

ICANN Transcription Privacy and Proxy Services Accreditation Issues PDP WG Tuesday 03 March 2015 at 1500 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 03 March 2015 at 15:00 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.

Attendees:

Frank Michlick – Individual
Justin Macy - BC
Val Sherman – IPC
Griffin Barnett – IPC
Kathy Kleiman – NCSG
Darcy Southwell – RrSG
Todd Williams – IPC
David Heasley - IPC
Chris Pelling - RrSG
Steve Metalitz - IPC
Graeme Bunton – RrSG
Jim Bikoff - IPC
Michele Neylon- RrSG
Holly Raiche – ALAC
Vicky Scheckler – IPC
Kiran Malancharuvil – IPC
David Cake – NCSG
Volker Greimann – RrSG
Alex Deacon –IPC
Sarah Wyld – RrSG
Carlton Samuels – ALAC
Stephanie Perrin – NCSG
Susan Prosser - RrSG

Apologies :

Don Blumenthal – RySG
James Bladel - RrSG

ICANN staff:

Marika Konings

Mary Wong
Nathalie Peregrine

Coordinator: Good morning, good afternoon. Please go ahead, this call is not being recorded.

Nathalie Peregrine: Thank you so much Francisco.

Good morning, good afternoon, good evening everybody and welcome to the PPSAI Working Group call the 3rd of March 2015.

On the call today Val Sherman, Graeme Bunton, Steve Metalitz, Justin Macy, Holly Raiche, Chris Pelling, David Heasley, Sara Wyld, Alex Deacon, (Fran Comissley), Michele Neylon, Kathy Kleiman, (Calenen Griffinbonnett), Volker Greimann, Keith Kupferschmid, Vicky Sheckler, Todd Williams, David Hughes, Terri Stumme, David Cake, (Susan Karaguche) and Jim Bikoff.

We have attendance apologies from Don Blumenthal. And from Staff, we have Mary Wong, Marika Konings and myself Nathalie Peregrine.

I would like to remind you all to please state your names before speaking for transcription purposes. Thank you so much and over to you Graeme.

Graeme Bunton: Thank you very much Nathalie.

Just the usual; does anyone have any updates to their SOIs before we begin? Going once, going twice, sold.

All right, so welcome Ladies and Gentlemen. Apologies for missing last week. I was on vacation, it was delightful.

I was reading through the transcripts through last week's call and it looks like everyone got the chance to go through the document that was floated by

Steve and I and the product of a number of us working together to try and get something out there for discussion. And I think that was really good.

We still have some work to do, and Kathy certainly floated an interesting email - I think that was last night - that's going to be good for discussion today.

I thought we would spend the bulk of today continuing on this disclosure draft. We need to talk a little bit near the end of the call about the face-to-face facilitated meeting possible in Buenos Aires. So we'll carve about ten minutes out for that.

And Mary all sent out our updated work plan, and that's worth looking at for everybody. We've got I think about six meetings to go if we aim to publish a final report between now and Buenos Aires which isn't a lot of time.

Now we have a lot of work done on the draft final report but we still have some pretty heavy questions in front of us. So I hope that we're able to move forward and answer some of these questions and that get that out there; that would be great.

And so if I could editorialize and maybe set some context before we move on. What it seems to me like, and perhaps this is obvious for everyone, but maybe it's a nice way to start the call is, you know, really what we're trying to do here is figure out how to reconcile, I sort of think there's three separate concerns or areas. And you know, I apologize if I've mischaracterized these but I think I've got it reasonable well.

You know, IPC is looking for a consistent transparent and reliable process for addressing infringement, proxy and privacy providers are looking for an economical and implementable solution that also protects our registrants, and we have others that are also looking out for privacy and due process. And we need to figure out a way to amalgamate all those concerns and put

something forward that we can all live with hopefully and answer this question.

So this draft was put out as hopefully a starting place for discussion, and it looks like last week we got some of that and Kathy kicked that off on email which is great.

I will say now that I think we do need to encourage a bit more list participation if we could. So thank you very much Kathy and others who responded to that email.

I think there's a bit of responsibility on us chairs to encourage and maybe push back a bit and ask more questions and help facilitate or moderate on the email list so we can get a bit more discussion going there, because if we only have these six sessions left we need to be a little bit more vibrant on that list and not just reserve all of our conversation for the call.

So going back to the disclosure/draft document, there are a number of changes that Steve made that were incorporated. And perhaps as a first step we can walk through some of those changes if that's okay with you Steve, and then I think we'll dig in to Part 3 which is where I think most of Kathy's questions came in.

So Steve, if it's okay with you, if I can put you on the spot to walk through the changes that you put in to that document.

Steve Metalitz: Sure.

Graeme Bunton: Oh I see a hand from Justin so let's maybe do that first. Justin? You might be on mute Justin.

Still can't hear you. All right, so let's go to Steve and then Justin if you sort that out we can come back to you.

