

**ICANN Transcription**  
**Privacy and Proxy Services Accreditation Issues PDP WG**  
**Tuesday 29 September 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 29 September 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-pps-a-29sep15-en.mp3>

Attendees:

Stephanie Perrin - NCSG  
Todd Williams – IPC  
Sara Bockey – RrSG  
Frank Michlick - Individual  
Steve Metalitz – IPC  
Sarah Wyld – RrSG  
Darcy Southwell – RrSG  
David Hughes - IPC  
James Gannon - NCUC  
Paul McGrady - IPC  
Susan Prosser- RrSG  
Alex Deacon - IPC  
Luc Seufer - RrSG  
Michele Neylon - RrSG  
Osvaldo Novoa – ISPCP  
Christian Dawson - ISPCP  
Chris Pelling – RrSG  
Val Sherman - IPC  
Kathy Kleiman - NCSG  
Lindsay Hamilton-Reid - RrSG  
Graeme Bunton - RrSG  
Terri Stumme - BC  
Volker Greimann - RrSG  
Stephen Truick -  
Carlton Samuels - At-Large  
Griffin Barnett - IPC  
Susan Kawaguchi - BC  
Holly Raiche ALAC  
Rudi Vansnick – NPOC  
Don Blumenthal-RySG

Roger Carney-RrSG

Apologies :  
Phil Corwin – BC  
James Bladel - RrSG

ICANN staff:  
Mary Wong  
Marika Konings  
Amy Bivins  
Gisella Gruber

Coordinator: The recording has started please go ahead.

Woman 1: Thank you very much. Good morning, good afternoon and good evening to everyone. Welcome to the Privacy and Proxy Services Accreditation Issues PDP working group call on Tuesday the 29th of September, 1400 UTC.

On today's call we have Todd Williams, Frank Michlick, Steve Metalitz, Sarah Wyld, Chris Pelling, Val Sherman, Kathy Kleiman, Graeme Bunton, Stephen Truick, Carlton Samuels, Holly Raiche, Rudi Vansnick, Christian Dawson, Don Blumenthal, Alex Deacon, Osvaldo Novoa, Roger Carney, Sara Bockey, Lindsay Hamilton-Reid, James Gannon, Darcy Southwell, and Susan Kawaguchi.

Apologies today noted from Phil Corwin and possibly James Bladel who was not able to join the call. From staff we have Mary Wong and myself Gisella Gruber.

And if I could please remind everyone to please state your name for transcription purposes. Thank you and if anyone does join this call during the recording their participation will be noted and I will let you know on the Adobe and over to you (Graeme) thank you.

(Graeme Bunton): (Unintelligible) okay I see the only one who has updates is SOI before we get started. (Unintelligible) I'm very faint apparently so let me get closer to my mike how is that?

Woman 1: (Unintelligible).

(Graeme Bunton): Great okay so what are we going to do today? We are going to take a look at Annex C, we're going to hear back from sub team four and then if we've got time we're going to look at some of the issues we've noted previously.

Now we haven't had along with the Annex E document I think Mary sent it out yesterday and I'm not clear whether it was Mary that made some of those edits or whether that was the sub team that did so.

I see Mary's hand up which is great so Mary if you want to let us know who made those and then we can go through some of those changes I think and have some discussion.

Mary Wong: Sure, thanks (Graeme) and hi everybody this is Mary from staff. Thanks of course to sub team three for continuing to work through this document. So what this document is the one that was sent out yesterday that you see on the screen is an update made by staff based on first of all the continuing sub team discussion including second of all the working group discussion of the earlier draft from about two weeks ago.

So what I wanted to note for those of you who haven't had a chance to look through this 28 September draft is that while some comments were put into this there wasn't a whole lot of textural changes.

So it might be easy given that you can't actually see the comment balloon in Adobe Connect. Obviously if you pull up the document on your own screen you can.

We put into the right hand side notes part, hopefully you can see that the comment and the changes. And the last thing I'll say (Graeme) before putting it back to you is that there were only a few textual changes.

They were all in Section 3(D) and they are grouped together in the right hand side notes part. As for those comments which are also in the notes part those are the comments that came from the working group discussion of two weeks ago and the sub team has had a few discussions by email since then.

And I assume that they would want to take the working group through some of those outstanding issues. Thanks (Graeme).

(Graeme Bunton): Thank you Mary. Great so maybe let's see is (Todd) on the call? I see (Todd) and he's got his hand up. (Unintelligible) on this one. (Todd) is here and is going to talk us through some of the discussions that you guys have been having and (unintelligible) this document.

(Todd): Right sure, so as Mary said we had a good discussion the last time we talked about this document in the broader working group which was the September 15 call.

