

**ICANN Transcription
Privacy and Proxy Services Accreditation Issues PDP WG
Tuesday 03 November 2015 at 1500 UTC**

Note: The following is the output of transcribing from an audio recording of Privacy and Proxy Services Accreditation Issues PDP WG call on the Tuesday 03 November 2015 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at: <http://audio.icann.org/gnso/gnso-pps-a-03nov15-en.mp3>

On page:

<http://gnso.icann.org/en/group-activities/calendar#nov>

Attendees:

Alex Deacon - IPC
Darcy Southwell – RrSG
David Hughes - IPC
Don Blumenthal - RySG
Frank Michlick - Individual
Graeme Bunton - RrSG
Griffin Barnett - IPC
James Bladel - RrSG
James Gannon - NCUC
Kathy Kleiman - NCSG
Lindsay Hamilton-Reid - RrSG
Paul McGrady - IPC
Phil Corwin – BC
Sara Bockey - RrSG
Sarah Wyld – RrSG
Stephanie Perrin – NCSG
Steve Metalitz – IPC
Susan Kawaguchi - BC
Terri Stumme - BC
Todd Williams - IPC
Vicky Sheckler - IPC
Volker Greimann - RrSG

Apologies:

Holly Raiche - ALAC

Michele Neylon – RrSG
Kiran Malancharuvil - IPC

ICANN staff:
Mary Wong
Gisella Gruber

Gisella Gruber-White: Thank you very much operator. Good morning, good afternoon, good evening everyone. This is the Privacy and Proxy PDP Working Group call on Tuesday the 3rd of November at 1500 UTC.

This call we have Frank Michlick, Graeme Bunton, Griffin Barnett, James Bladel, Kathy Kleiman, Lindsay Hamilton-Reid, Phil Corwin, Sara Bockey, Sarah Wyld, Stephanie Perrin, Steve Metalitz, Susan Kawaguchi, Terri Stumme, Todd Williams and Vicky Sheckler.

Apologies noted from Holly Raiche, Michele Neylon and Don Blumenthal.

And from staff on today's call we have Mary Wong and myself Gisella Gruber. I hope I haven't left anyone off the list and over to you Steve.

Oh, if I could just remind everyone to please state their names when on speaking for transcript purposes. Thank you and over to you Steve.

Steve Metalitz: Thank you very much. Welcome everyone. I'm glad that we all seem to have made it safely back in Dublin.

And I think we had a good productive face to face meeting there that generated some forward momentum.

So our immediate challenge is to maintain that and press ahead to finish up our work.

Mary circulated an agenda which I hope could be posted on the screen. At least I'm not seeing that on my screen. And but I'm sure it starts with any updates to SOI that people wanted to emphasize.

Okay hearing none we'll go ahead into the agenda.

We have a couple of documents to review that were circulated last night. The first one is on your screen. The second one will be on your screen after we get through the first one.

And then we have I think James has an all - any other business items that he wanted to raise. So we'll make sure to reserve some time at the end for that.

But the two documents are first the revised, proposed revised text for de-accreditation and possible data escrow recommendations which again these are items that were discussed in Dublin.

And there was a feeling that we needed to address some of these questions a little more directly.

And then we have some output from Sub Team 3 from the illustrative disclosure framework that will move which was obviously a subject that was quite a bit of our discussion in Dublin. And that - I know that sub team has been hard at work since Dublin so we'll go over where they are with that.

So why don't we go right to this first document. And it really addresses, I think it addresses two issues.

One is the point that comes up in a number of places about the implementation challenges of applying the accreditation framework to service providers that aren't affiliating with or aren't controlled by accredited registries.

I think most of what we've done will work reasonably well for affiliated registrars. But there are some areas where an unaffiliated registrar would - could run into some difficulties. And a few of those are mentioned in the statement.

And then one particular area about de-accreditation and how this affects customers I know was emphasized in Dublin. And this paper attempts to summarize that discussion in the form of conclusion.

So Mary could I ask you to just walk through this document quickly for the benefit of the Working Group so that we can get reactions too?

Mary Wong: Sure thanks Steve and hello everybody.

Steve's already summarized the genesis of this document and the problem that we were trying to address while staying on course for policy recommendations and not delving too deep into implementation details specifically on the de-accreditation side.

And actually to James' point that will come up at AOB I should note here that the initial recommendations our group had for the accreditation was a group of comments that my operational colleagues had the greatest number of comments and concerns about which is one reason why we raise them in Dublin.

So this document and specifically the principles which are three principles here you see on this screen and what was documented last night tries to address that following the working group's agreement in Dublin that in view of the operational issues it may be better to create several overarching principles to guide staff and the Implementations Review Team.

So the three principles do try to take into account that agreement as well as some of the more specific issues and topics that working group members felt would be important in developing these principles.

So principle one talks about the notification of a customer.

Principle two talks about the need to really try to minimize the risk of having a customer's personal details published in the course of the accreditation. And certainly we reiterate the point that the problems may be different when a provider is affiliated versus one who is not affiliated.

