

**ICANN Transcription  
Privacy and Proxy Services Accreditation Issues PDP WG  
Tuesday 10 March 2015 at 1500 UTC**

Note: The following is the output of transcribing from an audio recording of Privacy and Proxy Services Accreditation Issues PDP WG call on the Tuesday 10 March 2015 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The audio is also available at:

<http://audio.icann.org/gnso/gnso-ppsa-10mar15-en.mp3>

Attendees:

Frank Michlick – Individual  
Justin Macy - BC  
Val Sherman – IPC  
Griffin Barnett – IPC  
Kathy Kleiman – NCSG  
Darcy Southwell – RrSG  
Todd Williams – IPC  
David Heasley - IPC  
Steve Metalitz - IPC  
Graeme Bunton – RrSG  
Jim Bikoff - IPC  
Holly Raiche – ALAC  
Vicky Scheckler – IPC  
Kiran Malancharuvil – IPC  
Volker Greimann – RrSG  
Alex Deacon –IPC  
Sarah Wyld – RrSG  
Carlton Samuels – ALAC  
Stephanie Perrin – NCSG  
James Bladel – RrSG  
Tatiana Khramtsova – RrSG  
Richard Leaning – no soi  
Susan Kawaguchi - BC  
Terri Stumme – BC  
Phil Corwin – BC  
Luc Seufer – RrSG  
Osvaldo Novoa – ISPCP

David Hughes – IPC  
Chris Pelling – RrSG

Apologies :

Don Blumenthal – RySG  
Michele Neylon- RrSG  
Lindsay Hamilton-Reid – RrSG  
Paul McGrady - IPC

ICANN staff:

Marika Konings  
Mary Wong  
Terri Agnew

Coordinator: Please go ahead, this conference call is now being recorded.

Terry Agnew: Thank you, sir. Good morning, good afternoon and good evening. This is the PPSAI Working Group call on the 10th of March, 2015. On the call today we have Kathy Kleiman ,Volker Greimann, Holly Raiche, Tatiana Khramtsova, Steve Metalitz, Graeme Bunton, Dick Leaning, Sarah Wyld, Justin Macy, Val Sherman, Todd Williams, Griffin Barnett, Vicky Scheckler , Frank Michlick, Susan Kawaguchi, James Bladel, Terri Stumme, Alex Deacon, Phil Corwin and Luc Seufer. I show apologies from Michele Neylon, Don Blumenthal, Chris Pelling and Lindsay Hamilton-Reid. From staff we have Mary Wong, Marika Konings and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much, and back over to Graeme.

Man: Graeme, Jim Bikoff and David Heasley just joined.

Graeme Button: Thank, (Jim) and David and for anybody else who's on the call but not in Adobe, just pipe up and we'll try and get you into the queue. Right. So on that note, good morning everyone and welcome to privacy and proxy. Normally it

would be I think Steve's turn to host, but he needs to drop off I think half way through the call so you're stuck with me for two weeks in a row. As per usual, if anybody has any SOI updates, now it's a good time to mention that. Going once. Going twice. Right.

Okay, so the agenda today is we're going to continue working on Category F. Hopefully get this conclusions, and then we're going to look at the remaining questions that we need to answer if we get that far. Hopefully we do.

Another starting business is a thanks to everyone for participating on the list. I thought that was really good work this week. We had some good substantive dissenters. Good sharing of ideas and it was really positive. I see that happening, so thank you.

Now let's get rolling unless someone has some other business they'd like to bring up first. So Mary circulated a draft of the document that we've been working on. There's some minor edits in there reflecting changes we discussed last week. I don't think there's much. Everybody should have scroll control. I don't think there is much we need to discuss there until we get to section three, and this is where we had the bulk of our conversation on the list as well.

And I put her on notice that (Phil) would - we can talk about - sorry so Philip in the chat has mentioned that he wants an update on the face-to-face. Actually, before we get going as now is fine. A decision hasn't been made yet. There is some pressure to do so in the very near future. I - my understanding from the pool is that there seems to be solid support for having a face-to-face meeting and it was pretty closely split between the two shorter chunks and the full day, preferably the Friday before.

