

## **Transcription ICANN Buenos Aires**

### **Privacy & Proxy Services Accreditation Issues PDP WG update: GNSO session Saturday 20 June 2015**

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#### **Privacy & Proxy Services Accreditation Issues PDP WG update**

(David): Yes, okay. So the first item in this session is this session is a proxy and privacy services accreditation issues PDP Working Group.

And now I understand I just heard that Steve Metalitz has had some flight problem so we will be joined only one of the co-chairs.

So without further ado let me pass over to Graeme Bunton who will tell us about the work of his group which is at a - has a solid - has seen some strong advancement since we last heard from them so...

Graeme Bunton: Thanks (David). Hi everyone. I'm Graeme Bunton one of two co-vice chairs as (David) just mentioned. Steve couldn't make it for this but we were expecting him.

Also Don Blumenthal was our chair and had to step back so Steve and I have been running the Working Group for a bit now. And thanks to both of them and their apologies for not being here.

I'm going to try to keep this relatively brief. We should have some time for questions. But I think as (David) mentioned we've made some solid progress since our update in Singapore.

Most notably we published our initial report that went out on May 5. We have an extended comment period which closes on July 7.

There are a few comments in there already which is positive although is per usual we'll probably see the vast majority of them come in at the end.

I do think humorously we have set a high water mark for pickiness with a comment of I could care but I don't. Everyone else seems to care. That one was just enjoyable.

So we've - you can see on the slide here some key preliminary recommendations. And in everyone's spare time I would highly encourage everyone to go read the executive summary of our report.

It - the accreditation program is going to affect vast swaths of registrants and registrars and civil society and intellectual property interests.

And so it's pretty relevant for a lot of people in the room and you should go do that and then help us with your feedback.

So some of those key recommendations is there's no need to distinguish between privacy and proxy services for the purposes of accreditation.

Designated point of contact which we're drawing from the (Teact) how we're going to handle relay requests. And that's relay from third parties to registrants.

We've also split apart Reveal into two components so that there is publication which is the publication of a registrant's information in the public Whois.

And then there's disclosure where you take the registrant's information and disclose it to a single third-party. And then we need to look at the consequences and making sure that we've spelled out the consequences of disclosure publication to customers.

We also have a pretty substantial illustrative disclosure framework for intellectual property requests which is a good piece of work and I think an annex to the initial report that is worth reading as well.

Next slide right. So here's where we need everybody's input is we have a good number of substandard - substantial open questions that we have yet to answer.

And we've certainly spent some time on many of these already and more input is definitely needed.

The big one at the top there is whether domain names registered for purposes associated with online financial transactions can use privacy or proxy services.

And I think that that title is maybe a little bit incorrect is that you don't necessarily register a domain name for a particular purpose. It's whether the Web site itself is being used for financial transactions. Intent is maybe a little bit hard to tell.

So there are two statements in the initial report on this, one from sort of each side of whether we should or shouldn't have that restriction.

This is a relatively contentious issue that I would again encourage everyone to have a ponder over and share with us their thoughts.

And we have some more open questions on the escalation of relay requests following initial forwarding of an electronic request.

So this is requests from a third party to go to a registrant. What are the obligations of a service provider? Do they need to forward all communications? Does that include physical mail?

Is there the opportunity for a cost recovery fee? And if so does the requestor, the third party pay for that? Does the registrant pay for that? Does the service provider eat that cost?

And we have some other questions in there too about how to handle requests from third parties other than IPs. That's just law enforcement whether publications should be mandatory for malware and other illegal activity.

And then whether registrants have remedies for unwarranted publication or if they've been exposed wrongly what opportunities do they have?

So next steps I think we can go to the next slide, thank you. So we're closing the public comment period as I said on the 7th of July and we'll certainly review and incorporate that.

We're aiming and hoping to have a final report for September or October 2015. And then implementation will need to begin as soon as possible. So there is a expiration date on this in that if something isn't in place by January 1, 2017 the status quo will prevail.

And so there is not a lot of time considering that we need to get this done then have the GNSO vote on it, then have the board vote on it and then have implementation proceed and complete.

So we don't have currently a ton of time. And we need to make sure that we're working very hard to get towards yards that. And that's probably a note for the council to think about that that vote will need to happen quickly.

And then the last thing I'd like to put in everybody's head is that we're meeting at 1530 on Wednesday afternoon.

I think the schedule actually says it's going to be 1500. But we're only going to use an hour and a half so we're going to give people a half hour break in front of that meeting.

All are welcome and encouraged. We do have some preliminary feedback from ICANN staff on from the initial report on how implementation might proceed so that's going to be some interesting discussion and should inform how we move forward.