And in this particular respect you noticed in this document and throughout the report we use the word affiliated with a capital A. And we do know elsewhere in the report that this is used in the same sense as in the RAA.

The last part of this document is a separate recommendation which actually is one that was already made in our initial report.

But because it was made as part of de-accreditation section we felt we should retain this for continuity. And that is the relationship to the upcoming review of the IRTP.

Steve I don't propose to read all the principles and hopefully that summary is useful for folks as you review this document and perhaps provide your comments here orally and any follow-up by email. Thanks Steve.

Steve Metalitz: Thank you Mary. And I do think this capture some of the discussion in Dublin and highlights the issues that are important to include in our final report.

Let me ask if people have questions about this document or comments on it. We can open the queue for that now. Are there any questions or comments about the - this proposed text that was circulated yesterday?

Okay hearing none and knowing that it did just arrive in your inboxes yesterday let me ask if you have any questions or comments please bring those to the list and if you can do so by the end of your day on Thursday which is the 5th as we're hoping to fold this into a final draft of the report by the end of this week.

I see James has a hand up so let me turn to him.

James Bladel: Hi Steve, James speaking and sorry for the delayed reaction there. I'm trying to find my hand raise button.

I just wanted to say I'm on board with these principles in this document. I do want to give it a more thorough review.

But one thing that I think is, you know, perhaps needs to be explored and maybe we take this over to the implementation discussion is whether or not there's a window between notification and, you know, actual de-accreditation where, you know, where - I think this is the more I think about it this is an implementation concern where there's a window that allows the customers to choose what, you know, what fate will become of their private information whether it's published, whether they move it to another provider, it's unaffiliated or whether they transfer to a registrar provider combination service.

So I'll drop my hand now and we'll just maybe put a button in that for implementation talk.

Steve Metalitz: Okay thank you James. Let me see if there's any other - anybody else that would like to be in the queue. And if you're not in the Adobe Room just speak up if you want to be in the queue.

Okay well then we'll close that agenda item. And as I said please provide any further comments or questions as soon as you can and no later than Thursday so that we can fold this into the final draft.

Okay the next agenda item is the continued discussion of the illustrative disclosure framework. And again a document was circulated last night.

And just to reiterate what was in the cover note on this, this looks a lot more marked up than perhaps it should be in the sense that most of the changes in here were already on the table and were discussed in Dublin.

So Mary has kind of highlighted two or three areas where there are new changes that have emerged since in the discussion in Sub Team 3 since Dublin. And I think we should probably focus our discussion today on those.

So we have several members of the Sub Team here. If I can ask Todd to kick off the discussion here and just kind of identify for us the main changes that are reflected in here since the Dublin meeting and then we can discuss those.

So I think that's the best way to proceed. So let me call on Todd and then followed by other members of the subgroup.

Todd Williams: Thanks Steve, Todd Williams for the transcript. And just in terms of how to go about talking about these I would break them down into two broad categories.

And we have not discussed this internally but if it's okay with Kathy I would suggest that I'll kind of take the first and then she take the second in terms of walking the Working Group through what we've done.

The first is changes that we've made to the document based specifically on discussions that we had in Dublin in the face to face. And those are all included within Section 3 and I'll walk through them.

The second broad category are changes to the document based on the annex, the annex to the annex.

And as the Working group will recall there were essentially two options for that annex. And we've changed some language on the second option and have gone back into the first part of the document because certain changes to that annex will require certain insertion back in the actual text of the document Section 2. But I'll let Kathy kind of walk through that.

So with specific respect to changes made to the document based on the discussions in Dublin as I said they're in Section 3. The first is in 3A. And this was based on some conversation as to how 3A relates to 3C6.

And specifically we've added this language so long as doing so will not endanger the safety of the customer as outlined in Section 3C6.

And so if you recall in Dublin there were some concerns raised about what the provider discloses to the requester and whether certain information being disclosed short of the actual contact information could endanger the safety of the customer and basically trying to make sure that 3A and 3C6 kind of work in tandem. And so that's what that language is meant to do.

The second is in 3B and it's changing calendar days to business days and then changing one calendar day to two business days. And again that was based on what we talked about.

Going down Phil 3C4 if you recall we had a couple different alternatives in terms of language based on whether this particular surrender option was in fact an option or was required. We've now solidified it as an option.

And then there is a new 3C7. This was based on the concern that Volker raised and that we had talked about in Dublin making explicit that if the requester simply fails to provide any of the information or the elements that

are required previously in the document in Section 2 that the provider can refuse to disclose based on that failure.

Again, you know, and we discussed this with kind of implicit in the structure of the document 3C7 now just makes it explicit.

So those are kind of the changes to the document based on what we talked about in Dublin. And I would propose that we kind of go over those if anybody has any concerns, we talk about them before we moved to the other changes in that annex.

