Transcription ICANN Dublin
Wednesday 21 October 2015
GNSO Privacy and Proxy Services Accreditation Issues PDP WG

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Graeme Bunton: Good morning, everyone. This is Graeme Bunton. We're going to get going with our Privacy and Proxy Services Accreditation Issues Policy Development Process Working Group update to the community this morning.

I hope everybody is feeling chipper this bright and early and this far into the meeting. And the goal today is to primarily share with the community what we've been up to for the past two years but primarily since our past update in - where was the previous meeting, where were we?

((Crosstalk))

Graeme Bunton: Buenos Aires. No, I'm not sure.

((Crosstalk))

Woman: He just took my word for it.

Graeme Bunton: I did.

Woman: I just made it up.

Graeme Bunton: So we're going to move through some slides. We're going to talk about the public comment period and the face-to-face we've had. And I do see a couple new people around the table but I don't know and so maybe the first thing we do is go around the room and maybe get the people on the line to introduce themselves because there's people on the Adobe Connect that I think are new to the space too so maybe we should here who people are and where they're from.

Holly, do you want to start us off on that end please? Paul, you want to start us off on that end please?

Paul McGrady: Paul McGrady, member of the IPC.

Todd Williams: Todd Williams with Turner Broadcasting, IPC.

Jeremy Malcolm: Jeremy Malcolm from the Electronic Frontier Foundation.

(Cory Zamir): (Cory Zamir) from (UNH) School of Law.

(Gregory Munir): Good morning. (Gregory Munir) from the European Cybercrime Center and Europol.

Steve Metalitz: Good morning. Steve Metalitz, I'm the - one of the co-chairs of this working group and member of the Intellectual Property Constituency.

Graeme Bunton: Graeme Bunton from the registrar called Tucows, also one of the co-chairs of this working group and belong to the Registrar Stakeholder Group.

Mary Wong: This is Mary Wong from ICANN staff. And I'm supporting this working group.

Greg DiBiase: Good morning. Greg DiBiase from Endurance International and a member of the Registrar Stakeholder Group.

Darcy Southwell: Darcy Southwell, Endurance International.

Sara Bockey: Sara Bockey from Go Daddy.

Holly Raiche: Holly Raiche from ALAC.

Amy Bivins: Amy Bivins, ICANN staff.

Steve Metalitz: I don't know if the people on the phone are - have audio contact but I did want to point out that Don Blumenthal, the initial chair of this committee and are continuing on as active member is on. I didn't see who else was on there but welcome, Don. And welcome everybody else on the - on the line.

So we're going to - as Graeme indicated we're going to briefly walk through what we've been up to. We seem to be starting at the end and working our way backwards but let me - this is just the update of what's happened since we last met in that unnamed South American capital where ICANN last convened.

We did have a public comment period on the draft final report - the draft report. I guess it's called the initial report. Whatever it was we had a comment period on it from May through July. It was a very active docket. We got petitions with thousands of signatures. We got form generated comments, many with added color from thousands more. We had a lot of submissions from individuals, from groups. It was a very robust discussion in the public comment process.

And one result of that was that since we had a higher volume of comments than we had anticipated we had to revise our schedule for reviewing those comments, considering them, deciding whether to make changes in the initial

report and also how to resolve a few unresolved issues that we have presented to the public in the initial report.

So we did that -- what we had help from a lot of fronts. Graeme had a document where he put together and charted out a lot of the comments and the staff was extremely helpful in trying to help organize this big mass of comments into something that the working group could work with. I think they were successful. And what we ended up with was some sub teams looking at particular questions, particularly especially the unresolved questions and some issues that had arisen on the illustrative disclosure framework that was in the initial report.

And excuse me. And although sub teams have reported and we have their input into the draft final report. We did have a meeting here in Dublin back on Friday I guess. Seems like longer ago than that but we had an all-day -- pretty much all day meeting at which we went over the work product of a number of the sub teams and as well we reviewed a draft of the final report, what I've been calling the near final near complete report. And we went through that.

That was circulated about a week before the Dublin meeting by the staff and showed the changes from the draft report. And I think we had a productive session. I think it helped resolve several issues and there clearly are still a few loose ends. I don't mean to minimize them by using that phrase. There are some significant issues that we still have to nail down. But I think we are on track to complete a final report by December, which under our revised -- revised timeline is our goal. And that will enable it to be presented to the GNSO Council for action before the end of the year.

