

**Transcription ICANN Singapore
GNSO Privacy & Proxy Services Accreditation Issues Working Group
Thursday 27 March 2014**

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Don Blumenthal: Okay, why don't we get started. Oh yes, I haven't run a session at ICANN before, took me a while to get used to running phone calls. So if we could get the recording started please.

There's plenty of room at the table for those of you in the chairs at the back if you care to join us up here.

This is an open meeting of the Privacy Proxy Services Accreditation Issues PDP Working Group, our first open session since we began work not long after the Buenos Aires meetings.

I'm Don Blumenthal, the Chair of the group. Graeme Bunton to my left who is one of the Vice-Chairs, Steve Metalitz is the other one. He couldn't make the trip but I understand he's on the phone.

Why don't we just do a roll call of committee members who are here? I can't see who's on which end so starting that way.

Amr Elsadri: This is Amr Elsadri from the Non-Commercial Stakeholder Group, (unintelligible) group.

Marika Konings: Marika Konings, ICANN staff.

Avri Doria: Avri Doria, NSCG; just observing.

Osvaldo Novoa: Osvaldo Novoa, ISPCP.

Kristina Rosette: Kristina Rosette, IPC.

Margie Milam: Margie Milam, ICANN staff.

Graeme Bunton: Graeme Bunton from (Two Cows); Vice Chair.

Don Blumenthal: Don Blumenthal, I work for Public Interest Registry, but not representing the stakeholder group.

Mary Wong: Mary Wong, ICANN staff.

James Bladel: James Bladel, Go Daddy; we're a registrar.

David Cake: David Cake, (Electronic Frontiers) Australia and NCSG working group member.

Alex Deacon: Alex Deacon with the MPAA, IPC.

Griffin Barnett: Griffin Barnett, IPC working group member.

Marie-Laure Lemineur: Good morning. Marie-Laure Lemineur with NPOC.

(Apraneice Ricoch): (Apraneice Ricoch), I'm with NCUC and I'm just an observer.

Claudio Di Gangi: So am I. I'm Claudio Di Gangi; IPC.

Don Blumenthal: Any members in the seats back there? I have an eye doctor appointment about a month after the conference; I'll be in even better shape next time.

Okay, we're going to do some kind of set up explanation of what we've been doing, who we are, for people who are not on the committee. Then have a presentation about the Proxy Privacy Survey the Expert Working Group, which we have not had a chance to see really because it was released right before people started departing wherever they were departing home to come here.

And we're going to - we had decided to forego a formal working meeting in the interest of leaving time for public comments. We can talk about all the issues among us, but after a while it's the same voices with the, you know, not same perspective necessarily, but we know who we are. And it's nice to get new comments, new observations. So I hope the people who are here who are not on a committee will take the opportunity to speak up.

Okay, yes. Let me take a minute to give people who are on the phone who are members of the committee a chance to introduce themselves, even on the phone or in Adobe Connect.

Steve Metalitz: Hi, this is Steve Metalitz with the IPC, Vice Chair.

Don Blumenthal: Do you see anyone else? Okay.

Man: There's more people in the Adobe Connect I think that are introducing themselves.

Don Blumenthal: Mary, could you read out who's introducing themselves on Adobe Connect, the members?

Mary Wong: Yes, there are several people in Adobe Connect who are presumably not able to join us in person including several members of the working group. One is Tatiana Khramtsova as well as Todd Williams. Tatiana is from (RE

Center), she's a registrar representative, and Todd Williams is from the IPC. There's also Brian Winterfeldt, also IPC and Councilor to the GNSO Council.

Don Blumenthal: Okay, we'll just take one more minute to let late comer committee members to introduce themselves.

Volker Greimann: Hello, Volker Greimann, Key-Systems and GNSO Councilor.

Mary Wong: We also have (Norm Richy) from Secure Domain Foundation who has just joined us in Adobe Connect.

Paul McGrady: Paul McGrady from (Western & Strong). I removed my badge because it contains personal information.

Man: You could have just paid someone to put a sticky note over your badge.

Don Blumenthal: Okay. One last chance to do a self-introduction.

Maria Farrell: Thank you. This is Maria Farrell; I'm from the Non-Commercial Stakeholders Group.

Don Blumenthal: Okay. With that, let's get...

Stephanie Perrin: Stephanie Perrin, Non-Commercial Stakeholders Group.

Don Blumenthal: Apologies (Stephanie); I couldn't recognize who it was down there.

Okay, that's it. Anybody else who comes in is anonymous so I guess that's proxy instead of privacy.

I'm going to go, I think, without slides here except a couple of grid notes for myself.

We have been in business roughly, as I mentioned, right after Buenos Aires. But a lot of the work done in 2013 was already innovative. And obviously as with every group a lot of time, just kind of disappeared with the onset of the holidays. So I think it's fair to say we really just got started at the beginning of this year, so we're not quite effectively three months into our work.

There's a lot of very - GNSO gave us a lot of issues to address. Some of them are relatively straightforward; some of them are really complex.

So at this point, I think we're probably looking at a draft report a year from now, a little bit less, so this is not going to be a quick process by a long shot. I hope I'm wrong, but that's just realistic expectation.

We are - the group is kind of an outgrowth of the Registry/Registrar Accreditation Agreement of 2013. That effectively put Proxy/Privacy Services in the system officially.

But the decision was made to include provisions for Privacy and Proxy in the agreement, but defer until there was - defer operational decisions to this working group. Our task is to come up with policy guidance on accreditation issues. The details will be worked out afterwards.

You know, there's a temporary privacy/proxy - instead of privacy/proxy items in the RAA because obviously we are - the 2013 Agreement is in place and moving ahead kind of like the new gTLD, a lot is temporary. But then it's our task to make it - to really lock down the terms and conditions and requirements.

We took the set of questions the GNSO gave us and organized them into groupings. Roughly I'd say - well our overall groupings were issues related to maintenance, registration processes, relay and reveal, and then termination of service.

Once we organized things, we sent questionnaires out to the SOs and ACs, and SGs and whatever else I'm missing here, to get their input into the questions. We didn't get a lot back but we did get some answers from groups that traditionally seemed to be the most interested in Whois issues such as the NCSG and the IPC. We are going through those and they'll be part of our deliberations.