Steve Metalitz: Okay thank you very much Todd. So these are all changes in Section 3 basically on Pages 7 and 8 of the document that's in front of you. And we can open the queue for questions, questions comments or concerns about those changes.

Are there any comments on this?

I'll put myself in the queue first while others are gathering their thoughts.

So in terms of the first change this is about what the customer is supposed to provide to the provider.

A complaint comes in, the provider sends it to the customer promptly and asks the customer to respond. And the customer responds if he thinks there are legitimate reasons to object disclosure. Then the customer has to tell that to the provider and authorize the provider to communicate that to the requester. That's kind a where we started with this.

And then you have - we had a parenthetical here so long as doing so will not endanger the safety of the customer is outlined, you know, in the section below about ground for refusal.

So this is something that's communicated by the customer to the provider. Now this still leaves the provider with the obligation it is going to deny the request if request meets all the requirements in Section 2 and it's going to deny the request still have to state a reason for that.

Is that - am I correct in that? This doesn't change that. It just it makes it clear, you know, that the customer can tell the provider, "Don't pass along what I'm saying to you to the requester because I feel like it would endanger my safety," and but still isn't a requirement to state a reason. Is that - have I correctly summarize that?

Todd Williams: This is Todd for the transcript and I'll just say yes unless anybody else wants to jump in. That's exactly as you outlined it that's exactly the purpose of that language.

Steve Metalitz: Okay great thank you. I appreciate the clarification.

Are there others who want to comment or ask questions about the three changes that Todd just walked through?

If not then as Todd has suggested let's shall we turn to Kathy to walk us through the changes to the annex to the annex and then conform - any other conforming changes resulting from that?

So we're basically looking I think here Page 9 of the document.

So James do you have a question about...

James Bladel: Yes.

Steve Metalitz: ...the first part?

James Bladel: Yes thank you, begin with a quick question. This doesn't preclude or eliminate any option where the service provider customer responds directly to the complainant right? It's not a forced rely on the part of the provider? And I apologize. It's been a while since I've looked at this.

Steve Metalitz: Yes.

I don't think anything in here prevents that.

James Bladel: Okay. I don't know we need to explicitly state that are not but...

Steve Metalitz: Yes.

James Bladel: ...if we can leave that option on the table that would be great.

Steve Metalitz: I'll ask the Sub Team members if they want to comment on that.

Todd Williams: So this is Todd. I'll just go quickly. No, I mean nothing in this framework precludes that kind of direct communication between the customer and the requester, the customer so choose.

Again, the, you know, framework is meant as to what are the obligations of the provider when they've received a request that meets the elements outlined in Section 2.

But no, I mean to the extent that the customer wants to essentially short circuit that process and go directly to the requester they're certainly free to do so.

Steve Metalitz: Okay thank you. Phil Corwin is in the queue. Anybody else want to comment or ask questions here?

Philip Corwin: Yes.

Steve Metalitz: Phil go ahead.

Philip Corwin: Yes Steve I may have further comments in writing. I just want to understand how this works. On Page 2 under 2A it refers to situations where domain name will allegedly infringe as a trademark which of course is what can give rise to a UDRP or URS.

And then later on it says the requester will submit in C there on Page 32 to court jurisdiction, no reference to UDRP or URS action.

And then on Page 8 let me just - sorry I'm just scrolling down. Yes, it says that under D near the bottom that disclosure (cap) is used solely for lack of civil action or URS.

I just want to say in a situation where, you know, I understand if the domain name is identical to a registered unique registered trademark. But if it's a generic word or if it's confusingly similar what's the latitude here if the registrant says, you know, my domain is not identical to a trademark and I've got - I believe I would prevail in a UDRP or URS or a court action?

Is that sufficient? How does that work vis-à-vis the disclosure decision? It's not clear to me how all that works.

Steve Metalitz: Well I think the answer to that can be found again on that page in Section 3 where one of the reasons for refusal is that the customer has provided a basis for reasonably believing it's not infringing the requester's claimed intellectual property rights. That's C Roman...

Philip Corwin: Oh yes, I see that. Okay.

Steve Metalitz: I think that's the answer but I will defer to anybody in the Sub Team that may have a better or more complete answer to that.

Philip Corwin: Okay. All right and the answer to that I just wanted to raise that I may have for the further written comments but...

Steve Metalitz: Yes.

Philip Corwin: ...I don't want to monopolize the conversation here.

Steve Metalitz: Okay. I see Kathy has her hand up and Todd has his hand up so I don't - are either of you responding to Phil's question?

Todd Williams: This is Todd. I'll just go real quick. I was just going - I mean what you said is correct and I would agree with that. And then I was just going to add that to the extent the new language in Section 2 about submitting to the jurisdiction of the court how that kind of fits in is not clear. I was just going to say I think that's what Kathy's about to talk about.

Steve Metalitz: That's right. So if there's no other questions on that at the moment let's turn to Kathy and Kathy I see are you going to walk us through the...

((Crosstalk))

Kathy Kleiman: No I was going to raise a different question that...