And yes so I think that's all I've got off the top of my head and in the slides for an update. Do we have any questions or comments?

Thank you. Thank you.

(Karen Malitaver): Hi. Is it my turn? Okay yes the only on the table? Okay. (Karen Malitaver) from MarkMonitor.

I spoke with Steve Metalitz while he was stranded I think in Houston before he got on his plane.

And he asked me to express one of his questions which is a concern that I share. So kind of on behalf of him we have some concerns about a Web site that was called to our attention signed by many members of the working group including your organization Graeme. Savedomainprivacy.org I think is the Web site.

And it's an outreach site for kind of soliciting input to be in a short report which I think is really positive and a great way to reach out to the community.

But we were sort of concerned with some of the content that was on that Web site. And we have a specific question.

One of the quotes taken from the Web site is "Under the proposed new rules providers would be required to monitor your use of domain names and Web sites."

So our question to you Graeme is where does the initial report say that and Steve's word why is your company misrepresenting the report in this way? So (Tocout) is listed a site sponsor under the About Us section.

I think I could probably understand where you're coming from on that. But in particular on the Permissible Uses section of the report there actually hasn't been any discussion about how that would be implemented because we haven't actually gotten past the preliminary question of whether the threshold question about whether there should be permissible uses and then restricted uses as a consequence.

So I guess we're just seeking clarity specifically on that statement. I think there are others also on that so we...

Graeme Bunton: Sure thanks, (Karen). I don't think I actually wrote that particular piece of content. But it's certainly referring to if there are restrictions on what Web sites can use privacy and proxy there will be some form of monitoring required. I think that's relatively straightforward.

(Karen Malitaver): So where that initial report that maybe you can point it to - point us to that so that we can adequately...

Graeme Bunton: I don't think those words are specifically in there but I think it's a logical outcome of the question in front of us around transactions.

(Karen Malitaver): Right. So I think as a point of clarity like I just said we haven't actually reached the point of discussion about how that would be implemented.

And we I believe anticipate that that piece as, you know, we drafted the relay piece and the disclosure piece would be request based and not monitoring based effect.

In fact I think there was quite a bit of discussion in the working group between the proponents of the permissible uses issue and the registrars concerning, you know, expressing concerns about the implementation difficulties and acknowledging the impossibility really of monitoring content on the front end of the registration.

And I think that we in the group it was our impression that we all got to a pretty good place on understanding that monitoring your use was not going to be a piece of this.

And if it was figured out from an implementation standpoint that that would be the only way to address permissible use as an issue I don't think that that's the case. But of course that's not the discussion that we need to have here.

But we that, you know, it just seems disingenuous to include this statement on the Web site and frankly a little alarmist and misrepresentative of the work, the good work that's been going on in the group and then the content of the initial report.

If it's not in the initial report let's not tell the community that it is.

Graeme Bunton: Fair enough. I'll let maybe perhaps some of my other registrants respond. I see a number of hands up there.

(David): Yes thank you (Karen). And I mean this issue is a little bit peripheral given it's about something that's in a Web site not in the report.

So (Brett), (James), Michele and then the back of the microphone.

(Brett): Thank you very much for this presentation. It was quite helpful. And I apologize in advance if the answer to my question is to be found in the detailed report which I admit I have not read yet but will.

And this actually dovetails a little bit I think maybe with the point that (Karen) just made. If, you know, a substantial number of domain names are registered before there's a Web site operational.

So on this possibility that you can't have privacy or proxy if you're offering financial transactions well what are you going to do about that substantial number of Web sites where someone registers a domain, builds, you know, sets it up with privacy proxy and then later enables financial transactions?

What's the, you know, registrar obligation at that point?

Is it triggered by a report or is it triggered by someone monitoring? What's the thought there?

Graeme Bunton: Thanks (Brett). I think that was (Karen)'s point is that we haven't gotten to that point to figure out how that sort of enforcement regime would work whether that is registers monitoring or whether that is people complaining. We have not solved that problem. Yes.

(David): (James)?

(James): Thanks. And thanks (Brett) for bringing that up.

Going back to I guess I am encouraged by the previous speaker that that site is getting some traction and some visibility out in the community.

And I know just from viewing some of the traffic sites I know that there is some keen interest in that campaign.

I was the one who wrote the content so not fair to call all Graeme. And I do believe monitor is the correct word.

I mean the proposal is vague but the implication being that we would either have to respond to reports, review Web sites, review the merits of the complaints or possibly take proactive action based on the nature of the domain name or other products served.

