ICANN83 | PF – GDS: PPSAI IRT Working Session
Wednesday, June 11, 2025 – 09:00 to 10:15 CEST

YVETTE GUIGNEAUX

Thank you. Hello, and welcome to the ICANN83 Privacy and Proxy Services Accreditation Policy Implementation Review Team Working Session. Today is Wednesday, the 11th of June, and it's 0700 UTC. My name is Yvette Guigneaux, and Jessica Puccio and myself will be acting as remote participation managers for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior and the ICANN Community Anti-Harassment Policy.

To ensure transparency of participation in ICANN's multistakeholder model, we ask that you sign into Zoom sessions using your full name. If IRT members would like to speak during the session, please raise your hand in the Zoom. When called upon, participants will be given permission to unmute in Zoom. Please state your name for the record before beginning your input. And if you have any SOI changes, please notify ICANN staff of this now. Okay? Well, with that, I will turn the floor over to Dana. Dana?

DANA KUEBLER

Thanks so much, Yvette. All right, we're grateful to have everybody here and have a broader community engagement during our IRT working session. To manage our very limited time, we ask that if you're not an IRT member or a registered observer, kindly hold your

questions until the end. We've got time for you. Please note that all participants in today's session can view all of our working documents presented in the public session. However, access to the IRT working documents or respective team drives are only for IRT members.

PDF version of the slide decks will be available on the session page for ICANN. Additionally, as we work through the accreditation models today and responses to comments later in this session, we invite available IRT members that are present who posted comments on the document to provide a quick intro or summary to the comments so that we can focus the majority of our conversation on responses and further discussion with the IRT members. With that, I would love to hand the ball to Jason Kean. Thank you very much. Looking forward to great conversation here.

JASON KEAN

Thank you very much, Dana. Welcome, everybody, joining in the room, participating at ICANN83, and joining remotely. Good morning, good afternoon, and good evening, accordingly. So, we'll get right into it.

Next slide, please. Thank you. So, the agenda for today's IRT session. First, we're going to do a welcome and introduction, then provide a background, so some background information for those that might not be familiar, and to remind everybody else as well. We'll then go over threshold questions and the accreditation models. We'll have an active discussion on this. We'll then review

next steps, and as Dana noted, we will have time at the end for questions and any other tips.

Next slide, please. So, an introduction for the Implementation Review Team and the Implementation Project Team. So, the IRT currently has 56 members, one GNSO liaison, Paul, who you'll probably hear from occasionally throughout this session, three stakeholder group representatives, and three alternatives have been appointed for this IRT. The ICANN org Implementation Project Team consists of the Core Project Team and extended Subject Matter Expert Team. This includes departments from across ICANN, including not limited to Compliance, Legal, Policy, Global Domain Services, and many others. Information for this IRT can be accessed through the Community Wiki, and we do have a link for that which we can drop into the chat. Thank you for the heads up, Reg, on the muffled volume. It is early here, so I'm probably adding to that muffle as well, so I will try to articulate and help as much as possible. Okay. Thank you.

Next slide, please. So, some background information. The GNSO approved policy recommendations on Privacy and Proxy Services Accreditation Issues, PPSAI, in 2016. According to the final report, some goals of the recommendations included clarity, transparency, and consistency in the operation of services. The Board adopted the recommendations in 2016. ICANN org worked on implementation of the IRT until 2019. Then the work was paused due to overlapping issues being considered by the

community around GDPR, data processing, and temporary specification.

Although gTLD registration data is no longer public by default, proxy and privacy services still exist within the ecosystem. The Privacy Proxy IRT reconvened in July 2024 after issues around GDPR, data processing, and temporary specification progressed. Here is just an overview of the timeline, which I just reviewed. And if you go all the way to the right, 2024-2025, this is the current phase of implementation that this work is in, analyzing and designing policy implementation.

Next slide, please. Now, I'd just like to quickly review the purpose of this IRT work to really level set with everyone, so everyone's on the same page. The Privacy Proxy IRT is tasked with assisting staff in developing implementation details for privacy proxy accreditation to ensure the implementation conforms the intent of final recommendation. As a first step, the IRT is informing the development of a set of threshold questions for the GNSO Council to define the major decisions needed to move forward on implementation. The IRT, as a reminder, is not a policymaking body. If any policy issues arise during the implementation, they must be referred to the GNSO resolution and/or input. I know this is a point that Paul did make very eloquently at the last session. Paul, please.

PAUL MCGRADY

Thanks, everybody. Sorry, that sounds loud to me. I don't know if it is or not. It may have something to do with the fact that we found some great live music last night in Prague, and I am too old for that sort of thing, but I'm doing it anyway. Just to take the opportunity, I know you guys may be tired of hearing me say this, but there is a temptation, especially when recommendations are old, to want to redo those recommendations and accidentally slip into policymaking mode.

But, as Jason mentioned, that's not what this group is about. We are to implement the policies that are already adopted by the Board. The Board can choose to do something with those policies if they'd like to do that, but we're neither the Board nor are we a PDP working group. I think that, like I said, you guys are tired of me hearing me say this, but it'll be really important for our work here to keep that in mind so that we don't go off the rails, and I'm happy to answer any questions about that. Thank you.

JASON KEAN

Thank you very much, Paul. I really appreciate you coming in on that point. Very helpful. So, now that we've had a chance to level set with everyone, give a brief background, I'm now going to transition this over to Leon Grundman to discuss threshold questions and accreditation models. Leon, please.

LEON GRUNDMANN

Thanks, Jason, and thanks, Paul. So, we're going to zoom out a bit back to the threshold questions that we are, of course, tasked with drafting. So, we have those three categories, and I've linked those up, you can see on the screen, with the actual threshold question drafts that we've prepared in the IRT drive. So, Category 1 was, are there any policy questions or items the IRT already wants to bring to the GNSO Council for guidance? That is Threshold Question A.