Steve Metalitz: Okay, thank you Graeme; this is Steve.

Yes, the only changes made here were really the ones that were brought up on the call last week; I think they're all fairly minor.

First in Section 1B, Roman Numeral III on the first page, I incorporated a comment from James that the idea of the cost recovery fee was not to be something that would serve as an unreasonable barrier to access to the process, so I just plug that in there. I thought that was a useful elaboration.

The second change is on Page 2 - actually in all of the templates I think at Michele's suggestion, we moved up, you know, the domain name that infringes the trademark or the URL where infringement is taking place, we moved that up to the top.

Again we're not dictating - this wouldn't dictate a form necessarily, but I think his point was well taken that the first thing the service provider needs to know is, you know, what domain name are we even talking about here? So that change was made in all three templates.

The next change is on Page 3 in the template regarding domain name resolve to Web site where copyright is infringed. At James' correct suggestion, in what had been Number 4 and now is Number 5 because we moved URL up to the top, the second half of that paragraph remains; the exact URL where the original content is located If Online Content or where the claim can be verified, that remains in brackets because there are some concerns about that. But basically, that splits up, you know, the URL where the infringement is claimed to be taking place and moved that up to the top.

In C, which for some reason in the earlier version was marked as A which is on Page 4, and I don't have any explanation for that, again I just moved up

the exact URL where the allegedly infringing content is located, moved that up to the top.

And then I think the last change in here, as a result of Kathy's comment from Kathy, that there was - it was not clear in 3D, if there was no civil action pending, what affect that had or whether if there was a civil action pending, it could have an effect. So all I did there was put in was put in lack of - but not only for lack of a court order but also lack of a subpoena or lack of a pending civil action UDRP or URS proceeding, to make it clear that under 3D none of those could be the sole basis for refusing to disclose.

So it wasn't intended to say that because there's a civil action, we refuse to disclose, that would be an immiscible reason. So I think - hopefully that clarified that on 3D. Obviously that remains bracketed and that's a very important provision from our perspective.

So I think those were all the changes. And again, all of them were intended to reflect the discussion on our call last week. Thanks Graeme.

Graeme Bunton: Thanks Steve, appreciate it.

I'm seeing from Michele that I think where we've move the - if I'm capturing this correctly and correct me if I'm wrong - that where we've moved the exact URL to the top, we need to make sure that it's alleged different infringement.

Actually I see your hand up Michele. Go ahead.

Michele Neylon: Thanks Graeme. No, just in terms of consistency, I mean it's also something that Kathy put in her email. Just, you know, if it's URL content, whatever, that the terminology should be allegedly infringing, alleged infringement, etcetera, etcetera, just for the sake of consistency. Thanks.

Graeme Bunton: Sure, I think that's a reasonable addition and we can make sure to capture that.

Kathy, I see your hand is up.

Kathy Kleiman: Their Graeme, can you hear me? This is Kathy.

Graeme Bunton: I can; thank you.

Kathy Kleiman: First, I'm glad you've been some place warm without multiple feet of snow; that sounds really nice.

And I just wanted to share that last week was really not so much a discussion as a walk through which I really appreciated and I think others did as well. Where Steve - I guess the draft had come out the day before which was great. And then Steve really walked us through it and there were questions, maybe a little discussion, but questions. I think we're really opening up the discussion for the first time this week.

So I just wanted to share that I think this is kind of the beginning for those of us who work with organizations and registrants and individuals to kind of jump in and really begin to kind of wrestle with the concepts here.

And similar to the Michele, as we look at Sections 1 and 2, I have the word allegedly scribbled all over. So I think we need to add it in lots and lots of places, especially our titles like request template, which is Roman Numeral Section II, A would be domain name allegedly infringes a trademark. And other places where I won't - you know, domain name resolves to Web site where trademark is allegedly being infringed.

So I think we have lots of places to put allegedly but I thought Steve got one of them which is great. Thank you.

Graeme Bunton: Thank you Kathy, it's a good point. And I don't think to hard/to capture or implement, nor do I think there is too much disagreement on that.

And you're right Kathy, and thank you that last week did give you a walk through and we are going to be hopefully really getting into the details and discussing more today and wrestling with those concepts.

I am going to go to Justin and then perhaps I'm going to come back to you Kathy, so this is your pre-notice that I'm going to put you on the spot a bit around your email. And hopefully we can think about that and use that as a starting point for discussion.

But before we get there, I'm going to come back to Justin.

Justin Macy: Okay Graeme, can you hear me?

Graeme Bunton: We can.

Justin Macy: Excellent; this is Justin for the transcript.

My question really is I think at the IPC issue that we're going over here are really important, but I want to make sure that we're not missing I guess another picture which is there is a lot of illegal content or actors that are using privacy/proxy services that are doing other harmful things like some of the illegal drugs or arms or human trafficking.