For example if we knew a product was sold like a privacy service in conjunction with a shopping cart service or a payment gateway I think that would be one way that registrars or providers would be backed into the corner of monitoring content.

So I do believe that that was not a mischaracterization of potential consequences of some of the proposals that are being illustrated in the report regardless of whether or not that exact language is contained.

But I am encouraged that the site and the campaign are getting some traction. I think it's one of the ways when we went back to our previous slide about engaging the broader community outside of the ICANN circles.

When we have these discussions and we have, you know, the traditional registries and registrars on one side, intellectual property on the other side but there are, you know, just in our case millions of customers that could lose access to services based on decisions that are made in that room I think you have to throw open the doors and make sure that they're included in that conversation. So I'm encouraged with that outcome. Thanks.

(David): Michele?

Michele Neylon: Thanks Michele Neylon for the record. I'm just echoing actually a lot of what (James) has said.

I mean they thing with a lot of the policies that are made within ICANN is that the people who are - the people and organizations that are impacted by them directly a lot of the time aren't aware until it's too late.

Now whether you're looking at the initial report for a PDP, an interim report, the final report or whatever I mean we've seen this happen time and again where it gets so far down the tracks that it's too - it's very, very hard to make changes to it no matter which side which interest group you represent.

So the fact that, you know, there might be some discussions about this particular report out there at the moment I think it's a positive thing. Thanks.

(David): Thank you, at the microphone. Thank you.

Oliver Hope: Hello, Oli Hope from Host Europe Group.

I guess one of the points I wanted to come to was the question that you asked Graeme which was about basically...

Graeme Bunton: I'm not sure if your microphone is on?

Oliver Hope: I want - hello?

Graeme Bunton: (Unintelligible).

Oliver Hope: Is that better? Okay, my first (song). Oli Hope from Host Europe Group.

So my first point was about the question that you asked Graeme specifically about domains that were associated with financial transactions.

The concern that instantly springs to mind is that's not defined enough because it's associated, it forwards on to another Web site that has financial transactions or its, perhaps it's owned by a company who also had Web sites that do financial transactions.

So from my perspective to be able to actually answer that, it would have to be put out in a lot more detail.

And instantly for more the other policies that I've seen that worries me because all this stuff should ideally be as simplistic to implement and as simplistic for the end user as possible.

So that's just my comment on that because I feel I can't really answer it. The other thing is just to kind of echo what (James) is saying.

I think it's brilliant that this Web site is out there. We've not participated in it or joined in it so we have no sort of, you know, direct involvement.

But I think anything that pushes things out to actually try to get end-users interested in understanding these things are absolutely brilliant.

And they should of course be worded in the correct ways. But I think that kind of initiative is brilliant and I just wanted to point some support behind it.

Thanks.

(David): Thank you. And I think Volker will probably be the last person in the queue on this item.

Volker Greimann: Yes. I would just like to make a brief comment from recent experience regarding the financial transactions issue that is put in front of the GNSO in this public - in this initial report.

When looking at options of transferring money to Argentina I came upon this Web site that offers quite a reasonable rate and quite a good service, looked very trustworthy, had good reports on the Internet.

And just for the fun of it and because they were offering financial transactions I looked at the Whois and I saw the Whois service, Whois privacy service of one of the registrars in this room.

Now that made me think about it and made me check a bit more for the background of that company. But in the end I decided to send that money and it arrived here safely.

Now what I'm trying to say where's and what I was trying to say is this is obviously a domain name that is specifically targeted by this question.

It's a Web site on a domain name that is providing financial services but is using financial - that is using privacy proxy.

And it made me realize it may cause me to do a little bit more research on the company I'm doing business with but in the end it didn't turn out to be a problem.

And using this as example as an answer to the question no I do not think that financial services or any other services should limit the ability of a domain owner to use privacy services because there may be a lot of different reasons that may legitimize it. And using privacy proxy does not mean in any way that the service is illegitimate.

(David): Okay. Last call, just one last comment from (Thomas) then.

(Thomas): Yes just an observation. This discussion taking care of the content that's on the Web site made me think about what we're doing in the CCWG at the moment.

We're trying to make the bylaws more robust in order to ensure that ICANN is not mission creeping into areas such as content regulations.

So I certainly do the predicament that's trying to be addressed here not for people to be deceived by inaccurate or fraudulent sites and not being able to reach out to those that are operating the sites.

I'm just not sure whether Whois is the right mechanism for that. Because particularly when it comes to financial services we do have disclosure requirements and regulation in national states that would take care of that and that might be more efficiently tackling that.