At the same time, we've heard presentations from staff, we've heard presentations from members of various - well so far I guess only one. Some various members of the Registrar Community who are on the committee largely for the purpose of just educating work group members. You can't really address these issues properly without really understanding how the industry works, how registrars operate.

So we've had those briefings specifically from James Bladel and Volker Greimann. I suspect there will be others as we go along, and we need to educate ourselves as we go along on the issues.

Staff pulled together information kind of a sampling of terms of existing proxy/privacy services, again, to guide our work. We've reached out to the CC community because a number of the ccTLDs already have existing formalized proxy/privacy operations.

And with all that going on, we actually do our own work. We - excuse me. We have the GNSO questions organized as I mentioned and go through them methodically on each call and on our mailing list. As we go along, staff puts together kind of a template cataloging the comments that come in that way.

And through the templates, we come up with what we think are the beginning - and we stress that - beginning of consensus positions. We'll go through these, again, week by week, but periodic revisiting because sometimes we've already come to issues early on and looked at them and realized, you know, we can't look at this until we look at something that's not going to - we're not

going to even examine for a few months. So this will be a process of moving forward but then looking back.

You know, we're - excuse me. Travel does my voice; it does some ugly things to my voice.

We'll have another session like this in London, in Los Angeles, and in addition to looking at things ourselves, we will consistently reach out for thoughts of interested and educated - and I say that I mean people involved in the processes - communities so that our work is as informed as possible.

Any questions on what I've laid out here before we move on to discussion of EWG survey?

Okay, Margie Milam is here from ICANN staff who is also the primary staff person for the EWG. So why don't I step back.

Margie Milam: Thank you Don. What I'm going to provide to you today is a summary of the findings from the Privacy/Proxy Questionnaire that we put out in January on behalf of the EWG.

As you may recall, the members of this working group did provide some comments on how to phrase the questions and address some of the content.

Could we have a clicker? Next slide please.

We were fortunate in that we got 58 respondents, so that's a fairly sizeable amount although they immediately - most of them dropped after the first question when they realized how much information we were asking for. But said, this slide shows the breakdown of the 58 respondents and what kind of services they provided.

Essentially, the summary we're talking about here, because there were only really 11 true responses, isn't statistically significant. You know, I wouldn't, you know, I think it's more illustrative of the tax practices that are out there, so I just wanted to mention that.

And so if you look at the slide, it describes the kind of services that they provide with respect to this topic. You've got 43% that are resellers, 74% were registrars, and then the breakdown between privacy and proxy providers were 41% considered themselves proxy provider, and 66% considered themselves a privacy provider. Next slide please.

And so we asked a series of questions to try to get a sense of the practices that are used by privacy and proxy services.

James?

James Bladel: I'm sorry. Did you want us to hold our questions until the end? I had a question on the previous slide but I'm willing to wait if that's...

Margie Milam: No good ahead. I think it's probably easier to do it during the presentation.

James Bladel: Okay, thanks. I wasn't sure what our protocol was here. So just two quick questions here.

When you say that there reseller or registrar, these are self-identified? Okay, so it's not necessarily that we're getting information that the proxy service itself is the same entity as the registrar, the reseller or an affiliated? Is that coming later?

Margie Milam: We didn't go into that level of detail.

James Bladel: Okay.

Margie Milam: We weren't trying to identify affiliates.

James Bladel: And same thing with the term proxy or privacy? For example, in our company we use the name proxy, but we call it a privacy service so that's also a self-identified term. Thanks.

Margie Milam: Yes, and in fact when we looked at some of the responses, what we thought were proxy services were described by some as privacy services. So I think there's a bit of confusion in the industry regarding what those terms mean.

((Crosstalk))

Steve Metalitz: Margie, this is Steve Metalitz. Could I ask a question?

Margie Milam: Go ahead Steve.

Steve Metalitz: On the summary slide, proxy and privacy numbers add up to more than 100%. Does that mean that some people identified themselves as both?

Margie Milam: There may have been some that offered both; I didn't look at the raw data. (Lisa Fifer), our consultant, actually worked to provide data. So I don't have the answer to that.

Don Blumenthal: Kathy? Or James, were you falling out?

James Bladel: Yes, just to a point that I don't know that it's industry confusion so much as when selling these products, the idea or distinctions between privacy and proxy are usually not interesting or material to the average consumer. And so I think you'll see both of them marketed as privacy services because that's more readily understood.

Don Blumenthal: Certainly if you do a Google Search on privacy services, when you read more deeply you realize it's proxy as I find out. Kathy?

Kathy Kleiman: Yes, I was just thinking this slide would be really useful if they were absolute numbers next to each bar so that we knew how many services (unintelligible), you know, of the 58 respondents, how that goes.

Man: Thank you.

Don Blumenthal: I was going to say, for people, even myself, for people who are speaking, please speak into the mic.

Kathy Kleiman: That would be a really good idea wouldn't it.

Margie Milam: And if you actually look into the survey summary - this is just a summary of the summary - it has the breakdown of the 58, so you could take a look at that document.

I think, Marika, it's been circulated or posted? Yes, okay. Next slide please.

Okay, so one of the questions related to the Privacy and Proxy Service Contract and the kinds of customer support, and so now these responses, as I mentioned, are the 11 that provided details. And from that, it appeared that 7 of them provided their customer contact information online, but only 2 of them included telephone numbers.

Some of the other responses we received were that the contacts were not published because they varied by TLD and by customer; that was one response. And another response was that the provider contact information constantly changes and is not posted on the Web site for that reason. So interest response there.

Any questions or comments on that? Okay, next slide please.

Steve Metalitz: This is Steve Metalitz. I'm trying to understand that last one. Is this someone who said - was a provider and said, "Our contact information constantly changes so we're not going to tell anybody how to contact us?"

Margie Milam: That their contact information changes, that presumably they didn't feel the need to update their Web site or to have it be on their Web site; yes.

Steve Metalitz: Okay, but this slide refers to how the customer would contact the service, right?

Margie Milam: Yes. Volker?

Volker Greimann: This could also refer to services that, like ours, have a fixed set of data, but one point of data always changes. In our case, the email address is generated automatically every time Whois inquiry is made. So every Whois inquiry gets their own email address to use which expires after 14 days. That ensures that no harvesting of Whois data can occur and the email address can still be used to forward directly to the registrant.