I think it's now in the chair's hands to make a choice, and that choice has not been made yet, so we'll try and make that as soon as possible and if anybody still has other input that they would like to share on that particular issue, do

so, but I think it's - now we just need to make a call. And hopefully we'll have some more sense of how we're doing at the end of today's call and I will inform that decision a little bit. That's about all I can give you on that at the moment. Hopefully that's helpful. I assume it is. All right.

There (Marika) has posted the link to the doodle poll, so if you haven't filled that out please do. That information is extremely useful. All right, so. Right.

Section three, service provider action on request. It is page five in the document if you don't have scroll control or you should. You should be there. There was good discussion on the list around this, and I'd put Kathy on notice that it would be great if she could explain some of the concerns that was raised by her and her subgroup. It's not a formal subgroup. I think it was Kathy Kleinman and Carlton, Holly, David and (Stephanie) put forth a response this week on the list.

It would be good if one of you could perhaps talk about that a bit more and hopefully we can use that to advance discussion a bit more. I see notes from (Luke) in there, so let's start with Kathy if we can or whoever from that group and then try and capture some of these comments.

Kathy Kleinman: Hi, Graeme can you hear me? It's Kathy.

Graeme Button: I can hear you. I can anyway.

Kathy Kleinman: Terrific. Well you put me on notice and I put the rest of the small group on notice, so I'm hoping that everyone who helped draft this will jump in and clarify anything I haven't expressed clearly. I just want to separate out the main thing I'm going to talk about which is the tough - what I'm calling the tough questions from appeals. Appeals that are - I've gotten a number of questions -- both privately and I think on the list -- about this.

The appeals are something different, and it's really - it's not section three that the appeals would fall into. It is under annex. And there may be more questions about the appellate process than I understood or that we understood. There's one about the kind of drafting this draft. So let's just put appeals out. The whole concept there is that whatever it is, it's fair and balanced. But if one side has access to appeals, the other side has access to appeals. But that's not the main thing I'm going to talk about.

The main thing I'm going to talk about is not an appellate process or even a decision making process. It's just an input or an advisory process. In talking both all these months and, you know, separately with different people, what we found is that there is - the most difficult type of questions are probably the most expensive for providers to respond to. And that's when - and we don't think this is going to be the majority of questions by any means, but when we're dealing with a reveal that involves the use of a copyright or trademark allegation, and let's say that's what it is because it's unsubstantiated. There's no - you know, we're talking without subpoenas. Without court rulings. Someone is alleging that there is a trademark infringement or a copyright infringement.

And for those of us who have been in the field for way too many years, we know that sometimes these are used to stifle criticism, speech or competition. And so what we're trying to do is figure out how to help the tough case where the action is really being taken for perhaps political reasons or going after fringe groups or fringe speech -- to borrow a phrase from Carlton -- where we're talking about minorities -- political, religious, ethnic -- or even new competitors in a field - entrepreneur.

I worked with a lot of entrepreneurs who were attacked on trademark infringement grounds because the competitors just wanted them and their services out of the way. So in talking with people, these are the tough questions because they really require specialized expertise. And that may or

may not be part of the reservoir of experience of the traditional corporate counsel or internet counsel.

And so what we wanted to do is make the input on these tough types of decisions easier for the providers by creating an advisory group on complex cases. And so this is - this is what we propose is kind of a safety valve. The creation of a group of attorneys -- perhaps one from each region -- that would be specialists in freedom of expression, free speech, competition issues, and they could create - they could, you know, create some kind of complex case advisory group which solely at the provider's discretion questions could be sent out for rapid review and rapid input.

And given that these people would specialize in this area, we think the input would probably be pretty vast because this is what they specialize in. Nothing is binding. This doesn't have to be outsourced to, you know, a dispute resolution provider because it's not part of the dispute. It's just to make the lives of the providers easier and make sure that these really, really tough freedom of expression cases get the kind of evaluation that they deserve without costing the providers an arm and a leg.

Hope that makes some sense, and I'd love to invite my group to jump in if they want to add anything. My group. The group that created this.

Graeme Button: Thanks very much, Kathy. That's helpful. And the distinction between the appeals process for a registrar choice and what I think you're proposing new which is another mechanism for service providers to use is interesting. I see James has his hand up. Let's go to James.

James Bikoff: Thanks, Graeme I actually would like to defer to any other folks who would like to speak on this topic that Kathy mentioned. Put myself behind them if there are any folks that want to weigh in.

