

**Transcription ICANN Los Angeles
GNSO Privacy & Proxy Services Accreditation Issues Working Group
Wednesday 15 October 2014**

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Don Blumenthal: Yeah, I will. This is the open - an open meeting of the Proxy Privacy Services Accreditation Issues Working Group - PDP Working Group, I almost had it all right. I'm Don Blumenthal, the chair of the group.

First thing off I want to just have the members of the working group who are here identify themselves. Why don't we start from my right and circle through the audience and come back up this side.

Graeme Bunton: Good morning, everyone. I'm Graeme Bunton. I'm from Tucows and the co vice chair of the working group.

Volker Greimann: Top of the morning to you all who made it this early. Volker Greimann, Registrar Stakeholder Group.

Kathy Kleiman: Yeah, I'll add my thanks for being here. Kathy Kleiman, Non Commercial Stakeholders Group.

Val Sherman: Val Sherman, Silverberg, Goldman and Bikoff, IPC.

Griffin Barnett: Griffin Barnett, same firm, same constituency.

Marika Konings: Marika Konings, ICANN staff. Any other members of the working group?

Libby Baney: Libby Baney, Forward Strategies, BC

Darcy Southwell: Darcy Southwell, Domain.com registrar.

Mary Wong: Mary Wong, ICANN staff and we do have a few members as well as other participants in the Adobe chat room as well. Should I read?

Don Blumenthal: Please.

Mary Wong: We have Chris Pelling and Phil Marano, Philip Corwin and Steve Metalitz, one of the co vice chairs. And so welcome to all working group members and welcome to all other participants who may become working group members.

Don Blumenthal: The idea here was to go over the objective, have a bit of an open working group meeting. As soon as I walked in this morning I realized that open group, open working group meeting was not - probably not going to happen. We put in a request for a kind of a squared off table setup but somehow it got torn down and put up this way.

We also are a lot shorter on working group members than I anticipated. I got a - there may have been a confusion on the scheduling. We had originally been at this time, we got moved, we got moved back and I'm concerned that some people who didn't get the word about the move back. Welcome to ICANN scheduling for those of you who aren't used to it.

For those working group members who are here or who are on the phone or Adobe, the usual, please update your Statements of Interest if they've changed since our last meeting. If there's anybody in the audience who's interested in signing up, and it's never too late, if you do want to you just

need to submit a Statement of Interest to become official. Today's one of the rare opportunities to be able to participate without being a working group member just do the community input section. But we are interested in comments from a broader cross section than we have on the working group.

We're fairly well represented. Registrars - and I apologize, my voice disappeared about two days ago and it hasn't shown up yet. We have a good cross section, Registrars, Intellectual Property community, Non Commercial Stakeholder Group, you know, privacy community, one active Registry member, and you're listening to him.

Which I think is - works out well. We have an interest in the issues but we're much less directly affected than some other groups might be because we don't run - we would not work directly with a privacy proxy service. We just put the stuff in the system when it shows up.

It would be nice to have more representatives from law enforcement. We've had some - and government, we've had some. But because of other work pressures, not lack of interest, they've had to kind of drop away. More representation from the anti-abuse community would be good too, that's the role I'm filling but - I try to be as neutral as possible. Those folks rarely attend ICANN meetings so that may not be feasible.

Can we move up to the - just to give folks a bit of a background, the 2013 Registrar Accreditation Agreement had a provision for accrediting privacy proxy services. Those types of services have been around for a long time. I've been involved in Whois issues since 1998. I can't tell you when I first saw one but - it could have been that long ago.

But there have been concerns over the years about those services being accredited in the same way that say registrars are. There is some level of assurance concerning data handling, concerning accuracy of data, accessibility to data.

There have been no formal rules. Obviously privacy proxy service, couldn't say it has to but should respond to court order. But beyond that there's been nothing to say you need to respond to requests for information.

There's nothing out there about who should or should not be eligible for privacy proxy type registration or any of the other things that you might expect. You know, the registrars are a bit of a model but there are other factors that come into play.

The RAA has provisions for - temporary provisions for accrediting privacy proxy services but they decided - the negotiators decided at the time it was really too complex an issue to address, they really needed to complete the process. And one of the negotiators is that the table here so if I stumble completely feel free to step in.

Ergo the privacy proxy - I spit it out once, I'm not going to try it again, working group. We were formed about a year ago although we really didn't begin work until the beginning of the year. We had an informal meeting but it was just that and a lot of people didn't make it, including me, because of conflict.

Could you bring up the full list? Yeah. We were given a list of issues by the GNSO to discuss. No, the full list. No, okay I'm not getting it here, I'm sorry. Okay. Yes the Adobe is not syncing with what's on the screen here.

We were given a list of I think 25 questions to address. These were taken from the Whois Review Team and a number of other previous studies on Whois issues in general and that touched on privacy proxy questions in some cases.

That was just - so I have control? Okay. Yeah, there is no way that we were going to go through this list piece by piece. So our first step was to organize.

We split those questions into categories as best we could. And you can see them here. We had certain primary issues just to the basic structure.

We look at what had to go into just maintaining systems, maintaining these services; basic registration processes, issues concerning contact, how do you get in touch with a privacy proxy provider if needed; relaying - and I'll focused in on these a little more in a minute - reveal and termination.

We have proceeded relatively smoothly which has been nice to see. We've got some potential inherent antagonisms or opposing viewpoints on how some of these questions should be handled and have proceeded through very civilly. We've had people openly saying, I agree, with you on the phone, which astounded us. I won't name names but again if somebody wants to volunteer I'm glad to cede the mic.