But in that call also identified several areas that needed further discussion. So just to kind of go in order through the document the first is 1B3. And just to kind of set the table on that the only substance of discussion we had about that section on the September 15 call was to say that we had removed it per the majority of the public comments that we reviewed were against it as opposed to for it.

We didn't really get into the merits any but then kind of at the end of the call James Bladel spoke up and said well can I just put a marker down to come back and discuss this further and so that's what this is.

There has been no textual changes to it it's just highlighted as a topic for further discussion to throw out the I guess pros and cons of including it for discussion among the larger working group.

So I suggest we cover that and I mean I'm happy to go first in terms of discussing the pros and cons of it.

(Graeme Bunton): Sure, unless Kathy has something to add to that particular point we can take these in by one and hopefully most (unintelligible).

Kathy Kleiman : Yes actually, you know, this is Kathy. I do have a procedural set of changes, procedural question to raise which is again we're looking at a document that came out last night from staff that hasn't gone through - the sub team has been going back and forth with a number of changes and questions.

So we can't jump into debating pieces of the report as posted by staff. But the textual changes and I guess I don't understand what that means because there are textual changes throughout the document not just in one section.

But the one we're talking about here that we haven't really talked about is nominal cost. Whether the nominal cost should be passed on to the requestor. So when it says that all the comments were on one side we have a number of comments that had to do with the reasonable cost and access to proxy privacy services.

So I don't know frankly I would throw this back to the sub team right now. I'm not sure, you know, happy to get input for the working group but from the working groups perspective to let you know that a lot of this is still being debated within the sub team.

And that text came out may not be what would ultimately be recommended after the debate goes back and forth. But there are a number of very selected changes here that have an enormous impact.

And so you can talk about it, we can talk about it here or you can ask the sub team to write a report or more people can come into the sub team or we can create another avenue for discussing what really is the center of our report, which is Annex E the center of our working group presentation is really Annex E and right now there are thousands of comments on various parts of it.  
Thanks.

(Graeme Bunton): Thanks Kathy and I don't want to force this if it's not ready for prime time but at the same time we need to make some head way. I see Steve's got his hand and (Todd). Let's hear from them and then we'll decide whether to leave that point or whether we need to put this whole piece aside for today. Steve.

Steve Metalitz: Yes thanks this is Steve Metalitz. The vast majority of the change of the things that are marked here as changes were presented to this working group by the sub team two weeks ago so they're not new.

And what's on the right hand side are the things that have changed in this document since then. It's been two weeks and we asked the sub team to go back and look at this.

The sub team members said they really wanted to discuss verifiable evidence which was one of the main topics that we talked about two weeks ago. And I'm reluctant to send this back to the sub team because I don't think the sub team is producing.

And it may be more efficient to just have this discussion here now in the working group. Obviously I'd love to hear more from other sub team members on this but I think the two options are either to discuss it now or to ask the sub team to provide its final report by Friday.

I don't really see any other options than those two if we are going to actually have a meaningful face-to-face meeting in Dublin and meet our timetables.  
Thank you.

(Graeme Bunton): Thanks Steve. I see (Todd) and (James). Kathy is that an old hand I think it is? Let's hear from (Todd)...

Kathy Kleiman : Yes sorry.

(Graeme Bunton): ...and think about what we're going to do here.

(Todd): Yes this is (Todd). I agree with Steve I don't see any downside in discussing the open issues on the larger working group call today and to the extent the people that aren't on the sub team have points that the sub team then needs to go back and consider and debate among ourselves. That's the only way we're going to find out.

I don't understand the suggestion of taking this back under sub team consideration.

(Graeme Bunton): Thanks (Todd). (James).

(James Gannon): Hi (James Gannon). So I would go along with the suggestion of taking this to the full working group however I wouldn't agree that we need to be finishing this out today.

There's still a lot of work to be done on this it's still not in a position where we have agreement on the content of this. There's certainly more than an hour's work left on it.

But I would agree that I think this is at the stage where it needs to come back to some substantive and serious discussion on the fully working group.

Mary Wong: (Graeme) are you on mute?

Steve Metalitz: In the chat.

(Todd): All right I'll go ahead while adjusting that. I mean if we - it appears from the chat that most of the comments are in agreement let's discuss with the stipulation that (James) just identified that this isn't necessarily final.

So on this issue of cost on these three, more of the comments that we reviewed noted opposition to this than not. And I think the kind of substantive argument on it just to lay it out is as simple as I can make it.

When you're looking at a privacy proxy service that's a contract between two parties the provider and the customer. They are the two parties that enter the contract, they are the two parties that are enjoying any benefit of the contract.

To the extent that there are any costs that are generated by them doing so it makes sense for them to divide those costs between them however they see fit. To instead pass off the cost to a third party mainly a requestor that had no, you know, input on the decision to enter into that contract and gets no benefit from that contract just doesn't make sense. That's at least my position.

