

ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 06 October 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 06 October 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-06oct15-en.mp3>

Attendees:

Alex Deacon - IPC
Carlton Samuels - At-Large
Chris Pelling - RrSG
Christian Dawson - ISPCP
Darcy Southwell – RrSG
Don Blumenthal-RySG
Frank Michlick -- Individual
Graeme Bunton -- RrSG
Griffin Barnett - IPC
Iranga Kahangama
James Bladel -- RrSG
Kathy Kleiman - NCSG
Lindsay Hamilton-Reid -- RrSG
Osvaldo Novoa – ISPCP
Paul McGrady -- IPC
Phil Corwin – BC
Rudi Vansnick – NPOC
Sara Bockey - RrSG
Stephanie Perrin – NCSG
Steve Metalitz – IPC
Susan Kawaguchi - BC
Theo Gurts - RrSG
Todd Williams - IPC
Val Sherman -- IPC
Vicky Sheckler
Volker Greimann - RrSG

Apologies:

Sarah Wyld – RrSG
Holly Raiche -- ALAC

Kiran Malancharuvil – IPC

ICANN staff:
Glen de St Gery
Mary Wong
Marika Konings
Amy Bivins
Gisella Gruber
Chantelle Doerksen

Coordinator: Recording has started. Speakers, you may begin.

Chantelle Doerksen: Good morning, good afternoon, and good evening. Welcome to the PPSAI Working Group Call on the 6th of October 2015.

On the call today we have Steve Metalitz, Graeme Bunton, Frank Michlick, Kathy Kleiman, Alex Deacon, Sara Bockey, Val Sherman, James Bladel, Rudi Vansnick, Phil Corwin, Todd Williams, Susan Kawaguchi, Theo Guerts, Don Blumenthal, Amy Bivins, Darcy Southwell, Chris Pelling, Griffith Barnett, Vicky Sheckler, Carlton Samuels, Volker Greimann.

And from staff we have Marika Konings, Mary Wong, Gisella Gruber and myself, Chantelle Doerksen.

For apologies we have Sarah Wyld and Holly Raiche.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you ever so much and over to you Steve.

Steve Metalitz: Okay thank you, Chantelle, and welcome to our - your first call with the PPSAI. Chantelle, for those who don't know, is a new member of the ICANN staff, providing secretariat support to - will be providing secretariat support to

several of the GNSO groups. So we welcome her to this call and to the ICANN world.

We've got a full agenda today, so let me just start by asking whether there are any updates to statements of interest that people wish to make. Okay hearing none, let's move onto to the Dublin face-to-face meeting.

You've got up there a working schedule, draft schedule, for the meeting that we'll be having in Dublin on the 16th, a week from Friday. As you can see, it's - well let me just walk through it so you can see we've discussed among the co-chairs and the staff not only the schedule but also what you've done to get to this point.

I'm getting echo now though.

So let's walk through this. The first substantive item will be some proposed solutions to the issues identified in parts one to three of the public comment review tool. You'll recall this was a one-page document with seven issues that had been identified by the working group members over the past three months. It was -- or two months, I guess. Well, closer to three. It was circulated about three weeks ago. We'll be getting - you should be looking within the next week for a document just annotating that and proposing ways forward on those issues.

The next item is to, again, subject to change and with whatever happens in our call today, is to discuss the sub team four report. That is on our agenda for today, so we'll see where we are at the end of that. The next is to basically go through work product of sub team three on the illustrative disclosure framework dealing with Annex E, which also has had a document circulated today and we'll be at least touching on that later today.

And then there's some time for remaining issues and further - the last section is on the draft final report. And you will be getting, by the end of this week, a

near final, near complete draft report from staff for review, based on the discussion - based on the initial report and the discussions that we've had since then. So that's really what we're thinking about being the focus of our discussion in Dublin.

So to sum up, please keep your eyes open for two documents that will be circulate at the end - by the end of this week. One is the draft final report, and the other is the issues document from the public comment review tool. It's possible there will be something else circulated from sub team three or four; we'll know this at the end of this session, I think.

And because there will be a lot for people to go through and prepare for for Dublin, the co-chairs' recommendation is that we not have a call next Tuesday and everyone can use that time to actually go through these documents and consult with your constituencies and stakeholder groups and be - come prepared to discuss all of these things substantively in Dublin on the 16th.

That's basically what we have planned for Dublin at this point. I'm happy to open the floor either to other comments from my co-chair Graeme, or from the staff, or from Don, or any questions from members of the working group. If you're in the Adobe room please put up your hand and if you're - there may be some people just on the bridge and they can just speak up if they want to be recognized.

Okay, hearing no questions or further comments, this is our plan for Dublin, so please prepare accordingly. Okay the next item on - is the sub team four report. This document that's on the screen I think is what was sent around by the staff I believe on Sunday. And I know we have several of the sub team members here and there are some questions and comments about this that I think we'll want to go through.