Just the opposite we by not allowing such services for content such as stats we might even establish an expectation from the user side that they can particularly trust those sites because such service is absent that might even establish another danger.

But that's not to mitigate the requirement to, you know, try to do something. I'm just right whether - just not sure whether the anchor from which we're coming is the correct one.

(David): Okay, (unintelligible) then thank you.

Anne Aikman-Scalese: Yes, very quickly Anne Aikman-Scalese. I'm a member of the IPC but certainly not speaking on behalf of the IPC. I really want to speak to this just as a consumer.

And in the bricks and mortar environment when I do business with a company and I purchase something from them they have to appoint an agent for service of process. And the reason for that is consumer protection.

I feel personally as a consumer that I want to be able to (unintelligible) even closer. So as a - okay, the sound guys can turn up the mic. Wow that's fine guys. Should I start over or, okay.

I am Anne Aikman-Scalese. I am a member of the IPC but not speaking on behalf of the IPC. I'm speaking as a consumer.

I really value being able to know who I'm doing business with. And in that purchase transaction want to know that if something goes wrong with them I can - with it I can find them.

On a state level in the US and I'm not sure about other countries exactly but when I'm doing business with a company they're required to appoint an agent for service of process within the states where they're, you know, doing business.

And that's because consumers need to be able to, you know, contact their sellers, need to be able to resolve differences.

And in the global environment where, you know, purchasing has changed radically paradigm has shifted, no longer, you know, bricks and mortar, I really feel that with respect to financial transactions in particular very happy for Volker that it worked out for him but guess what, it might not have.

And I would hold a high value on being able to identify who my seller is and who's taking my money.

You could say will let the market resolve that itself and say if people don't want to buy where there's a proxy privacy registration they'll go to a seller will give them that information. You could say let the market work that out.

But very honestly we can make a difference for consumers here. And speaking as a consumer I do believe that financial transactions should be - there should be an openness about who's selling to you. Thank you.

Okay. I've just - we've just - I'm going to close the queue here so Michele then Volker.

Michele Neylon: Thanks, Michele Neylon for the record. I'll be actually following on from what the previous speaker said but I was going to say it anyway.

I mean based on what we've seen -- and this is following on from Thomas's comments -- I mean what we've seen as a registrar and a provider of these services more often than not our clients will actually publish the contact details on their Web site or in their emails that they might choose to use proxy privacy services on Whois.

Why? Why not? Where's the harm? There is none. I mean essentially if there's an issue involving consumer protection or anything like that there are plenty of agencies out there who are able to enforce that.

And as a registrar and hosting provider we've get - we get a certain number of requests from law enforcement, consumer agencies and other groups.

The number of them is so small that we've never even bothered doing a transparency report because it would take me longer to write the damn thing than it would to populate it.

And, you know, under Irish and European law, you know, there is a right to privacy. Just because ICANN as an American entity can't get its head around

the concept of privacy I won't except that it is a data controller isn't my problem. Thanks.

(David): Thank you. Volker?

Volker Greimann: Yes just to clarify I was earlier also speaking as a consumer, not as a registrar. And when I'm doing business with the sites I'm checking the Whois because I always you want to know who it is.

And if I find Whois privacy then it means I have to do more research. It doesn't mean that the site is necessarily a bad one. In this case it was a good one.

There may be many reasons why people do not show the details of the Whois. They might only decide that under that Web site, under that domain name might not even be the owner of the domain name. They might be renting it.

And they do not want to point different - have different details in the domain name than what they're showing on the Web site because that might cut get more questions done down the line. So privacy might be a very useful tool for such cases to avoid user confusion.

And Whois privacy is not a bad thing. I might have used another site that has Whois details in public that are false and might have been scammed in that way.

There is no indication that having data in the Whois that is not Whois privacy is necessarily better for the consumer or worse for the consumer. And it's part of my research routine as a consumer but it's only part of my research routine.

(David): Thank you. And I appreciate that we've had a, you know, had quite a good discussion here. And let's see some of that be in the - oh, (Stephanie) wants to make a very short...

Stephanie Perrin: Thirty seconds, Stephanie Perrin for the record. ICANN is really not responsible for electronic commerce.

And while we have a lot of sympathy for consumer protection it's not within its remit. It is within the remit of national governments. It becomes more difficult globally. It's still within the remit of national government.

(David): So thank you for that. And before we - Graeme do you have any final comments?

Graeme Bunton: No just thank everyone for the robust discussion and a reminder that Wednesday at 1530, I'm not sure of the room off the top of my head but do join us and also read the report and provide us with your comments and feedback please.