Are we going to be addressing any of those or are we really just targeting intellectual property infringement?

Graeme Bunton: Thanks Justin. I think - and someone can correct me if I'm wrong - that we built this template as an example for intellectual property concerns. But the idea was this would give us another place to go for other issues - other related issues - like illegal content.

But we still have not really tackled some of that as a working group and that's still left to do.

I see Mary's hand is up. I suspect she is going to respond to that. Mary?

Mary Wong: I everybody, thanks Graeme; this is Mary for the transcript. And in fact I am.

And just to amplify what Graeme has just said, Justin and everybody, because if you recall, back in I think it was October or thereabouts, the working group did identify that in terms of requests for disclosure, which is what we're talking about here, there are at least several groups or types of requesters. And IPOs are one of those.

And as Graeme said, ideally we want to look at at least a couple of the other categories that we identified back then as illustrative examples if nothing else. And the hope is that we can accomplish this in the next couple of weeks.
Thanks.

Graeme Bunton: Thanks Mary, and hopefully that adds a bit more color to my response Justin.

Michele, I see your hand up.

Michele Neylon: Yes thanks; Michele for the record.

Just so - Justin's thing there. Most of those sound to be like they're infringements of law. I mean these are matters for law enforcement. So I'm not really sure why they'd be considered here at all. I mean if law enforcement wants to access whatever, then they can present a request to a company be it the registrar or the proxy/privacy service provider.

So I'm just trying to understand exactly what you're suggesting. I mean I'm just a little bit confused by that. Because it's not going to be up to either a

registrar or a service provider to adjudicate that particular domain name is being used as part of some larger case.

I see Dick has got his hand up; he can probably speak to that more coherently than I can. Thanks.

Graeme Bunton: Thanks Michele. Mary is putting in the Chat that anti-fishing (sic) and consumer protection groups would be other categories that we might be able to extend this template too.

I want to I think congratulate (Dick) because as far as I know this is the first time he'll have spoken on the call, so it's nice for him to join us and participate. Please go ahead.

(Dick): Well I wouldn't get too excited.

I think the comment about law enforcement being involved in this process, even though we do have a jurisdiction process that we can request this information, that isn't what every provider delivers these services.

So I don't think we should be excluded for commenting on this process because we are part of the communities everyone else is. And we have concerns about gaining access to this type of information to prevent criminal activity and to protect the citizens.

So yes, we are fortunate to have another mechanism, but that mechanism isn't full-proof and it doesn't work in every jurisdiction in the globe. So we need to be involved and we need to have this part of this process right. Thank you.

Graeme Bunton: Thanks (Dick), and certainly you are absolutely welcome to participate in the process. And you're right; jurisdictional issues are another topic that we've certainly run into a number of times and I don't think we've resolved yet.

So thank you everyone. I think that was a good start there.

I'm going to come back to Kathy now, and as I warned her, put her on the spot to talk a little bit about the email that she sent. And hopefully we can use that discussion to focus on particular pieces of this document and use that to find a way to compromise and move forward.

So Kathy, if you could perhaps walk us through your email or talk a little bit about the concepts in general.

Kathy Kleiman: Terrific, I'd be happy to Graeme and thank you.

As you noted, most of my comments refer to Number 3, Roman Number III, Service Provider Action on Request, which is Page 5 in the draft, the revised draft that Steve circulated online.

What I'm thinking about here is both big picture and little pictures. So before we jump into editing the words, let's look at the concepts. And what we seem to have here is a really good first step, but I don't think it's the final step.

So here we have a presentation by, in this case, an intellectual property owners of what it is that they're concerned about; what it is that they're alleging the infringement on. And that's very legitimate.

And what corresponds too, Steve has been reminding me for a while that some of the thinking was along the lines of the Digital Millennium Copyright Act. So I went and I pulled it, and what we have here is really what the equivalent of in the US Copyright Act.

Now the elements of notification; so you notifying, you know, the intellectual property owner is kind of swearing out an allegation identifying the trademark

or the copyrighted work that's being infringed and where it is and how to reach them and what they're concerned about.

And here though, instead of having a takedown, we're having a reveal. And I just wanted to point out that in the Digital Millennium Copyright Act and here too, there's another step before you get to reveal. And that is does the allegation sufficiently outweigh the privacy interest? And I'm not sure we've gotten to weighing that.

So even though the allegation of illegality may be completely legitimate, it may be that the privacy rights, regardless of whether the person defends them or not, the privacy rights outweigh. So maybe it's a magazine publishing, you know, they're using the trademark to critique what a trademark owner is doing or something like that.

So a lot of comments kind of run to the due-process. The rights of not only the alledger or the requester, but also the responder, the registrant, the customer.

So the first thing I say in my comments is first, you know, where is the sanctions for misrepresentation. Let's say a company knowingly misrepresents the material or activity. How does the registrant get a hold of that material - I'm probably going to use registrant instead of customer but you know what we're talking about; the customer. How does that registrant get a hold of that material, how do we have, you know, clear damages/costs/fees to somebody misrepresenting?