Steve Metalitz: Okay (Graeme), if (Graeme) is not back on why don't we go to Kathy who I think had her hand up and then I see Holly's hand and others can following the queue. So Kathy go ahead and (Graeme) if you reemerge I'll pass the baton back.

Kathy Kleiman : Sure thanks. Just to lay out the other side of the argument is that providers have expressed concern over the cost of providing these accreditation services, what we're going to be asking them to do.



And especially with scale and scope some of the providers could be on the hook for a lot of new staff. Customers have commented widely on the concern over affordable access to proxy and privacy services.

That if they are raised to the level of say attorney confidentiality then that would be a problem. So normally in other environments let's say you file in court as a third party you pay the filing fees.

And here too it seems very reasonable to be asking in the counter is to be asking those requesting services to pay a reasonable or nominal cost for them. Thanks.

Steve Metalitz: Holly go ahead or did you want...

Holly Raiche: No, I agree with Kathy and with the comments that are in the chat which is essentially the cost that we are talking about is because there has been a request for information otherwise wouldn't be available.

So essentially it is the requestor that is adding, that is taking some additional that's why we were talking about where the costs should lie. But that point has been made well.

Steve Metalitz: Okay I put myself in the queue and I guess I have a practical question here. So this language says there will be a standardized nominal cost recovery fee. Who would standardize that?

I'd like to ask the proponents of this language who would standardize that, who would determine whether it's nominal? And I say that just because I know the answer to the question is not going to be ICANN.

So how would this be standardized and how would the (nominalist) if you will of the fee and determining that it doesn't serve as an unreasonable barrier since it's also in there how would those be determined and enforced?

So I'll just put that question out there and any component who wishes to answer that can do so. Holly is that a new hand? Okay maybe (James) then we'll go onto (James Gannon) who is in the queue, go ahead (James).

(James Gannon) are you with - are you off mute now?

(James Gannon): ...accreditation we don't see any -- yes can you hear me now?

Steve Metalitz: (James) you're breaking up at least I'm not hearing you very well could you...

(James Gannon): Yes so I...

Steve Metalitz: (James) is passing I think we have a technical problem here. So (James) can get back in the queue at some point. (Michele) go ahead.

(Michele): Thanks (Michele) for the record. I'm not sure exactly how one would decide a standardized cost. I mean that is obviously a bit of a problem. But having said that as a service provider I would like to have the ability to levy a fee should I need to or should I wish to.

So for example if you were to look at our terms of service around various things we have in our terms of service that we can levy a fee on clients who constantly generate spam comp reports just as an example.

Generally speaking we don't do it but if they keep on abusing the system we have in our terms of service we can. If I'm getting like one request every six months then it's going to cost me more to charge somebody that it would be for me just to do whatever is required.

But if I have somebody who is constantly sending us reports every bloody day I would probably want to have the ability to charge them. So my main thing is just making sure that I can levy a fee on these people who are asking for sending things for me.

See the thing is is that yes I can levy fees on my clients but if you or somebody else wants me to go off and jump through hoops to provide you with all sorts of extra information about my client for whatever reason then I'm going to charge you a handling fee for that much in the same way as we would for somebody who want I don't know to get us to spend hours pulling out logs out of servers for whatever reason to deal with some kind of, you know, third party civil court case or something like that.

I mean generally speaking we probably don't charge it but we need to have the ability to be able to charge it should we need to. Thanks.

Steve Metalitz: Thanks (Michele). I think Holly is that a new hand or if not could you take it down?

Holly Raiche: No, no, no.

Steve Metalitz: It's a new hand go ahead. Go ahead Holly.

Holly Raiche: Okay the point of what I'm making, saying in the chat which is we're not talking about client versus non-client. If you're asking for information automatically you are a client.

And therefore its leading up to the person who got the information to say well I will charge you and they can use the term cost recovery or something like that so that in fact you're not making a profit out of it but cost recovery.

And taking (Michele's) point if you are constantly harassing for information then probably you are going to be incurring costs. But I don't think it's fair to say non-client in this stage because in fact you are seeking a service and the service is the provision of information.

And I think that there should be some kind of nominal cost recovery for that. Thanks.

Steve Metalitz: Okay, that's an interesting concept of what constitutes a client. (Michele) is that a new hand?

(Michele): Yes it is, thanks again (Michele) for the record. To say briefly I'm not sure if it's the same in every single jurisdiction which has data, privacy and protection laws but in this jurisdiction, Ireland anybody can come to a company and ask them to produce a copy of the records that are held.

And there is the ability for us to levy let's see I think it's the maximum but somebody might know the exact amount. But there isn't a bit - we have the person - sorry the company providing that these can ask the requestor to pay a nominal fee.

It's the same with our frame of information request and you can submit them to government departments and other agencies that are subject to (FOI) and they house the ability to levy a charge.

