

**Transcription ICANN London
Update on PPSAI
Saturday 21 June 2014**

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(David): Please let us know what we can start the recording again. Yes it's ready to go all right.

So this last session of the day is on the proxy and privacy and proxy services accreditation issues PDP Working Group.

And we have Don Blumenthal who is the Working Group Chair here to talk to us about - and as I said we are over time. But we'll - if it's pretty busy in congested working group so I'm sure Don has plenty to tell us and productive I add.

Over to you Don.

Don Blumenthal: Yes, appreciate it. We were just having a debate to whether I'm here or not so I'm glad to know I am. And I just need to take a second to bring presentation up here because I didn't do well with anything very far away from me.

Well I appreciate it. Once again the last session of the day, so thanks for sticking around. And also once again between people in the audience and (Mary) and Marika and members of GNSO can we have a mini meeting here. And I will keep it short.

We are I think coming along pretty well. We - yes.

We've had a very good participation rate I think it and, you know, with the standard amount of regulars and people who show up every once in a while and people who don't show up.

But what's been good is that the people who do participate regularly whether it's on the phone or an email has kept up a good cross-section of I think the interested individuals and groups.

And we've even continued to grow. We early on had somebody with law enforcement who was still interested but had a number of other things put on her agenda and had to back away.

But we just last week added somebody from law enforcement so we've that's one area where we hope we get some activity. And I hope this person will become active.

I spoke at Center a few weeks ago and talked about just privacy and proxy issues in general and put out a request that maybe some people from the CC community with proxy privacy experience which is somewhat different than the gTLDs generally go about it.

And now that they are getting into the gTLD space might become active because I heard some very interesting and different perspectives.

So that's kind of reaching forward admittedly. But (unintelligible) in some ways that's some interesting stuff, what can we do beyond what we have been doing?

But in the shorter run and just to report progress we are pretty much on track for the early 2015 date that we had that we had suggested to have our draft report out.

We as I mentioned, last time grouped questions and are going through them quite methodically. And in the slide deck we listed some things where we generally have come up with our primary preliminary conclusions.

Let me suggest that these are all subject to reconsideration because the nature of the questions that we were given there's a lot of cross connections.

And we may come up with a prelim conclusion and then get to group six or group six. We actually do letters but that's okay and then realize so we clarified a little on an earlier issue and go back to it. In some areas I suspect that will happen, in some areas I'm sure it will happen.

Fundamentally we've come towards conclusions that there's really no reason to differentiate between proxy and privacy services in our discussions.

You know, ICANN and this almost comes under the heading of too obvious to mention ICANN should publish a list of accredited proxy privacy providers.

In some ways Whois entry should be entered listed if they are privacy proxy services.

We talked about the issue of saying additional field but that's just not within our purview to mandate a change in Whois structure or to suggest that ICANN mandate. I should put it that way.

Proxy privacy services will have to relay notices required by the RIA or consensus policies. That's a primary area where we'll have to look back. And we can say now that it's going to be required but later on is when we're going to get heavily into relay, reveal and relay.

Customer agreements test set out rights and responsibilities, you know, inform the customer, the registrant. And for example if a registrar for whatever reason isn't the registrar anymore that it may create a disruption in the privacy and proxy service coverage.

There have to be designated contacts for abuse reporting. And we're - it's been suggestion in the group that there should be some standardized templates.

And that's a little beyond I think the question that we provided but I think it's something worth considering. And we have for example looked at some anti-phishing working group abuse system reporting, abuse reporting system to just get some ideas.

I'm not sure where how far that will go. That's pretty much where we left off our last discussion.

There are some areas that clearly need more discussion. Over the years the traditional - and I've been this in a long time. Traditional discussions have been should there be any restrictions on privacy and proxy registrations?

Should everybody be able to have one or should it be limited? The traditional distinctions have been well commercial versus noncommercial. And I'm going to leave aside definitional problems.

Our discussions have I think opened up a new area which is really interesting to me. I think most people in the group have agreed that say, you know, some people say there should be no distinctions. Everybody should be eligible.

But even among those who think that there should be categories we seem to be converging on the idea that commercial and noncommercial, well non-commercial clearly could take advantage.

Commercial organizations could have domains and use privacy proxy if they don't conduct transactions using their domains.

For example companies who have trade secrets and don't want to reveal them but have a real use for the domain.

Companies that conduct business online under that scenario could not use privacy proxy.

Running up those definitions is going to be challenging. Seeing where the group goes in terms of where there should be any distinctions even that one is going to be challenged.

So I think that's one of our biggest things that we've treated and now we're going to have to revisit going forward.

We have to look at guidelines for malicious conduct that'll trigger certain reporting requirements or action.

And again like I mentioned the - our biggest step moving forward, I think our biggest - well I mentioned we're going to get to reveal and relay. And I think fundamentally that's the biggest question still on our list to look at.

We're aware of the Expert Working Group Report. We're going to have somebody discuss it. Not have somebody, we're going to take it up. It's not going to guide us but it's I think because we're different projects. But it's a major thing we can't not look at Pages 99 to 101 or 102 -- whatever it is.

It's an evolving process. We've had some great support from staff. We've had great support from (James) and some other people, (James) and Volker who are in the registrar community and then, you know, fundamentally what we're doing has a lot of commonality with the notion of registrar requirements. So they've bring great at giving us a view of how these things work beyond what's on paper.