But let me just first ask if maybe we could turn - maybe I can give the floor to Kathy, who was I believe was the drafter of this document and she can walk us through it and tell us what we have in front of us here in terms of the output from sub team four. Kathy?

Kathy Kleiman: Terrific. Can you hear me, Steve?

Steve Metalitz: I can.

Kathy Kleiman: Okay great. I just switched phones because my former phone was very staticy. I'll spare you all that. Okay this is sub team four's summary and report. This is a draft. We've been working hard. There's a lot of material. People still need to review this, as Paul noted.

The co-conveners of this are Paul McGrady and myself, but everyone wrote this document together. There was a lot of input. We divided up the comments and reviewed them together.

So you've already seen part of this report. You saw where we went through comments. We went through about 90 substantive comments that included issues that hadn't been dealt with by the other sub teams, and we divided them into categories A through G. And you've already seen the basic summary and kind of the bullet points of what we found in various comments.

What's new here (unintelligible) what's new here, if you can page down, is the boxes, where we got to what's our recommendation. And you'll see our recommendation wasn't always just one recommendation. There are various ways you can interpret what's coming in.

And so I just wanted to walk through this, you know, one by one. I'll try to go through quickly categories A through G and tell you what some of the recommendations are and also where there are various ways often we agree

on kind of the recommendation but not the details, so. And obviously the details belong to the working group.

So I was - Steve, I was happy to hear when you said that there's room in the agenda for Dublin to talk about some of the things coming up, because I think there'll be some important things about methodology, review, penalties, that we still need to finish up in order to, you know, tie a bow on our final report.

Okay so category A was issues involving law enforcement, and the recommendation is when, if and when, any, you know, the working group works on kind of a Annex E for law enforcement -- right now our Annex E is an intellectual property request, as you know -- that you review the comments.

A number of expert comments came in, you know, very - they seem to be well informed. And so just take those comments from Pages 1 through 7 of the template. We'll be circulating a revised updated template with some additional comments, and, you know, look at those, look at what came in about law enforcement. I can answer questions about that.

Category B is methodology, periodic reviews. Now this is interesting. So if you can page down, and Mary if you can page down to category B, recommendations, the question is are we communicating, will we be communicating clearly the new rule, will people know, will customers, providers and requesters know what the new rules are, will be communicating them clearly.

And then - so some people suggested a short-term review soon after our implementation that says, you know, are the FAQs out there, are they being understood, you know, do people understand the provider rules, and that they can go to the providers and find out what their disclosure and publication rules are, is this whole process clear. That's a really good question.

Another review process is later on. Are there any unintentional consequences, should be reviewing for unintentional consequences, and a lot of comments on this, a lot of concerns about side effects that can happen that we don't intend and that we don't want and that we have a plan for. So, you know, a few years in, are there problems that we can - that the accreditation process can then avoid.

I think there's an agreement among the sub team that we do need reviews; the question is how to do it. Do you do anonymously, do you do questioning, but I think, Steve and Graeme, that's for the working group. But short-term and long-term reviews are our recommendation.

And... Go ahead.

Steve Metalitz: Kathy, this is Steve. And Paul has his hand up too. But...

Kathy Kleiman: Please. Absolutely. (Unintelligible)

Steve Metalitz: Let me just defer to Paul first and then maybe if my question's not answered we can come back to it. Paul, why don't you go ahead?

Paul McGrady: Sure. Just an extra thought on this particular issue, which is the primary discussion around this seems to be around data gathering. Obviously it's not possible to survey privacy customers to find out if anything inadvertent or unexpected happened because that's the nature of the service, right? We don't know who they are, there's no way for ICANN to know who they are.

Even if they sent a survey through a privacy proxy service, the identity of who's responding, you know, there's no way to sort of verify those sorts of things that you would normally have in survey methodology. And so that's why the first option was put up there, which is to at least collect anecdotal data on a rolling basis and have outlets for that if people have issues or

concerns that ICANN could, you know, collect that information for potential review.

So again, review I guess is the topic but how do you collect the data practically is sort of the more complex issue. Thanks.

Steve Metalitz: Thank you, Paul. I guess my question is about this text in front of us and what it represents. It doesn't necessarily seem to me that this - there are two paragraphs here that seem to be expressing two divergent points of view. I'm not sure how divergent necessarily they are or inconsistent.

And my understanding from looking at the red line that Paul circulated yesterday was that everything in the bottom half - nothing in the bottom half was in this until Sunday when it was added. So has the sub team actually discussed these two alternatives and are these alternatives or are these actually kind of two sides of the same coin as far as review? That's my first question maybe for Kathy and Paul.

Paul McGrady: This is Paul. I'll just jump in here, if that's okay. We have not had a lot of time to discuss these to try to refine these ideas. I tried to send out a little note last night sort of explaining how we got here. We've tried to have a couple of calls. With everybody's pre-Dublin schedule that proved difficult to get a quorum on the line.