Again it comes back to the ability. It doesn't mean that they're going to and I think this is something that others have mentioned in the chart as well. I mean it's not a quick case of saying that everybody is going to charge everybody for every single thing.

I mean if we get, you know, a very simple request from somebody in relation to a core case involving one of our clients and it takes one of my staff 5 or 10 minutes to deal with it, fine.

But if it involves going off and digging out, you know, archived files, extracting them, doing stuff with them then, you know, that's a very different set I think because that's providing as I think Holly said it's providing a service to somebody. Thanks.

Steve Metalitz: Thanks (Michele). I also have an echo. (Alex) go ahead.

(Alex Deacon): Hi it's (Alex). Is it because of that echo I hope not can you hear me?

Woman 1: Yes.

Steve Metalitz: (Alex) go ahead. (Alex) I'm not hearing you. Let's go ahead to Kathy and we'll come back to (Alex).

Kathy Kleiman : Okay, so again I wasn't sure we should be doing all this word stuff here but if we are then looking at the paragraph b sub point three. What I'd recommend in light of the current discussion is taking out the word standardized.

So because, you know, some providers what we're hearing is may charge, may not charge. If it's a small amount of time they may not charge. So assessing a remove the word standardized nominal cost recovery fee for processing complaint submissions.

So we're not saying what it is but we're saying nominal and cost recovery. This is not a profit center. You can't make a profit out of it. These are pretty standardized terms.

You could replace it with a reasonable fee but not making it mandatory but certainly making it optional. Thanks.

Steve Metalitz: Thank you, Paul.

Paul McGrady: Thank you, Paul McGrady for the record. My concern of course is that without it being standardized and I agree with Steve I don't have any idea it would do that.

That there were nominals open for negotiation or abuse and again there is no way without getting inside the providers books to know whether or not if the (B) charge didn't back cost recovery.

And so again my concern is if the nominal fee is \$1000 that will cause, you know, people to flock to a particular provider because it's more difficult for concerned parties to obtain the information.

If everybody were, you know, good actors which, you know, 99.9% with a line over it are it wouldn't be an issue but there's always that .01% that will try this and will certainly find a way to abuse it.

So I don't know that we can if we're going to include this provision I think we have to do more than - you say terms. The problem is I just don't know ICANN can do that.

But maybe that's just a question how do we prevent the \$1000 charge or the \$10,000 charge. Thank you.

Steve Metalitz: Thank you Paul. (Alex) are you back with us or maybe you're going to say something in the chat. Okay so (Alex) has a comment in the chat. Okay let me just draw this comment to a close really by posing two questions again to the providers here.

One is since I'm sure we have an answer of who would determine whether it's nominal cost recovery or whether it's standardized but that stays in. So one question is how do you do it now?

I mean you receive requests now for people to disclose information about your customers. Do you charge them I mean in some cases I suppose at least in theory you do that. So you charge them and how do you calculate that that's one question.

The other question is if this is not - this is in here as a nominal cost recovery fee and if it's not standardized (unintelligible) then that means that if someone encounters the \$1000 fee that Paul talked about, they go to ICANN and

ICANN compliance and say this provider is in violation of these accreditation standards because it's accepting a fee that's more than a nominal cost recovery fee.

So is that more palatable for providers? I'll just pose those two questions. If anyone wants to respond to them now then please do so. I see (Michele's) hand is up, (Alex's) hand is still up but I don't think he's able to speak so maybe you could take the hand down. (Michele) go ahead.

(Michele): Thanks Steve this is (Michele) for the record again. So the main concern I have is without some language in here are we going to end up in some kind of weird circular discussion or argument for the next 20 years if for example you submit loads and loads of requests to like one of my companies and we end up having to levy a fee to be able to service those in a timely fashion?

I'll put it another way, you know, if by admitting any reference to fees by not explicitly stating that that is going to be done for free are we still able to charge a service, charge for it?

I mean I think one interpretation would say yes because there is nothing in here to say that we can't charge first, that we can't do some kind of cost recovery.

Just my concern is if we don't put something in then if somebody needs to charge a fee because somebody is abusing the system or the requests that they're sending in require whatever, you know, we just have that ability to be able to levy a fee.

That's all I'm personally asking I'm not into this entire thing about what constitutes excessive fees and all that but I think that again it's a very hard question to answer.

And what is excessive for me might not be excessive for you et cetera, et cetera, et cetera. Thanks.

Steve Metalitz: Okay thanks (Michele). I think we've had good ventilation of the viewpoints on this including the questions that would have to be addressed if this language were kept in.

So let me ask I don't see anybody else in the queue. Let me ask (Todd) to continue down the other changes that were made in this last or were proposed because as pointed out the sub team hasn't approved this in this last go around. So (Todd) could you go back to the next substantive one?

