

**WHOIS Working Group A "Responsibilities"  
Teleconference  
TRANSCRIPTION  
Wednesday 23 May 2007  
15:00 UTC**

**Note:** The following is the output of transcribing from an audio recording of the WHOIS Working Group A "Responsibilities" teleconference on May 23, 2007, 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://gns0-audio.icann.org/whois-a-20070523.mp3>

<http://gns0.icann.org/calendar/#may>

**Attendance:**

Steve Metalitz - IPC - wg chair

Philip Sheppard - WHOIS wg chair

Carole Bird - observer

Patrick Cain - observer

Richard Padilla - observer

Eric Dierker - observer

Chris Gibson - observer

Kari Moeller - observer

Melanie Holloway - observer

Adam Scoville - observer

Steve DelBianco - CBUC

Ross Rader - registrar

Absent - apologies

Avri Doria - NomCom appointee to Council

Robin Gross - NCUC

**ICANN Staff:**

Maria Farrell - GNSO Policy Officer

Glen de Saint G ery - GNSO Secretariat

Coordinator: Please go ahead, sir.

Thank you.

Steve Metalitz: Okay. Thank you.

This is Steve Metalitz, and this is the meeting of Subgroup A.

(Richard): Hi. This is (Richard Padilla here.

Steve Metalitz: Welcome, (Richard).

We are being recorded, and if you would, to aide in the transcription, if you could identify yourself, that would be helpful.

Well, I - what I would suggest that we do is plunge right into a discussion outline that I circulated yesterday. I hope everyone has - had a chance to look at that.

Really, what I was attempting to do there was to kind of put in a more schematic form some of the issues that have been raised by first, Steve del Bianco's proposal, then Chris Gibson's proposal, and also some of the discussion on our list. We haven't had a whole lot of discussion, but we've had several issues discussed on the Subgroup A list.

And the idea here is not to, you know, reach a conclusion necessarily, but to try to isolate some of the issues, and perhaps as we walk

through them, we can see where there are areas that there is general support or there's areas where there - is generally lacking support, and where - it's something in between and where we can maybe identify issues that are needed for further discussion.

We have one more meeting of this subgroup. I think the full group is supposed to reconvene on June the 6th, if I'm not mistaken. And I'm supposed to prepare a report prior to that, and I - my hope is that we can kind of use this template as the outline for the report and to the extent that we do have areas of agreement to report. We will include those, and where we don't, we will note those.

So that's the purpose of this document. And it is organized along the four questions that we've been talking about for the last several weeks regarding the OPoC.

And as you could see, it's a little more developed in the first couple of questions and on the last couple, which I think also reflects our discussion. So that's kind of the basic framework of the discussion outline.

And unless people want to make any general comments at the outset, maybe we could just start in on the discussion of the outline.

Okay. I'll take that as the green light to go ahead.

The first - what I've done under the WHO question, who is the OPoC? I've kind of divided it into two sub-points. One is, what capabilities does the OPoC have to have?

And second, what relationships does the OPoC have to have with other entities in the process.

So in terms of capability, I think there are three main areas and they break down along the three functions that we've been talking about for the OPoC -- relay, reveal and remedy.

And although we have those really - we've been discussing those for the last several weeks. I've put a very cursory definition of each those in here just so we have some common ground of what we're talking about, but of course, we may - if this were to go forward, we would need to have a somewhat more detailed definition perhaps of these functions.

So the idea is that in order, you know, relay is one of the functions, which is forwarding some message query, something that comes in from a third party who can't contact the registrant directly based on the WHOIS data, and therefore goes to the OPoC to - in order to send a message to the third party.

So the capability there really is a technical requirement of 24 by 7 accessibility where I think we talked on the last call of maybe the ability to automatically forward in real-time the message or at least with the - or a very minimal delay, but (to create) that these are technical requirements.

Second is one of the capabilities that would be...

Coordinator: Adam Scoville now joins.

Steve Metalitz: Okay.

What would be the capabilities needed to - for the OPoC to reveal in whatever circumstances we, you know, it would be the OPoC's responsibility to actually provide the requester with the contact information for the registered nameholder.

And for that obviously, the OPoC has to know what that contact information is. They have to be kept current. Perhaps it has to be verified.

And then the third is on the capability for remedy, if there are circumstances in which the OPoC should have the capability to actually make some change in the registration or in what appears on the site to which the registration name may resolve.

He needs to have - he or she needs to have the authorization from the registrant to do that in order to direct the registrar to do sorts of things.