Steve Metalitz: Okay, go ahead.

Kathy Kleiman: ...may track Phil's. First I agree with the answer which is if there is a dispense then the customer is supposed to present and the provider is supposed to evaluate that.

So hopefully we took that into account but, you know, we could always use more eyes looking at that.

But one of the questions is and Sub Team 3 does not have an answer to it in the - what we're presenting today is not designed to address it. So let me raise it which is if there is a parallel proceeding going on do we want to suspend the request?

In a UDRP if someone takes the same action or similar action to court the UDRP suspends until the end of the court action. And then there's some kind of determination about whether it's appropriate to continue or not.

Here if someone say files a motion to quash in the middle of a request I don't know the answer. But I wanted to raise the question if there is a UDRP going on at the same time there's a court action going on at the same time.

Do we want actions to go on in parallel or do we want to somehow put them in serial so that one at a time it's addressed? And probably it's a good question for the provider. Thanks.

Steve Metalitz: Thank you Kathy. I'll, you know, if there's anyone on the Sub Team in particular because I don't know if you discussed this before if you have any have an answer to this or...

Kathy Kleiman: We didn't have time Steve. We can say that. We wanted more time on this but we didn't have time.

Steve Metalitz: Okay other responses to this? I see Todd's hand up. Todd go ahead.

Well I was just going to say to the extent I guess I don't understand the posture of how this might come up because obviously this is one of the kind of first steps in the process that, you know, Kathy is outlining.

I mean to the extent that there's a court action, you know, binding the identity of the beneficial owner is going to be a first step in that.

So I guess I would ask Kathy what is the fact pattern where something like this might come up?

Kathy Kleiman: Okay what we're working on today what the edits have come out with is if there's a violation after the information is disclosed.

So it's been disclosed and I'm going to walk through it. But say for example the requester as we know agrees and agrees in an affidavit that they will have restricted use of the information, say they turn around and they published it, turn around and harvest it that's where we're going to talk about Options 1 and 2 in Annex 1. But this is a different situation.

In the DMCA if an Internet Service Provider is being asked to turn over the identity of a customer they will notify the customer and then the customer may take direct action, go to court and file what's called a motion to quash which is I'm going to represent myself through my attorney and say no, you know, but you don't have the grounds to reveal this.

I'm just wondering if a motion to file, a motion to quash is filed what, you know, this is before. This is before the requested information is given out. Do we want the ICANN proceedings to prevail over the court proceeding? Do we want the ICANN proceeding to be preempted?

I don't think we need an answer now but this occurred to me as I was working through some of the other issues and it's also raised.

And what Phil says is that, you know, we have all these other proceedings that can come up. What do we want to do?

Steve I would recommend we cue this up actually for another time. But this is like an interim. This is like a break in the processing. Do we want to stop and suspend it, halt it, recognize it or ignore it? Thanks.

Steve Metalitz: Okay, look I see Vicky has her hand up so let me turn to her.

Vicky Sheckler: A couple things. First, you know, I mentioned on the Sub Team that I think that getting too much into the options in the annex may not be appropriate at the policy level.

As James mentioned and is all other business and, you know, the talking to the Implementation Team about what's doable and what's not doable I think this might fall into that camp generally.

And moreover to Kathy's question I think we've already put into this document everywhere that it's all subject to applicable law. I don't think we need to address it any more than that at this stage.

Thank you.

Steve Metalitz: Okay so one answer would be that in that case that the court could obviously freeze the situation, you know, that jurisdiction over the provider presumably if you would.

Because otherwise, you know, there wouldn't be a motion to quash unless there were some likelihood that the court would order the provider to do something or not do something.

But let - I think we're getting a little bit ahead of ourselves in terms of the annex to the annex. And I think we wanted to get back to Kathy to walk us through what changes and what we have in front of us here in Pages 9 and 10 I guess of the document.

So let's - why don't we unless there's other questions arising from the material that Todd walked through why don't we turn to Kathy and ask her to walk us through the annex to the annex last page or two and tell us what the Sub Team is presenting on that. Kathy?

Kathy Kleiman: Terrific. This is Kathy. And this is Annex 1. And we've been reviewing it for, you know, we've been kind of glancing over it for a long time. But no one's really kind of stepped in to edit it. I think and somebody correct me if I'm wrong I think since the beginning of when it was introduced.

So it seems like the right time for Section 3 to wrap up its work in full, you know, seems to some of us it's the right time for Sub Team 3 to wrap up this work and figure out what to do with the next one.

And part of this is related to what James was saying or at least interprets him as saying which is there's only a limited amount of things we want to send to implementation. We want to make as many decisions as possible, policy issues at our level.

So Annex 1 is the disclosure framework. And here we're talking about when there's been a wrong for disclosure of the customer's contact information or an alleged misuse of that information presumably after it's been disclosed.

So this is all after everything, the request templates have been filled out, the provider has processed, the provider has disclosed the requester that there's some allegation of misuse.