Steve Metalitz: This is Steve. That's why I asked that question. This is not about that; it's not about the information about the customers. This is the information the customer can use to contact the service.

If I understand Margie's earlier answer correctly, it doesn't have anything to do with what's presented in Whois? Or did I misunderstand?

Volker Greimann: Yes, that would be my misunderstanding.

Margie Milam: That's right, that's right. Steve, your understanding is correct that it's possible that the responder didn't understand the question. So it could be that this, you know, they misread the question to ask about the contact information for the domain name versus the contact for the service itself.

Next slide please.

So we asked about what the contact information looks like depending upon this type of service. And as you can see, they gave some typical examples of what the information would look like.

I won't read it, I think this is probably consistent with what you understand, you know, from what a privacy service would provide or what a proxy service would provide. Next slide please.

So essentially, what the providers do is they used the following methods to protect the customer contact details. They will substitute the providers name as the registrant's name, and you see that obviously in a proxy service.

They substitute the provider's postal address as the registrant's tech, admin, and registrant postal address. And they'll substitute the provider's email address or sometimes provide a unique forwarding email address; I think that's what Volker was referring to, or they'll substitute the provider's telephone and fax number for the registrants, or in some cases, provide a unique forwarding number.

And so one provider indicated that they substitute all of the details for non-identifiable information that's unique to the domain name and to the client. And then another provider indicated that they'll sometimes indicate that it's registered on behalf of the domain, so I think they're trying to, you know, clarify that.

Any questions on this slide or comments? Okay, next slide please.

Marika Konings: Yes, this is Marika. We're having some issues in displaying the information correctly in Adobe Connect. But I've actually just posted the link of the Wiki wire, just uploaded the slide. So for those that have difficulty viewing it,

please go to the link and download it from there so you can follow along. And apologies for the distortion.

Margie Milam: (Unintelligible).

Don Blumenthal: It's Don. Thanks for saying that. A few of us up here we're thinking our computers were getting up after a full week at ICANN.

Margie Milam: Yes, that's interesting.

The next question related to how complaints were handled. And so two providers indicated that they handle complaints as any other; they don't treat it any differently than they would for any other domain-related complaint.

Others provided specific examples of their practices. For example, they would ask that abuse be reported to abuse at the providers email address. Some say that their complaints are monitored and escalated according to internal policies.

For substantiated complaints, some reveal the identity of the registrants to the complainant or will cancel the service. Some request for evidence of the illegal use of the domain name in order to assist in an investigation. And for malicious abuse complaints, they typically will provide - they will independently investigate and verify the allegations made.

So these are just examples of different responses; it's not uniform across the board. And one provider will take action if it's also hosting the content.

Any questions about this or comments? Go ahead.

Maria Farrell: Hi, it's Maria. You know, quick one. The final one there, is it one provider will only take action if they're also hosting the content or?

Margie Milam: It was one provider commented that way. I mean we didn't ask a certain questions about it; how many people would do that. So again, this information is not statistically significant, it's just illustrative.

Maria Farrell: Yes. And actually - I'm sorry, the other one I was wondering, exactly it's kind of illustrative and maybe we're just trying to just more simplifies which is, you know, I don't mean to comment on the work done.

How many people were still with the survey after the first?

Margie Milam: Eleven.

Maria Farrell: Okay, eleven.

Margie Milam: Eleven, so what you're looking at from here on are the high level summary of the eleven substantive comments that we received. Kathy?

Kathy Kleiman: This may be something that we'll see in further slides but, which is provide a request of evidence or any evidence of the illegal use of the domain name to assist in investigation.

Was that a single - this is only two providers responded on the complaint handling and one of them said they'd do this? Is that the right way to interpret the slide?

Margie Milam: That is one of them describing their process, okay. And if I could actually read the more detailed summary, I was trying to capture concepts for this presentation. Next slide please.

Go ahead (Elliott).

Elliott Noss: Yes Margie, Elliott Noss, Tucows.

I think it's probably also important just in terms of the remit here where there's a reference to what somebody will do in their hosting context, that that's, you know, identified as being outside of the preview of this because there's fundamentally a different standard around what a registrar should do around a domain registration compared to what a hosting company should do around a hosted Web site. Thanks.

Margie Milam: Correct.

Elliott Noss: Yes, you know, I'd really like to see that explicit wherever we're referencing hosting.

Margie Milam: Okay, so next slide please.

And so we asked whether the process were automated or manual with respect to handling abuse inquiries, and predominantly they were, you know, manual because it's difficult to just get a complaint and actually do something without having, you know, some human take a look at it and make an assessment.

Any comments on this? Next slide please.

So we asked that the UDRP or URS procedures. Generally, because the URS is so new, there was a lot of information on the URS. Three indicated that they do follow the standard UDRP procedures.

Several indicated that they immediately deactivate the service and inform the UDRP provider of the underlying registrant. And one indicated that they actually delete the domain name in order to avoid any negative publicity. Yes, I was surprised to hear that.

Don Blumenthal: Go ahead Steve.

Steve Metalitz: Yes, thank you. Steve Metalitz.

On the preceding slide about automated versus manual, was there a question asked about the volume of abuse complaints? Because that might have an impact there.

Margie Milam: No.

Steve Metalitz: Thank you.

Margie Milam: Next slide please.

We asked questions about the procedures to relay customer correspondence. And it depends on how the type of correspondence received. With regard to email, four responders automatically forward it to their customers. Three of them do it on a case-by-case basis. For example, they might filter the emails for (Sam), or they would look at the content and forward important communications.

One indicated that they do not forward correspondence, and another one indicated that if you want to reach their customers, they have an online form related for that purpose.

With respect to postal mail, one responder actually opens the postal mail, destroys the junk mail, and then takes reasonable steps to scan and forward the postal mail electronically assuming that it's a reasonably sized package.

On telephone, if a telephone call is received, one of them indicated that the caller would be informed about how to contact the administrative contact.

Any questions or comments on this slide?

Maria Farrell: We're just commenting on the slide that we want people to go through our spam mail also and filter it out for us.

Margie Milam: Okay, next slide please.

So then we asked whether it was automated or manual, the processing that they use to relay the correspondence. And you can see the breakdown on the slide where three were manual, three were both, and two were automatic and one didn't do it at all.

Okay, next slide please.