We had a little bit of, for the most part, we sailed through things. We had a little bit of focused discussion on the issues of who should be eligible to have a privacy proxy registration or not. We've had an extended focused discussion on revealed - relay and reveal.

And let me give a little definition for that. Relay is having somebody, a requestor, and I'll stick with that term, ask that something be sent along to the beneficial registrant, to the person who has the privacy proxy registration or who has registered through privacy proxy.

Yeah, the - you need to get a cease and desist letter through. That may not be the best example but the idea is you want information passed along to the beneficial holder that you don't necessarily need to know the holder's information. You know, what are the rules there? Under what situations does the service have to forward the request for information?

Reveal is another step beyond that. Reveal is the term that's been used forever, however long proxy privacy forever is, forgetting that registrant

information. We have chosen to split that into two terms. Disclose, the requestor wants the information but there's no need to publish it - to post it in the public Whois.

Or the alternative is published it. At what point does the registrant, for whatever reason, lose its protection, lose its right to have protection? At what point does the registration information gets posted in the public Whois? We have spent a lot of time on that.

We made a lot of progress on Friday I think. We were the test, the pilot for a face-to-face working group program. We spent an entire day in a room, a couple of breaks but it was around a table instead of just on the phone, instead of just one hour, and we made a lot of headway.

We still have to deal with issues concerning termination of an accreditation - privacy proxy accreditation. Then it will be cleanup and after that start to write.

We set a very aggressive schedule, which we are a little bit behind on, because it was aggressive I'm not that concerned. If ICANN were on a normal schedule I'd say I'm pretty confident we have a written report out by Marrakesh. The first meeting of next year is extraordinarily early, beginning of February. So that might be a stretch but we are going to try.

I'd like to get into discussing some of our preliminary conclusions, but after yakking for about 15 minutes here let me see if any other working group members have comments on what I've said?

Graeme Bunton: This is Graeme for the transcript. I just wanted to add that I thought Friday's session where we sat in a room face to face was pretty helpful. I don't think we've made any gigantic breakthroughs but that process was good.

It was good to get in there, have the time to spend some real effort on topics, having knowledgeable third-party mediator, as we contend to be a little entrenched sometimes. And so that experience as a whole I thought was positive and probably a good model for other working groups. Thank you.

Don Blumenthal: Kathy.

Kathy Kleiman: I just wanted to share that we have a really great share who brings a lot of experience on all sides of the Whois issue, and great vice chairs so this is a group that's running and spending a lot of time administratively and coordinating and Don is terrific and I thought that was a great summary.

Don Blumenthal: Appreciate it. Like I said I've been Whois issues since '98 and before ICANN existed technically. And I think Kathy might have been in the wars almost if not as long. I was in law enforcement back then, so a little bit different perspective as a registry working with PIR.

Anybody - any other comments? Comments from the non working group members? And one of the disadvantages of generally working over the phone is that I don't - I've never met most of the members. So if any have come in since we started please introduce yourselves.

I saw one person can then and I didn't recognize you so I guess you're not on the working group. Wendy. Just introduce yourself since you're a working group member and came in late.

Wendy Seltzer: Sorry.

Don Blumenthal: That's okay.

Wendy Seltzer: Wendy Seltzer on the working group from the Non Commercial Stakeholders Group.

David Cake: Yeah, and I don't think I introduce myself earlier. David Cake from the Non Commercial Stakeholders Group, also on the working group.

Don Blumenthal: I appreciate it I couldn't see you there David, you're hidden by...

David Cake: Volker.

Don Blumenthal: ...other people. Blame everybody not just Volker. Go back to the slides. Yeah, yeah. I don't know who here from at least non working group members was at our session in London?

((Crosstalk))

Don Blumenthal: Oh okay.

((Crosstalk))

Don Blumenthal: All right maybe we should try to go back through some more of the preliminary - some of the important preliminary conclusions from earlier. Our last slide here, which we'll put up and which will also be on the ICANN site, will have a link to our wiki which has all the documents we produced which has all of our preliminary conclusions. And we keep that up to date. So if you want to keep up with what we're doing it's there.

Right now it's current up to before our face to face, you know, not everybody was there so we need to float our discussions to the working group before we post whatever progress we made in - at that session.

I'll focus on I think two critical ones. We call ourselves the Privacy Proxy Working Group - we're called the Privacy Proxy Working Group. The fact of the matter is that proxy registrations dwarf the number of privacy registrations.

And in some parts of the world privacy registrations are basically unheard of. The difference is proxy registrations all of the information, registration information is hidden. The registrant is listed - the proxy service is listed as the registrant. Privacy services at least the registrant is listed even though all the contact details are not.

I've discussed privacy services, (unintelligible) which is the association of European ccTLDs and they basically it doesn't exist in Europe. So we decided to just - that all of - anything we come up with is going to apply to both privacy and proxy.

I think the second major issue we have tackled is the question of categorization. Who should or should not be able to take advantage of a proxy registration? I'll just use the one term. That's been a very challenging issue in general for years.

I think it's fair to say the group consensus is that there should be no limits. And that that was a very interesting discussion. I think that's - if I had an example of anything that worked more smoothly than I expected it was that question.

Traditionally the argument has been commercial versus non commercial. You know, good luck. The challenge there obviously is defining those terms. We got in some very interesting discussions about commercial uses of proxy registrations.