And the last bullet here I think is correct. There aren't major changes in the final report. But as I said we will resolve some issues that we weren't able to resolve at the initial report stage and there will also be some other changes to

the final report. So can I handed back to you or do you want to - or do you want me to continue?

Graeme Bunton: That's pretty much where we are. What's next?

((Crosstalk))

Graeme Bunton: Well I guess where the next pieces to cover?

Steve Metalitz: Well, let me just say on this slide, I mean, there were a lot of comments and a lot of people you know, looking at the comments a lot of people have read the report and went into it in detail and a lot of people hadn't. And there were some misconceptions about where things stood in the process, what was the status of the report, what was the, you know, we had already resolved at least for the initial report a pretty significant question which was would only individuals be, you know, should only individuals be allowed to use privacy and proxy services? Should organizations be allowed to use it?

That had all been resolved in the affirmative that anybody would be -- there wouldn't be any per se eligibility restrictions about who could make a proxy or privacy registration. The open question was about whether it could be -- whether such a registration could be used for a website or other resource where there's online financial transactions going on. That was the point on which the working group couldn't come to agreement. But there was a lot of misunderstanding about what exactly was on the table for decision and what had already been decided.

Be that as it may, we did try to clear the air a bit with a blog post that came out -- this was after the close of the public comment period and we had looked at some of these comments that had come in to try and clarify where things stood. I hope it helped. But we will, you know, I guess others could be the judge of that.

And in the final report - let's try that again. In the final report we will have -- on the open question about whether there should be a prohibition on the use of privacy and proxy services for domains associated with online financial activity the great weight of the comments was against having such a restriction. And I think it also became clear that absent an agreed definition of what online financial activity constituted or what was encompassed within that phrase, is perhaps a better way to put it. Without that definition it would be very difficult to actually fashion a workable rule that could be used as part of an accreditation process.

So on pragmatic grounds, even though I think there's still obviously members of the working group have different views on this but on pragmatic grounds I think the consensus is likely to be -- well it is at this point but is likely to be that we would not have such a requirement. Although as we noted, some existing proxy and privacy services do have that rule and do enforce it. So I think that pretty much covers what's in this line.

Graeme Bunton: Thanks, Steve. So what do we still have to do? We've still got some contentious questions ahead of us but we have been and especially on Friday in our face-to-face session got a lot done I think. So we need to finalize our illustrative disclosure framework for intellectual property requests and that would be revealed request there. We have a few more pieces in there but I think that one's pretty close to being put to bed and included in the final report. That was previously known as Annex E. I believe it is now Annex B.

And I know we have some law enforcement in the room and so I would encourage you very much to look at that because it's a framework for intellectual property but we've felt very strongly for some time that it may serve as a template in some respects for other forms of -- excuse me -- requests. And law enforcement would be really good to take a look at that and see how they might be able to use that as a template for their own sort of

framework. So that's my gentle encouragement there. Also thank you for coming.

And there are probably other segments of the community that we should have those perspectives from as well, the malware anti-abuse people, law enforcement. And we don't have those perspectives currently so we feel reasonably strongly that we would like those and would encourage the community to provide those to us.

Handling of escalation relay requests...

Steve Metalitz: I think we've got that. That was pretty...

Graeme Bunton: Yeah. Steve.

Steve Metalitz: This was another area where we put forward some different options in the initial reports about -- this is -- I think we have the basic agreement about the situations in which something should be forwarded by the privacy proxy service provider to the customer, to the ultimate registrant. And in terms of electronic communications, e-mails and the like. Where we did not have agreement was on what should happen in the case that there is a known persistent delivery failure of those forwarding -- of that forwarding.

And that I think was clarified somewhat. We didn't get anywhere near the volume of comments on that that we did on the commercial transaction issue but we did get some comments and talk about it further within the working group. And I think we've arrived where the slide indicates that it's in terms of should rather then must forwarding these additional requests and being able to put some reasonable limits on that.

Again, I think this is well I won't speculate about how frequently this might happen, but if the provider can't succeed in forwarding something electronically to the customer, as we already said in the initial report, some

other consequences flow from that such as the need to re-verifying the contact information. So that may be a route that helps to resolve these or minimize the number of these cases.

But in any case this is where we're coming out on that topic which at the time of the initial report there were a number of brackets on it.

Graeme Bunton: Right, so as we mentioned a couple times already, we met on Friday for a face to face. We had a really good array of membership showing up. We had about 20 people in the room. And we worked on some topics ahead of time to have some text for us to discuss. And we managed to I think very nicely get through a whole bunch of that finalizing definitions of privacy and proxy, the disclosure framework for IP requesters. And we did spend some interesting time on de-accreditation principles as well.