Glad to take questions.

(David): Avri?

Avri Doria: Thank you. Thanks for the report. A quick question on the - because I don't think I heard it. So it would be required once this happens that any privacy proxy that someone used would be a certified one or could - or would the others still be there and it would be up to a registrar whether they are offered or not?

And the other thing is how does it deal with the lawyers that provide privacy and probably wouldn't be more certified in their law degree and bar stuff is now? So have - those are my two questions.

Don Blumenthal: I believe that I'm going to have to defer to the people that I already put on the spot sort of.

I believe that the RAA requires that registrants only enter accredited - the registrants can only use accredited privacy proxy services.

Man: Just to clarify the 2013 RAA requires registrars to only accept registrations using privacy services from accredited privacy proxy service providers once an accreditation program is put in place by ICANN knowingly.

We do not look at every registration data. But if we find someone using registration data from a privacy proxy service provider that it's not accredited we would be forced to take action suspending or deleting the domain name.

Second part of the question lawyers it is our belief as registrars that every entity that offers any form of privacy proxy service be lawyers, be it classical privacy proxy service provider would have to be accredited under this to be eligible to provide that service that they are providing.

So while that suggests in our opinion which has not been voted on in any form seen if that is consensus in our opinion everyone providing this kind of service would be treated the same way.

Avri Doria: Follow-up on that? So would there be a transition process? Because obviously people could be using one now that wouldn't - so I mean so you wouldn't take action on I would assume very quickly?

Man: Well the agreement states exception accept registrations at this time. So I would argue this would only apply to new registrations or change of registrant but that has not been discussed yet.

Don Blumenthal: And we also have - we tackled that either issue within the working party within the working group. Certainly somebody raised what about lawyers early on? I hear that question a lot but maybe different context.

But we've yet to really come back to it. And as a recovering attorney in the US I can envision all sorts of problems on how we might address an issue. I can speak to other countries.

(David): (James)?

(James): So the conversation has sort of moved on but I think that this is a function of regulating a currently unregulated service provider via a pass-through is that all - as registrars our - we really we don't have any discretion.

I think in the matter as Volker is pointing out we're already bound by whatever comes out of this accreditation process to only accept from accredited providers.

So I think that there should be some sort of - personally I think we should be working toward some sort of, you know, implementation and enforcement period that would give that kind of timeline that you are looking for.

But I don't know that is a registrar we would have a whole lot of flexibility to say, you know, to grant certain whether it's a lawyer, whether it's a Web host, you know, a Web designer -- all kinds of scenarios where, you know, if it's

brought to our attention that someone is registering domain names on behalf of a different beneficial user it's not aware in Whois then what we do?

Our accreditation is at risk we're probably going to err on the side of caution and shut it down.

(David): Thank you. (Thomas)?

(Thomas): Two quick points. If I remember the language in the RAA 2013 correctly it says that registrants may only use accredited services if they offer these services.

So if you can take a part in the ordering process that you want to use privacy or proxy then certainly that service needs to be accredited.

But as (James) and Volker pointed out there is no way for the registrar to determine whether a Web designer or a lawyer registers a domain name for himself or on behalf of the client.

And to make that subject to compliance action I would find that difficult because you wouldn't be able to determine if it's a registration on somebody else's behalf.

But the - I have one question for Don with respect to the Working Group. I've seen many cases where the domain name was not owned by the company that is doing the training.

Let's say it's the founder of the company that has registered the domain name and allows his company to use it or a domain name that is rented.

And I would - I'm just wondering whether the working group has considered those cases. Because according to the current state of the discussions it is where possible that the working group will not allow privacy and proxy

services to be used in those instances if there is commercial activity taking place there.

Don Blumenthal: Yes I think that's going to be - I don't think - I know that's going to be the types of challenges we're going to have to address as we go forward in looking at the ins and outs, the definitions, the real-life situations that get balled up when you start drawing lines.

And we're not suggesting, you know, and I'm being a nice neutral chair and not trying to put a value judgment on either direction but yes those are practical realities would have to go into these discussions no question.

(Thomas): If I may add at least in Europe there are laws that prescribed that you have to disclose contact details on the Web site. So they request that from the Web site and not from the Whois which I think would be the more straightforward approach to that.

Don Blumenthal: Has been raised...

(Thomas): Yes.

Don Blumenthal: ...repeatedly.

Man: Do you still want to respond?

Man: Oh just a quick response. You know, I think we need to clarify this but I think you're mixing or combining two separate elements of the RAA.

The first one is that when -- and I'm paraphrasing -- when an accreditation program is in place we will only accept registrations from accredited privacy and proxy services.

And then second bit is the temporary specification and privacy proxy. Now that does only apply to services that are affiliated with that registrar.

But the first one is just a blanket obligation. So I think that there's two separate things. But the first one is not yet enforced because the accreditation program is not complete.

Don Blumenthal: You know, I'll just mention real quickly that's a - that is one of the issues that kind of use in the background through all we're doing the extent to which the accreditation requirements are going to vary depending on whether the service is affiliated with a registrar or not.

(David): Right. Well I think we've run out of time so we're going to draw this item to a close. Now we seem to be out of questions too. So I'd like to thank Don for his presentation and close this item. Thanks.

Man: So we can stop the recording there and I'm just going to make a couple of housekeeping remarks and then we're done.