

**ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 07 April 2015 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 07 April 2015 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-07apr15-en.mp3>

Attendees:

Frank Michlick – Individual
Justin Macy - BC
Val Sherman – IPC
Griffin Barnett – IPC
Kathy Kleiman – NCSG
Darcy Southwell – RrSG
Todd Williams – IPC
Steve Metalitz - IPC
Graeme Bunton – RrSG
Jim Bikoff - IPC
Volker Greimann – RrSG
Alex Deacon –IPC
Stephanie Perrin – NCSG
Phil Corwin – BC
Chris Pelling – RrSG
Carlton Samuels – ALAC
Richard Leaning – no soi
David Hughes – IPC
Tatiana Khramtsova – RrSG
Terri Stumme - BC
Holly Raiche – ALAC
Vicky Sheckler – IPC
Susan Kawaguchi - BC
Luc Seufer – RrSG
Michele Neylon – RrSG
Osvaldo Novoa - ISPCP
Roger Carney – RrSG
David Heasley - IPC

Apologies :
Don Blumenthal – RySG
Lindsay Hamilton-Reid – RrSG
Kiran Malancharuvil – IPC
James Bladel – RrSG
Paul McGrady – IPC

ICANN staff:
Mary Wong
Marika Konings
Amy Bivins
Nathalie Peregrine

Coordinator: Good morning, good afternoon. Thank you. Please go ahead. This call is now being recorded.

Nathalie Peregrine: Thank you, (Francesca). Good morning, good afternoon, good evening everybody and welcome to the PPSAI Working Group call on the 7th of April, 2015.

On the call today we have Tatiana Khramtsova, Graeme Bunton, Michele Neylon, Dick Leaning, Chris Pelling, Volker Greimann, Frank Michlick, David Hughes, Steve Metalitz, Darcy Southwell, Griffin Barnett, Val Sherman, Susan Kawaguchi, Kathy Kleiman, Roger Carney, Alex Deacon, Phil Corwin, Jim Bikoff, Justin Macy and Stephanie Perrin.

We received apologies from Don Blumenthal, Paul McGrady, James Bladel, Kiran Malancharuvil, and Lindsay Hamilton-Reid. From staff we have Marika Konings, Mary Wong, Amy Bivins 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, Graeme.

Graeme Bunton: Thank you very much. This is Graeme and this is Privacy and Proxy. I'll be leading you through today's discussion. Val Sherman mentioned that David

Heasley is on the audio bridge; is there anyone else on audio only? And also someone's mic is not muted. I'm going to take that as no. so, David, if you have something to add just interrupt at an appropriate time and I'll make sure to get you in the queue.

David Heasley: Thank you.

Graeme Bunton: SOI updates? Anybody? Any SOI updates to share? Going once. Going twice. All right, not seeing any hands, let's talk about today's agenda. We - I feel like we're getting closer so there's good progress, which is nice, and the list has been active. I wish the list were not quite so active in the hour before our call so that I could make sure I'm up to speed on all of those changes and additions and thoughts. We could spread those out through the week but nonetheless it's good input and we'll talk about a bunch of that today.

I thought what I would do is we could talk about the automation issue first and then go on to the pretextual issues from 3(c)5 and then attestation and then to the annex. We've got four good ones. What I'll try and do is give us about, you know, 15 minutes or so each on those and if we have stuff left to do then we can mark that, take that offline and work on it on the list, and move on to the next topic. And that way we can hopefully get through at least some discussion on all of these issues. Any thoughts on that agenda?

All right, seeing nothing let's get going. So we had some discussions last call about automation but it's still a bit up in the air. You know, service providers in general are not fans of having this process allow for automation. And it wasn't clear to me how much others were concerned about that. And I don't know if was really contentious that we would eliminate the ability to automate the sending of disclosure requests.

So let's just see if there's any immediate thoughts on that. I can't recall - and maybe Mary can help me with this - if we have any text in the template or where that is around automation so we can talk about the text specifically.

Kathy raises a point in the chat about how we would bar it. And would be relatively simple technically by, you know, we could implement some sort of capture process that prevents automation.

Marika Konings: Graeme, this is Marika. I think Mary is having some connectivity issues but she posted in the chat that it's at the end of the document, the last paragraph in blue.

Graeme Bunton: There we go. So the text as it stands right now - and I think everybody has scroll capability on the document. There it is. So given the balance that this policy attempts to strike evidence of the use of high volume automated electronic processes that send queries or data in the absence of human review to the systems of any of the parties involved, requestor, service providers or customers by any other party in performing any of the steps in the processes outlined herein shall create a rebuttable presumption of non-compliance with this policy.