Graeme Button: I see Holly's saying that Kathy gave us a good summary in the chat, but no one else has their hand up, so go for it.

James Bikoff: Okay, thanks Graeme. James speaking. And so first off I should apologize. You know, I'm coming late to this discussion. I missed the call last week. I was completely off the grid, so if someone of this has already been covered or raised, I apologize for the redundancy in advance.

I understand where Kathy and her group are coming from, and I think that their intentions are sound and valid. I just am having trouble with the - with you know, playing out the practical implications of creating such a group. I mean, I think I would love -- as a representative of a service provider -- I would love to have this external party or this body or this structure that I can refer the really challenging discussions or the real, you know, difficult problems to and then have them come back with an answer and then I can say essentially, you know, this wasn't our call. This was this referee. This, you know, the folks in the video booth made this decision, not me, so I can safely implement it.

You know, I think that I don't know that that would absolve us from responsibility of any consequences from that decision one way or the other. I think that's one thing to perhaps mull over as a provider. And I think that it just generally makes me uneasy because there's no way that this group could function I think, you know, with the high level of integrity that we would expect without it weighing in on matters of content and merit, you know, that were associated with the request, with the allegations of infringement, with the services associated with the domain name, and that, you know, takes me - takes us down a path where I think a lot of us are reluctant to go, you know, with any group being set up specifically to review matters of content.

So I think that's my second concern. You know, I think generally the problem we're getting at - the problem we're faced with in Category F in particular or generally in section three in particular is that -- and I don't mean to speak for

all of the folks involved -- but I think what we're looking for is certainty versus flexibility. You know, the providers need the flexibility to understand that there will be cases that are difficult, that are not clear cut, that are not cut and dry and black and white. And they need the ability to say, "No, I can't in good faith or good conscience reveal the customer information here because I think this is a gray area situation."

And of course, the other side would say, you know, "We need some understanding that that's not going to be the default response for all requests when we have legitimate and blatant examples of intellectual properties being infringed and we need help in addressing that infringement." I think both sides are I don't want to say focusing on the margins when the vast majority of cases will be very routine, very typical. Here's something that's obvious and yes, here's an obvious response. And so here's the information that you're seeking.

But I think that we're focusing on the margins of how both of those areas could be abused, and I think - you know, I don't know if we're going to get there. I don't mean to sound defeatist by that, but I just - I don't think that we can build an airtight process here that gets both sides exactly what they want.

So I think that we need to really think about whether or not that goal is worth creating some of these other structures. Whether it's the group that handles the tough decisions or whether it's the appeals process or whether it's adding six more pages to Category F here, or whether we just need to stop and think about where that balance needs to be struck and at what point we're willing to accept some degree of uncertainty into the process.

So that's just my thoughts on this, and again that's coming at this cold. I haven't looked at this document for a number of days now, and I apologize if this has already been covered. Thank you.



GraemeButton: Thanks, James. I think that's worthwhile input. I'm going to go with ((Vickie)) next, and then we have (Stephanie).

((Vickie)): Thank you. And James, I agree with everything that you said here. I'd like to remind the group that this is in the context of reveal, not in the context of a firm decision. One way or the other, this is not an adjudication. This is the first step in trying to address from our perspective a (unintelligible) the copyright infringement problem. I think James is right that -- at least for (RAA) -- it's going to be the blatant ones where we seek this type of information.

I understand that there are occasional abuses about this, but I agree with James that we're trying to find the sweet spot in the balance here. And I think that to keep all of that in mind as we go through thinking about this.

And then with respect to some of the stuff that I think was on the email this week -- and I'm speaking from memory so forgive me if I got it wrong -- just from my view but to the extent we're thinking about 512(h) as a model, that provision in our view provides, you know, pretty much pro forma subpoena to get disclosure of the information of the identity of a person if it's hosted and if we provide a copy of the notice and if we provide a declaration.

That's the bar there for disclosure and into the (unintelligible) of further action. But we want to use that one as a guideline. Thank you.

Graeme Button: Thanks, ((Vickie)). Let's - unless Kathy would like to respond directly to something, let's go to (Stephanie).

(Stephanie Perrin): Thanks. Can you hear me? Hello?

Graeme Button: We can.