So we had two options as you would remember. One was arbitration that the allegation, controversy, claims, dispute would be sent to arbitration.

The other was has to do with court actions. So I'll take one at a time.

Arbitration some of us - and this isn't necessarily the Sub Team. This is kind of hallway conversations.

Some of us felt that bumping something to an arbitration system that doesn't yet exist with no further guidance seemed a little vague and may not be appropriate. It would take a lot more discussion to send it to an arbitration.

You know, are we talking about setting up kind of in the UDRP type arbitration? Is this a whole new structure for ICANN? It raises many, many questions.

So the other option and page all the way down to the bottom these options to jurisdiction the other option is to let the requesters and customers and the requesters fight it out themselves and in which case where these do you do that? And the probably the logical restriction is where the requester or the intellectual property owner can be found or the location of the provider.

And that's what has been an option too I think since the beginning of time. And this is just a clarification of that language consistent with what we see in the UDRP that there was - so the original language was in making a submission to request disclosure of a consumer's contact information. Requestor agrees to be bound by the jurisdiction at the seat of the service provider.

More traditional language was introduced. Requestor to submit without prejudice to other potentially applicable jurisdictions' to the jurisdictions of the court, one of the domicile and two where the provider's located. So basically where the requestor is located or where the provider is located. But using more traditional language than the seat of the service provider. Because that's a little vague. And that's the - why don't we talk about that? And if people agree, then we can talk about how we implemented that. You know, with some fairly short language into the main annex. But maybe it's good to stop here.

Steve Metalitz: Okay. Thank you Kathy. I see there are a few hands up. Vicky is that a new hand? If that is a new hand, please go ahead.

Vicky Sheckler: It was an old hand. But it goes with the comment I made earlier about not driven this wheel into this much detail here.

Steve Metalitz: Okay. Thank you. Todd. Is the new hand, I take it? So go ahead.

Todd Williams: Just real quick on the clarification. It's not that the two -- kind of -- options on the table, one is arbitration and the other is court. Option One arbitration does not preclude court. I think the first sentence of the annex talks about -- you know -- nothing below is prejudicial to whatever other available remedies. So with Option Two you get court only. But here are some jurisdictions where that action can go forward. And then with Option One, you get court or arbitration. And if you go to court, well the jurisdiction analysis is whatever it would be. You know, kind of on its own. I just wanted to point that out.

Steve Metalitz: Okay. Yes. I think it's correct that the neither option would take out that first sentence. So - and I think Option Two could be - I mean the first sentence is about either option is intended to preclude any party from seeking other available remedies at law. So if we have this dispute about supposed misuse of the data, if you know where the requestor is, you can obtain jurisdiction over requestor there. So that's - you know, and you could use remedies that would enable you to do that.

So really I think Option Two is about the second point as to whether the requestor agrees to submit to these disputes to the jurisdiction where the provider is located. I have a question or two about that. But let me just see if there are others who want to raise questions or respond. Actually my question is really kind of similar to what Mary has in the chat here. It's not domicile necessarily. It's not about the Option One, it's about Option Two where the provider is located. Is that where the provider is incorporated? Where the provider receives complaints?

Where the provider - will it always be clear what that jurisdiction is, I guess, is my question. Because as I looked at a few of the services recently. It wasn't always clear where they're incorporated. Is that - well, I guess of course is what's meant by where the provider is located.

James points out that in the chat that there may be a difference between the service agreements and where they're incorporated. But I'm really trying to look at this...

Woman: Steve, the recommendation would be to parallel this with the (EDRP) and the Registrar. Where the Registrar is located. However we do that. That is where the provider is located.

Steve Metalitz: That's listed on the...

Woman: That way the customer has - the customers have a place where they know just as the requestor doesn't want to be forced to sue the customer or go after the customer where the customer's located, since they don't know where the customer is located. Similarly, the customer doesn't want to be bound to go to the (unintelligible) to reach the requestor. And the common jurisdiction is that of the provider.

Steve Metalitz: Okay. I'm just - my question was just how would the requestor know where that is. And the case of Registrars, that is listed on an ICANN Web site. You can go there and find out what the jurisdiction. The - and maybe that could be done as an implementation matter for this too.

I see I have a couple of people in the queue. (Paul) and James. So (Paul), please go ahead.

Paul McGrady: Hi everybody. (Paul McGrady) for the record. A couple of things. One, I do think there is ambiguity -- as Steve and James have pointed out -- in relationship to the location of the provider. Another example is two (files) who

-- I believe at one point -- were (unintelligible) in Pennsylvania but operated out of Toronto. And I -- you know -- went around in circles on that issue. And so -- I do think that -- the issue here is confusing as to the jurisdiction themselves.

But, secondly, most importantly, I am hesitant to think this is a good idea to essentially parallel this to (EDRP). Because one of the things the complaint is getting into the (EDRP) at the end of the day for rolling the dice on the location of the provider or the location of the Registrar. Is a neutral party addressing this and outcomes that are certain? We don't have that stake into our proposal here. Instead we could have a provider who's located in some place far away that maybe doesn't have great courts. Not great access. Not good predictable outcomes and high expense of enforcing it.