Category 2, so on the Implementation Model: Accreditation Program or Alternative Implementation. So, can an implementation model without a new standalone accreditation program remain consistent with the policy recommendations? That, of course, referring to the accreditation program that the previous IRT began setting up. So, that's a key question for Council as well, and that's Threshold Question B.

Category 3 was on the Disclosure Framework, so intellectual property and law enforcement. So, there was two parts to that question. So, are there specific areas to revisit under new law or policy? And secondly, can these frameworks be aligned with existing work, such as on the Registration Data Request Service, Registration Data Policy, and other existing procedures and remain consistent with the policy recommendations? That was Threshold Questions C and K. And just for information, Threshold Questions A, C, and K have closed for IRT comments. Threshold Question B remains open. Of course, this accreditation models document that we're looking at today is strongly linked to Threshold Question B

and will be annexed to Threshold Question B when this goes to the GNSO Council.

Next slide, please. So, we wanted to revisit part of the final report on PPSAI here. So, Section 1.3.2, additional general recommendations, makes the point. Finally, the working group has concluded the registrar accreditation model with its multiple steps governed by the RAA may not be entirely appropriate for P/P services. However, it is a useful starting point from which relevant portions may be adapted to apply to privacy proxy service providers. The implications of adopting a particular accreditation model will need to be worked out as part of the implementation of its policy recommendations if adopted.

So, of course, that gives us the mandate for Threshold Question B and gave us the mandate to propose several accreditation models. The final report text seems to say that a particular accreditation model should be chosen, that the accreditation model for registrars could be a useful starting point but is not necessarily what needs to be used here. So, obviously, we'd like a bit more clarity, so hence the question to Council. But we believe this gives us the mandate to already draft some potential models and try to see if anything in the recommendations precludes us from choosing any of those models. Next slide, please.

DANA KUEBLER Leon, a hand is up.

LEON GRUNDMANN Yes, I know.

REG LEVY Thanks. Reg Levy here from Tucows. Can we go back one slide, please? So, from my standpoint, threshold TQC and TQK, I feel like they need to be answered before we work too hard on an accreditation model. Because I feel like we're going to be spinning our wheels a bit if we get an answer from Council that says that this isn't something that we should be doing. So, I'm a bit concerned that we're not finalizing the questions for Council themselves and instead are working so hard on the accreditation models.

LEON GRUNDMANN Thanks, Reg. So, to be clear, you believe we should be finalizing those questions before looking at those documents? Yeah. No, that's a point taken and well understood. And we have asked people when looking at those accreditation models to please focus on anything that the final report precludes us from doing. So, this is definitely not a case of we're already choosing an accreditation model. That's definitely something we'll be doing later. We've tried to limit the time and give equal time to each of those categories and each of the associated documents.

And to be clear, there are associated documents to all of those categories. So, Category 3, of course, had the disclosure frameworks, which were commented by the IRT as well, as well as

the alignment document, which we had put out previously as well. And for Category 1, we prepared a document comparing definitions between the previous IRT and the original final report. So, these documents are intended to be supplementary. Those are not documenting where we're drafting policy or anything like that by any means. This is informing our discussion and conversation with Council to see what is our scope and how do we best move forward with implementation. I see that, Alan, you have your hand up as well.

ALAN GREENBERG

Yeah, I guess I'd like to support Reg. Certainly, my position is we can accomplish the equivalent of an accreditation model with appropriate changes to the RAA without building a whole new accreditation program and model. If we don't talk about that before we start selecting an accreditation model, we're spending an awful lot of time doing something that will not end up, assuming I'm right, yielding anything useful. So, we need to know what it is that we need to commit privacy proxy providers to, but it's not necessarily going to take the form of a separate accreditation model. Thank you.

LEON GRUNDMANN

Thanks, Alan. I think that's a good point. And as mentioned, what we're proposing is several assumptions to the GNSO Council and hoping to hear this is possible or this is not possible under the recommendations to give us a clearer mandate to move forward

with that. Of course, models two and three, as you can see in the paper, are not based on a separate accreditation program but are lightweight, let's say, lighter weight approaches making use of the existing RAA where possible. I see Roger, your hand is up.

ROGER CARNEY Thank you. This is Roger. I just kind of want to add onto what Alan and Reg were saying. And I think to staff's point, the models aren't something we're selecting. It's proof to answer the question that there are other models possible, so the Council knows that there are other models possible. We're not picking a model that this IRT is going with. We're using the examples to illustrate there are other ways to go than a full accreditation. Is that correct?

LEON GRUNDMANN Absolutely, that's correct. Thank you for making that point.

ROGER CARNEY Thank you.

LEON GRUNDMANN All right. Could we move to the next slide, please, and probably the one after that as well? Thank you. So, that's exactly to the point you just made, Roger. So, initially, there was a full accreditation model which would include a new accreditation agreement and a program for all privacy proxy providers which was designed to implement recommendations and reflect prior IRT input. So, the

model benefits to that model that the previous IRT began working on is that there is a clear path to accreditation and enforcement of agreement requirements for contracted providers. So, providers would have a new contract. Of course, they would themselves be contracted irrespective of provider's relationship with the registrar.

Model challenges with that one is significant operational burden to implement. Some proposed fees were challenged by some IRT members in the former IRT as unduly burdensome, and it may need or benefit from adjustments in light of subsequent developments. So, EPDP, new regulations, etc. It does not solve the big question of how to identify providers unknown to the registrars. That issue would remain with such a model as well. So, next slide, please.

DANA KUEBLER I'm not sure why I'm having a computer freeze. So, my apologies.

LEON GRUNDMANN Thanks, Dana Kuebler. It's on the screen now. That worked. To help inform the community's consideration of this issue, the IPT identified three potential models for implementation. So, that was the originally considered model and two alternative models. So, these models represent conceptual approaches to implement the original recommendations. They are preliminary, high-level and, of course, may need refinement. They are shaped by the text of the policy recommendations, which envision an accreditation process

and require a list of accredited providers and a mechanism for ICANN to enforce the requirements on parties that may or may not be related to or even identifiable by an existing contracted party.