I think that's relatively straightforward. And as a service provider, find that generally satisfying. Do we have any other thoughts on that text? Kathy points out that there might be a better place in the document for that. We can have a think about where that might go.

I see Steve's hand is up. Steve, please.

Steve Metalitz: Yeah, the - I think this is basically fine. And, you know, I'm not sure whether - where it should go in the document. But my one concern is that the way it reads now since I think one of the steps in the process is to acknowledge receipt of a request and if that's the case or even to notify the customer about the complaint - the disclosure. So would we - I don't think we intend to say that that would not be automated, right? So that's...

((Crosstalk))

Steve Metalitz: ...whether this is a little too broad about performing any of the steps. But, you know, that would be my only concern.

Graeme Bunton: Thanks, Steve. And if I can put myself in the queue briefly I think that's a good point. There are - the receipt and the forwarding - so long as - yeah, so long as we don't have automated requests coming in so we're not flooding those then I don't see any problem with automating the notification of receipt and the forwarding.

I see Michele's hand up so perhaps he's got input there. Michele, please.

Michele Neylon: Thanks. No I see where Steve is coming from. I mean, the way it's - I think the wording at the present could create a bit of ambiguity because what - it refers to automated processes impacting any of the parties involved. So if we're saying on the one hand that we don't want to allow for high volume automated reveal requests, relay requests or whatever it is then we shouldn't be - we should also make sure that we're not sending high volumes of notifications to our users as well.

But the way that's worded at the moment I think it suggests that the automation could be precluded from happening. I think the key thing here is the volume, not the automation. I'm not sure exactly how to word that.

The other thing as well is in the final version of the document would it be - would you really be then the bit about given the balance that this policy attempts to strike bit. I mean, I'm not sure if that's really needed. Thanks.

Graeme Bunton: Thank you, Michele. Good points. Steve, I think your hand is still up. Did you have a response to that?

Steve Metalitz: No, I'll take my hand down. I think this - I just wanted to flag that issue, I don't have a - you could - I'm not exactly sure how to address it but I think we're all pretty much on the same page on this.

Graeme Bunton: Feels like that to me. I see Kathy, Volker and Holly in the queue so let's go to Kathy please.

Kathy Kleiman: Great. Thanks, Graeme. I think one of the ways to clarify it would be to move this paragraph to the end of Roman Numeral 2, the request template section, maybe creating a D section that we put this language in. Because, you know, we have different types of requests templates. And so what we're talking about here is an automated request template.

And, you know, maybe it is worth a little discussion because I don't think computers can make infringement allegations so I think there is a real issue here about automating the request. And so I like this language. I think we should move it earlier to make it clear that we're talking about the requests coming in to the providers.

But I also wanted to make it clear that, you know, if there are these automated requests that the providers don't have to pass this on. I think that's that Michele was saying that this flood of requests doesn't have to go through. But I just wanted to clarify and see what others are thinking. But again, moving that to the end of Roman Numeral 2. Thanks.

Graeme Bunton: Thanks, Kathy. I'll have to go back and look at it but that could be the proper place for this. Editorializing, yeah, if there's evidence that there's a high volume of automated complaints coming in then that would be against this policy and we would not be obligated to forward that to our customers is my understanding.

I see Volker next.

Volker Greimann: Volker Greimann speaking for the record. I'm not solely concerned with the volume on this. I'm also concerned with the quality. I'm actually concerned more about the quality than the volume from the examples that we're seeing. And I think I sent a very good example of what kind of complaints we sometimes get in abbreviated form to the list where there has been no quality checking whatsoever.

Clearly an automated system has sent this email; nobody has read this email before it was sent. But it was only one email that we received. We also have high volume complainants that send one complaint for every link on one page so we might get 100 complaints about the same domain name where the only difference is the link and of course that's also something that should be taking into account. But what I am looking for is the manual review and the quality checking, not just the volume checking.

Graeme Bunton: Thanks, Volker. We'll need to think about how to capture that if that's really what we're going for here is to ensure that they've all been reviewed by a human. Holly.

Holly Raiche: First of all just a thought on placement. I would tend to put it just under Numeral 2 because it will apply both to 2A, 2B and 2C, i.e. where there is an alleged infringement. And to capture a little bit of what Volker is saying, maybe we put the presumption in terms of the presumption is in fact that and then using Val's language for the new sort of 6C that in fact there has not been the required evaluation as required under C, perhaps not required evaluation by an authorized representative.

So sort of deliberately saying that what we were requiring in terms of a check by an authorized representative or representative with a capability and qualification and putting that in the presumption if there is this then the assumption is this has not happened and that would tie it back to the proposed new rules.

Graeme Bunton: Okay. Thanks, Holly.