And two, how do we raise the bar? How do we together - whoever is running the slides, I would go to Number 3 here so that everyone - I guess we're all in control. Go to Section 3 if we could.

But whoever, you know - what is - how do we raise the standard for, you know, this reveal after a very good allegation is put out? And the first question

is, you know, what happens with the default and who evaluates a default because there may be very good reasons for the default. The requestor may not be able to respond - I mean the registrant may not be able to respond, it may have disappeared into spam, they may be scared or respondent, they not have language in the cases we're working on.

So in my material, I wrote down a number of - and in Number 2 of my material, I wrote down a number of examples where you could very legitimately use logos, copy written material and clearly defensible on its face.

So you use a logo of a gang so that you can identify them. You use a logo or trademark of a large multinational that you're criticizing in a blog or an online publication or an online newspaper.

The allegation against somebody is being made by a battered women's shelter and kind of on its face; you really don't want to disclose the location of a battered women's shelter without a lot of due process.

So in the case of a default but also in a case where the registrant respondent, how do we have a full and fair evaluation of what's going on here? Both the intellectual property rights and the registrants' privacy rights and protections.

One option I threw out is a third party review. And in fact, it's already in Steve's draft that at the intellectual property owner's request isn't honored by the provider, it should go to some ICANN initiated forum.

So as long as we're creating that forum for due process purposes, let's use it, and that could be for default or it could be for a tough case that the provider doesn't want to decide itself and move it to some kind of third party; some kind of independent forum that would take on the difficult evaluation.

Another thing that I put in, it's small Roman Numeral IV, and my notes toward the end of the second to the last paragraph of mine, is the privacy of the

customers and the providers. Obviously the requestor would like to know what it is that the customer, the registrant, is responding.

On the other hand, the registrant - we don't want to make this an inadvertent trap. The registrant is going to want to explain to the provider in their normal language, in their normal parlance, and probably without their lawyers, what it is their response is.

"Well I know it's a trademark but I think it's fair use; I think I'm protected." If you say it that way, and you pass it on verbatim, it can go straight to court guys as an admission against interest.

And we don't want small businesses and entrepreneurs and individuals and human rights groups' kind of giving legal language when they don't really realize they're doing it.

So I think we need to create some kind of a tier here where the customer can communicate with their provider. This is their provider; they're going to feel they can talk informally to them. And then some kind of legitimate summary is passed on but it's a summary that is passed on by the provider so it doesn't act as an admission against interest or an unintended waiver so some kind of legal language that the registrant was never intending.

And I think that's about it for right now. Those were the key points I found but I know other people have been reviewing closely, and I'm looking forward to hearing what other people are thinking as well.

Graeme, thank you for the moment; appreciate it.

Graeme Bunton: Thank you very much Kathy. That was a good response for being put on the spot like that.

I'll just put that out there. Do we have any - there we go. So a few for responses to Kathy's concerns. We'll start with you Todd; please.

Todd Williams: Thank you and thank you Kathy for that email. I agree that this is very helpful for kind of discussing going forward.

And I think maybe the first thing we ought to do to that is try to distinguish between issues of substantive disagreement and issues of perhaps clarification. And I'll go with two on the latter because I think that might be the low-hanging fruit that we could start with. One is on default and one is on the last point that you were raising about kind of the verbatim passing on of communication.

I don't read 3E of the current draft as requiring verbatim passing on of communications, and in fact I think it's actually written in order to avoid that. It's essentially just saying the reasons, you know, for full (sic) disclosure needs to be passed on, but there's nothing that, you know, mentioned verbatim. And I guess, again, perhaps that's an issue of drafting that we can make clear that would address the point that you just raised.

And then on default, I don't read 3B as requiring an automatic disclosure in case of default. And again, maybe this is something we can make clear. You know, the provider under 3B-2 can state to the requestor, you know, it's reason for refusing to disclose, but I don't read any kind of automatic disclosure, you know, within that. And then of course obviously there's a process for reconsideration of the refusal, and upon reconsideration going to the third party, etcetera.

But you know, again, perhaps that is like I said, just some low-hanging fruit. Thanks.

Graeme Bunton: Thanks Todd. And that's good to know. We'll see if there's - what a queue we've got following; delightful. We'll see if there's sort of agreement on that

verbatim that - and a good point that we can do some clarification versus substantive difference (sic). Yes, let's try and clear some of that low-hanging fruit first.

Let's go to you Vicky.

Vicky Sheckler: Thank you. And then, you know, further to Todd's point, also in Section 3B-3, there is the safety valve to deal with the concern if there is good reason for delay.

The safety valve in terms of someone not getting it is already built in. So I think that was put in precisely to provide the flexibility to deal with some of the concerns that Kathy raised, but not create a huge loophole to get out of the process.