(Stephanie Perrin): Yes, it's wonderful. It's working. I too agree with James' concerns. I just wanted to point out a few things. Number one, we're trying to respond to what

we fear -- and I'm speaking for the group so jump in and contradict if I'm over speaking for you folks -- we're trying to respond to the risk that in fact it's fine for the - to figure out what amounts to a regulatory structure here for the guys who are represented on this group who not only understand the issues but are prepared to in good faith spend time working on them.

Not all service providers will be prepared to spend any time. So we can set up a good system, but if in fact they're going to reveal as soon as they've spent \$3 on the case or whatever they figure their profit margin is, then we don't have a good system. And that's what this does.

To James' concerns about having to deal with all kinds of spurious requests, I mean speaking of coming from government, we can't afford to spend money on every spurious request either. So they're pretty routine administrative ways to weave through the spigot of the so-called, you know, it's to stop this becoming the default.

One of those ways would be of course to mark a service provider as abusive if they just dump everything to the tribunal every time because they're too cheap to hire a lawyer or think about it. So I think that can be dealt with. This has to be an in extremis situation only.

To ((Vickie))'s expressed concern that we aren't adjudicating here, we're just revealing, for the people that we're talking about just revealing is the whole point. There are people who are going to be in a very difficult -- I don't want to say life threatening, but there are life threatening examples in there -- situation. And these are the kinds of discussion that we had at the EWG when we came up with the anonymous domain name - anonymous domain registration system that we put into the EWG report.

I still love that idea, and I think it's a lot better and a lot cheaper for the registrars in the long run, but we're years away from implementing that, and

we're at the table now developing this. I would see this as a baby step towards developing something more secure like that. Thanks.

Graeme Button: Thanks, (Stephanie). Kathy?

Kathy Kleinman: I think (Stephanie) hit a lot of nails on the head. To James' point -- to one of James' many points -- nothing absolves the provider of responsibility. Not when you go out to attorneys and ask for advice. Not when you go out to the advisory board and ask advice. It's not - nothing here is intended as an adjudicator.

We raised that issue a long time ago. Do we want a third party who would just handle all reveal requests, and that was the decision we seemed to get resoundingly from the working group a long time ago was no. Providers want to handle this case by case.

So help us figure out the answer to the problem. Which is we've heard time and time again that the hardest questions are likely to get the fewest resources in this process. So for those of us that work with freedom of expression and free speech and their use and the problems that political speakers, minority speakers, dissent speakers have on a regular basis around the world and it's growing, how do we help put the resources in on these difficult questions?

Because while they may be few and far between, when those reveals take place as (Stephanie) pointed out, the cost could be tremendous to people, to their communities, to the groups that they're working with to the speech that they're working with.

And let me just add that in countries that have speech and expression protections, these are the most important cases. These go up to supreme courts and things. They're not buried. It's always - there's a great

consideration for minority speech and dissident speech. So these are not just minority cases, but considered very, very important cases in law.

So how do we as a group -- having heard repeatedly that these are likely to get the least attention -- find a way to give them more attention? And we think we've put on a very low overhead type of solution that provides critical advice. Completely advisory only. Providers don't have to use it. Thanks.

Graeme Button: Thanks for that input Kathy. I see Mary's put her hand up, so let's get a staff response.

Mary Wong: Thank, Graeme. Hi everybody. It's Mary. It's not so much a staff response because obviously this is a decision for the working group. We just wanted to highlight. It may be a potential implication that I would imagine a number of folks have thought about, but I just wanted to place it on the record.

Obviously if this is the right way to go, what I'm going to say should not repute the group from going there, but we just wanted to caution folks about setting a precedent. We note that the suggestion from Kathy's small group says this is obviously not a dispute resolution mechanism. Nonetheless, the way that it's structured having an advisory group even for the extreme situations, and there's some very real ones that they raised.

We're raising this because in part of what (Stephanie) said about the EWG, that we just want the group to think about the potential that this could create a precedent for other types of issues or problems or situations that the ICANN community might face outside of this group and weigh that in your consideration. Thank you.

Graeme Button: Thanks, Mary. I think that's a good point. There is a (unintelligible) there that if we start down this road, then we suddenly have groups popping up all over the place that are looking a resolved resources which is possibly quite a

difficult road to go down. I see Steve has his hand up. So let's go to you Steve.