There is still a proposal floating I think, well it's in the documentation so I'll mention it, if you look, concerning transactional versus non transactional distinction. Again there are very large definitional hurdles with that.

I think after going back and forth the group's consensus is for a lot of practical reasons there - we're recommending that there no be distinctions; that any registrant who wants a proxy registration should be eligible.

We're not finished with E and F with relay and reveal. So far we have come down, as you can see here, and basically we've been working on those questions since London. Relay requests must be forwarded if it's mandated by the RAA. Now that's a short term issue in theory. But we are looking at the RAA for ideas.

We're looking, for example, at some principles in the Whois Expert Working Group document for guidance. This isn't being done in a vacuum. Basically in the short term if it's required by the RAA, more practically an electronic request must be forwarded unless there's a commercial reason not to.

Generally that commercial reason is abuse. I mean, if a proxy service is being bombarded with requests to forward to a given registrant there's got to be a limit. A proxy service should be able to have spam filters in place. And if something gets snagged, well so be it.

We're still working on issues about, say, forwarding paper requests. We're still working on issues concerning what happens if there's no response. We're still working on issues concerning non paper requests, do you want to expand on that?

Graeme Bunton: Sure. This is Graeme for the transcript. One of the issues we were discussing on Friday and that's come up in the working group is relaying physical mail to registrants - people using a privacy and proxy service and what's the obligation of the service provider.

And it's tricky. And some of the humorous examples that we get, we have, you know, it's like a giant wood burned satanic art carvings that show up at our privacy desk or letters written on diapers and things like that. And it, you know, those are humorous examples but we do get a fair amount of physical mail and it's a considerable burden to impose to mandate sending physical mail.

You know, until, you know, maybe Val gets mad at us and starts sending us some - a cease and desist for customers inscribed on giant lead tablets or something that we would have to send on. And I don't think we've come to any clear consensus on this. I think Herr Volker is deeply against mandating the forwarding of physical mail.

And others have said okay but there needs to be a cost recovery mechanism built in so that we can charge for that service. And if that's the case then who do we charge? Do we charge the person who is trying to send that? Do we charge the registrant who is to receive whatever that is? And it's even been mentioned that perhaps it's just the cost of doing business as a service provider in the privacy or proxy that that's just part and parcel of running that business.

I would say to that that it is typically a very, very low cost business and that doesn't really make a lot of sense. So that's more or less where we were on physical mail. It's also not a bad place if anybody feels like chiming about that issue right now. Crickets. So that's physical relay.

Kathy Kleiman: May I?

Don Blumenthal: Kathy.

Kathy Kleiman: Yeah, we were certainly hoping for some input if you have it. One of the questions is should we be asking the proxy privacy providers to sort through the types of mail the they're getting and maybe pass on hard copy court orders or something like that, something that seems legal in nature versus, you know, strange diapers that may come in.

And, you know, at that point there's a discretion involved and as well as cost and time. But it's not an easy answer. Again, if there's any input or ideas we'd appreciate it.

Don Blumenthal: Okay, Steve Metalitz, one of our vice chairs has a comment. Steve, could you type it in? I don't think we have remote voice capabilities. He's doing that I might suggest it. 3D printing might be a solution to sending along diapers and tablets and things like that.

Mary Wong: So this is Mary Wong from ICANN staff reading out the questions and comments from remote participants. But before I do that I guess for anyone who is participating remotely because of the setup of these ICANN meetings it's a little bit different from regular working group meetings. If you do prefer to speak rather than type your comments just let us know and we can dial out to you through the phone bridge.

So Steve's comment is, "The arguments that Graeme is summarizing regarding cost concern the situation when email forwarding has failed as undeliverable." We also have another working group member, Lindsay Hamilton Reed who's comment is she agrees with Dan and surely the provider will have an email address.

Don Blumenthal: Yeah, the issue we focused on the other day I think was forwarding - say if email comes in printing it and forwarding it. But we've also discussed in the past the issue of just what to do with a physical document. The other day we were talking about 19-pound documents, I think 19 pounds of paper. Volker.

Volker Greimann: Maybe just to get into more detail for the - my position that physical relay is not really sensible. We're providing Whois privacy services for our customers on our platform to customers worldwide. We have our service set up in one country with a mailing address in one country and physical relay would mean we would have to send mails - or physical mail of any size to customers in any country.

Now we live in the Internet age luckily so there is communications possibilities via Internet. If the customer cannot be reached the might be able

to reach through a secondary account email address that the registrar has available or reseller address that the registrar might also have a way. So there's other ways of communication.

Finally, personally I believe that a customer who has an email address that is not functioning is violating his contact with the privacy provider and the registrar and therefore if he's not contactable by that email address for a prolonged period of time this violation might even lead to a reveal or termination of the service.

But, yes, we are also in the practice of destroying all physical mail that comes to ours because we do not forward, that's one of the terms and that's what we inform everyone on our webpage as well.

Don Blumenthal: Just had another working group member come in if you could introduce yourself?

Phil Marano: Hi. Phil Marano. Katten Muchin, IPC. I was on the Adobe earlier.

Don Blumenthal: Welcome.

Mary Wong: And we also have additional questions I think probably related to the point Volker and others were making from our remote participants. The first question is from Steve Metalitz, and his question is, "If part of the obligation for a service is to provide a channel for email relay then who should bear the cost when that channel is non functional? Should it be the customer, the service or the third party?"