In terms of the more substantive comments, I think we need to step back for a second and think about the fact that, you know, this is coming out of Whois, and that Whois was intended to be public in the first place. So it is a different scenario than straight up DMCA type disclosures, and we've got to keep that in mind.

Second, you know, with respect to 512A (sic) which Kathy referenced, there are other provisions that deal with that subpoena, which make it more or less to be a defacto that it will be disclosed on the (unintelligible) of subpoena.

I thought we tried to deal with the standard here in a way that addresses some of those concerns without going through the third party all the time. Again there are safety valves that are built into this in case there is abuse, and it provides to the privacy/proxy provider the discretion to deal with those safety valves and to deal with abuses.

So we tried to build in, again, safety valves for abuse scenarios, but not let hopefully the minor cases of abuse swallow the rule and not make this

process work for victims that want to get the information to be able to go to the next level. Thank you.

Graeme Bunton: Thanks Vicki. Let's keep going on with - Kiran's next.

Kiran Malancharuvil: Thanks Graeme. I - first of all, I want to add my support to Todd and Vicki's comments. I think - I kind of have a lot of nit-picky things to say about what Kathy proposed. I don't disagree with most of it as principals.

But instead of doing that I think I'd rather just make a broad and general comment which is that, you know, with this document what we're aiming to do is try to create a simple process by which we can deal with the majority of cases in which we need to seek disclosure.

And, you know, we need to make sure that it's not excessively time consuming or cost burdensome or cost prohibitive in some circumstances. And I think that when we start requiring, you know, third party observation on every claim for disclosure we start getting into the weeds.

And rather I think that we've built in good safeguards for these fringed pieces, these outlying cases where, you know, you're using a (unintelligible) for education or you have, you know, political dissidence that needs to be protected.

And I think that we have in here opportunities for service providers to protect those people that require protection and haven't responded to the requests that we sent previously, which is also required of us here.

So I think we need to try not to apply the outlying and rare cases to everything in this document but rather concentrate on where those cases, where there are exceptions built in to address those cases and instead see how this is going to be applied to the majority of cases.

So I hope that makes sense and, you know, feel free to if it doesn't to ask me more questions but I actually think a lot of Kathy's points are addressed within. So I guess that's my main contribution thanks.

Graeme Bunton: I think what I'm hearing and everyone should feel free of course to respond that there is some concerns that the safeguards or safety valves built into the process as it stands as the example that was put forward from - may not be enough and there is, you know, I think we need to walk through that a little bit more at least what I'm hearing.

And from Karen and others that, you know, there are safeguards built in and it sounds like from them that they think they will go, they'll cover the majority of responses or majority of issues that we'll see. (Stephanie).

(Stephanie): Thanks Graeme and I would agree with your summary that you just gave back there. I just wanted to clarify something that's come up a couple of times but most recently from Vicky a minute ago.

The notion that the Whois was intended to be open. I think we have to nuance that. Some parties have wanted to the Whois to be open from the get go. I have just been reading the facts document three and even the FSAC has been saying since early days that there has to be a way for individuals to protect their personal information in the Whois.

So I think that that's sort of a fundamental way of thinking about these issues that needs to be nuanced.

My - the reason I raised my hand was really to clarify for those of us not engaged in these matters on a daily basis like the registrars for instance. I think we worry that some of these processes are going to be automated.

And, you know, I think (Makaley) has clarified that if you don't put certain things in the subject line they're not going to be streamed appropriately. So

just for my own benefit perhaps, I would love to know how much of this process is basically going to be read and interpreted by machine and how much is going to be read and interpreted by humans?

And in that respect I'm very comforted by the notion that somebody will be executing a warrant through the unpronounceable Irish law enforcement agency that (Makaley) mentioned and I think these are important distinctions.

Those of us who are worried about it are worried that something will just automatically get you to the next stage without a human looking at it and saying, this hasn't been proven, thanks.

Graeme Bunton: Thank you (Stephanie). If I can put myself in the queue here just for a moment just to respond to that automation question. For us very little of our compliance function, which includes responding to issues with our privacy service are automated in the capturing of a ticket is automated.

And so we have methods for, you know, people to submit but I'm not aware of any process that at the moment does not have a human touch at some point. And which is something to consider when we're looking at this that, you know, it does not scale particularly easy and, you know, for someone like GoDaddy who have considerably more customers than we do it can be quite an issue.

And we need to make sure as we build this that it is something that we can make sure we're - sorry my phone was ringing, that we can take care of and put through economically (unintelligible) and still has that careful human touch.

I don't know of any particular way to automate this sort of investigation. I don't think it can be done. (Makaley) may have something to say about that but before we get to him it's (Holly).

Holly Raiche: Thank you Graeme, Holly for the record. I think I'm just picking up on Kathy's point. If you look at its 3C, the one word compelling reason against disclosure.