Customer support services; we asked about the procedures of how you get customer support. And so here's an example of the types of customer support that's out there. There might be a phone or email that gives you access to the provider.

One provider has what they call a console where the customer can activate or deactivate the service at will. Another one has a dedicated account manager assessable by phone or email or mail. Another has a customer service by phone, email and live chat. There's also online forms that can be used such as contact owner or report abuse which goes directly to the support team.

And then one indicated that the support is provided by the domain name registrar for the domain name. And then another one provides online support to the customers and has a URL for that purpose.

So you can see that there's a wide range of, you know, customer service approaches. I imagine they're related to the type of business model that the proxy or privacy service would have and what kind of customers they have.

Any questions on this? Okay, next slide.

Responding to correspondents. We asked the question about if there's correspondents, does the service actually respond to it? Some services say that they do not respond, instead they just automatically forward the emails to the customer.

One indicated that since the clients are seeking privacy, there's no need to forward the correspondence. Some will notify their customers and advise them of the risk of not responding and then the potential loss of the domain name if they violate the terms of service.

Some will do both. They'll respond and forward to the clients. In this case, it appears that it was someone that has a large trademark client portfolio, and so they like to respond and tell their respondent that, you know, that they're forwarding it on, and so they will do both.

Any questions on this or comments? Next slide.

We asked the question about whether there was any validation done on the customer contact details.

Three respondents that were registrars indicated they followed the 2013 RAA requirements for validating customer contact details. Two providers who were also registrars did not validate their customer contact details. But you may recall, that's not a requirement in the other versions of the RAA. And one indicated that they rely on a trusted relationship instead of validation because they have a direct relationship with their customers.

Any questions? Go ahead.

((Crosstalk))

Steve Metalitz: This is Steve Metalitz.

Man: Go ahead Steve.

Steve Metalitz: I'm sorry; I didn't know someone in the room asked a question.

Margie Milam: It's fine; you can go and then we'll go to the next person after you.

Steve Metalitz: Thank you. This slide - where did we get the information about whether the registrars had signed up for the 2013 RAA? My understanding was that the responses were supposed to be anonymous to this survey. I remember a discussion of that.

Did you ask whether they had signed up to the 2013 RAA or how do we know that?

Margie Milam: They volunteered it. And so we're just reporting on what they - we weren't trying to look at this from a compliance perspective. This is just a general survey for policy purposes.

Steve Metalitz: Okay, thank you.

Maria Farrell: Hi, it's Maria. To the last one, it says (unintelligible) on existing trust relationships instead of validation. I guess what do you think he meant by that or do you (unintelligible)?

Margie Milam: I assume it's probably the company that has a brand portfolio so they might have a very close relationship with their clients, you know, know their customers as opposed to perhaps a larger registrar that, you know, only deals with online business and doesn't have that same kind of relationship with their customer.

Next slide please.

So we asked about the conditions of service. We were trying to get at a sense for what kinds of terms and conditions applied to the service.

Two indicated that they don't have any special requirements for the privacy and proxy services; they just use their standard terms and conditions.

Four indicated that they did have specific conditions of purchase, and I've listed some of them here to try to explain what kinds of things they asked for with respect to these kind of services; such as commitment to maintain accurate contact data, and they'll actually escrow their customers contact data.

They ask their customers to be responsible for infringement. They let the customer know that the provider will take all necessary steps to avoid legal or financial liability.

The provider can at any time suspend or disable the domain name without or the service without liability. The provider indicates that they may reveal customer contact Whois information for any reason, and also they let their customers know that suspension or termination of the service will result in the immediate disclosure of their registrant's information in the Whois or to the third party claimants that might be asking for that information.

And some provide notification to their customers or they endeavor to provide notification 24 hours before the service is disabled.

Any questions or comments on this slide?

Oh good ahead Marika.

Marika Konings: This is Marika. Just one comment. On taking questions from Steve or everyone can take - turn off their mic otherwise it creates feedback when we have people on the phone speaking and the microphones.

Margie Milam: Okay.

We also asked about what requirements the service places on the customer in order to retain the service. Again, two indicated that they don't have any special requirements except for the normal terms and conditions.

One referenced the Whois data reminder policy. Another one requires a customer to update their contact data upon request usually within three business days. Another requires response on a request, and they again, list a time period, in this case, 72 hours. And then another one indicated that they follow the revalidation process as required under the 2013 RAA.

Man: Do you have a sense that normal terms and conditions means they're regular or registrar terms and conditions or the normal terms and conditions for their privacy and proxy service?

Margie Milam: They didn't have anything special for the privacy/proxy service is my reading of the response. So if they are a registrar, I assume it's the same as the registration agreement, but not every respondent was a registrar.

Next slide please.

So we asked about the response processing times. Email forwarding services generally take place within seconds. Telephone or fax responses are usually the same day. If they're doing the postal scan like the opening the mail and scanning and sending it to their customer, it can take from 2-5 days.

Abuse responses, generally we were seeing about 72 hours to respond to abuse complaints. Forwarding complaints ranged from 2-7 days, and then some indicated that they just don't have any service level agreement on response times.

Any questions? Next slide please.

So we asked about how they handle inquiries. One provider indicated that no correspondence was accepted, replied or forwarded, so there's apparently no handling there. Another one indicated that all the queries are passed on regardless of the nature.

Another one indicated that they would forward some of the communications as is, but they might also require their customer to take down the ascending content or they might publish the contact details if the end-service is using commercial services.

Law enforcement requests, some treat them the same as others. Some have special procedures for law enforcement related requests and will forward them to their legal department.

Any questions? Avri?

Avri Doria: This is one where - Avri Doria speaking. This is one where I got confused in that were we expecting the proxy or a privacy operator to be the one taking down offending content. When I was reading it, I mean I didn't see how that was possible. But I was basically having difficulty with that context.

Margie Milam: I think we were just asking what the procedure was if there is a law enforcement related request. And so these are the responses we received. We weren't assuming a response that I recall.

Kathy Kleiman: Kathy Kleiman, I wonder if this goes back to what (Elliott) was talking about; the difference between the domain name registrar and the hosting provider hosting of the content and the need to identify, even if it's the same, you know, company, the need to identify the different hats that's being worn on the issue.

Margie Milam: Volker.

Volker Greimann: Well speaking from my sample, in some cases, we may forward it and include a note that we require certain action to be taken to be able to continue the service. If that action is not taken, we will disable the service.