Should I read the second question or do we want to take this point first? Another question, and, Dan, I apologize I missed it because it was slightly further up thread and, Lindsay, I think this was the comment you were agreeing with.

Dan's question is, "Has there been any consideration for requiring scan and send versus forwarding of the physical mail?"

Graeme Bunton: This is Graeme for the transcript. One quick correction for something I had said earlier was that I said that privacy or proxy services are low cost, that's from a registrant perspective. Typically for operating them they're a high cost service as they require a fair amount of effort.

As for the scan and send that Dan asked, we have talked about that a bit and Volker was saying that if you get physical mail that you can scan and you should do that rather than sending it on. There should always be a working email address within a privacy and proxy registration so that makes that easier.

However, and there are some people here from the IPC so I'd be curious to hear from you whether there are scenarios for you where you need it to be physical, where it's notarized letter of some sort that you need the physical mail to reach the registrant or whether in all cases you're able to submit documents electronically?

Don Blumenthal: We're having technical difficulties here which is why we're vamping. Wendy.

Wendy Seltzer: This is Wendy Seltzer. And riffing off Graeme's question I'll say that the requirements for service of process and service of legal documents can vary by jurisdiction and there are some of them that are governed by treaties.

I don't believe, though that we've ever said that service through a privacy and proxy service is meant to substitute for legal service of process or meant to provide an avenue for service of legal process. I think that would likely be opening up all of the participants to much higher costs and risks and it's not something I personally would favor.

Graeme Bunton: Thanks, Wendy. It's not that early, guys.

Don Blumenthal: Okay, let me just pick up on something that Steve said - wrote, whatever that I slide over a little too quickly. You know, we had focused, when I kicked it over to Graeme, on the issue of forwarding paper. And I kicked it over to Graeme specifically to talk about his entertaining submissions.

But, yeah, one of the issues in this - the scan and send is one piece of it is a variation rather on it. You know, we did spend a lot of time, as Steve suggested, on the issue of if it's not deliverable by email what obligation is there for the proxy privacy service to print it and send it? And that's a distinctly different issue than the one we were focusing on. We're still working on that question I think. I think it's fair to say.

And the technical issue I have is for some reason I have flipped over so I can't see the comments coming in through chat. Okay but so I'm going to ask Mary to repeat Steve's first point there.

Mary Wong: Thanks, Don. Mary Wong again from ICANN staff. And Steve Metalitz question from previously, "If part of the obligation for a service is to provide a channel for email relay then who should bear the cost when that channel is non functional? Customer? Service? Or third party?"

Don Blumenthal: We did discuss this on Friday. We didn't get deeply into it. But I'd like to take this chance to toss the question out. The point was if - the first impression I think we began the discussion with is if the privacy proxy service is going to pay. Is that the case?

I mean, if the beneficial registrant is the one who has the non functioning email should the privacy proxy be required to pass the cost along? Should some third party should the requestor have to - there's not a third party but should the requestor be obligated to pay? You know, we can't reach the registrant, what do you want us to do but you'll have to pay for it if you want us to do anymore. Any thoughts?

Graeme?

Graeme Bunton: Thanks, Graeme for the transcript. I guess I wonder what Steve means there by non functional. So if the email is bouncing we, I think, would all agree that we're obligated to fix that. And so I'm - I think personally of the mind, like Volker, that there should be no physical relay mandated. Certainly that could be an option for a proxy provider if they wanted to.

But physical relay I think is extremely difficult and probably rather expensive and time consuming. I see my CEO getting closer to the microphone, may be about to correct the record.

And so if they aren't getting a response through relay and it then comes up to - it's submitted through the abuse contact or what have you at the privacy and proxy provider and they ask for us to relay that I think that's all done electronically and so that sort of obviates the need for cost recovery.

Don Blumenthal: Thanks. And I see somebody in the audience wake up.

Elliot Noss: Yeah, hi. Elliot Noss from Tucows. I think that, at the risk of complicating this issue, that this would very much depend as you're sorting through this relay to very much depend on the nature of the requesting party. You're going to have, you know, various validation schemes for requesting parties and probably different classes of them, you know, with different access rights.

We have seen every open ICANN process like this abused. And, you know, you could see with improper forwarding or with, you know, open forwarding you could see this being used as a way to obviate postage in getting things to places.

You know, we see a number of people use these processes to complain in form and not substance, and we see, you know, abuse of privacy and proxy

today. So I think that, you know, sort of the more validated the party the greater - certainly it makes sense to be more comfortable the greater the obligation.

Don Blumenthal: Thanks, Elliot.

Mary Wong: We have some further observations and questions from remote participants on this point. And I think again it builds on what's been said including what Elliott's just said. First of all Lindsay Hamilton Reed says that it should be a requirement of the terms and conditions of the service that all users should provide a valid email address and if not the service will be suspended or terminated.

Secondly, Dan Rodgers says, "Wouldn't it be simpler to just tie the question of non-functioning email to reveal so that if you don't respond within a certain period privacy will be removed?" So that's two questions.

Don Blumenthal: Graeme.

Graeme Bunton: If I may? This is Graeme for the transcript. I think in the case of a non functioning email we would probably be obligated to remove the service. I don't feel like that's particularly controversial.

Something Elliot said in there was that interesting was sort of levels of access. And I don't think we've discussed that too much in the working group in terms of relay where different actors from different places might have different levels of relay.

I'm not - unless someone can correct me I don't think that's a way that we've really thought about it before. I don't love it because it sounds very complicated. I would think it's sort of the same channel for everyone. That's my thought.