I think that's what we have to unpack. We said a majority of cases or a minority in reading the chat I think it's a minority. But if we can understand what we mean by those compelling reasons because C also envisages that some people may simply say I'd rather surrender the domain name than have disclosure.

So I think it's teasing out compelling reasons and teasing out if in fact we want to go or we think we should go down the path of having some third party decide what we mean by compelling reasons because I actually think that's the really difficulty we've got to decide.

And if it is indeed a freeze case or something that can come close to easy decisions that can be automated, thank you.

Graeme Bunton: Thank you Holly and that's a good point. Maybe we can work through some examples of what might be a compelling reason. Work through some cases to see what fits for people and what doesn't and maybe that brings us a little closer together.

I have (Makaley) and then Steve, (Makaley).

(Makaley): Thanks Graeme, (Makaley) for the record. A couple of things, first off the statement that Whois was intended to be public I have issues with. Whois was never actually designed with anything specific in mind, it kind of evolved over time.

I mean it was originally a way for network operators to connect with each other in order to tell each other about problems or issues we were having between the two networks.

It has evolved there's a whole load of other things in there now but saying that it was intended to be anything suggests that a lot more thought went into Whois as a concept that never really happened.

I mean if you're looking in the ccTLD space there is a bunch of ccTLD's that don't even have a Whois server. A lot of other ccTLD's either rate limit you to death so you can only do a couple of lookups or the amount of data that they return is negligible.

I mean in some cases all you get back is the domain is registered or it isn't and that's about it but I digress. Just or the record the Irish law enforcement is called An Garda Siochana so you can learn how to pronounce that so when you come to Dublin later this year you can, you'll know who you're talking to.

They wear blue uniforms and they don't carry, most of them don't carry guns and we refer to a singular police person is a (Gard) and I would say they wear blue. For the most part they don't shoot people or anything else because they don't have any guns.

I do like Carlton's comment in the chat, fair to the French. And as I am surprisingly for some of you I do actually agree with Karen to a point, not kind of too strongly obviously but that would be completely out of character for me.

Trying to develop policy as the caterer to one specific interest or to one specific set of scenarios is not what we should be aiming for. We need to be aiming for something that as Carlton says, is fair to the French, which I think is a nice way of putting it.

But these were the bulk of scenarios so it's not - it's something that we all equally hate or equally love but probably not something that entirely satisfies a specific interest. It has to be more balanced.

Another thing to bear in mind is one around costs. I mean I'm seeing some talk here about some, about stuff around due process and everything else. But please for the love of God bear in mind how little people are actually paying for the services in most cases.

In many cases the Whois privacy proxy service is either bundled with the domain name so it's not actually been charged as an extra item or when it is being billed you're talking about a few dollars, euro, whichever currency you're comfortable per annum.

It's not something that is going to generate a massive amount of revenue per domain name for a registrar or a service provider. So loading on all sorts of complicated convoluted processes around a lot of it probably won't help too much because most of us will end up putting stuff into our terms of service and just going right, well if we get a complaint about X then we're going to terminate the service.

I'm not saying that all of us are going to do that but something you need to bear in mind, thanks.

Graeme Bunton: Thank you, I feel like I started this call with a long piece from Kathy and we've got there. So we've continued to have long contributions and maybe even want to think about making sure we're short and punchy.

We've got about six minutes left or so before we have a discussion around the proposed face-to-face, something to keep in mind. Steve please.

Steve Metalitz: Yes just three points. First on automation I think the expectation was that this process would not be totally automated as contrasted with the relay piece of this, which as I recall when we talked about that we wanted to design a system that was capable of automation. This is different.

Second, on the last point that Kathy raised in her posting without getting too much into the details of it I think we certainly attempted to do what she is asking for here, which is to leave it up to the customer to decide what goes - if the refusal is based on the customers reason let the customer decide what goes forward as articulation of that reason.

They may have other dialogue with their service provider but they should be able to frame something that is verbatim what goes forward to the requestor just so we know what the reason is.

So I think our intent was there and Kathy if you have any drafting suggestions that would better accomplish that I would certainly like, very much like to see them.

And finally I want to agree with (Makaley) on the last point. If you have a system for example that calls for bringing in a third party every time somebody makes a request, which I think is what Kathy was proposing, that's a complicated and expensive and time consuming system.

This proposal recognizes there might be some edge cases where that's necessary where disclosure is denied and then it's denied again and at that point if the requestor wants to pursue it then maybe there should be a third party system.

But if you have that for every request then you've got a lot of the complications and expense that I think (Makaley) was warning against, thank you.

Graeme Bunton: Thanks Steve and I think Kathy has got a response, Kathy.

Kathy Kleinman: First great discussion I really appreciate it. So I am feeling a lot better about the term, the responses of the customers that will be passed on to the providers.