So, the key questions that we asked you on this and that we were trying to discuss is that, firstly, could ICANN implement models two or three consistently with current policy recommendations? Secondly, how does each model align with community expectations? Thirdly, does the IRT believe further policy development or guidance is necessary or desirable? Of course, the threshold questions that we ask are directly asking GNSO Council on that. Is further policy development or guidance necessary or desirable, and can we receive any such guidance for this implementation?

Next slide, please. So, here we have a nice visual overview. Model one could call that the heavyweight model. That's the Accreditation Agreement for All. That's the implementation of a new Privacy Proxy Service Provider Accreditation Agreement, or PPAA. The last IRT had already developed such a document, and I believe it was, you can see a red-lined version on the wiki, which was about to go up for public comment. So, you can see pretty much how such a document would look. That's, of course, a new contract between ICANN and a new party, which would be the privacy proxy service providers that would become a group, a party that ICANN would contract.

The second model, so-called Fast-Track or Opt-In model. So, that's accreditation for registrars who opt-in to provide privacy proxy services or to have their affiliates or resellers provide such services via the registrars accreditation program. And there would be a separately published consensus policy and enforcement would flow through the existing RAA. Model 3, the Lightweight model, the Opt-Out model. So, requirements for registrars would be in a separately published consensus policy, also binding through the RAA, as with Model 2, but by default everybody would be included. If registrars or affiliates or retailers do not offer such services, they could then quite easily opt-out of being on that ICANN list of accredited providers. Reg, I see that your hand is up.

REG LEVY

Thank you. Reg Levi from Tucows. I just want to once again object to the fact that it says opt-in, because if registrars want to participate, want to continue to provide the services that they provide, they will be forced to choose, forced to opt, forced into it. So, it's not an option.

LEON GRUNDMANN

Thanks, Reg. I think that's something we're going to look at when we look at the document in just a moment. Alan, I see your hand is up as well.

ALAN GREENBERG

Yeah. Again, I'm going to say close to the same thing. I don't understand why models 2 and 3 exist explicitly. It would seem to be satisfactory to put new conditions in the RAA that only apply to those registrars who offer the services. And registrars have to provide a lot of information to ICANN. One of them is, are you providing the service? And they say yes or not applicable. It's not an opt-in or opt-out issue. The terms are just there, and they're used if needed. I don't know why we're complicating it with this concept of opting in and opting out. I mean, implicitly, they are going to have to tick off the box or not. So, we have the list, but it's not more complex than that. At least, I don't see it.

LEON GRUNDMANN

Thanks, Alan. Indeed, that's a question that we're going to answer now when we look at the document. Did we have another slide before that? No? Okay. I think we can get started with the comments in the actual document. And so, before we do that, any members in the room who have left a comment, we are going to invite you to speak as concisely as possible because, obviously, we have a limited time in this session, and give us a short or a concise overview of your comment if you would like to do so, and then we will speak to the response to that comment. So, the first one here we had from, Steve, Steve Crocker, and that came in as an email but was intended as a comment as well. So, I don't know, Steve, if you wanted to briefly speak to that.

STEVE CROCKER Thank you very much. Is this okay, or is this echoing?

LEON GRUNDMANN It's echoing. I think you can use the microphone if you just press the button once. It should be online. Yeah.

STEVE CROCKER Okay. We'll try this, in which case I need to take this off. I don't have the full text in front of me, but the basic thought was that, which was covered in the introduction here, that the current state of registrars is that they are in the position of protecting information by default as opposed to not. And so, that raises kind of the fundamental question of what's the division of labor between what they are obliged to do today versus what privacy and proxy services provide, and do they both need to exist in the same ecosystem. And that question obviously is weighted in the direction of suppose not. It's much simpler just to not have extra named players doing the same thing.

I went on to suggest that privacy and proxy providers actually provide somewhat different services. Proxy services hide the registration data completely. Proxy services, in my understanding, typically provide an alternative pathway to communicate and protect the information about the registrant's contact detail, but as I said, nonetheless providing a pathway for communication. And they do that by overusing, reusing the contact, the registrant

contact fields, and from a system design point of view, it'd be much simpler to have a correspondence role which could be populated.

And I know depending upon one's background in these things, the reaction might be, oh, that's a big deal to go create all that. Well, there's an awful lot of big deals in this room that we're talking about, and in terms of creating another role and putting it into the database, that's pretty mild compared to the kind of things that we're talking about here. So, that was the essence of it, and there wasn't that I could see a natural place to put that comment with respect to, oh, so which model does that apply to? It's kind of a larger question, and I appreciate staff support in putting this in and including it. Thank you.

LEON GRUNDMANN

Thank you, Steve. We have it up on the screen. I have it up in front of me as well. And responding to that, so according to the final report, we do need to treat privacy and proxy services equally. Having said that, Threshold Question A, of course, on definitions, we'll ask the GNSO council for some clarity around those definitions, and they will give us a response on how we should proceed with implementation. Of course, making the point, we make the point in Question A that definitions do not necessarily match the current reality. So, I think that's a question that we'll appreciate Council's guidance on.

As to your suggestion that the data relayed by the privacy providers should be explicitly labeled as correspondence contact data. To

me that sounds similar to the abuse reporting designated point of contact, which privacy proxy service providers should maintain under Recommendation 11 of the PPSAI final report. So, that is a designated point of contact that they should provide, which should be capable and authorized to investigate and handle, for example, abuse reports and information requests received. And the final report makes clear that doesn't need to be one person, that designated point of contact, but it needs to be one contact field that the requester could contact and expect to receive a response from. So, I think that's the response there. I think we could move on to the next comment.

DANA KUEBLER Oh, sorry. Owen's hand is up

LEON GRUNDMANN We have some hands up before we move on to the next comment.

OWEN SMIGELSKI Hi. Thanks. Owen Smigelski for the transcript. I just wanted some clarification, I think, from Steve because it seemed that it was an implication that if it was a proxy provider, communication went one way, and if it was a privacy one, it was easier to communicate with the registrant. And I just want to clarify that both a privacy and proxy provider, they both have the requirement to forward on communications, right? And so, I don't think the person behind

that would be not contactable via either of those methods. So, I just wanted to clarify that point.