Don Blumenthal: Yeah, I don't think we've gotten into different levels of request. But this is a chance I think to explain a little bit the interests - one of the interests in having a broader participation. You know, we have found through discussion that there are different requirements for different types - for different types of requestor. You know, all along because of the makeup of the group we have focused on the intellectual property community in terms of requesting which has led - kind of taken us on the path that very often relay is sufficient.

Which has led to some thoughts that well should relay - questions should relay be required before reveal? But the fact of the matter is in an issue of anti abuse or law enforcement reveal may be problematic - relay may be problematic. Relay alerts the beneficial registrant that there's an inquiry.

And very often inquiries from law enforcement or anti abuse don't mean that the beneficial registrant is the target of an investigation, it may be a third party. You know, back when I was doing cases very often I would want registrant information to create links. It really had nothing - the Whois record I was looking at was not a target of the investigation.

But still, relay - is an issue in that type of situation where it might not be in an intellectual property situation. So we've got a look at different categories of requestors and in that sense - we have discussed very briefly the concept of validation and whether there should be some process for validating requestors even if it's self-validation. But again, these are issues still on the table.

And again to reflect back on something that was just said in terms of where I think it's fair to say we're going, which is common sense, you know, terms and conditions should be part of any proxy privacy - I'm not sure - I may have gone too far here so I'll stop talking on that point anyway. Something in the chat? Oh okay.

And, yes, we have addressed issues of point of contact earlier in our deliberations. That's an important element. But we run into issues though of at what point does a proxy provider have to act. You know, the fact of the matter is we've talked about afferent of bounces, you know, unreachable. Well what should trigger further action by the proxy provider? Unreachable is one thing.

One of the things we generally all seen is - is we've generally seen can't be delivered now, will keep trying. Well at what point does that become considered a delivery failure? What do we - what should a provide do if there's just no acknowledgement at all? Is that considered a failure? Is that considered a - could that have just gone into the recipient's spam bucket?

While you would hope that the recipient would white list proxy privacy provider; that's not necessarily the case. Some of these things that are - may seem apparent on the surface or easy on the surface really turns into some very complex discussions.

Graeme Bunton: We've got comments from Kathy I think.

Don Blumenthal: Oh, okay Kathy.

Graeme Bunton: Oh sorry, Volker.

Don Blumenthal: Volker.

Volker Greimann: For many of these questions I think that there's already an analogous determinations made in the registrar agreement both pertaining to obligations of the registrar in itself and the obligations of the - of privacy services that are affiliated with the registrar.

And I think the easiest and most sensible way to go forward would be to look at these questions and see if there is already a solution that is prescribed for

the registrar. For example, the registrar has the obligation to suspend or terminate his service - the registration of a domain name if the registrant does not respond after 15 days of sending a request or requesting to update erroneous Whois information. And something similar could also be in place for the privacy service as well.

I mean, the obligation to have correct contactable details would remain the same whether those details are published or not. So the underlying details would also have to be correct of course. And certain obligations to enforce a certain measure against the registrant could be similar to those of the - what the registrar has to enforce against a registrant.

Don Blumenthal: Kathy.

Kathy Kleiman: Okay. Kathy Kleiman. I'm not sure - we always want to go with the option that's available in the RAA here. There is - from - and here I'm going to maybe speak for both the party trying to use the system and the party trying to receive the message.

Because there's an underlying assumption, correct or not, that most registrants probably want to get the message that's being sent assuming there's some kind of filtering for spam. If somebody has a problem with what's going on under my domain name I'd like to know; as a registrant I'd like to know.

So if we're trying to get the message through, and I'll just ask Volker, trying to get the message through, the registrant has moved, something's happened, there's a problem with the server. While I can see invoking a whole process to take down the server, isn't, I mean, is there a problem having a parallel service to try to get that message through?

Because once that message is through the rest of it's kind of resolved because it's probably not an intentional or purposeful - at least the scenario I'm putting

forward is not that the information is inaccurate on purpose, it's something's changed. And a lot of people change their email addresses frequently.

Volker Greimann: Yeah, if I can respond to that? I think what I'm looking at mainly for these consequence is a registrant who has violated his obligation under the agreement either the proxy privacy agreement or the registration agreement which is one of the main ones is to provide accurate, up to date and usable contact information.

So if he moves and is not reachable for a certain amount of time that would be a violation. Now how to deal with that violation is a different question. I'm not saying there shouldn't be an escalation path so for example if you don't get a response you might try other venues you have at your disposal, for example, an alternative email address that he might provide or a telephone number or contacting the registrar that is dealing with that privacy service provider or the reseller that is dealing with the privacy service provider in case the privacy service is not affiliated with the registrar.

So there may be other alternatives and venues for communication but I don't think there is a need for physical forwarding at this time. I think there should be consequences at some point if there's a violation and there should be an escalation path before it comes to these consequences.

Graeme Bunton: Thanks, Volker. Wendy.

Wendy Seltzer: Thanks. Wendy Seltzer. Among the other things that the group was discussing was the variety of circumstances and variety of interests that registrants and users of privacy and proxy services might have. So there are all sorts of reasons why an email might not be delivered including I configured my own mail server and I (borked) it up the other day trying to respond to an urgent security patch that was issued and for a few days mail was undeliverable.

We don't, as a working group, I think want to go into a level of detail that would make us address all of those circumstances in ICANN policies. But the other sort of array of options that we were discussing was the different preferences registrants and users of the proxy services might have for what happens in the event that somebody is trying to reach me or somebody is trying to get information and it fails.