Holly Raiche: Okay.

Graeme Bunton: I see Steve and then Vicky in the queue and Volker, your hand is still up.
Steve.

Steve Metalitz: Yes, I have two points. One is this is not just about high volume requests, it should apply to high volume automated responses too. And secondly, I think Volker made an important point here which is we want to have a process where human beings look at this at all stages of the process. And I think maybe the attestation language of this on the request side, the attestation language that Val proposed pretty much takes care of it. I'm not sure we actually need an automation provision too. I mean, maybe we could but I'm not sure it's really necessary; I think attestation probably handles this and, you know, we might think about extending that to the other phases of the process.

In other words that once - when a customer objects that the customer is also attesting that they're capability and qualified to make the judgment based on, you know, for the reason for the objection and that when the provider responds to the requestor it is done by a party that's (unintelligible) qualified to do so. So, you know, maybe that's a way to handle this all the way around and we wouldn't necessarily need a provision that singles out automation because automation obviously doesn't meet that standard.

((Crosstalk))

Graeme Bunton: I'm getting a lot of background noise.

Kathy Kleiman: I just lost half of what Steve was saying, could somebody summarize it for some reason...

((Crosstalk))

Steve Metalitz: I'll summarize it. This is Steve. Can you hear me?

Kathy Kleiman: Thanks.

Steve Metalitz: I was just saying I think attestation covers a lot of what we're trying to - good attestation requirement such as what Val has proposed covers a lot of what we're trying to get at with this automation thing and it may not even be necessary, maybe we just need an attestation requirement at all stages of the process so that when there's a request made, when a customer responds to the provider and when the provider ultimately responds to the requestor that's always being done by someone who's capable and qualified of making the response.

And that way you're taking automation out kind of by definition. And hopefully if the human being who knows something about the subject matter is making these claims or raising these defenses. Thanks.

Kathy Kleiman: Thank you.

Graeme Bunton: Thanks, Steve. You may be right that this is sort of a belt and suspenders scenario. So I think if we can narrow this, it may still be useful to keep in. I am still hearing some static and rustling on the line so if you are not speaking please mute your microphones. Vicky.

Vicky Sheckler: I agree with Steve. We've got the requirements of what's supposed to - being requested what we're talking about in Section 2. This seems like belt and suspenders already without some of the additions that people are talking about here. And it's not, in my view, the automation that's the problem, right? It's making sure that you meet the requirements in terms of having a reasonable claim, essentially as we set out in the document.

I don't necessarily have a problem with saying that, you know, high volume automatic processes in the absence of human (unintelligible) presumption but going beyond that I think it's inappropriate and is getting away from what we're trying to get at in Section 2 about what are the requirements in the first place. Thank you.

Graeme Bunton: Thank you, Vicky. I'm hearing some - I'm seeing in the chat some issues with the line. Is that the case? Let's just wait and see. Okay Chris is saying he dialed back in and it got much better so perhaps if you are having trouble on the line - Stephanie, I would give redialing a shot because it sounds like that worked for Chris - or staff can dial out.

All right, I'm going to move on to Kathy. Thank you for waiting.

Kathy Kleiman: I don't think we should write this paragraph out; I think we should move it but I don't think we should write it out because I completely agree with Val and Steve, we want somebody capable and qualified; a human being making these assertions. But we know that that's not going to happen all the time. So I think we put in what we want which is that we don't want automated queries coming through.

They're coming through in cease and desists, they're coming through in DMCA takedowns. So I think we need to make it clear here that this is not appropriate here. If it happens to be redundant, great. But I thought Steve was wise to separate out attestation, the signatures from automation in last week's session.

And I just - I just think at least for the time being we should keep it, relocate it because I think it's a very important concept. And just in case others don't understand things as clearly as we do it puts it front and center among those who aren't in the group. Thanks.

Graeme Bunton: Thanks, Kathy. I see Vicky in there and then let's maybe try and wrap this topic up. If you've got something else on here please get in the queue. If not we'll move along after Vicky. Vicky, please go ahead.

Vicky Sheckler: Yeah, it's Vicky. For the record I want to express discomfort with this general concept that an automated process, in and of itself, is bad. I don't think that is true at all. You need to make sure that your automated processes, if you use them, are narrowly tailored, are reviewed by an individual and are, you know, reviewed again, you know, at the beginning and at the end with the processes in place which is the way that we do our DMC notices generally.

As we progress down this path and we see how many people end up with privacy proxy service providers, you know, to register their domains and now to be entering into all things gTLD domains it very well may be that there is some automation in place with appropriate checks and balances. I mean, for our (AA)'s perspective I don't think we have any intent to do so in this scenario or anywhere in the near future. But could I see a world where it makes sense? Yes I could.