STEVE CROCKER Okay. So, to expand slightly. My understanding of a proxy provider is that the intention there is to prevent any communication whatsoever by just hiding the thing, so I'm eager to listen to the response to that. My understanding of the proxy provider is that it provides an alternate pathway for making communications, not giving out, say, the registrant's home address or direct address, but wherever they choose to have such correspondence directed, and if it's an external service that does that on behalf of them, so that's fine, too.

OWEN SMIGELSKI Just to respond to that, that's not correct. A proxy provider is not a way to prevent communications.

STEVE CROCKER I am sorry, can you speak up?

OWEN SMIGELSKI A proxy provider is not set up to prevent communications from going to the licensed customer underneath. That's completely not correct.

STEVE CROCKER So, what is the role of the--?

OWEN SMIGELSKI There's two versions of that. A proxy provider is a third-party entity that acts as the registrant on behalf of a licensee, at least under the definitions of the final report and the current RAA, whereas a privacy provider acts just as a mask or a way of providing alternate contact information. So, there's just slightly different legal implications under there, but under the ICANN requirements of the RAA, as well as these reports here, the proxy provider doesn't block communications or anything like that. That's not even remotely accurate. So, I just wanted to flag that to make sure. There are relay requirements in these--

STEVE CROCKER I stand corrected and appreciate that. The strong implication, though, for a proxy provider, in my understanding, is that it prevents determining who the beneficial user is by providing an intermediary who sort of blocks that. I mean, you can communicate through them if they choose to, but you don't get at the end user, so to speak.

OWEN SMIGELSKI I disagree. I think both are ways of protecting privacy of customers, just two different ways of doing so. But neither of them is intended to block it from ever being found out.

STEVE CROCKER So, what is the role of the proxy provider?

OWEN SMIGELSKI I think this is kind of a little off-topic, but there's some definitions in the RAA, there're definitions in here, which would explain the differences between the two.

STEVE CROCKER Thank you.

LEON GRUNDMANN Thank you for the discussion. I'm seeing Reg and Alan that you have your hands up as well. Reg?

REG LEVY Thank you. Reg Levy from Tucows. And I kind of want to insert myself into this colloquy because proxy is defined in the policy, and that doesn't necessarily mean that that's how it's typically used. So, a proxy provider is a registrant, full stop. And they may exist solely to obfuscate who their customer is. A lot of attorneys act as proxy providers so that Warner Brothers isn't seen to be buying Batman6.com, .movie, .film, but rather some other party is doing that. So that might be a purpose for a proxy provider.

As I've said multiple times, I am a proxy provider for some of my sisters. I don't have an agreement with them. If someone sends an

email to me with regard to one of their domains, I might decide about whether or not they care. If it is a legal document, I very likely will forward it immediately on. If it is some sort of advertising document, no, I'm probably not going to. I'll just delete it and not even tell them that I received it. So, the proxy provider is the registrant. The proxy provider has all liability, all rights as the registrant because they are the registrants. Whether or not a so-called underlying customer exists, as in the case of Warner Brothers, is completely immaterial because the proxy provider is the registrant itself.

STEVE CROCKER Okay. So, if they're the registrants then we have no issue. Then we don't need to know whether or not they are a proxy provider or the registrant.

REG LEVY Yes, this is the point that I have been attempting to make this whole time. Thank you so much for saying it so succinctly.

LEON GRUNDMANN Thank you. I believe, Alan, you had your hand up as well.

ALAN GREENBERG Thank you. Just to beat the same dead horse. In a pre-GDPR world, the only difference functionally, and what Reg said is still true, the only difference functionally is my name would show up as Alan

Greenberg as the registrant, but all of my contact information would be obscured and usable to get to me indirectly through the privacy or through the privacy provider. If it was a proxy, you wouldn't see my name either.

In a post-GDPR world, in most cases, my name is obscured. So, there's functionally no difference from someone looking at WHOIS. The difference is instead of skipping the name of the proxy provider in a privacy service, it says redacted. So functionally, there is no difference. Legally, there is a difference, as Reg pointed out. And, of course, in a post-GDPR world, I could opt in to have my name show up with the privacy service if I ask for it, or if it's a registrar who doesn't have to follow GDPR.

LEON GRUNDMANN Thank you, Alan. I see some hands up, but please do use the Zoom interface. I see that you're next, Reg, and then I will move along.

REG LEVY Thanks. Reg Levy from Tucows again for the record. With regard to what is seen in the WHOIS, or what I like to refer to as previously public WHOIS, it is the case that a privacy service, which is operated by the registrars, will show all information by default. So actually, the domains that I own for my sisters have contact privacy publicly available in the WHOIS because I have privacy turned on by default. But I am the person who is behind that. The privacy service does have an obligation to forward everything to me.

So, if you send an email to reglevy@contactprivacy.com, I will get that. Actually, you will get a response that says fill out this form. If you fill out the form, I will receive that information directly to my email. That's a privacy service. Again, if this was intended for davesafebakery.com, and it was for my sister instead, I would have the choice to whether or not I forward that information on. So, a privacy service has public information in the WHOIS, and a proxy may or may not, because as you said, a registrant may choose whether or not to have their information private, because the proxy service is the registrants and can make that choice.

LEON GRUNDMANN Thanks, Reg. I saw some hands on the other side of the room. Michael, please go ahead.

MICHAEL Thanks. Steve, I want to follow up on this proxy service, and Reg, maybe you can confirm this, and I'd like to give this in the specific example-- Sorry about that. Trying to follow along with ALAC as well, multitasking. So, let's look at this, Steve, in the context of harm, because I think this is what you want to talk about in privacy proxy when there's a harm and an urgent request, because I think that's your underlying concern with a lot of these things.