Some might prefer that their information be disclosed and made public and the proxy was removed. Others might prefer that the domain was deregistered and others might prefer to opt into a more expensive service that would offer them multiple options for the receipt of messages. So I think it's important that policies allow for that range of further options.

Don Blumenthal: Thanks, Wendy. And that's an important distinction. We are dealing with policies. We get into a lot of case examples in our discussions and the different communities have been very helpful in that. You know, those who aren't registrars may not know how the registrar business works. Those of us who aren't intellectual property may not know the issues.

So we go through case examples, in some cases, you know, documents that we can review to understand how these things work. But it's only in the sense of so that we can develop policies that make sense. The actual implementation details will be done after our work is finished, after we publish a draft report and comments are filed and the final report and it's approved.

So the real - the fine tuning will be done by staff and the community, not by us. Are there any - okay. Any other issues that I'm forgetting that maybe we should focus in, bring up?

Graeme Bunton: I think we just covered sort of where we are on relay pretty well. We could talk about reveal a bit. I'll mention briefly we talked about the idea of transfers

and how transfers would work, the transfer of domains, on Friday. And it's an interesting and difficult issue.

And, you know, I'll put this out there for the broader community is that if you have thoughts on how that might work to transfer a domain without having to turn off the privacy service and you have input or thoughts on that it would be great to hear about it.

Don Blumenthal: Good point. The - kind of a work - small working group document on transfer is on the wiki so it's public. So Kathy, can you fill in some blanks?

Kathy Kleiman: Happy to. Kathy Kleiman. The key issue here - we looked at different scenarios but the key issue here is how to transfer a domain name from one registrar and one proxy privacy provider to another registrar and another proxy privacy provider.

And the traditional answer it seems, at least when we ask the question, it seems has been to publish the information, to actually take the information that was in the proxy privacy, publish it, put it in the regular Whois and then transfer the name.

That at least provides the receiving registrar and the transferring registrar with assurance that they're working with the right registrant. But from a registrant point of view that's not a very good solution. Obviously we want portability among domain names and we want to be able to choose our registrars and our proxy privacy services and, you know, registrants may move. And so they may want the protections of - or the jurisdiction of the registrars that are closest to them if they move from the US to Europe to Asia.

So how - it seems from a policy point of view, from a registrant point of view a natural. We can transfer domain names, we should be able to transfer to proxy privacy services and keep the privacy layer the whole way. But it turns out to be a totally non trivial technical problem. How was that?

Graeme Bunton: That was good. Thanks, Kathy. I think there's also a policy problem in there in that the IRTP specifies that you need to use the Whois from either the registry or losing registrar and if what's displayed in the Whois is - I think the IRTP states you have to use that or another data source specified by a consensus policy. So until that changes too it might be a little bit difficult to use a different source for your Whois information.

I don't think we need to talk too much more about that probably unless someone else has thoughts. But that's just another thing for, hey, everyone, have a ponder.

Volker Greimann: Yes just - as an example, it is difficult to have the transfer of a domain name with the privacy proxy service activated because the gaining registrar has no way usually to see the underlying data that is - so that means that he has to assume that the privacy proxy service provider is the registrant and would transfer the domain name.

This essentially means that he has to have a contract with the privacy service provider and the privacy service provider does not usually want to have a domain name out there somewhere using his data where he has no longer any control at least in the cases where the privacy service is affiliated with the registrar.

Because he has no more ability to act but he's still liable in a certain way as the entity that's in the Whois. So what we usually recommend our customers to do is to change the Whois data and the underlying Whois data to the new privacy proxy service provider's data and then initiate the transfer. The transfer would go through and then he would have to update his Whois data again to, once gain, reflect his ownership details.

But that of course is a complicated process and not being made easier by the results of IRTP-D which has the transfer log after - the updates of the underlying data as well.

Don Blumenthal: Thanks, Volker. More comments?

Graeme Bunton: There's nothing in the chat.

Don Blumenthal: Yeah. I did get my chat back. Mary suggested the good old fashioned low tech solution of close the window and reopen it. It worked. And I've kind of back over another document. I was paying attention, Volker, but I still looked in a document.

When I said I may have said too much, I was wrong. Sometimes it's hard to remember what we have published as a consensus and what we haven't, what we just talked about. And we have come to agreement that - and again this is common sense. What we're talking - what we're talking about is baseline requirements here.

Regardless of what we said, and the implementation team sets, recommendation is that anything be posted in terms of service; anything be included in contracts so that proxy registrant isn't - doesn't have to know what ICANN requirements are; the proxy registrant is aware of them through formal documents. The requestor is aware of them through what's on the Website or some other avenue to find out what the proxy - the specific proxy provider requires for relay, for reveal.

Again, we're looking at baseline issues. There's nothing, I don't think, that's going to prevent a provider from setting up different terms as long as that baseline is met. And, you know, very honestly it's possible that there might be competitive reasons to vary, there might be competitive reasons to have different terms in order to attract proxy customers.

Okay I'll make...

((Crosstalk))

Don Blumenthal: Yeah. We're going to move on to reveal although we've - you'll find that reveal and relay bounce back and forth. It's hard to talk about one without the other so certain things in, we've discussed in relay, apply to reveal also. I'm going to, again, for those who are not in the working group and haven't heard this plea, some of the issues in - concerning the underlying data, some of the issues I think concerning transfer play out differently depending on the context.