So from my point of view at least, and Kathy may have a different view, but from my point of view, I think that these are not two competing recommendations or two recommendations that we're trying to reconcile. I think that these are two ideas that emerged out of the comment and they should just, from my point of view, be treated as ideas that the working group should discuss.

You know, should we do one, we should we do others, should we do both, should we do neither. It's essentially, from my point of view, a starting point to

have a discussion about if we should we have a review and, if so, how do we collect the data so that the review is meaningful.

Steve Metalitz: Okay thank you.

Kathy Kleiman: Can I add as well?

Steve Metalitz: Kathy, do you have anything to add on that?

Kathy Kleiman: Yes. As Paul mentioned, we haven't had another call. We had an initial call. We've been doing a lot of work by e-mail. So here, you know, these aren't necessarily divergent. They're kind of different ways of looking at different approaches.

I don't have the same issue with anonymity. I'm a very proud proxy privacy holder, and I can tell you I'll put my name on it whether, you know, the FAQ that comes out later is clear or not, whether I understand what the new rules are, or better yet, I'll show it to someone, you know, who's not involved in our process and ask them, who I know the proxy privacy customer.

But, you know, as long as you don't poach my address, phone number and e-mail with that, you know, I'll be fine. So, you know, this is something I hope we can discuss in Dublin is different ways to implement methodologies and reviews. But what you're seeing here is different wording of different people in the working group. And since we didn't have time to finalize, we provided both.

Steve Metalitz: Okay thank you. And that basically comes to my next question, which is whether what we're talking about within this box is an implementation guideline rather than a policy suggestion. It sounds as though it's different ways and perhaps divergent, perhaps not, perhaps overlapping ways, of approaching implementation review, evaluation, getting feedback on the policy once it's implemented. Is that...?

Kathy Kleiman: Steve, it's more than implementation. It's a recommendation that we - I mean a lot of reviews don't take place. They are speculated on, they're discussed. A lot of reviews don't take place. But for example the URF did not provide education to registrants. It provided a lot of education to trademark owners.

Here this is a recommendation that we actually get out there and make sure that education is provided, that people understand what's happening, and that then we review it at a specific point for side effects. That's one of the recommendations we're looking at. So again, taking - so the issue is review and when and how, and the question of implementation would be up to the working group. Does that make sense?

Steve Metalitz: Well not exactly because - I mean certainly it's a recommendation but it's a - I kind of read this as a recommendation for how the program should be implemented and what review process should be built into it. But let me just flag that issue and unless there are other - I see Paul has - Paul, is that an old hand or a new hand? I'm going to assume - okay it's down. And now Vicky has her hand up. So, Vicky, why don't you (unintelligible).

Vicky Sheckler: I just wanted to reiterate what Paul had mentioned earlier that as a sub team we have not had a chance to discuss it live, and I apologize, I've been with my father for the last week and a half and that's been part of the problem. So, you know, even though these are stylized as recommendations, they are ideas. They're not, you know, consensus recommendations at this point. And so this is more in terms of these are the ideas that are floating. Thank you.

Steve Metalitz: Okay. Thank you, Vicky. Any other comments on this or can we move on to the next box, and Kathy maybe you can walk - this is at the bottom of Page 4 I think, so maybe you can walk us through this one.

Kathy Kleiman: Sure. This is category C, other new or additional features that the working groups should consider. And there were some interesting ideas. We made a

list of five of them that really struck us. If you go down to the box, the bottom of Page 4, we recommend that the working group considers the new features by commenters such as requiring ICANN compliance to develop a specific framework to accept and investigate notifications, breach of accreditations involving improper reveal of publication.

Number two would be monetary damages. Penalties for abuse of the reveal discloser process. You know, those who go ahead and publish the data, what's the implication there. Three, retention of data timeframe. Four, there was a request from some type of statistic. We're not going to go into whether you anonymize those statistics or how you do it, but what - how is the accreditation process being used.

Five is one that sub team three's already working on, which is clarity of the document. There were people who said it's really hard to understand what we were talking out, so if we could make the document for ordinary readers and not those deep in the policy process. That was an interesting comment. They called our interim report a hall of mirrors and they asked us to reduce the amount of incorporation by reference and just make it clearer.

Let me stop there and see if Paul wants to add anything or if there are any questions.

Steve Metalitz: Paul, do you have any comments to add on this box?

Paul McGrady: Yes I don't know that it's a new comment because I think Kathy phrased it the right way. These are, you know, a group of ideas that came out of the - out of our review of these disparate comments. And as you can see, I mean they're all over the place from new as, you know, kicking around the idea of monetary damages, which obviously people on this call will have strong feelings about, all the way to something as benign sounding as bringing in a, you know, an English professor to help us write the report in a way that people can understand, right?

So there's quite a big divergence of ideas here. Again, because of the timeframes and everybody's schedules, we've not had a chance to sit down and really talk through these issues. So they should be considered raw ideas, but again, they did exist in the comments and so we brought them forward in the summary.

Steve Metalitz: Okay. Thank you, Paul. Vicky, is that a new hand?