So, let's walk through this in the context of a UDRP. If you look at a number of the UDRPs that are filed, in many instances, when the attorney files a UDRP, it is filed against the proxy. Okay? And then

what happens is WIPO will then contact the registrar. The registrar then has the ability, under the terms of conditions of that service, to disclose the underlying registrant. So, you will see in certain UDRP decisions, attorneys will sometimes amend the complaint to just go after the disclosed registrant, or they will sometimes proceed both against the privacy proxy provider and the registrant.

So, this, to me, I think, is very important to acknowledge the distinction that Reg was making, that the proxy provider is the legal registrant, and they are liable. And that is why some attorneys choose to leave the proxy provider in the complaint and then name the underlying registrant. And I think this is important because what is seen, if you go and you pull some of these UDRPs from WIPO, you will actually see the time process that it takes from notification to disclosure to refiling. That takes time. I think this is very important because one of the things that I know is very passionate to you is the issue of urgent request. When you have urgent request, and you have all of these different layers, that just slows down law enforcement from getting in contact with that person to stop harm.

STEVE CROCKER Thank you. Yeah, I do have a lot of concerns about urgent requests, but it's not part of any of the things that are on my mind in this discussion at all. There is a relevance in terms of law enforcement in that, oftentimes, as I understand from listening to law enforcement, that they actually want to know not who the legal

registrant is, but they want to know where is the actor behind that. And if it's not the legal registrant, then they still want to know who's behind it. And that's a law enforcement issue, which is different from just assigning responsibility for the domain operation. Taking down the domain may not get at-- For example, if the registrars says, here's the registrant, and if there's a problem, we'll take them down. That may not be at all relevant or even helpful. It may be actually averse to the needs of what law enforcement is after in that particular case.

DANA KUEBLER Thank you very much. I would like to-- Leon, do you want to go ahead?

LEON GRUNDMANN Thanks. Yeah, I think we're going a bit off track here. So, I think we'll move on to the next comment that we received, which I believe was from Gabe Andrews, and I think, I believe that he's not in the room. I believe he sent us apologies. Yeah, so I think we'll encourage, in the interest of time, we'll encourage him to read that offline and to respond as needed. So, we could move on to the next comment, which I believe was from Reg. Yes, thank you. So, would you like to speak to the comment directly?

REG LEVY Sure. Reg Levy from Tucows. So, the knowingly accepting registrations involving a proxy service, because again, the privacy

service is owned by the registrar, so I don't accept a registration from a privacy service. I accept a registration from a registrant, and they choose whether or not to pay me for the privacy service that I provide. But knowingly accepting registrations from a proxy service via entities, blah, blah, blah, this seems to imply that I look at every registration that is made through my registrar and then decide about whether or not to accept it.

These are systems, so if you pay me for a domain, you get a domain because you're a registrant. That's how it works. I'm not reviewing who you are. I have, again, systems in place to make sure that you are contactable, that you are providing information to be entered into the WHOIS record that is valid, but I'm not looking to say, oh, Steve, cool. Yeah, absolutely. Steve gets a domain. Alan, sure, domain. Luke, no, not you. That's not how this works. So, it's not like I'm knowingly accepting a registration from Steve and Alan. I'm just accepting a registration.

So, I'm really unclear about how I can knowingly accept a registration or not when there is, even if we end up with some sort of an accreditation process for a proxy provider, because again, I am a proxy provider for at least two people. So, how is my registrar to know that? It just it assumes knowledge on the part of a registrar that simply doesn't exist, and it assumes a way of making registrations that is not based in reality.

LEON GRUNDMANN

Thank you for the comment there, Reg. We left a rather lengthy response, but I'm going to go through that, go through that quickly. So, this was a known challenge discussed in the prior work of the previous IRT, as registrar members of that IRT expressed this challenge during the registration process. So, not knowing whether a registration involves an unaffiliated privacy proxy service.

The way this was proposed to be handled in the prior implementation materials was the requirement attaches at registration if the registrar knows the registration involves a privacy or proxy service. If the registrar does not know that the registration involves an unaffiliated or unaccredited privacy proxy service, but later gains this knowledge via a complaint report, etc., then requirements to remedy a registration involving an unaccredited service would apply. However, as discussed in the prior IRT's efforts, this could have significant negative consequences for the beneficial user of the domain name who, in an extreme scenario, could potentially have their domain suspended because it was not registered in compliance with the RAA or privacy proxy policy.

The appropriate path that should be required when a registrar does not know at the time of registration that a name was registered using a privacy proxy service, but later learns of this and is obligated to remedy a non-compliant registration for the RAA and PP policy may be an area that should be further discussed to ensure the required steps to be taken are clear and impacts are well

understood and reflect the intent of the privacy proxy service accreditation issues recommendations. Alan, I see that you wanted to come in on this.

ALAN GREENBERG

Yeah, I think what you just described is a fairyland situation that could happen if a whole bunch of things happen. As I understand it, as Reg says, there's no way to know at the time of registration that something's a privacy proxy service right now. If we were to go down the path of accrediting non-registrar privacy proxy services and we published a detailed list of who they are, it is conceivable the registrar could check at registration time, is this one of the accredited non-registrar privacy proxy services, and tick off the box. But when we've asked the question, do such entities exist? The answer has been, I believe, none that we know of. So, although it is a scenario that one could go down that path, it's probably a path that is not populated, and therefore does not have a lot of merit of even talking about. Thank you.

LEON GRUNDMANN

Thanks, Alan. I think that's a good point and indeed, that's certainly an issue, the issue that we have not identified any such unaffiliated providers. I think in the interest of time, and I think this is directly linked to this comment, I'd like to move to another comment. Dana Kuebler, if you could go to page 12. I think you may have it open in another tab, but I think it might be easier to just scroll immediately there. So, page 12, the bottom of the page, if

you go up a little bit. So, the final paragraph, upon notice that a registration involves an unaccredited service, and there we have a comment from Reg. Yeah, I think that's the one. Reg, do you want to speak to this comment?