You know, as enforcing a dispute or going into a dispute in those courts. And again, a Registrant who may or may not be where there ultimately located. And may not even know ultimately where they're located, right. So I don't think it's quite the same thing to say that the (EDRP) and this process have the same level of (unintelligible) outcomes such as a complaint that really makes sense for them to consent to a jurisdiction that may be far outside their comfort zone. I -- for one -- think we should leave it quiet and just simply say, you know "courts of competent jurisdiction." And let the parties battle that out at the time, rather than in training this thing in a way that we have an (EDRP). It's not the same thing. It's an apple and an orange. Thank you.

Steve Metalitz: Thanks (Paul). James and then I have Todd in the queue after that. James go ahead.

James Bladel: Hi. Thank you. James speaking. And -- I think just -- expanding on this just a little bit. And I think some of this is going to echo (Paul)'s intervention that you know, I wouldn't hard coat it to the diction of the location of the provider. I think that -- you know as we've been discussing -- there are a number of reasons why provider might want to establish a separate location or a

separate jurisdiction other than their location or even perhaps unrelated to where they're incorporated.

So just putting it out there. You know, we do require providers to have a - you know, a service agreement on file. And why don't we just essentially require them to state the jurisdiction - the governing jurisdiction in that agreement and leave it at that. And I think that allows for the necessary flexibility that I think (Paul) is going for here which is saying that establishing a core account jurisdiction. And that would be disclosed in the service agreement if we go along with that.

Steve Metalitz: Okay. Thank you James. You know that would cross reference to something we already have in the - in another recommendation. Todd, please go ahead.

Todd Williams: Good. Todd Williams for the transcript. And not necessarily weighing in on either of these. But, you know, taking the argument that Kathy was raising before about the first option being that it's not, I guess, fully baked and there needs to be more to it before we could choose that. I just want to raise a fundamental point. And it may be too late, but I just throw it out there, which is what does exactly does this annex to the annex have to do with the accreditation standards for privacy parts to providers? I mean, if there was nothing here, if there was not annex to the annex, certainly wronged customer could still pursue either their provider or the requestor in whatever court of competent jurisdiction they could establish for whatever remedies they could get the court to give them.

And whether we decide on one of these two options or not, or leave it blank, that doesn't change that. And so I mean - just kind of a fundamental question. If we can't decide on one of these. And we just don't leave it - don't put anything in, what is the harm in that case?

Steve Metalitz: Thank you Todd. Kathy has her hand up. So Kathy, please go ahead.

Kathy Kleiman: Steve, I would recommend this go back to Sub Team Three. Because -- you know -- pushing this stuff out so quickly -- you've heard my complaints about this already, there's just not a lot of time to do it. We can spend the hours here, in the whole working group. But it's easier if we don't keep getting the method - you know keep getting the messages in the background that say, "Push it, push it out." So that's what happens when we do which is that we're still talking about really, really important issues. And critical issues are - you know, we heard and 21,000 comments that this data can be misused. And that misuse will cause (unintelligible). And a parade of horrors that we don't have to go into.

And the question, what's the remedy for the customer whose life may have been totally turned upside down. And the remedy might be to sue the person who requested the data, promised that they would only use it for limited purposes and blogged it the next day. And something got turned upside down. Somebody got arrested. Somebody got slugged. Somebody, you know - keep going. So just as requestors want a level of certainty, whoever drafted this annex initially was right to say that customers need to be able to know there's a place certain that they can seek remedies if their data has been abused. And the logical place is however we define it, consistent with the (EDRP) that you can go to the provider.

The reason (James') sensible (balance) answer doesn't work is that the service agreement only binds the customer, doesn't bind the requestor. So we need to find some way to bind the requestor -- as they come into the process -- that yes, if you abuse what you've agreed to -- you know -- there's a jurisdiction where someone can sue you that's easily reachable and knowable upfront. And that's what's fair and that's balanced. And frankly -- I think -- is consistent with 21,000 comments that we heard. Thanks.

Steve Metalitz: Okay, thanks Kathy. I have (Stephanie) and then Vicky. (Stephanie), go ahead.

(Stephanie Perrin): Okay. Thanks. I hope you can hear me. (Stephanie Perrin) for the record.
Hello.

Steve Metalitz: Go ahead.

(Stephanie Perrin): You can. Yes. Okay. I'm responding to the question, what's the harm?
And Kathy's answered part of that. I think the time -- that I just want to emphasize and I apologize for my clock going off in the background -- is that the beneficial end user is in a complete power imbalance in this situation. And therefore if we just leave it, they are not likely, even if the impingement involved is not as serious as Kathy has outlined. But, in any situation, they are not going to know how to sue these folks unless they are seasoned Internet (EDRP) type users. And most of the people we're worrying about as consumers, are not. So -- I think -- it's really important that there be some kind of effort to right that power imbalance. Thanks.