Vicky Sheckler: No sorry.

Steve Metalitz: Okay. Mary has her hand up. Mary, go ahead.

Mary Wong: Yes thank you, Steve. Thank you, Kathy, Paul and the sub team. So this is just to I think reiterate a point that was made a bit earlier. Of course as everyone noted, this is a set of discussion issues, not necessarily final recommendations.

But just looking at it from a staff or operational perspective, I think our request would be that the working group focus on making the policy recommendations, and in terms of how those might be implemented, whether that be a mandatory review or whether that be requesting compliance to develop an investigative framework, or the sort of penalties that ought to be imposed.

That may be things that are more appropriately worked out in the implementation process through what will now be a mandatory implementation review team. Thanks, Steve.

Steve Metalitz: Thank you, Mary. I think that - yes, I think that point - that issue runs throughout this document. Paul, is that a new hand? Okay, presumably not. So thank you.

Paul McGrady: Steve, I'm sorry. I'm such a bad housekeeper. I'll try to do better in lowering that thing.

Steve Metalitz: Okay no problem. I'll just - I mean I agree with what's been said and just would point - I mean some of this, as I'm going through this, a lot of it is the nature of - seems to be in the nature of brainstorming and - which is fine. I think that may be what some of the comments suggest, but a lot of these are, you know, would be extremely ambitious, let's put it that way, for this working group to do. Such as monetary damages or coming up with a retention period for each country, which I think is what number three suggests.

So anyway, I'll just note that and see if there are any other comments on this box from category C, and if not, I will just ask Kathy if she can walk us through the next box, category D, which is on Page 6.

Kathy Kleiman: Sure. Although, Steve, some of these recommendations, the ones that we were just looking at, have actually gone through several rounds of edits. They're not just brainstorming. There is the request for people to put teeth into -- from a number of commenters -- to put teeth into the process. If somebody puts revealed data, what's the penalty for that. That's a request for the working group.

Our sub team is different. Because we're dealing with such a range, sub team four can't develop specific recommendations, but we can say, and, you know, we do need to go back and have another meeting with people that couldn't make a call, but we can say, "This is something for the working group to flag and discuss."

And so I think here we should be looking, whether you call it monetary damages or - but how what are the teeth, what's the penalty for someone who takes a blogger's name, a dissident's name, and puts it in a public database, or harvests this data. I don't think that's just an implementation detail.

So I'd love to flag some of this as let's talk in Dublin what comes out of sub team four that should have recommendations, policy recommendations, and (unintelligible) recommendations. I think there is some work coming out of there that we really should be discussing in Dublin. Thanks.

Category D is possible unintended consequences of disclosure for registrants, requesters, providers. And in the recommendations - if (Stephanie)'s on the call I'll let her talk. She might be - it might be appropriate for her to talk about identifying cases of asylum where the contents of the website is largely political or religious and there's a claim of special protection and imminent harm. So, (Stephanie), if you're there and want to comment on that, please raise your hand.

There's also - there's still a question of definition, whether counsel, whether the use of counsel -- Paul, you should probably talk about this -- whether the counsel can act for a domain name registrant, whether counsel is included in our definitions involving the accreditation process.

And again, another - coming up in this set of questions as well for unintended consequences, how do we put in mechanisms later. First, do we want a recommendation and then do we want implementation that will capture unintended consequences quickly and try to create policies that prevent them in some way rather than waiting for ten years until the review of the policy.

I'll stop there. Thanks.

Steve Metalitz: Okay. Thank you, Kathy. I see Mary's hand is up, and Vicky. So let's start with that. Anybody else, please put up your hand if you want to be in the queue. Mary?

Mary Wong: Thanks, Steve. Actually, excuse me, my comment actually was a short one hopefully, related to the early appoints. And it's about the issue for example

of, say, what happens with - when there's unwanted publication and penalties, whether there should be a disclosure framework for law enforcement. It may be helpful, going back to Kathy's point about possible follow-up discussion in Dublin, to note that these issues were also considered, to some extent, by sub team one and the working group in its discussions. So maybe in circling back to that, that could be helpful. Thanks, Steve.

Steve Metalitz: Thank you. And yes, and of course a lot of these questions have also, in one form or another, have also been discussed in sub team three. So we'll - that's at least an example of it.

So I see Vicky, Paul, and (Stephanie). So, Vicky, please go ahead.

Vicky Sheckler: I think Mary beat me to the punch, and, you know, I apologize to Paul. I know that he'd asked early on about whether any of these issue were really new issue that were raised and I did not get a chance to respond to that. Paul, I apologize.

But as Mary mentioned, in reviewing the document for the other sub teams, I think that some of these issues, in fact several of them, have been addressed to some extent or another, in some of the other sub teams group and we'll need to keep that in mind as we move forward.