Now all of our discussions so far have been focused on privacy or proxy providers who are affiliated with registrars. There is a community out there of non-affiliated providers, proxy providers. We've had difficulty identifying them particularly in the sense of not only identifying who they are but having a contact to talk to and try to get involved. So if anybody knows such a company please let us know.

The business realities in that situation are different in some ways from affiliated providers. But again I'm not sure the extent to which that community is involved in ICANN. I don't - haven't met any so maybe that suggests there aren't many - or any. So it's a challenge.

Elliot.

Elliott Noss: Yeah, Don, you know, to repeat something we talked about in Singapore which is that really what you have with any privacy or proxy provider is somebody who is essentially providing a trust service or making a distinction between legal and beneficial title holder. And it would arguably be the same obligation for a lawyer who is providing privacy and proxy services for their clients holding domain names.

And there would be no reason that those domain names should be treated any differently from those that are under other privacy and proxy obligations, you know, at least at a, what would I call it, a technical level dealing with the domain names.

Don Blumenthal: Absolutely. Matter of fact one of the - I did have a company suggested yesterday who might be a good candidate for following up with but it's not clear from their site as to whether they really do - it's a legal organization - whether they really do provide proxy services or not. But that's an excellent example of the obligations are the same and an excellent example of where there are folks out there who are not affiliated. We've just got to track it down because, again, the data issues play out a little bit differently.

It may turn out when we talk to them that there are no differences in reality but we need to make sure.

Elliott Noss: Well, Don, I mean, you know, what is inarguably the case is that there are certainly tens, probably hundreds of thousands, could be more, domain names that, right now, have law firms sitting as titleholder, sitting as registrant in the Whois fronting for clients providing essentially privacy and proxy services.

And they would need to be, I would put out, held to the same obligations, you know, they are providing privacy and proxy services for gTLDs, they would need to be held to the same obligations as anybody providing privacy and proxy services. Otherwise, you know, all any registrar need do is put a lawyer in front of their privacy and proxy service.

Don Blumenthal: Okay, I'm not suggesting - and I'll transfer the mic in a second - I'm not suggesting different obligations, I'm suggesting understanding business models so we cover all cases in terms of the policies we come up with.

Elliott Noss: Yeah, I just didn't want you to - the only thing I was responding to was I thought you were - I heard an implication that you thought it was an edge case and we're not clear where that is. You know, there's a - there's, you know, the zone file is full of it.

Don Blumenthal: Oh yeah.

Elliott Noss: Yeah.

Don Blumenthal: Definitely. Volker.

Volker Greimann: Well I would agree that whatever rules we come up with would have to apply to any service or provider that is offering privacy or hidden Whois services in some form, the same way. Now the discussion from application disclosure or in general reveal, has very broad implications and therefore there is a lot of opinions there. There is some people of the opinion that there should be a reveal publication or disclosure of some form.

If enough hoops are jumped through in some form that - at some point there has to be a reveal. There is others that say if the privacy provider is willing to stand up in the name of his clients and be held to be the responsible registrant and therefore not reveal the underlying data, that it's his prerogative and maybe he has an indemnification agreement with the underlying registrant or something else.

But if he wants to be the one that is held liable at the end and refuse a reveal that might also be possible. And I think that might also be necessary for some of the law firms that have a legitimate interest to protect their clients and have a duty - legal duty to do so.

So whatever we end up with will be very interesting because it has to take into account all these different aspects and all these different possibilities and therefore I am not advocating a firm resolution or a firm decision on what has

to happen but rather a range of options along which the privacy service could set up his services and decide on how to deal with these requests for reveal.

Kathy Kleiman: Okay, hopefully this won't echo. Kathy Kleiman. Elliot, while I agree with you completely, I don't see how we reach - how we're able to reach the private law firms. This is the whole concept of accredited proxy privacy providers seems to be who you can reach by contract and let's just lay it out there.

I agree with you completely but we don't - this is the way - the way we reach - let me just follow the logic for - if people...

Elliott Noss: Yeah, no, no...

Kathy Kleiman:...which is we reach resellers through the registrar - resellers are bound by the requirements of the registrar accreditation agreement. It doesn't like me. You know, through the contractual obligations...

((Crosstalk))

Elliott Noss: But, Kathy, let me jump into your contractual chain. Any - so there's no definition of reseller. I could walk you through a whole class. You know, a law firm that is managing domain names for their clients for, you know, call it 100 clients, pick a number, pick whatever you'd like, is going to be dealing with a registrar at some level.

They will be bound by the registrar's accreditation agreement and would be forced to pass those - or would be required to pass those terms on to the, you know, equitable registrant or be bound by them, that's their choice.

They are behaving as a reseller. We have lawyers who essentially would, you know, use open SRS as their platform for managing their clients' domain names. The behaviors at a day to day level outside of, you know, some of

this privacy and proxy stuff, for a Web design firm, are completely analogous to what a lawyer is doing.

They are sitting out in front with their name in the registrant data, generally, and they're managing it for their clients, they're taking over that administrative burden for their clients performing exactly the same functions. There's no reason not to be bound by exactly the same sets of obligations. So there's no distinction there.

I think the minute you move outside of - and believe me, you know, it's a challenge for us because we're expected to enforce that down with our resellers. You know, should I enforce that differently if it's a Web design firm versus a lawyer who's using my service in exactly the same way?