Steve Metalitz: Thanks. This is (Steven), and as I noted in the chat I'm going to have to drop off shortly, but my only comment is that as this is being presented, it's clear this is intended to be kind of a resource for providers, to help them in these extreme cases -- I think in extremis was the phrase used -- but, you know, these cases that could arise that are not the run of the mill case or would not be expected to rise with any level of frequency.

So I guess I'm just interested in hearing more from providers about whether they think this is a useful tool and would they use it, and I suppose that one other thing to think about is there's nothing that would prevent providers -- a provider or a group of providers or something -- from establishing their own advisory panel to again help them in these cases if there is a close call. So I'd be interested in their thoughts on that.

And perhaps that avoids the precedent that Mary's talking about. This - obviously pros and cons to that because if it's done more efficiently, then there's more transparency in how a group like that is set up and operates I guess, but it wouldn't necessarily have - since it is advisory and it's supposed to provide some expertise, it wouldn't necessarily have to be a "official ICANN group."

So, I just wanted to add that, but I think it would be - we would look forward to hearing what the providers think about this.

Graeme Button: Thanks Steve. Something that occurred to me in the interim, and if I can stick myself in the queue very briefly, is that if a provider is capable of recognizing a request is of the sort that should go to the sort of extreme case panel or advisory, then it would seem to me that the response in that case may be just to decline the request and say as such that it or the provider felt like a difficult

case and if the requester chooses to take that to appeals, then maybe that's the best place for it.

After we hear responses on that, I've got Holly in the queue and then James. Holly?

Holly Raiche: I like your response which is, "When in doubt, don't." The problem with saying, "Yes, it's an edge case. We actually know that this is serious edge case stuff."...

Holly Raiche: I like your response which is when in doubt, don't. The problem we're seeing, yes it's an edge case. We actually know that this is serious edge case stuff. Yes, it would set a precedent. But the problem that this group faces is there are the difficult edge cases. And not to deal with them means that the people who particularly need protection won't get it.

So I'd rather have the discussion here which is in the really difficult situations where people really do need the protection, yes we'd like to have the discussion here rather than have a provider say it's too hard, we haven't thought about it, it's an edge case. I'm going to take the easy way out and reveal rather than this is a really, really difficult situation. There's a bona fide is here. What do we do?

And probably the - some of us would say well, maybe if there - if it's really hard and it looks like bona fide, take the time and if in question they know. And then the people with the deep pockets can be the ones to spend the money. I mean maybe that's the way out of it. That's just another thought. Thank you.

Graeme Button: Thanks Holly. There's some good discussion going on in the Chat. I'm not going to summarize it. But I would encourage you all to read that. I'm going to go to Volker next.

Volker Greimann: Yes. I think Graeme hit the nail - you hit the nail on the head when you said that as soon as you come into a situation as a provider where you would require the services of such a panel, then it's not a clear cut situation where you would be required - be required to whatever the case may be - to reveal.

This is already a case where there is doubt about either the complaint or the response that you got. And the fact that you will need to get an outside opinion already indicates very clearly that this is not an easy case where a question of whether to reveal or not is very easy to see.

So in this case the preponderance would probably be to refuse to reveal on that ground alone. I'm not sure we need such a panel and need to expand the mandate of ICANN into content.

Graeme Button: Thanks Volker. I think we're seeing a couple of people drop. There's a bit of a catch 22 I think there that we're talking about. You will require a certain level of expertise to identify the difficult cases and a certain type of provider who is willing to invest that time and energy.

And the people who aren't capable of catching them or interested in, you know, using that time and energy are never going to use this appeals process. And in my mind - and I see Cathy's hand going up, so this is great - the people who do care and are willing to put that time and energy are probably just going to, as I mentioned, refuse the disclosure. Cathy?

Catherine Gribbin: I'm coming off mute. Great discussion - really appreciate it. What I think Holly said makes a lot of sense - that we're talking about the serious cases, the tough cases. But Graeme, I don't think it's a catch 22 because it's something we've heard a lot about in our discussions over the months is the concern over the tough cases - the concern that these cost providers money, the concern that this will raise the cost of a proxy privacy registration, because defending the tough cases, doing the research that's required to say no or to

say no with confidence by the provider is - we've heard again and again that this is a problem.

And that's why we're trying to offer again a light weight solution because we're talking about some of the most important issues in the world - freedom of expression and people's political and personal views. And because we know intimately that what is one person's right to criticize is viewed as an invasion of someone else's religion, and people take action.