So, you know, saying that the rebuttal (unintelligible) I don't have a problem with but going down a blanket statement that any automation is always bad simply I think is wrong and I don't think it's true today. Thank you.

Graeme Bunton: Thank you. Something in there - if you have a human - and I believe you said you have an individual review those notices then that to me is not automated. But I'm going to let Michele respond.

Michele Neylon: Thanks, Graeme. Michele for the record. Two things, one if it's human review then it's not automated so I don't really understand what we're arguing about here. This is confusing me. If it's human reviewed then it's not automated because the two things are contradictory.

Secondly, as a small registrar and hosting provider, I can assure you that our experiences with automated notices, be they for DMCA or other types of notice, have shown that as a general rule automated equals low quality which is - which I would put, for example, with the 20,000 DMCA notices we received from one provider even though we've repeatedly told them that we won't accept DMCA notices. Thanks.

Graeme Bunton: Thanks, Michele. My sense on this is that there is reasonable support to keep this paragraph again. We may need to move it and we may need to make it pretty specific. I was hearing from Steve that the automation should apply to both ends of things and I think that's reasonable as well.

And so let's may be put that aside for now. I think we got some good input on that. I think staff is going to take a crack at that and we can come back to that on the list if we need to.

So let's then keep going, next up is pre-textual issues, 3(c)5. I think Page 7 or 8. It is on Page 8 about the middle, big blue paragraph. I think the tax in here is from Todd. Mary, could you confirm for me? Yeah.

So this is - this kicked up some discussion on the list, some of that I think was also this morning responding to Todd's text so that text, as it stands, if I can read this blue, is that the customer has provided or the provider has found a specific facts and circumstances or information facts and or circumstances showing that the requester's trademark or copyright complaint is a pretextual means of obtaining the customer's contact details solely or mainly for the purpose of contravening the customer's human rights, for example, freedom of expression and/or privacy.

And we had some reasonable back and forth on this. And I see Steve's hand up so I'm going to go right to him, Steve, please.

Steve Metalitz: Thank you. Steve Metalitz. I think, if I can summarize this, I think most of the discussion was about the last set of brackets. For the purpose of contravening the customer's something. And Todd's original language is human rights, e.g. freedom of expression, which I think is very responsive to the concerns Kathy and others have raised about this type of edge case that we want to be sure to accommodate here.

Volker wanted to change that to privacy. And I think one concern that Todd raised, and I certainly share it, is that that's kind of circular. I mean, this is a privacy or proxy service, a service to provide privacy. So if privacy trumps strong evidence of intellectual property infringement every time then we don't have much of the system here for disclosure.

So I would certainly support some version of what Todd originally proposed on that last point because I think that's responsive to the concerns that have been raised and talked about here for weeks and weeks and weeks. Maybe I misunderstand that concern. And we are not concerned about people trying to find out who is behind - who has registered a domain name because they want to suppress their free expression. But I thought that was what we were mainly about. Thanks.

Graeme Bunton: Thanks, Steve. And I see Todd's hand up and he wrote a bunch of that so please, go ahead.

Todd Williams: Thank you. And I just wanted to apologize in advance, I have a conflict and I'm going to have to jump off at 10:30. But, you know, I said a lot of kind of my reasoning behind the language in the thread. You know, for the reasons I outlined there I think privacy, as the last word, is kind of circular, and for a lot of the reasons that Steve just outlined as well. And I don't think gets to the point of this paragraph which was to address, as Steve said, the edge cases that we've been discussing for several weeks now.

So to the extent that we have other thoughts I just wanted to note that I won't be able to reply to them on the call that I will certainly try to catch up on the transcript and go from there. Thanks.

Graeme Bunton: Thanks, Todd. Thanks for your contribution of the text. I see Volker's hand up. Volker.

Volker Greimann: Yes, thank you, Graeme. Volker here. I do not think that privacy is circular in this interpretation here. Maybe it's my European background but I consider that every person has a right to not have his private details published on the Internet.

How that right is developed, be it through a privacy service, be it in another fashion is a different matter. But he has the right to request the removal in certain cases. And if he violates other people's rights then that right may be reduced and he may be - it may not be - it's not a universal right so. On the other hand, if we go into human rights, that's a very wishy-washy term. That can mean something different wherever you are.

The right to privacy is pretty defined as the right to use the service, in my opinion. And if the other party does not provide sufficient evidence to remove that if he says, "I need my privacy" then that should be taken into consideration and it should be reason to - for refusal.

Graeme Bunton: Okay. Thanks, Volker. This is interesting because I think we're quite close, we just need to get the right sequence of words in there so that I think we can all be happy. It's - feels like we all understand the concept we're trying to get it, it's just making it narrow enough.