(Todd): Right, so the next big substantive open issue is its easiest to start with 2A6B but then this particular issue then gets repeated in 2B and 2C. And it's basically the new language about requestor averment as to what it's going to do with the data.

So there was new language that we as a working group kind of went over in that September 15 call and a lot of people raised questions about how feasible this was.

I know there was also discussion of indemnification as kind of another way to look at this particular issue. I don't know that there is necessarily anything new or any progress in what you're looking at now just to say this is still an open issue as to whether this language gets to what it is that we were trying to get at or if there is a better alternative.

Steve Metalitz: Okay thank you (Todd). So I see one issue was whether a requestor can keep the data to associate with other information about the registrant for future other requests.

I think that was one topic that came up in the working group discussion here. And then there was the indemnification question. So I'll open the queue on this is people have comments.



I think - let me just open the queue if people have any comments on that.

And I don't know that there were textual changes here. I see there were comments added by (Mary) in the document which are not unfortunately here. But they basically get to those two points that are summarized in the right-hand pods. Are there any comments on that?

I see (Kathy) has her hand up. (Kathy) go ahead.

(Kathy): Okay first can you point out what - can you blow up the document on the screen to where you are?

((Crosstalk))

(Kathy): Because - and just a note the actual changes that are proposed currently here even though we've seen them before are certainly part of the discussion that's taking place and the active discussion that's taking place in the sub team.

But so in terms of indemnification there's a real question and it was raised, you'll see it coming through in sub Team 4's comments as well or review of those comments which is what happens when something goes wrong when the requester agrees to be bound for the use of XYZ to limit their use of the data?

And then they go and they put it on their block or their harvesting. They ask a number of requests to a number of different providers and they harvest the data and create databases.

A lot of people used to, you know, in the old days it was great to go after unlisted cell phone numbers and create databases of them. This is unlisted data that's ripe for the picking.

There were comments that there was no - that there's ramification for doing that, that there's no penalty. And so indemnification, a bond these are all important because the requestor can abuse the data just as anyone else can. Thanks.

(Steve): Okay so I think your first point is addressed by this language that was presented on the 15th about retention and what it could mean. Well first of all it's been addressed by since the beginning of about where uses are allowed.

So there is a question of enforcement of that which we'll I'm sure will come to later in this discussion indemnification. So that's where I guess the indemnification comes in in your (unintelligible).

Okay let me ask if there any other comments on this particularly on the points that are raised in the right-hand pod about the retaining it to associate with future requests. I mean is there an objection to that?

In other words is there agreement that that would be encompassed by what's in here in B2 retaining it as long as necessary to achieve the objectives outlined or do we need to have a specific provision on that?

Okay I'm seen James Gannon and Michele. James?

James Gannon: Thanks (Steve). So as I said last week I would be strongly opposed to having the ability to start building internal databases which is essentially my reading of that language.

And I understand that that makes life a bit more difficult for requesters and I'm sympathetic to that issue.

But I'm much more sympathetic to internal databases being built and matrices of, you know, known bad registrants and, you know, it just goes down a rabbit hole that I don't think we should be going down.

(Steve): Okay. So let me just ask on that how would that be reconciled with 2B5 above that says you can block requester access if there's numerous requests that are identical, the same domain name, same intellectual property and the same requester.

Does this - would this interfere with that ability because you wouldn't be able to retain that data or is that sufficient because you could still request it about the same domain name, the same intellectual property? You wouldn't know whether it was the same requester or the same registrant or not. Does that make any difference?

That is - I mean this question for James. Let's move on to - we have a few here. We have Michele and (Stephanie) and we can go back to that question. Michele?

Michele Neylon: Thanks, Michele. I mean I'd be wary of, you know, giving people unlimited retention of the data. That is problematic. I mean again you've got - there's a couple of strings to this. I mean you're talking about allegations without full due process.

I mean these whoever is alleged to have done whatever it hasn't actually gone through a proper process. So it's an allegation.

Is there a corporate entity, a company, their rights are very different from that from individuals. But when it comes to individuals, you know, there's problems for us as an Irish company to give out individual's data to third parties.

And we have there's a lot of restrictions about where we can - where that data can go. And while up until last week one did have the safe Harbor that's now very much up in the air.

I'm sure Stephanie and other people can speak to that more knowledgeably than I can. But I mean there are serious concerns about data privacy for private individuals with respect to the retention of data, be very, very careful about that. Thank you.

(Steve): Thanks Michele. I see (Graeme) in the chat. (Graeme) do you want to take the gavel here? And speak up if you can. I'll continue to sub here...

((Crosstalk))

(Steve): ...in the moment. (Graeme) is that you?

(Graeme): Oh it is me but I'll let you finish this point out (Steve) and then maybe take up the next section. Thanks.

(Steve): Okay great. Thank you. We have Stephanie and (Kathy) in the queue. Stephanie, go ahead.