I mean this is all very intimate. We know these are tough cases. And so I'm not - again I don't think it's a catch 22 to give somebody the option of instead of going to their attorney, going to outside attorneys so that the costs don't become very - the cost of the tough cases don't become very personal to the providers, and again a theme of costs that we've heard a lot. So let me take my hand down. Thank you.

(Stephanie Perrin): Can I jump in here and speak because I'm afraid I've lost my Internet connection again and I can't see who is in the queue?

Graeme Bunton: Sure, there's no one else in the queue. That's Stephanie, correct?

(Stephanie Perrin): Yes, it is - (Stephanie Perrin) for the record. I just wanted to continue what we were discussing in the Chat. The problem as we see it is that the human rights angle in this issue just hasn't really been addressed. So we've certainly talked about it for the last 15 years.

But if we are moving to a credit and regulate how privacy proxies - which is the only reliable way of getting privacy - if managed and regulated, then it's really time to figure out what the human rights issues are, and how this - and I keep coming back to this - how this will be managed among the providers who are not leaders.



They'll all be looking for their extra ten bucks a year or whatever it is just to offer the service. But if they cave on their contract Ts every time somebody scares them, then they're really allowing a - I don't like to use the word corrupt - but we're allowing a badly constructed system to have legs and to be blessed by ICANN. So I think we do need an off ramp for these difficult cases.

We also - and I'm keenly aware that this is competitive, and it isn't perhaps fair to the good players to provide free advice to the bad players. So it will have to be constructed in such a way that the bad players have to grow up and manage their proxy services that they're running and do some of the heavy lifting. And that can be - you can rate monitor this, you know? You can do a number of things to make sure that it is not abused. That's easy enough. It's a normal administrative function.

To Mary's question and I think concern about is this a new area that ICANN doesn't want to get into, maybe not, or at least maybe it is. But ICANN has to grow up and move up to the next maturity level. And these issues have been with us since the get go. They are responding sporadically to content issues. And they need a much broader - and this is reflected in other groups with the upcoming discussion on what's in the public interest - this I would see as part of that discussion.

It is in the public interest that we don't set up a proxy - a privacy proxy service system that doesn't work. So we need to figure out and come up with some kind of advisory function. And I'm sorry I can't see if anybody hates this or is responding. I'm cut off again. Thanks.

Graeme Button: Thank you (Stephanie). I don't - I'm not sure that Vickie is responding directly to you. I see James has got his hand up. I'm going to stick myself perhaps in the queue after James. James, go ahead.

James Bikoff: Hi Graeme- James speaking for the transcript, and probably not doing anyone any favors. But, you know, I don't know how wading into these waters of human rights is helpful for ICANN or for, you know, what I would like to see is more of a continued reinforcement of the boundaries of what ICANN can and cannot do.

And I think setting it up to be the defender or grantor or arbiter of different competing rights to me just feels like a scope creep to the nth degree. And while I can appreciate that (Stephanie) and others see the value of championing these things, I just - I question whether or not ICANN and this particular PDC is the right venue for those things.

Graeme Button: Thanks James. I have some concerns about that too. And the other point I was going to make is that - I guess it's tied to my earlier one - is that in order to make the most use of that sort of mechanism that's being proposed is we have to figure out a way to codify some level of sophistication into, you know, privacy and proxy service providers and their ability to recognize the difficult cases. And I think that's quite tricky.

I see Mary has her hand up. Mary?

Mary Wong: Thanks Graeme. This is Mary again. And just to follow up on some of the threads from the discussion including (Stephanie)'s last comment - and (Steph), I know that you may not be in Adobe but I hope you're still on the line.

Not so much asking for a response, but to follow through some of these thoughts. I think it's not just ICANN staff (unintelligible) speaking as one, but looking kind of at the big picture. If we're talking about human rights issues and free speech which are extremely fundamental, and as (Stephanie) points out, that's part of a broader, bigger discussion that's just picking up across ICANN.

And as Vickie points out in the Chat, there's, you know, two types of groups that might be impacted by this particular issue on human rights. I wonder if we are looking to taking this to the next step. It seems to me that two alternatives may have presented themselves as part of the discussion today.

One is Steve's suggestion that maybe this is something that the providers should be looking at setting up. And maybe there's a way in our recommendations that we can encourage that to be looked at either as part of implementation or as talking to the providers as part of accreditation and those implementation details.