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

Paul McGrady: So two things, one sort of procedural and then one (unintelligible). The first procedural one is it really, really would be helpful if we could have somebody from each of those teams identify the issues that they believe that we've listed here that have already been addressed by those other teams and what those outcomes were so that we can perhaps remove them from the summary. There's a lot of stuff on here and the more narrow we can make

our list of issues to focus on, the better the outcomes will be from the next call or whatever the next step is for sub team four.

And I appreciate that everybody's busy, but at the same time it's a little frustrating to spend time on topics, you know, and then only to realize that we sort of wasted time on it because they've already been addressed. So this is not for the, you know, not just for the handful but for the call. If you guys could help us with that, that would be terrific.

And then secondly, one of the issues that Kathy just raised in this box is the issue of whether or not the accreditation standards will apply to attorneys. I think that there was some discussion early on before the initial report went out for review. We never really reached a conclusion on that point. I think that it as an important point.

And as you can imagine from point of view, the issue has to do with the nature of the relationship between the attorney and the client versus the proxy service and their customer. The attorney acts as an agent for the client. There are special duties that are involved in that relationship. There is a regulatory framework within which to complain about an attorney's behavior. It's a, you know, completely different set up than a privacy proxy service, which is a contractual relationship and there's a customer relationship, and the duties between the two are limited to the scope of the contract.

And so from that aspect I think that we need to focus on how we deal with the attorney issue for a couple of reasons. One, I think that if we say to attorneys, "You now have to be accredited by ICANN and you may be forced to give up confidential information of your client," that will result in us hearing from every state bar association, every supreme court, every, you know, trade association for lawyers, you name it.

There will be great resistance to that idea. Secondly, it would - I think it doesn't sort of deal with the reality that attorneys are agents for their clients as opposed to providing a very discreet service.

If an attorney has a client who is - they are appearing in the WHOIS record instead of and that underlying client is using the domain name for a nefarious purpose, you know, that attorney has a problem that he or she needs to solve.

So again the relationships are different and I think we have to be aware of that fact. And then lastly there's the important issue of the right to counsel, which has been in existence for hundreds of years now.

It is considered to be a fairly fundamental human right and there are all kinds of situations that, you know, it doesn't take a lot of imagination to think of situations where somebody needs to have the protection of acting anonymously on the Internet and through their - through the attorney assisting them with that and having the special protections that - in the, you know, the disclosure role only come, you know, after a, you know, a lengthy process of involving - unpacking the relationship between the attorney and the client.

So those are some of the issues that came up here. I'm not doing a really good job of describing it. I apologize for that but it really boils down to the fact that the attorney is active agents for their clients as opposed to a more discreet customer relationship.

I'm hoping that we can find a way to make it clear in our final report that we do not intend for these accreditation standards to apply to attorney/client relationships just so that we can take the issue out of the debate.

So thanks for letting me ramble a bit and I'd be happy to answer any questions on that.

Steve Metalitz: Thank you Paul. Let me just - before we continue with the queue let me just note that this is an issue that was flagged in the public comment review tool.

And as I mentioned you will be getting some recommendations or suggestions on ways forward on those prior to the Dublin meeting so perhaps that will help to contribute here. I see Stephanie and then Volker so Stephanie please go ahead.

Stephanie Perrin: Yes Stephanie Perrin for the record. I hope you can hear me. I'm responding to Kathy's invitation to discuss this issue of asylum. And just to note of course that we do - even though the numbers of cases that privacy proxy service providers receives that fall under this particular category are undoubtedly much smaller than trademark cases, they're nevertheless very problematic and we got quite a few comments about people that - who would be at risk for several reasons.

We heard from basically the GamerGate folks about being tracked down by people who wish to harass them online. Personally - and I bored the EWG with this at some length when I was on that committee.

But when we gave - when we assigned new identities and social insurance numbers to people in government, the experience was that we thought we would be getting domestic violence cases.

In fact we got a great many people who were fleeing religious sects, and there just is no end to the creativity that people pursuing escapees as it were either from marriage or religious sects will go to to game the system.

So given that we haven't really solved this - the issue of how do we sanction the occasional bad actor with monetary penalties, et cetera I think we have to be very careful about acceding to these requests and providing the identity of

the individual, something that - I know we've gone over it and over it and over it but it bears going over again.

Once you release the personal information is out there and in particular if it's in the WHOIS it's gone forever because of the value added services, which we of course haven't discussed in this group but they are a reality.

Right. So I think that's all I want to say on that matter and I'll save what I have to say about litigation privilege - not litigation privilege but special categories for lawyers for later. Thanks.

Steve Metalitz: Thank you Stephanie. Volker please go ahead.

Volker Greimann: Thank you Steve. I think we may run a risk of creating a very big loophole if we create two separate rules, one for lawyers that are providing the exact same service and a non-lawyer who his privacy service would be providing.

It would be an invitation to the non-lawyers of the world to provide the exact same services and it would cause the service - it's providing with a level of water typing when we could have saved ourselves a lot of time if we just had - looked at what lawyers can agree to, what - and what system would be appreciated and would be amicable to lawyers and then apply that to all privacy service providers alike, because if the service is the same as the rules governing the service should be the same as well.