Steve Metalitz: Thank you (Stephanie). Vicky, you next. Please go ahead.

Vicky Sheckler: Thank you. I'd like to remind everyone that we have already put in several protections into (Annex Suite) to address those concerns. There's the pretext concept. There is the safety concept. There is the fact that that the requestor has to give their full name and information about how to contact them. So -- you know -- the question of do they know where to the requestor? Yes. They do. Because the requestor's supposed to identify themselves, you know, with particularity.

So we've addressed a lot of these issues -- I believe already. That is why I think going down this path does us a disservice. There is the ability to sue. We've already said that. None of this precludes that. I understand (Stephanie)'s point about the people may not know how to sue. But that the other built in protection's already there. And -- quite frankly I think -- going down Option Two is not the right way to go. Thank you.

Steve Metalitz: Okay. Thank you Vicky. I'm not hearing a good sense of outcome here. Let me just pick up on one thing that Todd said that may be important here is how this fits in with the accreditation process. So the Option One - and I could see how that fits. Because the provider has to agree and the request - you know, basically everyone agrees that they can go to arbitration. Option Two is just - it's apparently is the requestor agreeing to submit the jurisdiction. Obviously - again, the first option where the requestor is domicile, that's already a given that they're subject to jurisdiction there.

But it's really Number Two. And -- you know - this is - there is a question about disclosure of this. That's obviously a solvable problem, I think that there would need to be some way of making it clear to the requestor at the time it makes the request what it's signing up to in terms of jurisdiction. I think everyone would agree with that. But I guess there is the question of -- in the absence of this - in the absence of Option Two, I guess the only difference is whether the requestor - excuse me, the customer could be - could bring a lawsuit in the jurisdiction of the provider. And obtain jurisdiction over the requestor. That - I think that's the only additional element here.

So we say that's kind of the marginal value for the requestor - excuse me, for the customer is that. So if the customer has his registration for name sheet and uses (WhoisGuard), name sheet for the U.S. Registrar, and (WhoisGuard) is a Panamanian company. So this would enable the request - the customer if he feels that the information has been misused, to sue the requestor in Panama. And know that it wouldn't encounter jurisdictional obstacles there.

That's - you know, that's the example that I see. Or within the United States, it may create a different jurisdiction in a state court or something like that which federal court should get the case. So that -- I think -- is what we're talking about here. And so we need to figure out whether or not we need to resolve that in order to provide that additional marginal comfort for the customer who feels that the information that was disclosed was misused.

I mean, I don't think we're - we've reached a conclusion on this. But I would ask people to try to think about this and see first, whether they feel this is necessary to address this. And second, if so, then how should we be tweaking Option Two to make it clear? Two points really. One is really that there is some way for the requestor to know what jurisdiction he or she is submitting to. And the second is -- the other point I would make is -- we probably could say, "solely for the purpose of disputes arising from a less than proper disclosure, et cetera."

Because it's not a general -- you know -- "I agree to be sued by the customer for anything in this jurisdiction." It's just for certain types of allegations. So unless you people have other comments on this question or suggestions about how we might resolve this. I think we have gotten some of the issues out on the table here. And I appreciate everyone's participation in that.

Okay. I don't see anybody else in the queue. So let me just ask Sub Team Three, so have we basically covered the main changes that were made here. Are there any other points that any of the Sub Team Three people wish to bring up at this time?

Okay, if not, let me turn to (James B) who had an all other business question about the implementation, specificity - well, I don't want to characterize it. So James why don't you go ahead and raise your concern and your suggestion about how we should proceed on it.

James Bladel: Thanks Steve. And it's James speaking and yes, just something I posted to the list where I was thinking about coming back from Dublin. During the face-to-face and I readily acknowledge that I only attended the last couple of hours of that session. I had a conflict. But during a face-to-face -- I think -- where a number of -- you know -- may be challenges is a strong word. But -- let's say - - open questions with regards to implementation. How this accreditation framework - not just the rules that around accreditation, but just how it's

actually going to be put into practice. And some of the -- you know I guess -- operational concerns of rolling this out to existing privacy services. To new privacy services that may want to start up under this new framework. And -- you know -- how ICANN going to police and govern all that.

I thought that -- you know -- as we start to come in for a landing on our final report and some of the recommendations start to take shape. Maybe we're not there yet. But it seems that the time, the staff, approaching where we want to hand this over to staff. Whether that's some combination of DVD staff, as well as ICANN compliance. And ask them to weigh in while the window - to modify the report is still open. And ask them to kind of weigh in on the implementation challenges that they anticipate with each of these recommendations. And whether or not they can identify any alternatives that are already being practiced that can be leveraged to develop some new models.

So I think that Mary's putting something here in the window here. But just is thought that if we're not there yet, we should probably be thinking about this as we get closer to a read through of our final report, final recommendations before we absolutely close the window on the text.