REG LEVY

Reg Levy from Tucows. This is perhaps a question directed at Alan, because in one of the previous meetings, he indicated that whatever accreditation models come out of this, he really hopes that they don't apply to law firms, and I was a little bit confused by that. If we decide that proxy providers are so dangerous that they must have a license to operate, then I don't see why anyone should be exempt.

ALAN GREENBERG

I think my answer is just let's assume we came up with an accreditation model for non-registrar proxy providers, then you, for your sisters, are also one, and if there's a $20,000 fee associated with becoming accredited, you're not likely to do that. I'm not likely to do that on behalf of my local genealogy society, so I will continue to be the registrants, period, as the lawyer for MGM might, should they choose to. So, I just don't see the need for it, because as you've said innumerable times, if you're not operating this as a huge service, then you are the registrant, period. Our rules cover that. We don't need to have a new set of rules for it.

LEON GRUNDMANN Yes, absolutely.

REG LEVY Thank you. Strong agreement. Yes, if there is a $20,000 cost to being a proxy for my sisters, it's not that I'm going to stop being a proxy for my sisters. It's going to be that I lie about it. So, how is my registrar to know to knowingly accept my registrations, because I am a proxy provider? I am an unlicensed proxy provider, and that is in full violation of-- like, my existence puts Tucows in danger, because it's a violation of this policy that we're pretending to make.

ALAN GREENBERG Which is exactly why I'm suggesting it shouldn't apply.

REG LEVY But why shouldn't it apply? Why am I any different? Because again, I'm just the registrant. Why am I different from a law firm? Why is a law firm different from my reseller? Why is my reseller different from any other registrant? The registrant is the registrant. If there is somebody else who it happens to be involved, like for a long time, Elliot owned tucows.com. His name shouldn't be in the WHOIS. He's just an employee. Did that make him a proxy? Unclear. It does not accord with reality.

ALAN GREENBERG

I didn't think this was a two-party discussion. I'm working on the premise that some god has decided that we must recognize at least big privacy proxy providers. I'm suggesting that we delineate between the big ones and the small ones. Do we need that? Was that decision in 2011 or 2010 a good one? I believe we might want to revisit that. But should we decide to go ahead, then I think we need to delineate between you and me doing it on behalf of a friend, a lawyer doing it on behalf of a client, but they're a client for not primarily as a register on behalf of. They have a lot of other things.

I'm simply saying, if we end up with a privacy concept of a privacy proxy provider that has rules associated with it, let's be rational and make this practical, not build an albatross that we cannot manage. That's my target, which is why I say there are some classes of proxy providers that we may want to exclude from this privacy. I don't want to build another process that is going to be very expensive, impossible to manage, and encourage people to violate the rules.

REG LEVY

I don't know how we get around that last part, but I would ask how big the law firm has to be. Because again, these are known entities that act as registrants, as proxy providers. So, like carving out these artificial definitions, this is a rule that applies to everyone except lawyers and Reg and Alan. I don't understand why we need to do that. Either we believe that registrants aren't registrants, and we

need to create a new class of registrants called proxy providers, or we accept that this does not accord with reality despite the fact that the policy went forward and everybody agreed that we wished something was true that is not. As you said or as you put it so perfectly, we are in a fairyland situation.

ALAN GREENBERG I am not going to try to judge today whether this implies we need to go back to revise the policy, or we can mangle this one to interpret it to be what we want. I have suggested that the only privacy proxy providers we need to be concerned about are the ones that are part of registrars and the rules can be incorporated into the RAA, period.

If someone can find some other privacy proxy providers that are outside that are doing this as a commercial venture, free or for fee, but as a major venture, that is what the business they're in, give us the name of them, and we'll think about how to implement it. But we haven't heard any. So, if we just target it at registrars, we can incorporate any rules that we deem to be needed, which may not exist, there may not be any, but if there are any, put them into the RAA. If the registrar offers the service, they apply. If they don't, they don't apply. End of game.

LEON GRUNDMANN Thanks, Alan.

REG LEVY

Can I just, really quick. That is already part of the RRA. 100% agree, love it, we don't need this.

ALAN GREENBERG

We may decide there are some new rules we didn't cover at that point. If there are provisions in this policy which implies you have to add X, Y, and Z to the rules, fine. We have a mechanism for doing that.

LEON GRUNDMANN

I think it's a good moment to go over the ICANN org response and document revision that we propose here. So, we accept that this is a challenging issue. It was discussed in the previous IRT and in the course of the working group discussions on PPSAI. So, the recommendations don't explicitly address this issue, which resulted in a lack of clarity in the intent of the recommendations. So, final report's definition of proxy does not explicitly exclude this scenario from the definition of proxy, and as drafted, the definition could be read to extend to this scenario.

So, this is a topic that could definitely benefit from input from GNSO Council, as it is a known issue which the working group recommendations do not specifically address, and absent a specific expression of intent to exclude this scenario, the definition of proxy could be argued to apply here under any of the three models. So, we are proposing a document edit to reflect that.

Under current definitions, law firms acting on behalf of clients would in fact fall under the definition of proxy services. We also want to flag this in Threshold Question B and probably Threshold Question A to GNSO Council to receive guidance from Council on this matter. So, outdated definitions are linked to Threshold Question A, the language of which has been reviewed and approved by the IRT.

And just quickly, so footnote 8 reads, under current definitions, a lawyer or law firm registering a domain on behalf of their client would appear to be counted as a proxy service, depending on GNSO Council's response to TQB, and that should probably read TQA as well. This may mean such cases would be a category of unaffiliated providers. This would require discussion and implementation to create a bespoke solution for such cases. So just as a quick disclaimer, we're not making a value judgment here or anything. This is what the current recommendations would appear to read, and this is what we need guidance on because it would appear to create a whole new class of proxy services. And I believe that Paul, your hand was up.

PAUL MCGRADY Thanks. Paul here again. Same comment, which is we have to paint within the four corners that are in front of us. And it's an interesting back-and-forth between Reg and Alan on this topic, but there's some baked-in hypotheticals here about hypothetical exclusions and things like that. We don't really have to breach the

issue of whether or not there is any difference between a law firm's relationship to its clients and a privacy proxy online business relationship to its customers. It's just a non-issue because the plain text doesn't make distinctions in relationship to that. And some of those distinctions, if they exist, are a matter of law outside of ICANN's control.