If that action is taken, we will continue providing the privacy service. There wouldn't (unintelligible) on behalf of the registrant could be taking down of the offending content by the registrant himself. So we wouldn't be able to do that, but we would require him to do so.

Margie Milam: Any other questions or comments? Go ahead Don.

Don Blumenthal: Let me jump in, I should have said this upfront.

If there are any questions or comments from people not on the working committee or working group, please - I know some people have but I probably should have made that clear. When we ask if it's not just for working group members, I mean looking at folks who are sitting in the back there.

Margie Milam: Next slide please.

So we asked about the procedures for transfer, renewal or suspension of the domain name or the service.

Two providers indicated that their procedures are no different than what they would do for a normal domain names that aren't involving a privacy or proxy service. One indicated that they issues a separate notice for expiration of the privacy service. The service is typically renewed automatically along with the domain name.

With respect to registrar transfers, I think several indicated that they will only do registrar transfers if the privacy function is removed prior to the transfer request on the registrars.

For a registrant transfer, they will keep the service in place as long as the new owner requests it and signed a new contract.

And then for obvious infringement, one service indicated that they would suspend the domain name, contact the owner and ask him to take appropriate action within five days and confirm that they've done so. And if they don't respond in five days, they'll delete the domain name.

Elliott?

Elliott Noss: Margie, I'm confused and I'm sure it's me. This is in the case of a transfer or renewal request host complaint?

Margie Milam: Are you talking about the last point?

Elliott Noss: Well, it feels like the first five points there are just dealing with, you know, how privacy and proxy service deal with transfer and renewal. And then the sixth one has introduced this new concept. And I don't understand.

Margie Milam: It's a suspension. Yes, so we asked about all of those.

Elliott Noss: Oh, so that's the others - okay.

Margie Milam: Yes, right. Next slide please.

We asked for reasons - go ahead Elliott.

Elliott Noss: Margie, so was the last point the only response that you got on suspension or that was (unintelligible) anybody unanimously make that point?

Margie Milam: It's just where the responses came from. So they answered in that question related to suspension. I have a few more slides now that go into more detail, so you'll - there were several responses that dealt with termination and suspension.

Elliott Noss: Okay, so it's a sequential slide?

Margie Milam: Yes, after these slides you can - I think you'll see the kind of responses that we received. Okay, next slide please.

So we asked them to identify the reasons that they might terminate the service and so I've listed them on the next two slides. One would be obviously illegal use, termination of whether an alleged breach of law or regulation has occurred. They'll terminate on the breach of their terms of use or non-payment of fees.

They will terminate if there's a failure to update the content made available under the domain name upon request. UDRP might be a reason for termination or legal administration action at a competent court or by competent administration body.

Another reason might be compliance with applicable laws or regulations, foul legal service or process.

Let's go to the next slide and we can flip between the two because the list keeps growing.

Engaging in prohibited contracts, breach of registration agreement. One even said anything that jeopardizes the operation of the service. They might terminate for technical failure or modifications or maintenance, in other words if they're having some technical issues.

On 30 days' notice, for any reason, they might terminate the service. They might terminate the service if it's being used to conceal illegal, illicit, harmful activities such as spam, viruses, worms and other types of computer programs. If there's a notice of a claim or a complaint like a UDRP, they might terminate the service.

Many of them indicated to avoid legal liability or financial loss would be a reason to terminate the service. And one had it tied to commercial purposes that they would terminate the service if the domain name was being used for commercial purposes.

So are there any questions about these two slides? These are just the, you know, many issues that were raised in these responses as reasons for termination of the service or suspension of the service.

Alex Deacon: Hi, Alex speaking with a Newby question.

I'm just curious. Are these terms like termination and suspension, are they well known and defined or are they used interchangeably, are they different?

Margie Milam: I think it varies. And I mean perhaps we can ask the registrars in the room and whether they treat suspension differently than termination. Volker, do you have a thought on that?

Volker Greimann: Well with our service, suspension is termination because suspension of the privacy service usually means that the service is terminated and the real Whois data displayed.

Graeme Bunton: Graeme Bunton. I don't know how you could suspend a Whois privacy without affectively terminating it.

Margie Milam: Okay.

Elliott Noss: Yes, and I guess when you're saying service here, I assume you're meaning the privacy service, not the - yes.

Yes, just so I'm clear again, it's more form than anything else, you're just sort of word for word putting out here what these people said. I mean a couple of these don't make sense to me - and okay, that's great. So it's just who knows and who knows what the respondent said.

Again, going back to my previous point, if you go back two slides...

Margie Milam: Go back two slides.

Elliott Noss: So Margie, was that the only example of somebody who responded on suspension procedures?

Margie Milam: I'd have to refer back to the document that's posted.

Elliott Noss: Okay, it just strikes me as strange that that's the one that's, you know, sort of highlighted here as the, you know, it makes it look like that's the predominant result or the only result or the significant result. And that really surprises me

Margie Milam: Okay. Let me get that information for you guys. I'd have to dig into the document.

Elliott Noss: Yes if you could because I mean if this is going to be a public document that's for thought form part of this record, you know, to me that's a very misleading bullet, you know, unless it's clearly supported by the data.

Margie Milam: Yes. My assumption is there's other reasons as well.

Elliott Noss: So then I think maybe a separate slide and a list of those reasons just as you've done for termination, etcetera.

Margie Milam: Okay.

Elliott Noss: Thank you.

Margie Milam: Okay. Next slide please. Oh sorry, go ahead Kathy.

Kathy Kleiman: Go back to the slide that we were on, so two of them. Oh, sorry - yes.

So let me check and anyone who's running a service, please feel free to help me. So if someone has - in fact, I'm looking at the bullet point that says spam, viruses, worms or other harmful computer programs, so botnets.

So someone's infected someone else's Web site and the result - is there any process - was there any question asked about whether the registrant was informed, notified or do they terminate without kind of letting the registrant know that someone else has taken over or planted something on their Web site?

Graeme Bunton: This is Graeme Bunton. I can't say definitively, but I think that's something we would ask the requestor to take to the hosting company.

Margie Milam: Any other questions or comments on the reasons for termination? Elliott?

Elliott Noss: I just want to slightly modify Graeme's point. It depends where that is coming from as well.