And so that felt like a really good productive day. I think people in the room would probably agree with me on that. Amy Bivins (unintelligible) scared and sad about that.

And so we are not too far from our finishing line is the hope. So as Steve mentioned earlier, we are hoping to have our final -- final report for the December GNSO call. We've got still a few more issues to put to bed between now and then and we're hoping we can do that. And one of those we still need to do a formal consensus call as well.

And assuming that we can get our consensus on the report and we can get back to the Council, it'll probably be voted on then and implementation will move forward. As it says on there, once the GNSO adopts it the board needs to then approve it and then the implementation can get started. And that's going to be -- I think we're all quite aware a difficult process. There's still lots of interesting implementation questions to be answered. And I guess typically there's an implementation review team and I would encourage lots of working group members to pay close attention or participate in that.

And I think that's all our slides for today. Did we have anything else we wanted to cover, share, do?

Steve Metalitz: I don't think so. I think we're happy to have further comments from members of the working group or from nonmembers of the working group.

Graeme Bunton: Don't be shy.

Jeremy Malcolm: Hi, Jeremy Malcolm from Electronic Frontier Foundation. Can you just go back a couple of slides? I'll tell you when. Yeah, this one. So agreement that providers should forward additional requests, blah, blah, blah. Is there some text for that that we can look at or is that...

((Crosstalk))

Jeremy Malcolm: Cool.

Graeme Bunton: There's quite a lot of text, really, you can look at.

((Crosstalk))

Steve Metalitz: Yeah, the - the text on this was in the initial report in brackets. So we have in the draft final report some of those brackets have been removed.

Jeremy Malcolm: Cool. In that case I've seen it, I was just wondering if there was something else that I haven't seen. So thanks for that.

Graeme Bunton: Oh, Holly, please.

Holly Raiche: Are we going to actually discuss anything new today or what the issues that have been on the list but wouldn't be on your slides?

Graeme Bunton: I don't think that's the intent of today.

Holly Raiche: Okay.

Graeme Bunton: Because we don't have the full working group and frequently don't, or what tends to be an early morning session, I think we use this more intentionally as a community update. And so I wouldn't want to really try and substantially moving issue forward at this particular moment.

That said, if, you know, this is all of our time if there's an issue that people would like to discuss in some depth we can do that. I don't think there's any opposition to that.

Jeremy Malcolm: Maybe there's something else that I can raise then since there's time. So something that concerns me quite a lot is the bypassing of ICANN's procedures to other venues. And I've just posted something to eff.org about this, which you may be interested in reading. So there's two places where this discussion is sort of being circumvented.

So one of those is the OECD committee on consumer policy where as of today they are in the middle of a meeting where they're going to finalize a recommendation which says that Whois data has to be publicly available except in -- they've narrowed it a little bit so now it is only for commercial domain registrants. So there's that.

And then there's also the transpacific partnership which only relates to ccTLDs though admittedly it's a little bit different. That you may be interested in just checking that out. And I think it would be good if some message could be sent to particularly the US government that this is the place, ICANN is the place where policy on domain names is made, it's not to be made at the OECD, it's not to be made in bilateral or multilateral trade agreements.

Holly Raiche: I'm going to butt in and say, and it's the Wikileaks that actually has the latest version. And you're right, there is a little -- just a one sentence that says, and by the way, registering data will be publicly available. Which was interesting really.

Steve Metalitz: This is Steve Metalitz. I appreciate your comments, Jeremy. I don't think that ICANN has the authority nor the capacity to prevent national governments from enacting laws or rules that apply within their jurisdiction or coming to international agreements about it. So I'm not sure that I agree that this is something that is a circumvention of the ICANN process or that is anything that ICANN should be doing about it. I appreciate you bringing that to our attention.

Jeremy Malcolm: Just respond to that, I think the reason why I feel that it's a circumvention of the process is simply because the US administration in particular has been so specific about its support for the multi-stakeholder process and saying that we're not going to do things in a top-down governmental fashion, we're going to involve the community and we're going to work out these rules particularly on domain names through ICANN. So it seems to be going against that policy.

Steve Metalitz: Okay well I guess you could pass that concern along to the US government which I don't think is represented at this table.

Jeremy Malcolm: Well I have but thank you.