So, fine, to bring the question back to Council, and Council can either answer it or not and/or undertake some process, but I don't want to see us get bogged down with attempting to carve out exceptions that are not in the policy. That seems to me a bit of a goose chase right now. Thanks.

LEON GRUNDMANN Thanks, Paul. Karen.

KAREN LENTZ Thank you. Karen Lentz for the record. I was going to add that when this group started and first was looking at the final report, this was one of the first things that came up, which was the definitions of what is a proxy and what is a privacy service and how is this meant to apply with many questions that we've already recorded around that point, like how can we really proceed with implementing a lot of the rest of this without some additional clarity around these definitions or considerations.

And I think as we've moved on to the other questions, that has continued to be reinforced, so it's certainly come up before and

already recorded and will likely be kind of an executive summary, bullet point, high bullet point from the group's work, because it's gets come up as we've just heard in multiple places, which makes it even more important to sort of establish this at the threshold point that we're at. Thanks.

LEON GRUNDMANN Thank you, Karen, for this valuable contribution. Alan, I believe you wanted to speak as well.

ALAN GREENBERG From a very personal point of view, I don't want to waste all of my time following a policy which may not make sense anymore to get all the way to the Board, and hopefully the Board will reject it. Our aim is to build something that is fit for purpose and is implementable and is practical to address whatever the problem is we're trying to solve, which I'm still not sure I'm clear on. Thank you.

LEON GRUNDMANN Thanks, Alan. I believe, again, we have to reiterate the process at the moment that all we can do is ask those guiding questions to GNSO Council and then take our mandate from there when it comes to implementation. And encouraging again the group, Threshold Question B remains open for drafting, so we're going to allow you to-- and share that very soon, so you'll have the chance to have input on the language of Threshold Question B. And I think

that's going to be a key question to ask the GNSO Council. And we'll be sure to include this discussion in Threshold Question A as to what is the definition of a proxy provider and does that definition require additional guidance from Council because there wasn't a lack of sufficient clarity in the official in the previous recommendation language.

I believe that we'll move on to a question from Reg, I think this is an important one to discuss during this session as well. That is page 9. Thanks, Dana Kuebler. On the question of resellers and affiliates. Reg, did you want to speak to that one?

REG LEVY

Reg Levy from Tucows. So, it is true that the RAA has requirements to pass through certain things from the registrar to the reseller. No problem there. The use of the term affiliate. Affiliate has a definition under law and in contract and my resellers are in no way affiliates. Affiliates are related to the company in question. They are typically under common ownership with the companies You all know that I work for Tucows. Tucows has affiliates that are also called Tucows.com. We have at least two affiliates that are also called Tucows which doesn't get confusing ever, I promise you. We also have Ting which is an affiliate which you may not have heard of, and one that you've never heard of called Wave Low. That is an affiliate. They are under common ownership. They are not our resellers our resellers enter into contracts with us. They are

customers and so calling them affiliates is incredibly dangerous legally.

LEON GRUNDMANN Thank you, Reg. That is well taken point. So indeed, affiliate is a term specifically defined in the RAA and elsewhere. This document for clarity is definitely not attempting to define or redefine resellers as affiliates across the board if the reseller does not otherwise fit within the definition of affiliate. Absolutely.

REG LEVY Can you scroll up just a bit? Okay. So, Model 2 is for services offered by registrars {and affiliates and resellers}. Yes, that's correct. In that case, those are two distinct entities, but option one is for unaffiliated services and that implies backwards that the resellers are affiliated. So, throughout this document, you do make a distinction between affiliates and resellers sometimes. I don't mean you specifically, the author makes distinction at some points, but also conflates them throughout and especially in the negative where they're talking about not resellers, but unaffiliated entities. Resellers are unaffiliated entities because they are not affiliated entities.

LEON GRUNDMANN Thanks, Reg, for the distinction there. So, that is something we address as well in our response here. So, the RAA does contain requirements for registrars in relation to resellers, which must be

imposed via the reseller agreement. So, the reseller agreement provides an enforceable contractual link between the reseller and the registrar which makes the relationship between the registrar and a reseller different from a situation in which a registrar does not have a reseller agreement with a third party. Hence this differentiation between what we could say truly unaffiliated in any way and having a reseller agreement.

But we do concede. So, the terms affiliated and unaffiliated are causing, of course, confusion as there are legal terms. A better term might be and what we propose here is maybe listed via registrar as both affiliates and resellers would be listed on the ICANN published and maintained list of accredited privacy proxy service providers according to Recommendation 10 in the Final Report, and RAA 3.1.2.4 would allow the new privacy proxy consensus policy to be drafted in such a way that it requires registrars to list both affiliate and reseller privacy proxy service providers to ICANN. Similarly, the privacy proxy spec and the RAA already obligates registrars to comply and to require its affiliates and resellers to comply with the terms of that privacy proxy specification Do you want to respond to that?

REG LEVY Reg from Tucows again. Sorry, Alan. I do see your hand. Okay. So, there's a difference between pass-through obligations and listing a proxy provider on some sort of list of proxy providers. Resellers enter into a contract. I am a reseller of Tucows because I get

cheaper costs that way. rather than buying it through our affiliated reseller, Hover, which is a corporate entity owned by Tucows, I buy directly through open SRS from Tucows.

So again, this goes back to the knowingly. Is Tucows knowingly supporting my proxy registrations or not? And what is the level of knowledge that is required? Because I can put into my contract, hey, if you operate proxy services, you have to click here and pay $22,000. Or I can say these are the obligations and you kind of have to tell us if you're going to do it. And then whether or not people even read through that is a different question. It's just there's so much that is assumed here with regard to contractual relationships and how the reseller and registrar model works that I'm concerned that people don't understand-- Again, I don't mean to say this with any offense, but it just does not comport with reality. This isn't how things work. And even though we may want it to be how things work, we can't write policy in a fairyland situation. I'm just going to keep using that, Alan. You're great.