If that's coming from, you know - there are security circles where there's a very high level of credibility, and you know, so there might be a senior security person at, you know, Senior Security Institution who's speaking to some of our senior security people. And in extreme cases like that, you know, we're told about something that's going on that's really, you know, quite

urgent and we will take that down. And there can be things like that taken down. But that's only in very extreme circumstances.

And what you see here where it's really about privacy, then typically it's going to be the straight procedure that Graeme described.

But I want to make sure, you know, we all want to leave room for these extremely urgent cases for all of us because, you know, they really help the Internet.

Kathy Kleiman: Elliott, if I could follow-up.

It is a difference between taking down which I can understand; you don't want that botnet to continue, you want to take it down.

But the revealing of the group, the human rights organization on which that botnet was planted, does that, you know - can you help me out of this (unintelligible)?

Elliott Noss: Sure. So when you're going to have those extreme circumstances, they're very (dispose). You know, that's a very hands-on process. So if you had that, that's going to be secure senior security entity - seek to senior security entity. You know, to person on the phone getting people all hours of the night with cell phones and things like that. So that's a very, very hands-on process.

Kathy Kleiman: Thank you.

Margie Milam: And that's consistent with the question we had before whether it was manual or automated. I mean when you deal with abuse things, that's manual across the board from the responses we've received.

Next slide please.

So then we asked specific questions on what are the reasons to reveal or to publish customer contact details. And these are similar to the list we just discussed. There's obviously illegal use, or receipt of a valid verifiable locally issued court order that complies with local legislation.

This one was interesting. In the event a direct relative of the registrant requests the information, the customer's identity is revealed to the relative. I was a bit surprised to see that one.

Legal claim or UDRP might be a reason. Compliance with a registry request. And then infringement on the legal rights of a third party or any third party trademark or trade name.

Any questions or comments on this?

Don Blumenthal: Go ahead Steve.

Steve Metalitz: I'm sorry, this is Steve. And I'm sorry about the echo.

But again, the question about whether reveal or published, was a distinction made there because we kind of wrestled with this in the group as to whether there should be different standards if you're revealing something to a complainant versus suspending the proxy service altogether so that the, you know, the world at large has access to this information. Was that drawn out in the question or were they lumped together?

Margie Milam: They were lumped together but I think we could go back and the responses are generally pretty specific. So I might be able to recategorize the information if it's helpful to this working group.

Man: Since my first joke went nowhere I will attempt a second joke and say that I was very angry when they turned over my identity to my mother about my (Mind Craft) server. A little better.

Margie Milam: Next slide please.

So we asked about escrow, how many of them escrow their customers' data. And six said they did and three said they didn't. Okay, next slide.

Logging of requests. We asked if information related to relaying the relayed correspondence or reveal requests or subsequent actions taken, whether that was actually retained, seven said yes and two said no.

And then we asked a further question that if you did retain or log this information, would you ever provide it to a third party, five said no and three said yes.

Any questions or comments on this topic? Okay, next slide.

Steve Metalitz: This is Steve. I would just point out again that there are more responses on the right than there are on the left. Seven people said they logged it and then you have eight responses about how they would share it. So how does that?

Margie Milam: Yes, I'll go back and check that.

Steve Metalitz: Thank you.

Margie Milam: Okay, that's the end of the summary. Again, these are really high-level summary of the responses. The document we submitted to you is 14 pages, and I think you'll get a lot more flavor for some of the answers that were provided. And I have a couple of action items that you guys asked to try to clarify some points and I'll do that and send it to your list.

Okay? Any general questions or comments? Maria?

Maria Farrell: Yes, it's Maria speaking. It's just kind of a broad comment really in response.

And I know it's just an illustrative survey, but I find it actually tremendously educational and useful. And in terms of the granularity that I know the registrars are very familiar with but I actually learned an awful lot.

And the main thing I take from it is the amount of variety of response. And to, you know, also think of it particularly to alleged misuse or abuse.

And so, you know, it makes me think but I could be wrong and have to be corrected, but the big task of this working group is to develop, you know, a certain amount of uniformity of response. And that, you know, takes a lot of the boxes from all the way on one end of the threshold from completely inadequate or non-responses to responses for alleged misuse that shuffling down without any process at all.

You know, so I think there's a spectrum there of a variety that we should be looking to try to narrow down a bit.

But then it also occurred to me that then - and I wonder. Maybe the registrars, you know, could get some feedback on this. Will we be creating a level of granularity and uniformity in this one small area of a registrars' interaction or a proxy and privacy service providers interaction with their customers that we don't have although - not necessarily that it's problematic, but I was surprised there was so much variety.

And is what we are going to do going to create a really kind of a narrow channel of uniformity?

And I'm sorry, and the final thing really was that we also need to look up how, you know, how those kinds of responses and reactions are going to be when we're dealing with lawyers, for example, who are providing proxy and privacy services. You know, we pretty much have to define the process - the process that we define I think have to be defined in that way for them as well.

So anyway, so that's just kind of a broad set of responses really. But I think we've certainly got a lot of work to do. And I find it a really great piece of work. Thank you.

Margie Milam: If I could comment, I really want to thank the registrars that participated in this and the privacy and proxy service providers because I was very pleased with the amount of detail we received. And I think, you know, it took a lot of time to prepare these responses. So you know, thank you to all of you in the room that participated.

Elliott Noss: Margie, do you know if any of the participants were law firms?

Margie Milam: I don't think they were; no.

Elliott Noss: Was any outreach done on the law firms?

Margie Milam: We just published it on the announcement page, so no we didn't.

Elliott Noss: You know, it might be helpful - I mean boy, there's probably - there's certainly in the tens of thousands, I'd be surprised if it's not hundreds of thousands of names in the name space, and probably across, you know, thousands, maybe tens of thousands of lawyers, privacy and proxy services provided for clients around domain name registration. And those tend to be sort of much smaller in number of registrations per provider.

And so, you know, I'm wondering if there's any subsequent follow-up, you know, outreach plan into that particular segment of privacy and proxy services.

Margie Milam: Good question. Ask the lawyers in the room.

Elliott Noss: Why the lawyers? I mean who's responsible for grabbing, you know, who's responsible for generating these questionnaires and?

Margie Milam: Oh, so yes. The EWG published it and we did an announcement on the Web site of ICANN and sent emails to the various SOs and ACs and these are the responses we received.