We also have the solely or mainly language too. I think there was some support for the mainly, not solely, but we'll leave that for a bit of discussion too. I see Stephanie Perrin and then Kathy and then Steve. Stephanie.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I sent this out on the list, unfortunately it didn't go so I just resent it just immediately prior to the meeting so probably nobody has read it. But I think one of the problems here with respect to this discussion of whether it's circular is we need to distinguish between how we're using the word "privacy." What we're basically (unintelligible) that removes the privacy that the customer has availed himself of through the service provider, right?

So that's privacy in the very broad sense. And I agree with Volker that I may just want my privacy; I may not be running from religious cult or ex-spouse. I may not be doing anything criminal; I may just not want my privacy revealed. And I may instruct my service provider...

Graeme Bunton: We're losing you a bit, Stephanie.

Stephanie Perrin: ...that unless there is very high threshold for (unintelligible) the day is legitimate, right? I don't...

((Crosstalk))

Stephanie Perrin: Sorry? Can you hear me now?

((Crosstalk))

Stephanie Perrin: ...a situation - even though I understand (unintelligible) - okay maybe I'll walk a little closer to my transmitter in case it's me. I don't want a situation where the privacy proxy services (unintelligible) has to make a case for why they have got the privacy proxy service. In other words I don't - I shouldn't have to reveal information to my requestor that makes me vulnerable if you understand what I mean.

So the - ultimately at the end of the day the onus is on the requestor to meet the threshold of a review, not me to defend. And I share the concern that

getting into a - once I have to explain why I need the privacy service then we're getting back into the privacy proxy service provider being judge and jury over whether this is a legitimate, you know, whether I have a privacy right in this particular state, whether I have a legitimate reason to flee someone, etcetera, etcetera, etcetera. That's not the point.

So it's - there's two things happening here. All we're determining is has, under this policy, the requestor made a sufficient argument to remove the privacy that I am purchasing through this provider? Yes or no. And I can certainly make an allegation that I'm endangered, yada, yada, yada but it's not up to the provider do weigh that. Does that make sense? I realize I'm contradicting some of the things I've already said. But you're not fighting out the edge case here, you're pushing the edge cases to another venue.

Graeme Bunton: Thanks, Stephanie. I think we're getting a little bit away from what this, as - and I think Vicky was noting this in the chat - from what this paragraph was originally intended to do. And I think this paragraph was originally about where the person is operating in bad faith like the requestor is operating in bad faith.

((Crosstalk))

Stephanie Perrin: If I can just respond to that, Graeme? That is the problem that some of the arguments we've been having import all these other things back into this clause. In other words, I shouldn't - if the requestor is operating in bad faith I shouldn't (unintelligible) make my case about my human rights in order to prove that, we should be able to figure out whether they're acting in bad faith without me making myself vulnerable.

Graeme Bunton: I'm going to get Kathy and then Steve. And I suspect Steve - actually Steve, did - I suspect you want to respond directly to that so I might get you in there first.

Steve Metalitz: No, I'm happy to defer to Kathy.

Graeme Bunton: Okay. Kathy.

Kathy Kleiman: Okay. A response to Stephanie, to you, Graeme, and to Volker. Stephanie, I'd love to see the language that you're thinking of because I think it would help make it more concrete and maybe this means that we extend this discussion until next week. But I think 3(c)5 is a very, very important section.

Graeme, to your idea about the requestor operating in bad faith, I hate to say it but I think we're - I think the answer is no; I think we're doing much more than that. This was about kind of the slam dunk concept. This is about the provider looking at the evidence, or as Volker would say, the facts and circumstances and information on both sides and seeing - and being - and looking at both sides.

So, yes, there could be a very good faith request for the information based on the allegation of the trademark infringement but that - the trademark may actually be being used to criticize or critique or condemn a product, a goods or service, something, you know, a child's product that has hurt or killed children, very legitimate use of a trademark.

So the reveal request is legitimate but the privacy request is also legitimate and probably outweighs. So to Volker's concept - Volker, unfortunately in the US the word privacy does not encompass what it does in Europe.

Our privacy rights come out of our sectoral, you know, so we have privacy rights in our videotapes back in the days when we rented videotapes, you know, privacy rights in our health records but not - but also our privacy rights come both to individuals and organizations and companies and associations like the NAACP through our freedom - through our free speech laws, the freedom of expression laws and freedom of association laws. That's where some of our privacy comes from.

So we need to kind of be more comprehensive in the use of language if we're going to I think embrace the protections, the human rights protections of the UN declaration of human rights and kind of create privacy rights across the board or not create but encompass.

