliance. But maybe somebody else might be able to answer. But as far as I know that the stipulation would only really have covered those that were affiliated entities, I think. So I assume then that if that existing clause kind of covers what people want it to cover then that's probably something that you might want to have a look at. And also I can't give you a 100% answer on that one, I'm afraid.

Steve Metalitz: Okay. This is Steve. I'd like to try to get us back to - we've really been talking about two parallel things here. One is - and I guess I'd like to suggest that on this issue of the additional obligation regarding re-verification that we ask the staff to take a look at whether this is covered by B2 in our preliminary

conclusions, which Marika has pasted into the chat and whether there should be a reference here, a cross reference, that says in addition, you know, the B2 process should occur or whether there is something additional. Maybe they can, after looking at it, let us know whether they think that's sufficient. And obviously if people think something additional is needed, we can deal with that then.

Turning back to the other process, which is in the second bullet point on Page 2 on the screen in front of you. I think we've heard no objection to the concept that the provider must upon request offer a further form of delivery. I think we've heard no objection to the provider having the ability to select the most appropriate means of forwarding.

And I don't know, we haven't heard on this call objection to allowing the provider to recover a cost for that. I think in our previous discussions, as reflected in the text in front of us, there was a difference of opinion on that. I guess if we agree on the second point that the provider has the ability to select any means of forwarding, if the provider also can select cost recovery, what's to prevent it from frustrating the purpose of this provision by providing a very expensive form of delivery with costs payable in advance and thereby kind of rendering this a nullity.

So I guess I'd like to ask if there are any further comments about the cost issue. You know, I guess there's really three options here. One is - and they're all set out there. One is that in selecting the more appropriate means of forwarding, they could take cost into account. Second is that they could charge a reasonable fee. And the third is that they can't charge a reasonable fee to the requester, they can charge it to the customer or they can include it as a cost of doing business as a proxy privacy service provider.

So let me just ask for any views or comments on that question of cost. I know we just have a couple of minutes. Paul, is that a new hand or an old hand? I'll assume it's a new hand.

Paul McGrady: It's new enough, Steve.

Steve Metalitz: Go ahead.

Paul McGrady: This is Paul McGrady for the record. This won't come as a surprise to anybody, but we're talking about a situation here where the non-communication is caused by the privacy proxy services customers failure to maintain an e-mail address that works, and it doesn't - my reaction to that is that doesn't seem like that's the fault of the complaining party. And if the customer chooses to not maintain an accurate e-mail address so that it can receive communications and the privacy proxy service has to take some other step, I think it's only fair that that underlying customer pays for his or her choice.

Steve Metalitz: Okay. Thank you. James?

James Bladel: Just to -- this is James speaking for the transcript -- just to kind of reiterate something that Graeme had indicated earlier, I think that because the folks that participate in ICANN and these working groups are all honorable folks with integrity, we sometimes lack the imagination of what the bad elements are capable and willing and able to achieve with something like this.

Our experience is that any system or facility that is put onto the Internet at no cost to use is immediately abused, and we can see very quickly how something like this could be used to harass individuals because of the content of a website or harass a privacy proxy service provider or even if it's only a nickel or a dime, you know, those things could be abused.

You know, I feel like that this needs to be tracked back economically to the parties that are benefiting from having this facility available. And I think that goes back to the requester. It is a cost of doing business for a privacy proxy service provider, but for protecting a valuable brand has also has costs as

doing business, and I think that this is nominal fee. It probably costs the attorney time several orders of magnitude more just to fill out the form than it would be just to deliver a post card or a letter.

So I should not be directed to the service provider who's really just a facilitator. It should not land on the doorstep of the person who may be the subject of a campaign to discredit their website. Thanks.

Steve Metalitz: Thank you. I'm going to give Paul the last word here for the 30 seconds and then we will wrap up. Paul?

Paul McGrady: Paul McGrady for the record. We have to remember though that we're talking, again and I keep saying this, I keep pointing to what we're talking about in these paragraphs, we're not talking about when someone's refusing to respond and somebody wants to press that issue and make the privacy proxy provider send a physical letter. We're talking about situations where a party has an e-mail address that's not working, right? That's what this paragraph is.

And so I'm very sensitive to what James is saying about campaigns to harass and those kinds of things, and those are absolutely important things and we should talk about how to prevent that kind of stuff. But what we're talking about here is not that. What we're talking about here is where an e-mail address isn't working.

Steve Metalitz: Okay. Thank you.

James Bladel: Steve, can I respond real quickly? I know we're up against the top of the hour.

Steve Metalitz: We are.

James Bladel: But I think -- this is James speaking again -- and I think, Paul, you know, that's a good observation that we're talking about a very limited scenario here. And if we could narrow it even further and say that this could allow for an escalation to a non-electronic communication once per domain name or once per requester per year or something like that, we could some boundaries around it, it might be something we could work - maybe discuss a little bit further. Thanks.

Steve Metalitz: Okay. Thank you. Well on that note, let's hope we can work this out. There's also the option of course if we can't reach consensus to take this discrete issue and put both options into our draft report. But let's see if during the week we can make some progress on this. We are out of time. I want to thank everybody for their participation, and I assume will be talking to folks next week.

Woman: Thank you, Steve.

Woman: Thank you.

Woman: Thanks. Bye.

Man: Steve. Thanks, Don. Thanks, everyone.

END