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. I hope you can hear me. I was going to address 7C3.

It's nice and, you know, as Michele has pointed out data protection applies.

But my point is really you're getting data, the requester is getting this data that is bound to confidentiality by contract, the community, the customer and the service provider.

And it seems to me that there has to be a contract between the service provider and the requester that also respects the data protection law but the confidentiality of third-party information whether they're a group or an organization or an NDO or a company. So that's commercial confidential information.

And if - of we need a clause that discusses that they're getting it under contract and that there are terms to this contract and that those terms have to meet what I would call best practice of data protection law regardless of whether any particular jurisdiction it applies to commercial entity. Are you following my logic here?

Thanks.

(Steve): Thanks Stephanie. (Kathy)?

(Kathy): Hi. For this section B2 I would recommend going back to the original language that we had agreed originally that the requester would retain the data for particular purposes. One was to contact the customer regarding further action and the other was and so actually two is just redundant.

But the idea of retaining the customer's data for as long as it's necessary to achieve the objective. As a lawyer you can argue it's always necessary to hold that data to achieve the objective and future objectives and related objectives.

There's no reason you would be holding the data for as long as you possibly could under B2.

The other thing is the reference that goes back to 2A, 6BI. I wanted to discourage these kinds of references and I'd like to take it out here again going back to original language or just deleting this section completely.

One of the comments that we got again in Sub Team 4 is that it's completely impossible for a layman to understand what we're talking about here. This is very legalese. And in fact all it's doing is referencing the section right above it.

Let's write in English. Let's not write in legalese and let's make sure this is clear to people who speak English and to people who don't. So I would just delete this whole section. Thanks.

(Steve): Okay so you're suggesting going back to the original language of Annex E on this?

(Kathy): Or just deleting this little Sub Point 2 section since I think it's already...

(Steve): Okay.

(Kathy): ...considered in Sub Point 1.

But I think the language here it is dangerous. I think it massively extends...

(Steve): Okay.

(Kathy): ...what we intended.

(Steve): Okay, all right. Thank you. Is there anybody else that wants to comment on this? We've got a concrete suggestion here which I think is we ought to consider which is either go back to the original Annex C language or simply Point 2 here.

I see James Gannon's hand up. James go ahead.

Stephanie is that an old hand or a new hand?

James go ahead and...

James Gannon: Okay thanks (Steve). Yes I actually quite like (Kathy) suggestions and possibly with the modification in 161 to only and retain customer contact

details, blah, blah, blah. I think that would be a good way out of the complex nature of what we're going into. I think I could sign on to that.

(Steve): Okay. That's a good suggestion. Okay so let's - why don't we move on to the next point in the right-hand pod? And I'm going to pass the gavel back to (Graeme) and simultaneously call on (Todd) to walk us through the next set of changes here, proposed changes.

(Todd): Thanks (Steve). So now we go down to Section 3. The first part of 3B, you know, we had a little bit of discussion on the time on our last call five calendar days.

We had some discussion about the secure communication channels and heard from James Bladel and I think (Graeme) about why encrypted email is not administratively feasible.

We heard from James Bladel about why disclosing some subset of the information namely name, mailing address and contact information for service of process as opposed to just a broader set of the contact information that would ordinarily appear in the publically acceptable Whois database is problematic. And that's why we went back to the original formulation on that.

We discussion about shall versus encouraged but not required to. And the general consensus on the call last time seemed to be that shall was preferable and encouraged but not required to kind of administrative thing.

And then we had some discussion on the last call about whether C4 should be optional or mandatory and then whether B6 was duplicative of what's in 5.

So that's kind of the posture of where we are now. I think (Kathy) had identified some other language in 3 that she wanted to discuss. And I'll kind of pass the mic to her to raise that.

Actually I'm going to recommend we deal with Section B and Section C separately because I think they raise a host of issues. So let's just go with Section B.

The five calendar days was I think generally agreed to. But notice the change with the word shall. Within five calendar days after receiving the customer's response or one calendar day after the time for customers responsive past service provider shall. And that's replacing is encouraged but not required to take one of the following actions.

So let me raise this with the providers and I'm going to raise another one more smaller issue I think before I give up the mic.

But, you know, that shall, think about that shall in the weeks between Christmas and New Year's. Think about that shall period and the - you're only given two options really, disclose the data or tell them in detail why not.

So I think that shall is actually an enormous change. You're going from encourage but now it's mandatory.

And then the secure communication channels, if we take out channels it may be better secure communication.

I've talked with a number people recently about how credit cards how lawyers are communicating credit cards and confidential data like social security numbers online. And, you know, it's easy to put in a password on a Word file or an Adobe file and so that password be another email.

Sending this kind of data in open email like a battered woman's shelter - God forbid that happens -- that has to be disclosed or is disclosed is probably not a good idea. Sending any of this data in open email is probably not a good idea.