The second one - and forgive me, but this is just coming off the top of my head - is that if it is part of a broader context of awareness of what is really important here, whether or not as this group. And this goes to what James says about maybe this goes beyond our agreement, in some ways can make a recommendation that this is something that is looked at as part of that broader picture - that as we, you know, develop mechanisms and means to deal with these large issues ICANN wide, that this particular concern in this PDP becomes part of that discussion as well.

So those are the two additional alternatives I wanted to sketch out. Maybe they're not realistic, but I thought it might be helpful. And the last point I wanted to raise Graeme is that just thinking about setting this up, you know, through ICANN in addition to the question I asked in the Chat about, you know, who does the initial walk through or the review. It sounds to me like we're talking about some sort of junior case officer which is what, you know, (unintelligible) have for UDRP and URS.

If we're starting to look at that as an ICANN employee, if we're starting to look at a panel that might be paid - I don't know if that's within the contemplation. That creates all kinds of conflicts and other issues that seem to me to be going against the intent of this proposal. So that's it for now. Thanks.

Graeme Button: Thank you Mary. I see Volker and then Cathy in the queue. Volker, please.

Volker Greimann: Just one comment here - I mean the bad actors are of course an issue. But on the other hand, all the bad actors will be held as the registrants if they do not ever reveal any questionable users of their service. So while the reveal function might then break down, it might not even be necessary as the complainant still has the option to legally proceed against the provider if in fact a valid plan exists.

There is nothing to prevent that in the current policy that we're proposing. So not revealing the underlying data at a certain point becomes a legal risk for the provider as well, and that should be well considered.

Graeme Button Sorry, muted. Thanks Volker. Cathy?

Catherine Gribbin: I missed most of what Graeme said. It kind of came through high and low. I hate to have to - could he say that again because it sounded important?

Graeme Button: Do you mean Volker?

Catherine Gribbin: Volker, yes. Thanks.

Graeme Button: Volker, if you're still there, you want to give that another crack?

Volker Greimann: I'll just move closer to the microphone, yes. Thank you. I was just considering that while of course bad actors not revealing any of the questionable users might be a concern that many people have, I don't think it's that much of a concern. Any complainant still has the option of legally proceeding against the privacy proxy service itself.

If actual content that is or use that is questionable is protected by the privacy service, he is still in the Whois as the registrant. And most courts will probably

see the privacy proxy service provider that does not reveal any underlying data as liable for what happens with the domain name in that case.

So the legal option is still out there. We're just seeing that there's no circumvention of the legal option if we do not have a panel that decides. Even if there is a panel that decides on this, there's still a legal prerogative on the side of the provider to refuse the reveal. So in the end we'll always end up with a legal option for the complainants.

Graeme Button: Thank you Volker. Before I go to Cathy, just to put in providers' heads how they would feel about a, you know, sort of provider run panel or best practices work group, and whether that can be codified. I think that was Steve's suggestion, and it came back in there. So let's go to Cathy while you guys think about that. Cathy?

Catherine Gribbin: Can you hear me? Thanks. So I appreciate Volker repeating that. I come back to the often heard discussion that the tough questions are the most expensive questions for the providers, and the implication that the reveal is the easy answer.

And so what - since we've heard that for so many, many months, what kinds of options are there, and Steve did throw out one. But, you know, we should certainly talk about it this week and next week when Magaly and others are back on with us after we've finished kind of the time shifting fun.

But I still - we still worry about the tough questions. And the - and we don't - obviously no one wants a provider being held responsible for someone's speech. So it has seemed over the months that the easy answer is to reveal, particularly in the tough cases - particularly in the cases where to not reveal means you have to go your attorney and pay a lot of money for an investigation.

So again we're - I know there are problems with the options that are provided. I think we don't look at them in the huge context of human rights. We're looking at a very narrow problem which is that the tough cases of reveal don't have easy access to expertise that's cheap and affordable and fast. And that's what we've heard repeatedly we might need on these tough cases.

So what other options might be available, or how do we make this the narrowest possible type of group that provides input? Because revealing some of these people has huge implications. Thanks.