I had read 3A to be a requirement that the customers pass - it said something about that the customers precise terms basically would be passed on to the requestor. I think we can clarify this, this is great now that I know what the intent was.

So let's talk about default for a second. And actually safety valves, I would love if someone either on the call or in email could outline what is viewed as the safety valves and so that we have a better sense of what you're thinking of the safety valves.

So those of us who are kind of thinking about it from the registrant perspective can respond. The safety valve that was pointed out earlier in the conversation in 3B doesn't satisfy my concern, which is what happens if the customer doesn't respond, if the registrant doesn't respond?

Again for all the reasons we talked about in relay that the registrant may never get it, that the registrant may be on vacation for the month of August that in some of the things we were talking about the registrant may be too scared to respond or the registrant may not have the language skills to respond.

So one of the situations when I was talking about a third party review it was for anything we as a group choose that third party review for. So do we want it for everything? Probably not.

Do we want it for default situations? Maybe, that might be a really good possibility to pass things on to a third party for a quick review, the same kind of third party again that we're already setting up for review of intellectual property appeals.

And to go back to other concerns, sanctions for misrepresentation. How do we set up a process if the registrant wants to get ahold of the requestor and

say hey, this is completely, you know, frivolous it should never, it should not have happened particularly if the reveal takes place and it's found out that it take place under false grounds. I think that's about it, thank you.

Graeme Bunton: Thank you Kathy, (Makaley).

(Makaley): Thanks Graeme, (Makaley) for the record. Just very quickly I - just responding to Kathy I understand her concerns and I do appreciate them. I'm just, I am wary of, you know, the costs associated with this.

I mean the thing is like I do also - but I do actually like the idea of being able to have some way of drawing a line in the ground and saying look, you know, all of these requests against this particular domain or all these requests from this request are completely - are a complete amount of rubbish and should be rejected.

And there has to be some way of dealing with that kind of thing. I mean we've seen cases where companies, you know, they pervert the legislation. They, you know, they use existing legislation, existing policies in such a way as to, you know, to shut people down, which is a concern.

But again I am very, very wary of making it too complicated. I mean maybe what you're looking for really is some way of triggering something. I don't know I mean Kathy wants to ask me a question. I mean please Kathy ask.

Kathy Kleinman: Great, so (Makaley) let's go to the default situation. Right now as I read this a default situation means that the reveal goes through. First, am I miss-reading it and second...

(Makaley): Well does the reveal go through based on what?

Kathy Kleinman: ...based on looking at 3A, B, C, D, E, F there doesn't seem to be any ability to refuse the disclosure if the customer hasn't responded.

(Makaley): Yes well that's - this is the (unintelligible) where it's - see the flip side too that is Kathy right, imagine for example that somebody has registered, Kathy Kleinman is a pediophile.com and has put up a whole load of fascinating content which, you know, totally untrue about you and they're putting that behind Whois privacy service.

Do I, do you really want the registrar or the privacy proxy service to provide, you know, lots of protection to them? Or what if the entity, what if the domain name is something completely random, algorithmically generated and the only content being distributed by the domain name is Malware of some kind?

Again should there be an entire kind of process really complicated process around that? I mean I'm not saying that I have an answer but I'm just concerned of making things too complicated.

Kathy Kleinman: Agreed but the Malware and sorry to preempt other people in the queue. The Malware situation I think solves itself under terms of use of the registrar. We all take down that, you know, everybody takes down Malware.

But in this case...

(Makaley): No they don't though that's the problem, that's the problem though Kathy they don't. If they did I wouldn't be getting contacts from info sec companies asking me to put them in contact with various hosting providers, unfortunately they don't.

Kathy Kleinman: They should...

((Crosstalk))

Graeme Bunton: Okay let's part that one. Let's maybe park that one for a little bit because I've got a couple more people in the queue and we need to talk about the face-to-

face. So can we remember where we are in that discussion and maybe take that to email or hold it for next week?

Kathy Kleinman: ...yes.

Graeme Bunton: Good, great. Vicky if you can hold on a second I think we have David who is on the phone and not in Adobe, David. You might still be on mute.

David Cake: Hello I'm sorry Graeme I was on mute.

Graeme Bunton: There we go.

David Cake: Yes I'm following the discussion and I understand a lot of the concerns here. My concern is a much higher level concern and I guess really it's between now and the next call we need to address this on the reflector.

But it seems to me that we had a mission here to try to achieve something short of to address the cases where it's not obvious to the provider what they need to do as some of the examples that we assume that the provider would obviously know what to do and the opposite end of waiting until they have a court order.

And if all we do is introduce some complicated mechanism that's not, you know, maybe economically feasible or whatever or leave the option to the provider to wait for a court order or whatever.

What have we achieved within this group that's what I keep thinking when we're going off on these tangents? I'm concerned that our primary objective is maybe not being addressed.

I just want to put that out there, you know, if other people don't agree with me then feel free to go on the reflector or contact me offline.