So, those are the three main areas of capability. There's obviously some overlap because in order to relay, you need to have some contact information for the registered nameholder. Otherwise, you can't relay the message.

But it's an attempt to kind of tease out what are the capabilities that the OPoC needs for these three different functions.

So let me stop at that point, and just open the floor to any comments on this first sub-section of the WHO page.

And again, please identify yourself before you speak.

Steve del Bianco: Steve del Bianco.

Steve Metalitz: Go ahead, Steve.

Steve del Bianco: I wanted to just suggest it on relay.

We anticipate relay to be a two-way responsibility and capability. Not only to relay to the registered nameholder, but when the registered nameholder has information in response to a request, they need to also have responsibility to relay them back to the requester.

Steve Metalitz: Okay. So that would be in a case where - that gets into the point of whether the requester or excuse me, whether the registrant might not respond directly to the requester, but...

Steve del Bianco: That's right.

Steve Metalitz: ...I think you're right that there probably needs to be that relay - that's part of the relay function too.

Steve del Bianco: And I do think in many cases, the registered nameholder will choose to respond through their OPoC so as not to reveal their true identity.

The relay responsibility is got to be solid there.

Steve Metalitz: Okay. Okay.

Are there other comments on this? We'll take a queue if people want to.

Chris Gibson: Chris Gibson in the queue.

Steve Metalitz: Okay. Thanks Chris.

Anybody else want to be in the queue?

Go ahead Chris.

Chris Gibson: Just a brief comment to say I generally support and find this to be a useful summary of the three capabilities.

And, you know, if there's a summary where you do. I like the comment that was just made. It has to be a two-relay capability and perhaps an automatic one as you mentioned earlier.

Steve Metalitz: Any further comments?

Adam Scoville: Adam Scoville on the queue.

Steve Metalitz: Adam, go ahead.

Adam Scoville: Just that I'm - I know that we sort of addressed a lot about the questions of automatic, you know, and immediate sort of relaying in the case of electronic transmissions.

We probably should hit it at some point, I'm not sure it's the most pressing issue, but probably to hit at some point the question of

whether they have to have the capability to forward on other kinds of communications, letter, paper documents, et cetera.

Steve Metalitz: Right. That's a good point.

So when we say real-time or supposed the real-time as possible for - we're really thinking more about email and that the other things might obviously be a little slower.

Adam Scoville: Yeah. And that, you know, and if a document comes in in paper, what's the best way? Does the OPoC turn around and mail it back out or does the OPoC scan it and email it to the person?

You know, there are obviously advantages and disadvantages, you know, timeliness versus, you know, that a scan just, you know, isn't the actual original document and might not have the same fidelity -- various concerns there.

But I would think that there ought to be some sort of capability and responsibility to turn back around not just electronic stuff.

Steve Metalitz: Okay. Other comments on this first subsection?

Okay. Let's turn to the second subsection, which is what relationships does the OPoC have to have with other players?

And what I've listed here are really three relationships and maybe there are - I've made the comments on all of these. There maybe more that the OPoC has to have.



One is that they have to have a relationship with the registrant or registered nameholder.

You know, again, I think we've talked about, and I'm not sure there's total agreement but at least it's been suggested that the registered nameholder could be the OPoC in some cases.

Second, there obviously has to be a relationship in which the OPoC agrees to service the OPoC and take on those responsibilities. And the registered nameholder authorizes the OPoC to have the capabilities that are needed, authorizes them to reveal in the reveal cases, authorizes them to remedy in the remedy cases, obviously, authorizes them to relay.

So, those are elements of the relationship that the OPoC has to have with the registered nameholder.

Then there's also a relationship between the OPoC and the registrar.

Again, presumably, the registrar may be the OPoC. But in any case, the registrar has to accept instructions from the OPoC as if they were coming from the registrants.

So in the remedy case at least, there may be circumstances in which the OPoC is empowered to ask the, you know, to tell those registrar to put their registration on hold for example.

And then the third is, what's the relationship to ICANN? And we've had a lot of discussion about this including on the last call, would there be some type of contractual relationship between ICANN and the OPoC

with their type of accreditation - ICANN of OPoC-served entities to service OPoCs?

Or would there be no such relationship - I mean, there could be practical problems with requiring this relationship. It's really (of the) - jumps ahead to the enforcement or the HOW section, how the OPoCs responsibilities be enforced?

But I put it down here is a question of what relationship the OPoC needs to have to ICANN.

So, other comments on this second subsection on OPoC relationships? And we'll take a queue of people...

Coordinator: Excuse me.