LEON GRUNDMANN Thanks, Reg. In the interest of time because we had a couple of slides left and wanted to give the floor to general questions, Alan, I think we'll have your response as the last one.

ALAN GREENBERG Well, I was going to ask Reg a question, so you can if you'll let her answer or not.

LEON GRUNDMANN If it's quick, please, go ahead.

ALAN GREENBERG Okay. As I see it we have several choices with regard to affiliates who may or may not be a reseller. As Reg says Tucows has an affiliate that is also a-- I didn't say many, I said a. But in the general case, Reg, resellers are not affiliates. Is it reasonable if we end up with a rule saying your reseller must under contract tell you whether they also are a proxy to offer privacy proxy services or not?

REG LEVY So, from my understanding, a reseller cannot offer privacy services because that is the thing that the registrar does. And sure, I can put in there if you offer proxy services, you have to tell me. That assumes that they know what that means but sure, yeah, I can throw that into a contract. But again, as John so eloquently put it, I have thousands, I have hundreds of thousands, of resellers and a lot of them are idiots like me.

ALAN GREENBERG And a lot of them have resellers themselves. I understand. All I'm saying is if it is important, and I'm still not convinced it's even important, but if it is important to know that a proxy privacy service is part of this overall offering, then we can ensure that we know

whether they do it or not through a contract. That doesn't alter whether they do it or not. Thank you.

LEON GRUNDMANN Thank you. I think that it's a good moment to move back to the slide deck. I'll give the floor back to my colleague, Jason.

JASON KEAN Thank you very much, Leon. And we all do really appreciate the discussion today. Riding the wave of agreement that everyone has and the desire for this to move forward productively, we're just going to take a look at the current work plan. So, today's discussion really is driving towards resolving Threshold Question B. So, at the 26 June IRT meeting we will discuss the draft language for Threshold Question B based off of this discussion as this continues to be informed. We do have a date of July 18 to finalize threshold questions and supporting materials to present to Council, which I'm sure everyone is very happy to hear.

And at that point when we do deliver send this to Council, we will pause the IRT sessions, the bi-weekly sessions until we hear back either about a pathway forward or the GNSO submits questions back. And I do have a request to Paul, if he could just provide some context we will finish in mid-July this material for GNSO Council, but in terms of how that could fit into the GNSO's work moving forward. That would be great, Paul. And next slide really quick, or I asked Paul to speak, we do have the current work plan. So, for IRT

members, I did drop in a link so you could follow those next steps at your own leisure. Paul, would you be able to speak to the GNSO Council's work?

PAUL MCGRADY

Sure. Thank you. Paul McGrady here. So, if this is going to be wrapped up by the 18th, I think that we are not going to make it in time for the July meeting, which is fine. We will, however, be able to make it in time to get it on to the agenda for the August meeting. I believe that Council knows that is coming their way in August and if not, I'll make sure to make a point on that on the Council list. It will be a discussion item on that August agenda. I will invite the IRT staff to join me for that time. I think I can probably get a solid 15 or 20 minutes on the Council agenda to look at this. I'll introduce it.

I will state again what I've been stating from the beginning which is the threshold questions really should be questions related to things that have been overtaken by law or internal ICANN policy or technology and not re-litigation of issues that were asked and answered by the PDP working group. So, I'll be taking a close look at those and just so you know, I'll be characterizing them in terms of whether or not I think the record has already addressed the questions being asked. Staff will have their own independent view on that perhaps. And so, we will lay that out in August.

In terms of steps after that. By that point, it looks like we will be being co-chaired by Tomslin and Nacho. Am I getting that right? So, what they want to do with that with all of this afterwards will be

not fully up to Council leadership, but we'll rely primarily on them. It has been Council's habit of late when dealing with questions like this or situations like this that are not addressed by Council in the whole, we may see a small team pop up to respond to these questions. We may not, but it will not surprise me if we do.

And I would love in terms of timing since I am rolling off Council in Oman, I would love to get Council's response back on these in advance of Oman if I can. I can't guarantee it. But some other liaison will be stepping into my role after Oman. That is my stated goal, and I will do my best to push that so that we get this IRT back engaged and moving again so that we don't lose any more time. So, thank you all and I'm happy to take any questions.

LEON GRUNDMANN Thank you, Paul. I believe, Roger, you had a question.

ROGER CARNEY Thank you. This Roger. Actually, I've got one question now for Paul, but my first question was for staff. We're going to conclude our work basically June 26th. Is that right? And then we'll get a full final document from staff that outlines everything that's going to Council. When will the IRT get a full document from staff? I think it's important because if we're only given a week to review the full document as an entity as in itself, it seems like a little short period but I'll let staff-- I think the IRT needs a couple weeks to review it

once it's done. For Paul, when does the new leadership take over then? Is that August 1st or something?

PAUL MCGRADY I believe that Greg's last meeting is July and then we'll have a stub year of the two co-chairs and then a new GNSO Council chair will be elected in Oman and that person will then be running this. And in the one of the early administrative meetings either in Oman or the next one, there'll be call for volunteers for Council liaisons, so you should know by end of year who will be stepping into that role.

LEON GRUNDMANN Thanks. And to your question to staff. So, of course, we've already had the IRT review A, C and K. We're working on B. But what we would be happy to do is when we have the full draft ready, we'll put that out again so that people can review it and we'll do that in due time so that we can get it to Council on time as well.

ROGER CARNEY I think it's important to see the whole as a whole so we can cross reference any ideas across all the issues

LEON GRUNDMANN That's a point well taken. We saw that today with Threshold Question B and A overlapping quite a lot actually. I know that we're at time, but we were happy to take any general questions. So, if there are any general questions from IRT members or general

participants, we're happy to give the floor. Seeing none, I think we can thank you for your participation and continue to work together on list as well and look out for the document for Threshold Question B and later the document of the full threshold questions. Thanks everyone for your participation in the session.

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