I have a very big problem with creating two services because that way we will just be creating two worlds and a very big loophole that will bite us in the behind at some point.

Steve Metalitz: Thank you Volker. I see Todd, Paul and Vicky and I'd like to cut off the queue there because we do have a few more items to walk through in this Subteam 4 report. So Todd please go ahead.

Todd Williams: Thanks Steve. Todd Williams for the transcript. And my point was actually back to the asylum discussion that we were having, and just a flag for the Working Group's consideration that Subteam 3 tried to grapple with similar issues.

And where we landed is in what you now see as 3C5 and 3C6 and I just wanted to flag that when we get to looking at that as a potential template. Again, you know, ours is only limited to intellectual property requests but to the extent that the Working Group likes that and thinks that it could be applicable beyond those, you know, that's a possible solution to the issue that we're talking about. Thanks.

Steve Metalitz: Okay thank you Todd for bringing in that this is being looked at in a narrower context in other subgroups. I've got Paul and then Vicky. Paul go ahead.

Paul McGrady: Thank you. Paul McGrady for the record. This is just in response to Volker's comment that privacy proxy services are performing legal services. I don't think that they are, at least I hope not.

Obviously the - what the attorney does is very different from what privacy proxy services do so they can't be characterized as the exact same service. They're - and I've already gone over the difference between the two regulatory frameworks and the rights and duties.

So would like to point out that yes if privacy proxy services were performing legal services and that was actually a legal thing to do/an allowable thing to do, then maybe we would be dealing with the same accreditation standards.

But so long as privacy proxy services are performing privacy proxy services and not legal services, I don't think we can conflate the two and we shouldn't go - we shouldn't, you know, make that mistake early on as we're putting together this issue. Thank you.

Steve Metalitz: Okay thanks. Vicky go ahead.

Vicky Sheckler: I think it was just to relate Todd and Paul's point, you know, on the asylum issue. There is something addressing that in Annex E in connection with equating legal services or privacy proxy services.

I doubt the privacy proxy services want to take on the legal obligations that lawyers have and, you know, we ought to keep that in mind. I'm not sure what the right answer is here but I am certain that there are differences in the obligations and the lawyer versus the contractual privacy proxy arrangement.

Steve Metalitz: Okay thank you Vicky. I think the challenge is really to formulate those differences in a way that there's no way to prevent gaming but maybe to minimize it and make it clear, you know, which side of the line different types of services fall on.

We did want to cut off the queue here, but Volker if you have one more point that you need to make in 30 seconds please do so. Okay thank you. I'm sure this discussion will continue and as I said on...

Volker Greimann: I'm sorry. I had myself on mute there. I think as it comes to legal services then Todd had a point, but the act of providing a service of privacy of a domain name in itself is not a legal service.

Can we insert the service that would be a legal services that service the privacy voice, or shoot out the output that you're a privacy service provider and service provider?

We are creating one set of rules here that's supply chain privacy services or anyone providing services that are hiding the domain owner from public in public WHOIS.

It doesn't matter who's providing that service. That's not a legal service in itself.

Steve Metalitz: Okay thank you. Let's move on to Page 7, the next box. Kathy can you quickly summarize?

Kathy Kleinman: I can quickly but first maybe you could put it on 6 or somebody could tie it to Page 6, which was the introduction and then Page 7 where we have category. But before that let me - Steve I just wanted to preface or repeat again that we viewed - in Subteam 4 we reviewed our job pocket as a little different.

We're flagging issues not solving them. It's still - it's an array. All we can really do is flag them. So let me go down the list again of the key issues that have been flagged so far.

Definitional - who's the provider? You know, this discussion should continue in Dublin definitely. Penalties - review, timing, methodology. Review is key.

Special protections asylum - so let's kind of flag those as issues that we don't dismiss now or say whether they're policy or implementation, but hopefully discuss in Dublin.

Category E. This is really quick but it's not an important. A lot of people responded to our question, you know, to the underlying question of whether we should be creating an accreditation program at all.

Obviously we got our marching orders as a Working Group from the Counsel. A lot of people started to respond and so we summarized it and it's, you know, so we kind of disagreed what to do with these recommendations.

We'll get back to you with more details on that, but we want to flag that there's still a lot of controversy about this program. And Volker's opinion is

that we should - at minimum we should reflect that in the final report that not - the world doesn't necessarily want us to move forward with this and, you know, there's certainly disagreement out there in the real world.

Let me stop for a second and see if anybody disagrees or wants to add anything.

Steve Metalitz: Paul did you have anything or other members of the subteam did you have anything to add on this? I do see that this is a box that changed totally in the - at the last stage from the red line Paul circulated.

And obviously these implementation and post-implementation review issues are very important - our best to reflect those. Vicky and Paul and then - quickly and then we can move on to the next section.

Vicky Sheckler: I would just point out that I disagree with Kathy's decision that the world thinks this shouldn't move forward. You know, were there some comments that were critical? Absolutely.