Elliott Noss: So you know, what we're worried about as registrar is, you know, we're going to have these privacy and proxy providers, law firms, who are going to be likely because the outreach isn't reaching them - unregistered privacy and proxy providers. And we're the ones that are going to have to go out and deal with them and enforce, and that's going to be very, very complicated.

So you know, the more - and maybe our friends in the IPC could really help getting this out through the various bar associations, etcetera, you know, to - why don't I wait for further people I'm talking too to finish their sidebar. So you know, it might be very helpful if...

Steve Metalitz: This is Steve Metalitz. Could I comment?

Elliott Noss: You could interrupt me Steve, sure.

Steve Metalitz: I think for the most part, these concerns about (words) are not within the scope of what we're looking at here because the requirement in the 2013 RAA is basically for proxy or privacy services that offered in connection with registration. So either by a registrar or reseller that has a contractual relationship with the service provider.

Now I don't have the exact language in front of me, but that's basically what the scope of the (unintelligible).

((Crosstalk))

Elliott Noss: Steve, if I could interrupt you, so then what you would then simply create is a move by registrars to use that loophole to provide proxy and privacy services to exactly the same form of registration that covers any privacy and proxy service that you don't covered by this.

Look, at the end of the day, the facts are that thousands of lawyers across tens or hundreds of thousands of registrations are providing these same privacy and proxy services. And you know, it's going to be...

Steve Metalitz: They're not providing them in the...

((Crosstalk))

Don Blumenthal: Let's not have a two-person debate here.

Elliott Noss: Great.

Don Blumenthal: I saw some reaction from some registrar folks of something that was just said. So I'd like to refer it.

((Crosstalk))

Don Blumenthal: Am I misreading that you had a reaction to something that Steve said about the nature of the...

James Bladel: Yes, I don't think that that is correct. I think that that's currently correct for the temporary specification for privacy and proxy services.

But once this is an active program, any registrar that becomes aware of a proxy registration, whether it's affiliated with the registrar or not, or offered in conjunction with registration services or not, just any level of awareness puts the obligation is on us to then only accept registrations from accredited services.

So if we become aware of a service that's not accredited, then we have to take action on the names. That's my reading of the 2013 RAA that's current - I see some ICANN legal folks nodding.

But this is so that - so Steve is correct but it is part of the temporary placeholder policy that we have today and would not be correct in the ongoing policy.

Kristina Rosette: I mean it's fairly easy to do. Every country has a national bar association.
Write to them.

Don Blumenthal: Volker, did you have something?

Volker Greimann: I think James took care of that.

Elliott Noss: If I could, you know, I think Kristina's point is a great one. And you know, I really do want to see the legal community embracing this as an opportunity. I think, you know, a high-tide rises all boats here; I don't want this to be, you know, seen as a, you know, sort of negative consequence. I think it's a real positive one.

Because we have problems, you know, across the board. You know, believe me, you know, one of the truest things is that criminals have lawyers too, often the best and most expensive lawyers.

So I think that, you know, we really want to raise the bar for everyone here and I really would love to see this embraced. Thanks.

Margie Milam: (Stephanie).

Stephanie Perrin: I just want to reiterate something that I've said numerous times I think, so I'm sorry to be repetitive.

But it strikes me that this is fundamentally non-competitive if you do not have the same rules for all. You're destructing the marketplace, you're forcing the traffic somewhere else, you're depriving accredited registrars of business because they can go to a non-accredited lawyer.

They also get solicited client privilege when they go to a lawyer. We have to find a way to get rid of solicitor client privilege in the lawyer services or you don't have a level playing field.

That seems to me very self-evident, and if that isn't our scope then we should go back and ask for that scope.

Kristina Rosette: You can add that in to the request for information that you send to the National Bar Association.

Margie Milam: James.

James Bladel: Just pointing out that, you know, existing services may have to modify their structure or their product based on the outcome of this program, or new services might innovate and set up differently. For example, one of them could convert to becoming a legal services fund and therefore have a privileged relationship with its privacy customers. And that's one possible outcome of this program.

Don Blumenthal: Maria.

Maria Farrell: Yes, Maria speaking.

Surely, I mean a lot of registrations potentially, you know, from all of the privacy and proxy registrations can be the subject of misuse or abuse. So I think we should - I think we should probably investigate and make sure we

have a clear legal picture of what the RAA, you know, specifications are in conjunction with this and really understand where our scope is.

But you know, I hear so much about accuracy and misuse that I think we should go after all avenues. And as someone who previously worked for a law society, actually, the Law Society of England in Wales, there are also a number of kind of reaching and semi-global peak organizations, you know, as some of you know for the legal profession.

And I wonder, should we even just give them the opportunity to proactively, you know, let them know we are doing some work here and would like to get their thoughts on, you know, what is a light way for them to engage with us and to give them, you know, for them to give us some of their expertise and their experience.

Claudio Di Gangi: Claudio Di Gangi, IPC.

I just wanted to clarify Elliott's question. If you're referring to...

Don Blumenthal: Excuse me. Could you identify yourself please?

Claudio Di Gangi: Yes. Claudio Di Gangi; IPC.

I'm just trying to understand the question a little better Elliott. Are you referring to a situation where a law firm registers a domain name in its own name and is listed as the registrant, or it's providing a service when you do the Whois, it comes up and says domains by proxy or it shows the actual proxy service which is - I'm just trying to understand that nuance there.
Thanks.

Elliott Noss: Sure. It's a law firm who's registering names that are on behalf of clients.

Look, when it's, you know, I don't think anybody has to use the term by-proxy or privacy in the actual registrations. Typically, when a law firm does it, it's the name of the law firm. It says nothing underneath but it is on behalf of a client.

And it's not tough to know for us when we have incoming around that because, you know, it's a content Web site or it's something that's clearly not, you know, in the practice of the law firm. And that's quite a regular practice. You know, it's been done by lawyers who manage any type of registration or even just intellectual property underneath the registration on behalf of registrants.

So you know, it's a simple, you know, as this is, proxy or trust relationship. You know, separation, you know, for the lawyers in the room, separation between legal and beneficial ownership or title.

Don Blumenthal: Is there a response to that?

Greg Shatan: Greg Shatan from (Reed Smith) and Intellectual Property Consistency.