But I think there are secure communication paths that are cheap and easy.  
Thanks. But I'm interested in the discussion.

(Graeme): Thank you (Kathy). Hopefully everyone can hear me at this time.

(Kathy): Yes.

(Graeme): Yes?

(Kathy): Yes.

(Graeme): Hooray, wonderful. I suspect that cheap and easy isn't actually secure which, you know, only sort of superficially secure (Kathy) and maybe that's problematic.

I don't think this is worth considering secure communication is a best practice. But as a provider I just find that problematic to mandate.

As for another one of your points as to the shall so it's either they disclose or that they write back not. I'm curious as to what some of the other opportunities might be there if it's not shall. Is it, you know, you ignore the request entirely? What would be alternative response would be?

I see (Todd)'s got his hand up and (Steve)'s got his hand up. So let's hear from (Todd) and then (Steve). (Todd)?

(Todd): I just want to make a point of clarification on the shall versus encouraged but not required too.

Shall was what was in the initial report. We only received one comment suggesting changing it to encourage but not required to.

We brought that to the broader working group in our previous September 15 call and said, "Look this is a language that had been in there before that nobody had really had any issue with." "This one individual commenter had recommended changing it." "And we're bringing that to you in the sake of full disclosure so that we can talk about it." But that the consensus on the call the time seemed to be no, you know, that kind of defeats the purpose and we went back to shall.

I wanted to make sure that that posture is clear to what the default baseline is here. Thanks.

(Graeme): Thanks (Todd). I think I see - I thought I saw (Steve) in the queue but it looks like his hand is down. And I think that's an old hand from (Kathy) so let's go to James Gannon.

James Gannon: All right thanks (Graeme). So secure communication channels, this is my pet projects.

So I think the language that we have here is sufficiently broad that it encompasses a number of things that even the smallest provider should be able to do knowing here that, you know, the provider must have a (note) (unintelligible) XMPP server. You know, this could be anything from, you know, setting up a GGP email which I know people don't want to.

It could be ensuring that data is released through a HTTPS secure portal. You know, we're not specifying a single technology or a level of security here. We're mandating a minimum best practice which I think is the least we should be doing if we're going to be transmitting people's personal information between two parties. I think that it's fair ask at a minimum without specifying individual technologies or levels or (unintelligible).

(Graeme): Thanks James. And I think what it does do is it excludes regular email. You know, I don't want to push too hard but I'd be curious to hear from other providers on that.

(Holly)'s asking in the chat as for the other provider (regal) is the provider doing nothing? Okay.

And now I see (Steve)'s got his hand up again. (Steve) go ahead.

(Steve): Just on the secure communication channel point. If we're going to do this we need a definition of that phrase. And so James (didn't) talk us a little bit just now in his intervention about that. Maybe he could turn that into a suggested definition so would be clearer what he's talking about there.

and, you know, and again I - it sort of depends what is accomplished within that as to whether this is feasible but if James could circulate a proposed definition of that that would be great. And if there's one that's generally accepted that's even better. Thank you.

(Graeme): Actually a good suggestion, thank you (Steve). I see James has got his hand up in response and I still haven't heard anyone else on the shall. James?

James Gannon: Thanks (Graeme), very brief. And I'm happy to - circulate the (unintelligible) text. But I think we should in the interest of the provider we should try and avoid trying to push definitions into the actual text. And we're opening up the same issues that we're going to have with that.

But we're then specifying specific security measures and we're don't have to then (unintelligible) those as the years go on. And we'll have to make sure that they're updated and everything else.

I think that's a an ask too far. I'd love to do it but I think it's an ask too far, happy to do something for the list though.

(Graeme): Thanks James. Michele?

Michele Neylon: Agreeing with James G. I mean the specifying exact methods for doing anything be it communicating or doing anything else is about idea. I mean look at the world we live in today compared to the world we lived in a couple of years ago.

You know, communication methods change, the technology changes. Changing the language in one of these - in a policy document is going to be slow and painful process. So keeping things high level general not getting into specific is always better. Thanks.

(Graeme): Thanks Michele. If I can come back to you as a provider are you happy with the communication channel language as is?

Michele Neylon: I don't know if I'm secure. Secure is fine. I just don't want anybody specifying what constitutes secure.

I mean there's others said secure could be in certain circumstances a phone call. It could be a fact. It could be carrier pigeon. I mean there's a lot of different things that might constitute secure. And it's up to - and depending on the size and scale of your operations which one of them suits is going to vary.

I have no issue of people using secure. That's fine. But I wouldn't want anybody saying you have to use whatever because that could be really bad.

(Graeme): Okay thanks for Michele. My screen just refreshed so I've got to scroll back down to where we were. Where was that? And now I see (Kathy) has hands up. (Kathy) if you would.