But let's keep it, you know, in the general framework of what's actually happening. Thank you.

Steve Metalitz: Thanks Vicky. Paul?

Paul McGrady: Hi. Paul McGrady for the record. Yes I just - I think all this comment does is again highlight this recurring discussion that's been going on since Day 1, which is, you know, should we be doing this.

I don't know that we can provide details on what these comments said and if there were particular, you know, new ideas. Maybe we can pitch them out but - for the Working Group.

But I think that there is, you know, essentially that issue needs to be settled once and for all but I think it's at the Working Group level. I don't think that's something that our team could - or could possibly do.

Steve Metalitz: Thanks. Let's - unless there's other comments there let's move on to the bottom of Page 7, Category F, due process concerns. Kathy do you want to kick this off?

Kathy Kleinman: Sure. Okay Category F, additional due process concerns not already covered by other subteams, and this again goes back to privacy issues/law enforcement requests.

Extra reality was when we got comments on, you know, again the question of the - if something's criminal or illegal in one country and it's not inside the country of the provider or the Registrant what's, you know, what's the real requirement?

We've discussed this but it was interesting to see these comments coming in from outside, and there's no other subteam and - that was dealing with it. So we'll, you know, our interim recommendation or interim conclusion is that many of these due process comments appear to fit into other categories as well.

So we've probably been dealing with them under other titles and that we really, you know, that working through kind of due process as a whole should be one of, you know, part of the final report.

We'll see that as a final conclusion too because some people put their comments under one category, others into another so we're seeing kind of similar themes in the next two categories.

The other is that we really should sit down and talk about what laws - we've talked about this a lot but in the final report there's some call to talk about

what laws need to apply to the request, the law of the proxy privacy customer's location, the law of the provider's location, the law of the requester - the party?

So there was a call for us to make some statements about that. So let me pause there and then Category G should be fast.

Steve Metalitz: Thank you. Thank you Kathy. Are there any comments on this from other members of the Working Group or, excuse me, of the subteam first and then - or of the full Working Group?

My only comment on this is that I don't know that it's within the competence of the Working Group to decide what law applies here. There's - these are - those are legal questions but, you know, if there were a dispute then the tribunal would have to make that decision I guess.

But I'm - so I'm not sure exactly what's - what would be - how this would be carried out but I'll just - maybe that's just my misunderstanding of this. Paul has his hand up. Paul please go ahead.

Paul McGrady: Yes I think that that - Steve I was essentially going to say what you said, which is, you know, this is a fairly complex issue and I don't want to speak for the providers who might be on the line.

But I suspect that they have a particular point of view on this issue. We have heard over time - I don't know if Michele's on today or not but, you know, he would say things like, "Well if it's not coming from an Irish court or an Irish law enforcement agency I'm not going to respond to it."

You know, that I think, you know, that's something that I guess if - we got to figure out whether or not we're capable of settling that issue or is that something that will work itself out like you - in the courts.

But see that this is an ambitious topic but I think more of you picking around a bit.

Steve Metalitz: Okay thanks Paul. I see Volker has his hand up. Volker go ahead. Volker are you with us?

Volker Greimann: I was on mute again. Sorry for that. I think I'm just responding to Paul's comment there. And Michele and more providers would not look at the complaints which came from a law enforcement agency or from a different jurisdiction.

They would just treat them as the same they would treat law enforcement requests coming from their jurisdiction. There would still be a certain amount of due diligence that the end provider would have to face and determine their reactions by - according to the terms of service.

It's just that most providers will likely treat a lot of those complaints from a different jurisdiction just like a normal complaint from in jurisdiction.

Steve Metalitz: Okay. Okay thank you. Let's move on to the last box, which is - it's on Page 8. Kathy do you want to - Category G is other topics so go ahead.

Kathy Kleinman: Sure. Take a second. Okay so this is all on Page 8. Category G is other specific topics within the Working Group/Working Groups not captured by the above categories.

Then we have those bullet points of what some of the comments said as well as the recommendation or the interim recommendation. What you're going to see here was that it was some duplication because we hadn't, you know, we had five people reviewing comments so you can see some duplication.

There was nothing that said that the comment had to fall into only one category. So if that issue's like clarity, damages, coming back again

standards, verifiable evidence of wrongdoing - so as a subteam we have an interim recommendation that there should be a public-facing FAQ or other document designed to make our conclusions readable to the average person and understandable so they know what's happening.

There wouldn't be confusion and that again we review and assess the final - consider reviewing this stuff in the final report to make sure that this massive calls of due process that we would see is really incorporated at every stage of our processes being created.

There's also a call to consider concerns raised about the petitions as well and about some of the massive calls that came in. Vicky might want to speak to that one or Todd and that wraps up Subteam 4's report. Thanks - or at least my part of it.

Steve Metalitz: Kathy. Thank you Kathy. Does anybody else have comments on this last box? We are running short on time but if people have something they need to say here - okay let me - let me thank the subteam members for this - for all the work and for their detailed report.