Graeme Button: Thanks Cathy. And I think that gets to a point I was going to make earlier - is that, you know, that narrowing of down and trying to get that scope to what we, you know, you think is workable is a good endeavor. And we should try and do that in, you know, text that we can discuss in the draft report. And I find that pretty useful for allowing us to focus. We can discuss and debate the specific wording in a way that I think moves us a bit forward.

Did any of the providers - have they thought about the sort of provider panel? I see Holly's hand up. We've got about ten minutes left. Holly?

Holly Raiche: Just a thought, and it's - I know as Mary said - you're supposed to put in your terms and conditions exactly what you reveal. But when I say exactly, if somewhere in your terms and conditions you really spell out if somebody says they are X, we will do X.

At the very least that says to the groups who are most imperiled, we're not covered by this. Now right now I'm not sure that a general spelling out of what you will do in the case of reveal would say to the people who most need protection, we will get protected or we won't. And it will be critical for the really edge cases to have a very clear understanding that they will be protected or they won't.

And I realize that at the same time that would give some protection to bad actors. I hate that term but recognize the problem. I'm just thinking through - if you're not going to have a service provider way to deal with the really edge issues, then you're leaving vulnerability. And how do we deal with that vulnerability would be my question.

Graeme Button: Thanks Holly. Does anyone have a response to that? I can see people are typing in the Chat. So it's not super obvious to me where to move forward at the moment. I think we've had some discussion on this. I think we need to spend a little bit more time probably over the list, seeing if we can hone and focus what it is that is being proposed. And maybe that gets to a place where it's feasible or not. I see Vickie putting her hand up. Vickie?

(Vickie): Oh, I was going to say what you just said - that I think it would be useful going forward to try to, you know, clear out or get a better understanding of what we think is a clear cut case and what we think are these edge cases that are so hard. I fear that we - that the discussion keeps pushing the edge cases broader.

And if we can have some understanding of the clear cut cases as well as what are the true edge cases, I think that will help us move forward. And your thought of putting that into language, I think is helpful not only for describing or thinking about those two categories, but also to the extent that there is interest in Steve Metalitz's proposal thinking about what that looks like.

Graeme Button: Thanks Vickie. All right. So where to go with this discussion next? Looking at the text that is in the draft agreement, I would encourage everyone to spend a bit of time thinking about that - the language that's in there, the discussion that we've had today.

The other thing to think about is that - and how we want to move forward with this is that this text is specific to intellectual property. We need to figure out whether we're going to set this up as an example in our final report or in our

report, or whether we carve out specific versions of this document for different types of requests, or even if we're able to generalize this document to capture most requests. So that's going to include law enforcement, non-IP related issues - that sort of thing - the question we're going to have to tackle.

I don't have anything immediately worth tackling. So unless someone has anything else, we might end it a few minutes early. I'm a little bit wary about getting into another larger debate at the moment because I don't think we've got enough time to carry that forward.

Mary Wong: Graeme, I think that's...

Graeme Button: Mary?

Mary Wong: I'm sorry.

Graeme Button: No, go ahead.

Mary Wong: It's just that I agree with you because a lot of the rights holder types had to move on to the IPC meeting in any event. So that might be the best approach.

Graeme Button: Okay, thank you. (Stephanie) in the Chat is asking about the face to face meeting in BA. I talked a bit about that, and I think you missed it in the beginning. No choice has been made.

There seems to be broad support for having a face to face in Buenos Aires. It's relatively split between the two smaller sessions and the face to face on the Friday. A choice has to be made very shortly. We will try and do that very shortly, but it hasn't been done yet. So hopefully soon because I know people are eager and certainly staff is eager to sort that out.

I see Mary's got her hand up.



Mary Wong: Hi Graeme and everybody. Just going back to your previous - your and Vickie's previous point about where to proceed. Staff would suggest that we will go back and review this meeting. And I know Vickie did serve a couple of specific suggestions a few minutes ago as well, and sent an email to the list with a summary of where those suggestions and possibilities might lie in the hope that it will facilitate focus discussion on the list in preparation for next week as well in light of the other things that we do want to get to following this discussion if that works.

Graeme Button: That sounds very good to me. So perhaps that's a good place to leave it. I'll give you back a grand four minutes of your day ladies and gentlemen. Spend them wisely. So thanks everyone for coming. I look forward to more great discussion on the list. And we'll talk to you all next week.

Group: Thanks.

Man: Have a good day everyone.

END