So I know the wording for human rights seems to be creating some problems. I proposed something on the list, maybe we want to continue the discussion on the list. Just a thought. Thanks. Sorry for the long discussion.

Graeme Bunton: Thanks. That's okay. I think the language I see from you on the list was something instead of privacy, legitimate rights and protections and then a - you're proposing a descriptive paragraph. It feels a bit like we're not going to solve this on this call and we might need to continue where we were on the list. But I still have Steve and Volker in the queue so please, gentlemen, prove me wrong.

Steve Metalitz: Yeah, this is Steve Metalitz. I would just like to suggest that people do three things before they make a comment. One is to read the document. I think if you read the document you will see that the scenario that Kathy was just talking about about using a trademark to criticize is covered by C2. It's not about C5, it's already covered so please read the document first.

Second, please remember, those of you have participated in many of these meetings, and this is our 62nd meeting of this working group, please remember the discussion that has come before. And Stephanie's proposal that the customer be able to veto any disclosure, which is really exactly what her intervention boils down to, I don't think we've been at that point in at least 12 months or certainly many months in this group so please don't try to drag us back to issues that have already been very well discussed.

And finally, I think - I am opposed to the idea of saying well, please give us some language next week about this. We've been working on this for 16

months. We're getting down to some pretty specific issues here. And I think if people have an objection to the language that they see here they should propose other language.

I know Kathy did that about 40 minutes before the call. I don't think her language is an improvement because I don't see how legitimate rights, which is a totally squishy concept, is any better than human rights, which is an internationally recognized concept, far more broadly recognized than Volker's concept - and I respect his beliefs but it isn't the law, his concept that privacy rights are well defined and uniform around the world.

So I would just - I think if we're going to make progress here people have to read the text, think about what we've already discussed and bring forward specific language if they can and as soon as they can. Thank you.

Graeme Bunton: Thanks, Steve. That was clear. I've got Volker and Stephanie in the queue. And then I think we might try and do what Steve has just suggested is that we'll park this, someone has specific text in response to what Steve has just said within that context then we can look at it and that'll be great. But we'll hear from Volker and Stephanie and then we'll move on to attestation. So, Volker, please.

Volker Greimann: Thanks, Graeme. Volker Greimann speaking. I think Steve has slightly - probably not intentionally - misrepresenting what I'm trying to get to. My basic concern is that I do not want to enter or have required or enter into a deep legal analysis of what has been presented by either side.

The question that this boils down to is has the complainant provided enough to remove the privacy or has the customer provided something that would counteract or in some form make it incumbent upon the provider not to remove the privacies.

I specifically did not put privacy rights in my draft, I said privacy which my interpretation meant the removal of the privacy function, i.e. when the provider is contacted by the complainant with the main interest of removing the privacy for the interest of removing the privacy, i.e. the complaint, the copyright complaint, the trademark complaint is only a pretext for the removal of the privacy.

If that becomes clear then that request should be denied in all other cases if it has a legitimate right and it's mainly for the execution of that right then of course the normal parameters should apply.

Graeme Bunton: Thanks, Volker. I like what you're trying to get at there. We might need to work on that wording a bit to see if there's a middle ground there that we can come to. Stephanie. If you're talking - oh I think you're...

((Crosstalk))

Stephanie Perrin: Thanks. Am I on now?

Graeme Bunton: Yeah.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I understand Steve's point. Perhaps in my defense of my intervention I over-stressed the fact that we've already got in this list of, without restricting the generality of far-going type reasons, we already have the prima facie case, no I'm not abusing his trademark, tell him to go away. That is present in Number 2.

The problem being that there are quite a few concepts that people are complaining are being conflated and that it's circular in Item 5. Now I still think we need due language for Item 5 that makes it a bit more clear. I still think we need Item 5 because if as a customer (unintelligible) not being equal if as a group I decide to say hey, we're a religious group and we're persecuted I can

show you evidence that this guy is just persecuting us so don't do a reveal, I'll be happy to see them in court, then that circumstance (unintelligible) by 5.

The question is, how do you phrase this so as not to, in my view, conflate the concept of privacy, which you're protecting through this service, that you do not want to qualify and the concept that there are other human rights that are being protected, broader human rights that are protected and that those reading this policy need to understand that.

Because? Partly because whenever we talk about a privacy proxy service we do not automatically think of the other human rights that you need a privacy service to protect regardless of whether you've got privacy law in your jurisdiction. Does that clarify a bit? And please be assured, Steve, I do read the documents and I understand your frustration.