And just for a little bit of background, I'm raising this because of the experiences that I -- and a number of others -- had with regard to the implementation of a couple of transfer (PDP)'s which -- you know on the surface and certainly -- when they went through the (PDP), through Council and through Board, seemed fairly straight forward. But once they entered the implementation phase, got bogged down in the number of very, very tricky -- you know -- concerns that were unaddressed from the (PDP).

And that took somewhere in the neighborhood of 14 to 18 months just to implement a couple of tweaks to a transfer policy. And here we're talking about a whole new accreditation program created out of (unintelligible). I worry that we're setting ourselves up for a -- you know -- a heavy list on the

implementation side of this equation that's going to drag out. And you know, a number of years. And I just think that we should do what we can to head that off.

Steve Metalitz: Okay. Thank you James. I didn't see any responses to that. I don't know if the staff has anything they would like to say about this. Yes. I see Mary's hand is up. So Mary, please go ahead.

Mary Wong: Thanks Steve and thanks James for raising the (unintelligible) of yours. It's pretty important that we get this coordinated early. So -- to that extent -- when our initial report was drafted, the Registrar Services Team, as well as compliance was asked to look at it. And what you see on the screen is a document that I think was most recently sent around to the Working Group just after Dublin.

This is a summary of the operational concerns that they had with the initial report - or at least the recommendations not per se, but as phrased. So that's the first thing. The second thing is that for the draft final report, the - we had tried to change some of the language through some edit or some clarification to try to address some of these that seem more policy oriented. So -- on that score, I think -- all the staff, from policy to operations would ask the Working Group to look at the draft final report language with that in mind to see if corresponding with this list, there's more that needs to be done. Or whether on the policy side, we've done it sufficiently.

Obviously, then on the third thing. When we have that final report circulated. Well, we had. That was also sent to the operations staff. So we hope to have them sort of do another go around. At least of the actual phrasing of the recommendations. And some of you know (Amy Bivens). And she was at the Dublin meeting. She's regularly attending our meetings as well. So we've been in contact with her.

That doesn't mean, of course, to say that we shouldn't do what James is suggesting. And so to that end, (Amy) and (Mike Zupke) have offered to be available and possibly come on a call if it's helpful to talk it through. The only caveat to all of this -- I would say -- is that given the time line, you'll probably want to do this pretty quickly. And so maybe when (Don) and Steve meet to coordinate on that. But hopefully some of this sort of background information as to where this document came from and how we expect to deal with it in the draft final report is helpful.

Steve Metalitz: Okay. Thank you Mary. Yes. So this document that you've put up here is relating to the report that was put out for public comment. We now have - well, we have a near final version that we circulated before Dublin. And it would be - if you look through this. Some of these things have been addressed. Some haven't. And in fairness to (James') point, he didn't have the document on the accreditation that we just circulated last night. And -- I think -- that helps address some of these issues. But again, I'm sure it doesn't address all of the issues. So, yes. I think the time is now actually for if we're going to get further staff input.

And I think this document -- that's on the screen right now -- has been a little bit overtaken by events. But it could become the basis for other issues that they flag. But I guess my question would be -- and we can discuss this further among the negotiators and so forth - with the staff -- is let's distinguish between points where there's something in a policy recommendation that would impede implementation. And others like - you know, there're other questions here -- that are more strictly implementation questions I don't think -- we have to deal with. But, anyway, that's my only observation on that. James, why don't you go on into - you have your hand up, so please go ahead.

James Bladel: Thanks Steve. This is just a quick follow-up and thanks Mary. This is excellent. And I think this document is - you know, as Steve said, I think we probably covered some of these items. But a number of them still remain

open. I think we did my point. But what I had envisioned was maybe even a little more comprehensive than this. Rather than just identifying questions, I think it would be helpful to - you know to the group if staff were to come back and say, "Here's Recommendation One. We don't see any issues with this. Here's Recommendation Two. You know, we see that this is -- you know, let's call it -- a median task, you know, degree of difficulty and here are some options. And here is -- you know -- Item Three which is probably more difficult. And here are some other options."

And just kind of laying out some choices. Because -- you know -- my concern here is that we are "under the gun." I understand that we are trying to get this final report delivered. My concern is if we can invest -- you know -- a little bit more time on this, it's going to save us months in the implementation if we can address these questions on the front end. And I think that's understood. So I'm encouraged by this. And I just would urge us to get moving on it as quickly as we can.

Steve Metalitz: Okay. We'll take this up further. And we're really just about out of time here. But we are aiming to get a - the final version of the final report circulated as soon as possible. So on both of the topics that we discussed today, I would encourage people to get on the list and (unintelligible). If you have any questions about the accreditation document or if you have views on this (Annex Two) - excuse me. The annex to the annex issue is the (luster) of disclosure framework, please get those on the list this week. So that we can try to come to a resolution in folding those things into our final report.

I think we're about out of time here. So I will stop here and just thank everybody for their participation. And look forward to speaking to all of you next Tuesday if not sooner. Thank you.

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