Ross Rader now joins.

Steve Metalitz: Okay.

Philip Sheppard: Hi Steve. Can I get in the queue?

Steve Metalitz: Who want to get in the queue?

Philip Sheppard: Philip.

Steve Metalitz: Philip, okay.

Anybody else?

Adam Scoville: Adam.

Steve Metalitz: Adam.

Okay. Philip, go ahead.

Philip Sheppard: Thanks.

I apologize for missing the last conversation.

But I must say my instinct in terms of the OPoC (every) domain name having any sort of relationship to ICANN themselves seems to be a level of complexity that I haven't considered before.

What were the benefits of such relationship that the group discussed?

Coordinator: Maria Farrell now joins.

Steve Metalitz: I think - well, let me take Adam in the queue first. He may have some answer to that or else I'll (get back) to that.

Adam, go ahead.

Adam Scoville: Yeah. I think that - just to answer that briefly, I think that the - and as Steve said, bears on the enforceability point is that the main thing is that in order to have this - the obligations and responsibilities of the OPoC be enforceable in any way, you have to have some sort of a relationship and get back to ICANN in some way because, you know, that's how we bind the registrant to the registration agreement because the terms are dictated through the RAA.

That's how we provide for a third party enforcement mechanism in the registration agreement in terms of the UDRP.

You know, there's got to be some (tag) back to ICANN for ICANN have any sort of ability to dictate what these responsibilities are and provide for any sort of an enforcement mechanism.

There's also, you know, as we've discussed sort of capabilities that we think that the OPoC ought to have and how else do they get verified if ICANN isn't in some way accrediting those folks. I think that's kind of a summary of why the relationship would be there.

Man: If I could get on the queue in this question?

Adam Scoville: And the - just briefly the point that I was going to make is, you're almost at a fourth bullet here to this section, Steve. It seems that there's also a little bit of question as to how this would alter the relationship between or what kind of a (amendments) be necessary in the RAA between ICANN and the registrar.

For example, one of the things might be that the - because the registrar is sort of the backstop of making the system work because they hold control over the registration that the registrant has.

And one of the things that the registrar might be obligated to do is, for example, that they won't - the contact has to be either the registrant or an OPoC or an accredited OPoC. That might be where that sort of a (require) would come in.

There also might be things like if the OPoC completely is not doing its job, then the registrar is - probably the party that has the kind of make it default back to being a non-OPoC registration and having the registrant listed there.

So the registrar would have some sort of role as a failsafe and those would probably be dictated in the contract with ICANN.

Steve Metalitz: Okay. Thank you, Adam.

I think I had Ross in the queue, and let me just see if there's anybody else that wants to be in the queue.

Chris Gibson: Chris in the queue.

Steve Metalitz: Chris. Anybody else?

We're getting a little bit of crosstalk here, so I'm not sure where that's coming from, but hopefully we can minimize that.

So, Ross and then Chris.

Ross Rader: Yeah. And I'll just - no, I have to jump back off the call and I'll be back again, so I may miss more. And if I - to the extent I missed something, it makes me appear clueless in this comments, and I apologize in advanced.

I do have some comments on the earlier part of the document. I'll send this to the mailing list, Steve.

But to the specific question around relationships to ICANN, I think it's important - I think the previous (unintelligible) pointed out that there is already an existing (said) relationship between ICANN and the registrant, and to the extent that we can rely on those relationships and I think we'll be in a much more tenable position.

In that - the - a lot of the - a lot of those requirement send to around how the name may be used, the data that must be supplied and the penalties were not complying with those obligations.

And in extending those penalties to include non-performers on behalf of the OPoC is only a natural extension and would - can alleviate a whole set of kind of a new regime, if you will, around accrediting the OPoC and enforcing the OPoC to do specific names, right?

So I think it's just natural that we rely on existing contracts where possible.

Steve Metalitz: Okay. Thank you, Ross.

Adam Scoville: Steve, (take me) back in the queue. It's Adam.

Steve Metalitz: Yeah, sure. Chris and then Adam.

Chris Gibson: Okay. And this is also by way of background per se.

I wanted to restate my support for the accreditation of OPoC, but I am very much in agreement with Adam's points that if there is no accreditation for the OPoC per se, then we have to highlight the need for amendments to the existing (IA) between ICANN and the registrar.

And of course, we neither have to be directly to the OPoC, and if it can't be then it has to be to the registrar.

I would also say that probably in any case, for a reason that Adam highlighted there would need to be an amendment properly to the existing Register Accreditation Agreement because of the possibilities that OPoC simply wouldn't respond.