I see two action items coming out of this. One is as we mentioned maybe we can ask the Staff to in particular go to the co-conveners of each of the other subteams and ask them to take a look at this document, and flag any issues that they feel they've addressed or that were addressed in their reports and at least possibly that would help winnow the long list of issues here.

So that would be one request I'd make of Staff. Second, I guess I'd ask the subteam whether you think this will be - we will have something more refined - another iteration of this prior to Dublin.

I would strongly recommend that if we can because as was said this is an issue flagging document and we're, you know, we need to move as quickly as

possible to the problem solutions phase here that - of whatever needs to be addressed in our final report.

So can I ask Paul and Kathy if you can at least try to get a refined version of this document out to the list before Dublin, because that would certainly facilitate, you know, having a good discussion in Dublin on the Subteam 4 issue?

So let me just close with that request to the subteam conveners. We have only a few minutes left but I do want to put up on the screen the output from Subteam 3.

And I'm going to - we're not going to really have a chance to go through all of this, but let me ask Todd or others from the subteam to at least let us know what we have here that was circulated I believe on Sunday on the weekend.

And I'm going to ask people to take a close look at this over the next few days again to help us focus our discussion in Dublin. Todd please go ahead briefly.

Todd Williams: Thanks Steve. I'll go fast and Kathy if you want to jump in on any of this because a lot of these stem from comments that you had made in our call last week.

But basically what - you see the changes in the beginning are to the point that we just heard from Subteam 4 about readability and ease of understanding. Another big issue to flag, 1B3, being put back in minus the word standardized but otherwise intact.

Changes to 2A6D which then are repeated in 2B and 2C. Basically this goes back to what was included in the initial report, but with the inclusion of comply with all applicable data protection laws while retaining customers' contact details in essentially the preamble sentence for each of those three sections.

Steve Metalitz: And that's on Page 3 of this document if people are...

Todd Williams: Yes. And then it's repeated again on Page 4 and 6. And then in 3 - Section 3, changes to 3B, changes specifically to 3B1. We've got the inclusion of secure communication channel.

Changes on 3C2 and 3, changes on 3C4 specifically on whether surrender is optional or mandatory or allowed to allow, which I think is a new formulation and then keeping 3C...

((Crosstalk))

Todd Williams: Sorry.

Steve Metalitz: We're on Page 7 again. If you can - people can follow through this. Go ahead.

Todd Williams: No. Thank you. I was just trying to go quickly. And then 3C6 as its own section rather than being collapsed into 3C5. This is at the bottom of Page 7 and this gets to the asylum point that we were talking about before.

And I think that is it other than inclusion of kind of both options in Annex 1 for further discussion, which again gets to the point that we were talking about before from Subteam 4 on what to do to address requester misuse. So that's very quick.

Steve Metalitz: Thank you Todd. We appreciate that very, very brief summary. Does anybody else have a comment on this briefly? I see Volker's hand is up. Volker go ahead.

Volker Greimann: Yes thank you Steve. Just following on my comments that I made in the chat earlier, I think one point that is missing clearly here or missing and should be

made more clear in there is that if the requester has not showed the proof, i.e., provided all the information to the satisfaction of the provider, then it should also be - the provider should also be able to refuse.

I think we have different case here. This - not making the burden of proof submittal.

Steve Metalitz: Okay thank you. Thank you Volker. So 3C is - I think it was intended to be if you've met all the requirements in 2 then these are the different actions that could be the basis for refusal.

But you're - I think you're raising that if you didn't meet everything in 2 then that could also be a basis for refusal so that may need to be clarified. All right, let me - I'm just going to ask - Todd you have very - something very brief on this?

Todd Williams: No that's not. I was just going to say the language in 3C2 and 3 is meant to mirror what is in 2, meaning if you the requester have not met the requirements of 2 that's a basis for not disclosing.

I mean, I guess we could make that point clearer but that's certainly what those intentions or what those sections are intended to do.

Steve Metalitz: Let me ask Todd and Volker to see if they can resolve this offline if there's any further changes needed. Let me ask everybody to take a close look at this over the next few days, and please come to the list with any issues that you think we need to discuss on this in Dublin.

I think we moved along on this. We have some fairly - a very concrete document here and we just need to figure out what are the areas that still need to be hammered out.

So anything you can provide on the list over the next - say by the end of this week on this document on Subteam 3 would be very, very valuable so please do give us your input on that.

We are at the top of the hour and I want to thank everybody for their contributions. You will be seeing material on the list over the next week as I mentioned of the near final, near complete report and the material on the glean from the public comment tool.

And we may hopefully see something further on Subteam 4 as well so please watch for all those. We will not be speaking again until we convene in Dublin on Friday the 16th so safe travels to all who will be traveling.

But please watch the list and respond as fully as you can between now and then. With that we'll adjourn this meeting. Thanks everyone.

Volker Greimann: Thank you very much.

END