It seems that if we're going to expand this to ad hoc, privacy/proxy relationships, you would also want to expand it to Web design firms, Web hosting firms, advertising agencies, marketing agencies. And you also want to look at the practice of individuals registering company Web sites in their own name whether or by accident or on purpose.

At some point, the question of whether this is really privacy or proxy or just some sort of, you know, inaccurate registration, you know, becomes an issue as well whether they're intending to provide a privacy or proxy service, or if there's really a requirement here that if any registrant other than the user of the domain name, if there's not an actual identify, that's being considered privacy/proxy services. I think that needs to be considered because then that becomes a very broad definition.

Elliott Noss: You know, if I could, I think that's exactly the point. That's not saying the scope of this. I think it's identifying, clarifying the scope of this.

At the very beginning of the request for this term in the RAA, what was pointed out very clearly by me and others, but by me vigorously and regularly, was that it is exactly this.

You know, let me give you another word for Web designers; resellers. We have thousands of Web designers who are resellers. Something that I said over and over and over again, during the course of the RAA negotiation, as the IPC was repeatedly asking for this, was that this is the practice; that's what is done. It's not done evilly, it's done in the normal course of business. It's done in the normal course of business for Web designers just like it's done in the normal course of business for lawyers.

If we're going down this road, and we have now; it's in the RAA. This group is constituted. I would say this is not expanding, this is exactly including and making it fulsome inappropriate.

Don Blumenthal: Let me jump in here. I'd like to give people, particularly the audience who might have questions or concerns that they wanted to raise, a chance to do it. We've got less than ten minutes here.

I'm glad to continue this discussion, but I wanted to make sure that anybody had a chance to be heard on other issues they wanted to bring up.

Claudio di Gangi: It's Claudio. I just wanted to follow on what Elliott is saying.

There might be a distinction. Lawyers have a fiduciary legal duty with their clients which may not exist in some of these other examples that you're talking about. I mean I've seen plenty of cases where registrars just listed, they register the name under their own name instead of listing as it as proxy

or privacy service. They're the registrant. In reality, it's really their customer that's the registrant.

So I think there's some - there could be some distinctions that might require, you know, as a group to take a closer look at it. Just a suggestion.

Don Blumenthal: Elliott, hang on a second.

Elliott Noss: I'm sorry Don.

Don Blumenthal: No, Elliott please. I've asked if anybody else has any other questions. If they don't, I'm going back up.

Kristina Rosette: That doesn't bode well.

I think it might be helpful to have a better sense of the potential scope to the extent that we can identify it before we go down the rabbit hole. And I'm just wondering whether, you know, Elliott, you've indicated that Tucows can tell when it's a law firm registering a name - a domain name in its name but clearly on behalf of a third party.

I think it would be helpful to have a better sense of kind of, you know, either add quantitatively as an absolute or proportion what kind of number we're talking about to the extent that you can do that and to the extent that other registrars can equally and immediately identify those registrations.

Only because I want to make sure that if there is the - and it sounds as if this is the direction we could head, that there is a decision made that we're going to develop a request for information that's going to go out to every national and regional bar association in the bar, and all of the advertising agencies and Web sites, you know, developing associations in the world.

I think we need to make sure that effort is proportionate to the issue that we're talking about only because I think we need to then be able to affirmatively say, "We recognize that this is X percentage of proxy registrations globally. Nonetheless, we think it's officially important that we're going to devote all of this time and energy to that."

You know, I have my own personal view is to where this is going. And you know, I'm sure that James would be delighted to know that to the extent I have registered domain names on clients' behalf they do it under DBP for that reason.

So you know, I would just encourage us that if we are going to go down this very long path that we make sure that the effort is proportionate to the potential outcome.

James Bladel: Glad to always meet a customer and someone who's willing to say, "Yes," and hold up their hand and say, "I am one of the ten million people that have plunked down the payment for that service." It is a good service; I use for my own names as well.

But I wanted to just maybe step back a bit. I think that these points that we've raised are important and I think that Elliott's points are particularly worthy of, you know, spending some time on. Because what it is is a question of boundaries and right now we don't have any.

And I think that, you know, it opens up the question that if we were to make some sort of determination, Kristina, that some of these are problematic and worthy of policy attention and some are, as you said, not really worthy of the effort because they're smaller or more infringe-type or, you know, less frequently occurring the wild, that we could draw boundaries there.

We just need to recognize that whatever bad habit or actor or abuse of behavior we're going to do, it's just going to move to the other side of that

line. And that we're doing, what domains by proxy are doing to serve good customers like Kristina, is just going to become a little more difficult, a little more expensive, a little more involved, and the actual nefarious behavior is just going to say, "Well, I guess I'm a law firm now or I guess I'm a Web developer now." Or whatever group we draw a box around and say, "You're outside the fence in this policy," you know, that's my concern.

And it's really more of a concern for almost all consensus policy that we develop that tries to attack abuse or abusive behaviors. Bad guys don't follow policy.

Woman: And James just said some of what I might want to say. But I would like to pull us back to what actually is the purpose of this particular group other than to fill in something that was required under the RAA which strikes me as somewhat of a patchwork approach to what is the problem.

In the EWG, we were lucky enough to kind of tabular approach. So if you look at the three goals, accountability, more accuracy in the data, and better protection of privacy, then it's very clear with those three purposes that you have to come up with mechanisms in this group that are going to cover the waterfront. Otherwise, exactly as James says, you're going to regulate the good guys and allow the bad guys to make a fortune. Thanks.

Don Blumenthal: With apologies, I have to leave for my next thing. But I think to the extent we do reach out to the ABA and its' sister organizations around the world, one of the issues is the qualitative issue about whether or not the relationship bias nature is a privacy or proxy service relationship. Attorneys like to think that what they do is special, and this dates back to Henry II.

And so I think that if we go down this path, we need to make sure that we ask not only how many members do this, and you know, how many complaints have been filed with various bar association complaint boards and things like that, but also, you know, for the nefarious behavior. But also, you know, do

you view this as the same type of service or is legal profession different from privacy or proxy service.

And then lastly, what are the bars to entry for the bad guys serving across the line? Is it easy, for a proxy service for example, to become a law firm or is that an unlikely outcome; things of that nature.

I apologize for leaving but thank you very much. I think this was extremely productive, and Margie, especially that survey.

END