Mary Wong: I ask that folks identify themselves for the transcript when speaking. Of course I should have said this is Mary from ICANN staff.

Paul McGrady: Thank you, Mary. This is Paul McGrady. Sir, would you mind posting a link to that in the chat. I'm not seeing...

Jeremy Malcolm: I'm not on the chat but anyone who can access EFF.org will be able to go to the first blog post there and paste it into the chat.

Paul McGrady: Thank you. I'm terribly nosy about it; I'd like to see what it says. Thanks. Whatever version is not against the law to read I'd love to read it.

Jeremy Malcolm: It's not any leaks, it's just a blog post...

Paul McGrady: Okay thank you.

Mary Wong: This is Mary from staff. Again note that Sara Bockey, a member of the working group, has just posted the link to Jeremy's blog post in the chat.

Graeme Bunton: Anyone else? I certainly don't wish to stifle any discussion but I'm also perfectly willing to give people back half an hour of their day.

Steve Metalitz: Do we have any comments or questions in the chat? I'm not in the chat room so.

Graeme Bunton: No. Everyone is so wonderfully satisfied with our response to public comments and the initial report.

((Crosstalk))

Graeme Bunton: So I believe the working group has next week off and then we're back at it I think that's November 2 or 3.

((Crosstalk))

Steve Metalitz: And I'm sorry, this is Steve again. One thing we discussed with the staff is to see if we can get out a bit of a homework list from the face-to-face. There were obviously several areas where we have next steps -- and there's been some discussion on the list about one or two of them. But hopefully people

can use the next week to think about some of those issues so that we can have as productive a meeting as possible the first week of November and stay on our timetable. Thanks.

Graeme Bunton: Holly, please.

Holly Raiche: Holly Raiche for the record. That would be really helpful because I'm just not wildly comfortable that we're going to get from the almost complete to the complete, that there are a couple of issues that are potentially very thorny. So it would be really, even though we're not going to meet next week it would be really helpful to get just a list of saying these are the things we have to do, could the teams and everybody start coming up with some text so that we can move fairly quickly in the next meeting, be really helpful. Thank you.

Steve Metalitz: Yeah, this is Steve again, just to clarify. We have text in terms of the draft final report but if there need to be changes to that text or anything added then it would be good to have that. Thanks.

Mary Wong: (Unintelligible).

Graeme Bunton: Don, did you have a question or an issue to raise? Yes, I see your hand is up. Please.

Don Blumenthal: Yeah, thanks. Hello from Michigan, 3:30 in the morning. Now I know how people like Holly and some other folks feel more frequently than I do. I just wanted to toss out the possibility we do have another half-hour here. Holly had mentioned and asked if we were going to go into substance so I just wanted to suggest that this next half hour could be spent on some substantive discussions if working group members are interested in raising them now.

Graeme Bunton: Yeah, we could do that if there's a substantive issue that someone wishes to raise at this particular time. And Vicky just put up her hand.

Vicky Scheckler: Unfortunately, I think our time would be better served doing that within the working group. We don't have everybody here.

Graeme Bunton: And thank you, Vicky. This is Graeme again. I'm bad at saying my name today. Did express the concern that we have that we don't have the full working group here and we're relatively sparsely attended. I see Paul has got his hand up too.

Paul McGrady: I'd just like to second that. I think that the issues that remain are thorny and what we don't want to do is to move forward without everybody having a chance to opine on them. Thank you.

Graeme Bunton: Thanks, Paul. So and I agree, I think that that puts us at a -- makes it difficult for us to really dig into issues. If there are some for the people who haven't been working with the working group and would like some discussion around topics we've put in the initial report that I think we're all happy to do that but really tackling some of the remaining stuff is probably out of scope for this meeting.

Steve Metalitz: Yeah, but as - this is Steve Metalitz, as Graeme just mentioned, if there are questions including from nonmembers of the working group that this is a good time to raise them or other comments. But I agree with you that we're not going to likely to reach any actionable conclusions in the session.

Vicky Scheckler: I just wanted to formally thank the three of you again for shepherding us along. Really appreciate it.

Graeme Bunton: Thanks, Vicky. David Cake has entered the room to probably enjoy the announcement that I'm going to thank everybody for coming and joining us here this morning. And I appreciate you coming and I bequeath unto you 27 minutes of your day.

Steve Metalitz: If we'd only known we could have started the meeting...

((Crosstalk))

Graeme Bunton: Yeah, next time, 8:30. Thanks all.

Steve Metalitz: Thanks.

                              END