(Kathy): I was actually going to ask if you wanted to move on to C. But if (Steve) wants to talk to B I'm fine with that.

(Steve): This is (Steve). My...

((Crosstalk))

(Steve): ...only additional comment on D is I'm okay. IF Michele's okay with it on behalf of the providers I don't see a problem.

But I think that the danger is that they would conclude that the only secure, you know, again it's subject to abuse. And a carrier pigeon if it's hand delivery to my office and it's going to take a week to do that that's not going to be acceptable.

So, you know, again this will be an issue that would be subject to ICANN compliance if they sent it using a method that is dilatory on the pretext that was the only secure communication channel. But in general I don't - you know, I'm happy to do that (unintelligible). Thanks.

(Graeme): Thanks (Steve). I think many of us in a similar place on that that it's - I would love to see it as a best practice. I have a tough time excluding an email.

So that might be something to ponder a little bit more between the people who care about that and maybe providers can have a discussion see if we can bring something back on that.

(Kathy) you wanted to move on to C and maybe it's time to do that.

(Kathy): Okay moving on to C, reasons disclosure can be reasonably refused. So I just thought I'd read some of this text.

Disclosure can be reasonably refused for reasons consistent with the general policy stated here and including and I - you know, the brackets are still there without limitation any of the following.

And now if you look at Sub Point 2 a number of the options have been deleted. And I wanted to point that out to this group and see if we're comfortable with that deletion. It's certainly a part of the sub team's ongoing discussion to put it (unintelligible).

So that the customer has objected to the disclosure and has provided and then option to adequate, sufficient, compelling have all been deleted then.

And it's limited now to a reasonable basis for believing that it is not infringing the requester's claimed intellectual property rights and/or that its use of claimed intellectual property is defensible.

Similarly in 3 the provider has found and the terms adequate sufficient compelling have been deleted. The provider has a reasonable basis believe that the customer's not infringing the requester's claimed intellectual property and/or that the customer's use of the claimed intellectual property is defensible.

Reasonable basis is a fairly high standard. It's certainly higher than adequate or sufficient at least in my understanding. And so let me put it out there that, you know, are you - are providers comfortable, are customers comfortable, are registrants comfortable with this new - with this proposed hire standard?

This was based as I understand it -- you can correct me if I'm wrong -- this is coming in from the comments of the International Trademark Association and other intellectual property.

I know from the noncommercial side that we were much more comfortable with adequate or sufficient. There's a real concern about providers becoming judge and jury of infringement and intellectual property issues and same with registrants. They're not experts in a lot of these intellectual property issues.

They will have - they will give their best response. But it may or may not respond, you know, rise to the level of intellectual property infringement defense. Thanks. I hope that made sense.

(Graeme): Thanks (Kathy). And I've spent so long fumbling around for microphones the time's gone away from me. So we've only got about two minutes. I'll interject very briefly and then we've got (Todd) and James and then we'll have to close the queue because we're running very quickly out of time.

Reasonable to me -- and I'm not a lawyer -- sounds reasonable. I couldn't see us refusing for an unreasonable reason.

And to me reasonable fits adequate sufficient and/or compelling. And so it feels okay to me. But I'm very curious to hear from (Todd) and James both of you very quickly if you could please.

(Todd): This is (Todd). My point is not substantive but procedural.

These are not changes that the sub team has made or suggested. These were two alternative formulations that the initial report put out for public comment meaning do you prefer A or do you prefer B?

And we received more public comments preferring what is included here versus what is not. I just want to make sure that that is kind of understood by the broader working group this is not just some sort of sub team formulation or anything like that.

Thanks.

(Graeme): Thanks Todd. James, last word.

James Gannon: Thanks (Graeme). And very briefly so similar to (Kathy) and surprisingly I would prefer to have a look at where we could possibly use the old language.

And also we have to take into account that we have a huge amount of concern around due process and a certain level of evidence. And there's a number of things around public comments here that may not have been talking specifically to this text but will be talking to the issue here when we take those all into account so forward (unintelligible) language.

(Graeme): Okay thanks team. That brings us to 11 o'clock. We've made some progress through this document. But it certainly feels like we've got a little bit more work to do on the annex and certainly some other pieces of work to get to that we didn't get to like a report from the Sub Team 4.

And so I thank everyone for coming today and participating, apologies again for the audio issue.

And it's been a little bit quiet on the mailing list so let's make sure we're in there and engaged and maybe we could make a little progress there. Thanks all and we'll talk to you next week.

Woman: Thank you.

Man: Thank you.

Man: (Unintelligible).

Man: Thank you all.

Woman: Thank you everyone. The meeting has been adjourned and the audio will now be disconnected. Thank you for joining today's call and enjoy the rest of your morning, afternoon or evening. Thanks.



END