But I think we're getting down to it here and I would be reluctant to see the human rights language lost because I think it's very important because I think repeatedly even the group that has gone through 67 meetings or whatever it is, forget and (unintelligible) in terms of privacy we get into this how can I tell which of 132 laws you're referring to.

You know, that's not the point. The point is that the privacy proxy services operate not because of legal obligations, they operate because it's a service that we've agreed at ICANN that you can offer. Thanks. And, yes, I'll be happy to provide language but I don't think I can do it while we're on the call.

Graeme Bunton: Thank you, Stephanie. I don't think anyone expects you to provide it while we're on the call. But if you have tweaks to Todd's language, or anybody else, let's get that on the list in very short order rather than the discussion we've been having today before this call. So it'd be much better to have it with enough time to read and think and respond.

Thank you all for that discussion. I - it was contentious there for a bit but I do think we're closer than it may seem. Let's move on now to the issue of attestation. And this language is not, I think, put in a few places within the document. Top of Page 7, I believe is one of those.

And this is the issue around how do we ensure that the person submitting the request is the correct authority or an authority that can be held responsible for the request that they've made. So the text that we've got in there now is where the signatory is not the rights holder, he/she must attest that he/she is an authorized representative of the rights holder capable and qualified to evaluate and address the matters involved in this request and having the authority to make the representations and claims on behalf of the rights holder in the request.

And so we have Kathy concerned about this. And I - let me go back to my email there - that the people might not be held responsible for this and the people doing it weren't of the appropriate authority. And then I think we had rather late some text from James Gannon. I'm not sure if James is on the call. I don't see him.

So I see Kathy's hand is up, maybe she can speak to the draft language that was submitted by Val. Let's see if we can wrap this up. Kathy.

Kathy Kleiman: Actually, I was wondering if Val or Mary could summarize the language because it appears to be in different places. Mary's putting that in the notes. So maybe that should come first and then the discussion of building a little bit on top of it because it gets us most of the way but not all the way so maybe I should wait for Mary or Val, would that be okay?

Graeme Bunton: Sure. That sounds fine. I see Mary. Please, go ahead.

Mary Wong: Thanks, Graeme. I hope everyone can hear me. Sorry for all the weird problems I'm having. I see actually Val has her hand up so all I'll say is that

the language for what the signatory needs to attest to from Val is in the main body of the document as Graeme says, is in I think three different places to match the different scenarios where a request might come in.

And the footnote Number 2 that I referred to is the additional language that Val had also suggested for what the form itself, the form of the words might look like. Thanks.

Graeme Bunton: Thanks, Mary. And I'll go to Val and then back to you, Kathy. Val, please.

Val Sherman: Hi. This is Val. I think this kind of - I mean, I think it's fairly self-explanatory. I guess I intended this to be, you know, obviously at attestation provision that would be provided whether it's the rights holder themselves or an authorized representative of the rights holder. And it would be a similar provision that would be in the three sections of the templates or - the sort of examples that we have here that would essentially - again, it's self-explanatory. It would affirm that they're authorized, that they're capable and qualified to evaluate the matters involved and having the authority to make the representation.

So to us it was - this I guess was an attempt to balance the - to have a higher burden on the requestor but at the same time to kind of balance the considerations on all sides. So hopefully it has done that. I see that there is - Kathy still had some issues with I guess the - being able to - the sufficiency of the statement to bind the trademark copyright owner, or Proctor & Gamble, to the representations being made.

I think that given all the other examples that are currently being used in this sphere - in the online sphere as far as takedowns and these similar types of issues, I think it's sufficient and hopefully others agree. Thanks.

Graeme Bunton: Thanks, Val. And thanks for putting that language forward. Kathy.

Kathy Kleiman: Yeah, I think the language is great. I think it moves us forward a lot. But we still - and I would keep it, I would just expand to it. And on the list I added some language that James Gannon, who is a new member of our organization, and he was - we were kind of in a small group playing around with some language and working through it on how to - self attestation is great but limit it.

What we're really trying to do is find out whether that person is really bound by - is really able to bind Proctor & Gamble to the limitations not just of the statements that are being made but of, you know, the limitations on the data when it's disclosed.

And so some kind of letter, a delegation of authority for renewal request, might be appropriate here. We don't want to make it huge, we don't want to make it encompassing but letterhead clear proof that the trademark owner or the copyright owner has delegated - has delegated both the authority of expertise that someone else is making a legal judgment of trademark infringement or copyright infringement as well as the other requirements of the request template. And then is able to commit the trademark owner or the copyright owner to the limitations once the data is revealed.

That really - that's more than just a consultant or a clerk saying I have the right to do this. That's the trademark owner or the copyright owner saying you have the - you - you have the right to do it. And one letter may cover, you know, the delegation for a year or for a period of time or for a certain number of requests. So I don't think we're adding a huge burden on the trademark owner or the copyright owner to give some notice of proof that can then be passed on to the service provider and the customer if there are challenges later on. Thank you.