Graeme Bunton: Thanks for the input David. Vicky.

Vicky Sheckler: Graham I know that you want to talk about the face-to-face so if you want to do that first and if there's time I'll speak, if not I'll defer to next week.

Graeme Bunton: Thank you Vicky. Let's maybe cover that very quickly. Mary might have some more context for everyone but in Singapore it was proposed that there is another face-to-face meeting in Buenos Aires as there is funding for that.

And it was proposed that our group is again probably in the most appropriate spot to take part in that. Some of that hinges on our ability to get a final report out there and begin to receive feedback from that.

And we would I think the idea is use this face-to-face to go over some of the feedback and look at how we would incorporate that certainly in our initial report to then produce a final report.

And so we need to decide whether that is something that we as a group think is worthwhile doing and Mary if you have any other context I'd love to hear it. If anybody has opinions on whether it would be a good idea we'd also love to hear that.

I don't want to suggest that this is a top down thing and we have to do it. If we don't think it's going to be a worthwhile use of our time then we should not do it.

I believe the pitch is that it would be on the Friday after ICANN has wrapped rather than before as it had been previously. Mary.

Mary Wong: Thanks Graeme, hi everybody it's Mary again and just to followup on what Graeme has introduced. What we have on screen here is the proposed updated work plan, which Graeme referenced at the beginning of this call and hopefully this will make it easier for everyone to see where we are trying to go

in terms first of getting the initial report out for public comment and here we have an objective of mid-April.

Following that of course is a 40-day public comment period at minimum and then we have the Buenos Aires meeting and we go on from that to try to aim for a final report that can be adopted by the GNSO council by the Dublin meeting at the latest.

So the thinking is that if this work plan is reasonable and acceptable to the working group then having gone through what the survey respondents said was a very helpful facilitated session in Los Angeles in October that having a further one in June on the Friday after the Buenos Aires meeting would be equally helpful in facilitating our work.

I'll note here two things. One is that in Singapore the working group that did facilitate its session was the IGO curative rights working group and they have also sent in survey responses.

And the second point is as you may recall this is the third in the three meeting series that's the pilot project for the GNSO council for this financial year. So this project may or may not be continued next year but here is an opportunity for the working group.

And so Marika and I just thought that we would suggest this both to the council and to the working group as something that may be helpful, thanks Graeme.

Graeme Bunton: Thanks Mary. (Stephanie) is that a response to the face-to-face?

(Stephanie): Yes, I just wanted to strongly support the idea of doing it on the Friday after because before it's usually packed with things and I'm very sorry I missed it the last time.

So I'm strongly supportive of Friday. I think only the NomCom and some of the ALAC folks are tied up on Friday but it's much clearer, thanks.

Graeme Bunton: Thanks (Stephanie). I do note that Kathy is mentioning in the chat that we tend to be sleep walking after a week of ICANN, which is an important point. I don't see any other hands on that and we're just about - I see Phil Corwin, so Phil if you could.

Phil Corwin: Yes thanks just quickly, having participated in the first face-to-face of this group and LA and then in a face-to-face in Singapore of a working group I'm co-chairing, which was on the Friday after.

I mean I'm not arguing for or against it. I would observe that when we met in Singapore after the week we had people were pretty exhausted on Friday. And while we were scheduled for a full day we broke up about 3:00 and everyone was very happy.

So I think at that point particularly for those people involved with council and who observed council, Friday is the seventh straight day of working and, you know, it's not a reason not to meet but I think we should be realistic about expecting people to put in a full day of work after six 8 to 10 hour days up to that day.

Graeme Bunton: Thanks Phil, that's a good point. At the end of ICANN I am certainly beat. It's 11:00 am so we'll try and wrap this up. Let's try and have a bit of discussion on this particular topic too because we need to decide pretty shortly whether we would like to take part in this or not because the travel deadlines are coming up pretty quick.

And we may end up doing a poll on this one. I see Mary's hand again.

Mary Wong: Thanks Graeme and I realize it's on the hour but what staff will do is go back and check as quickly as we can with our colleagues on logistics and other types of things that may not have much to do with this working group.

But as others have noted there are a lot of meetings that are normally packed into the Friday before and that may include some of the cross committee working groups or the ICG or a number of the other, you know, high priority efforts for this year.

So we'll go back and noting the preference of some folks on this call and Graeme I noticed your suggestion of a poll and maybe we can do that as well. But as I emphasized in the chat we do need to confirm this soon because of travel plans including those being supported by ICANN.

Graeme Bunton: Great thanks Mary. Maybe we do look at putting out a doodle poll, something (unintelligible) and easy. Let's end it there, thank you very much everyone that was good conversation today.

Let's keep at it over email and we'll talk again next week.

Steve Metalitz: Thanks Graeme.

Mary Wong: Thank you.

Woman: Thank you for participating (unintelligible) the recording.

END