Kathy Kleiman: It's interesting. One of the requirements we're going to put on this notice that the proxy privacy provider puts on into the Whois, and correct me if I'm wrong anybody, some kind of notice that they're serving as proxy privacy provider. And, you know, whether the law firms are going to do that or the Web designers are going to do that.

But certainly one of the responses that we heard, if I remember correctly, when we talked about lawyers was, well, we could - we should start writing to the bar associations right now and see what they say. How do we - how do you enforce?

Elliott Noss: You know, I think if you're asking me there's - you know, there's going to be some benefits of being accredited. You will be able to do two things: You will be able to provide a service where you will have some limits on your obligations. And in exchange, you know, you take on some burdens, you take on the reporting burdens, the forward burdens, the reveal burdens, you agree to (unintelligible) to a set of processes.

You either don't get the benefits, you know, you don't get the benefits unless you're willing to pick up the burdens. It's pretty straight. So I don't think you need to enforce, it's the obligation of somebody who wants to avail themselves of the system to learn about the system and come into the system. You know, I think that that's no different than anything else.

Kathy Kleiman: Okay. Is there anything you think we should be considering at the - almost at the end of the evaluation to help registrars who may find out that someone's acting as a proxy privacy provider.

Elliott Noss: Well I think it's...

((Crosstalk))

Elliott Noss: ...I think that what is important is clear - clear communication of the definition. So one of, you know, two or three things are true. You know, so, you know, either the services that a law firm typically around domain registration is providing fall within the definition or they don't.

I think they clearly do, I don't even hear the argument, you know what when we talked about this issue extensively in Singapore the argument was not we don't fall within the definition; the argument was but we're different. Right? They shouldn't - the rules shouldn't apply to us.

So I mean, I don't, you know, I don't know what that argument is other than we're lawyers, trust us, is, you know, is really what was put forward. So, you know, if the working group sees it as inside the definition then I think that's less about going to bar associations and asking and I think it's more about communicating generally, you know, here's where we are, here's what the definitions look like. According to these definitions here's what it is. And communicate that broadly.

You know, the ICANN community has nexus, you know, we have plenty of lawyers, here, Kathy, as you know. And, you know, we have lots of nexus to have that communicated back.

Believe me, you know, the bulk of the articles that get published on the Internet dealing with new gTLDs are published by trademark lawyers in legal journals all over the world, you know, about what you should do to protect yourself with new gTLDs. There's no reason why this wouldn't be any different. There's no reason why this would be any different.

Don Blumenthal: Let me jump in here. We've got a comment in the chat.

Mary Wong: Thank you, Don. And it's a comment from Dan Rodgers in the form I think of a clarifying question. And his comment is, "Would it not simply be that if you're accredited it's known that they're not the legal owners therefore there's a requirement to reveal or relay. But a lawyer would be assuming the ownership position on behalf of its customers. It may be that that goes to the distinction between being a proxy provider, right, and actually being the registered name holder."

Don Blumenthal: If I may. One of the points that was made in the presentation I did before Center, the European association of ccTLDs, was that here if you are a proxy provider you're on the hook. If there are problems with a domain we're coming - law enforcement will come after you, not your beneficial registrant when it comes down to it.

So that - oh no, no, I'm saying that, from what I've heard that is the way things play out in certain communities.

Elliott Noss: Yeah, you know, in fact on the ground they don't. They all - in today's unregulated proxy regime, you know, they work appropriately understanding that there's a separation between legal and beneficial title holder.

And, you know, to the question I think that that's right depending on the services but I have no - I have never seen a situation where the position of the law firm was formally that they are taking complete responsibility for all of the registrant's actions.

You know, and if that's the case, if they truly are willing to fully step into those shoes, you know, and never step back then there's no issue. They are in fact the registrant for all intense and purposes. But that's never been the position of a law firm that's registering names on behalf of their clients.

Don Blumenthal: Okay I can't swear that these situations presented in Center involve law firms but certainly the position was if it's a proxy holder - if it's the proxy registration, the proxy holder can be held liable for whatever the underlying conduct is. I can't I've seen it in the US but I was told it does happen there.

And this discussion has been very helpful in I think forming some questions up for me. Again, talking about real world, how is this playing out. Is it an issue of the privacy proxy service being provided - privacy proxy service being accredited - and go with me here - or are we really talking about who registrars can accept registrations from under what terms?

Graeme Bunton: (Unintelligible).

Don Blumenthal: I know. So I think we have to look into the rules for who can be - who needs to be accredited as opposed to who registrars can accept registrations from in a proxy type form. And I'm throwing this out, I need to think it through a little bit more. But it is just an example of how these sessions can be very useful just in kind of refocusing or newly focusing some issues that we need to discuss.

Despite the relatively small size of the crew here I think we've had a good discussion. I was wrong, we did manage to go the whole way and if I had

more time I would expand on the thing I just said. Give people time to say I'm completely off the wall or maybe on to something here.

But let me just give a minute for final thoughts to anybody who cares to make them and...

Graeme Bunton: Sure, I'll chip in with a brief note that this working group is sometimes contentious and we've got some really complicated difficult issues we're working through but I think we're doing a good job and I appreciate the positive approach that's been brought to this overwhelmingly - and I think it's great. So thanks everyone who participates on a regular basis on frequently challenging calls. It's not easy work. But good on everyone for joining us and trying.

Don Blumenthal: And with that my computer says it's - yes, 9:45. My computer is actually on Eastern Time so I had to translate very briefly there. Thanks for your attendance and participation, I really appreciate it.

END