Graeme Bunton: Thanks, Kathy. So just to be clear you're proposing a sort of letter agreement between the person who's actually doing the request and the ownership of the trademark or the copyright that would then get shared down the line with

the provider so that we have - the provider knows that that relationship is legitimate and strong and...

Kathy Kleiman: Enforceable.

Graeme Bunton: Responsible.

Kathy Kleiman: Right.

Graeme Bunton: Enforceable. Okay.

Kathy Kleiman: Thanks.

Graeme Bunton: I would be curious to hear responses to that idea. I'm not seeing much. There we go, Val and Steve. Thank you. Val, please.

Val Sherman: Hi, this is Val. So Kathy had two pieces here, one was a policy principle so insofar as the policy principle is concerned, generally I have no problem with something like that with the exception of the written authority - the written really aspect of it. And I haven't really reviewed the detailed policy language in too great of a detail as it was sent out just recently today.

But it seems that it's really kind of placing - this is something very unique that doesn't - that isn't usually encountered in this setting, this kind of seems to place undue burden on the requestor to have to do this. I don't know what others think but to me, as I said before, I really think that the statement that we - that we had is, you know, should suffice to establish that kind of authorization.

And, you know, obviously the requestor would be on the hook for whatever they submit the statements have to be made in good faith; they are enforceable, it's made under the penalty of perjury.

So this kind of a, you know, submitting this kind of a - what is this a delegation authority letter to the provider, it seems to go way far and beyond what seems reasonable to submit a request. Thank you.

Graeme Bunton: Thanks, Val. I think to respond to Chris in the chat, you know, if the requestor screws up in a way that we feel like suing them regardless of whoever owns that trademark, I think that ability is still there. It's the connection is then that formal connection to the actual copyright owner that we're discussing here in the attestation and how strong that needs to be. Steve.

Steve Metalitz: Yeah, this is Steve. I would just underscore what Mary is saying in the chat and what I think Val just referenced. I mean, this would be really extraordinary compared to anything else that might be comparable. I mean, in terms of how much, you know, what documentation you would have to bring forward.

And again, if you look at what the ccTLDs do, you look what's done in the DMCA setting, you look what's done for URS or UDRP, for example, I don't think any of these require - and obviously these are all analogies, they're not exactly the same as what we're talking about here.

But I think all of these - none of these would be as intrusive as what - and as demanding as what Kathy is calling for. And I guess I'd just ask the service providers what they think.

I keep hearing from Volker and others that the main thing they don't want to have to do is make a legal determination so Volker, if you - would you guys want to examine the documents that are negotiated between the right holder a and whatever - whoever their agent is to see if you're satisfied that the agent has the authority or - and I know you're concerned about the quality of the request that you get in some cases but I'm not sure that that necessarily translates to concern about the legitimacy of the agency representation that's

being made. So I'd be interested to know what the service providers think about that.

Graeme Bunton: Thanks, Steve. And I think you raise an interesting point and I look forward to hearing from Michele and then Volker. We have two minutes left so you guys are going to have - I'm going to give you 45 seconds each. And it's clear we're not going to get to the annex today. So, Michele and then Volker. Quick and tidy.

Michele Neylon: Okay. Michele for the record. Now, Steve, we don't always agree on things but I think here I think there is a certain level of agreement. For us as a provider of any service having to go off and validate third party documents is going to cost me money, time, effort, legal fees. So I personally wouldn't be interested in going down that route.

I think that's - I think if - my main concern I think - and I think you've understood this concern is, as you said, it's around the quality of - the quality of the report, making sure that they - that accountability is covered, etcetera, etcetera, etcetera. I'll pass to Volker because we're short on time.

Graeme Bunton: Thanks, Michele. Volker.

Volker Greimann: Thank you, Volker speaking. Personally I would love to look at those contracts but not as a provider but rather as the curious cat that I am. As a provider I would not want to see those contracts and the specific details, I just would like to see a confirmation as part of the complaint that a certain standard has been followed and that would be of course also attributable to the complainant but I wouldn't look at the contract as a provider.

Graeme Bunton: Thank you very much, Volker. And I think that's helpful input from both of you. That brings us to the top of the hour. We didn't get through everything we wanted to today but I think that was still some useful discussion. There is a

couple pieces there that we need to work on. Let's do that and let's do that sooner rather than later.

And next week we're up for more discussion on annex and hopefully we've tied up these issues. Thank you, everyone for coming out and have a lovely day.

((Crosstalk))

END