And then last, there was a helpful, I think, distinction Steve, you made in previous call between - at least full broad categories of who might OPoCs.

And I think it might be worthwhile to reflect that somewhere in this document, you suggested it could be the registered nameholder him or herself or it's a - it could be registrars or it could be some new, you know, new businesses who find this as a business opportunity, and I don't know if it fits in this section or another, but it's generally, I think, a helpful set of categories to think about when you're thinking about questions such as this one, you know, accreditation and so forth.

Steve Metalitz: Okay. Thanks Chris.

Adam?

Adam Scoville: Yeah. I just - I think to sort of pick up on Ross' point, I think the reason why you wouldn't have - say, for instance, a registration be cancelled and the OPoC didn't do it, didn't fulfilled its responsibilities or something like that, and have the consequences fall back on the registrant. It's a RegisterFly.

I think, you know, this is sort of - let me back up.

A lot of the discussion that we've had is how do we deal with the - in sort of enforceability of rules of law as against a bad actor registrant, but take the other sort of situation where you have a - where the registrant is a perfectly legitimate registrant, but the OPoC for which may or may not be a business that might be related to the registrar the way the proxy services are.

I can see that business model happening.

You know, if the OPoC is a bad actor just as, you know, going bankrupt or whatever, it's not doing its thing. It wouldn't necessarily make sense for all of those registrants to suddenly be out their domain names if the OPoC doesn't do its job.

So that's why, you know, it seems that it's really hard to have to have the consequence fall on the registrant if it's OPoC who, you know, they may have relatively (little tied) to - doesn't do its job.

Steve Metalitz: Okay. Is there anybody else in the queue at this point? Anybody else want to be heard?

Let me put myself in the queue for a second.

I think what I'm hearing on this last point of relationship to ICANN is obviously, there is some - certainly some support for requiring accreditation at least when the OPoC is not the registered nameholder and not the registrar.



There is obviously some concern about a new accreditation regime and the question of whether - and looking at how much of this can be dealt with within existing contractual relationships that are already there, I think Adam's point is on the registrant.

But, of course, there already is an existing contractual relationship between ICANN and the registrar. And I think it's a given that any - if any OPoC proposal is adopted, there are going to need to be changes in the Register Accreditation Agreement, that kind of goes without saying.

So, I guess, one alternative approach here would be how much of this could be - how much could you get the desired enforceability simply by focusing on the existing contractual relationships.

For example, take the capability for remedy, you could require the registrar...

Man: Which means by this, it should be very (null) at some point.

Steve Metalitz: Excuse me.

You could require the registrar to respond to direction it gets from the OPoC in those remedy situations. Of course, that doesn't get you directly to whether the OPoC is supposed to give those instructions so maybe that's only an incomplete substitute.

But I think at this point, we can say that there is some - diverges of opinion on the question of accreditation and whether there are alternatives that would also serve that purpose.

Eric Dierker: This is Eric Dierker.

Steve Metalitz: Yes, Eric. Is anybody else want to get in the queue?

Go ahead, Eric.

Eric Dierker: I'm very mindful of Ross' (wearing this) or learning this regarding a new bureaucratic regime to enforce this accreditation. But I'm also very much in favor of accreditation.

So I see as a balancing act and there's probably the best way to handle it is through the RAA and have it somehow accredited through that process even if it's the registrar - it falls back on the registrar, at least there'll be something separate from simply a registrant agreement that has to do with the OPoC.

Steve Metalitz: Okay. So that would certainly work if the registrar were the OPoC or had some relationship with the OPoC.

But, I guess, the question is, would there be circumstances in which they didn't have a pretty existing contractual relationship with the OPoC?

Chris Gibson: This is Chris. Could I go into the queue please?

Steve Metalitz: Yeah, Chris. Is there anybody else want to be in the queue?

Adam Scoville: (Sure) and Adam.

Steve Metalitz: Okay. Chris, Adam, anybody else?

Go ahead Chris.

Chris Gibson: Just again, looking at your document, I know we went up to - and we already covered number one.

But in the definitions of remedy there...

Steve Metalitz: Uh-huh.

Chris Gibson: ...you might want to add some words to make sure that it's not just directing the registrar, but also requiring registrars...

Steve Metalitz: Oh yes, yes, yes, because they have to get a - yeah, yeah. They have to get a - yeah, yeah...

Chris Gibson: I'm hearing sort of cross...

Steve Metalitz: ...they're (at most) simple one that one - yeah.

Chris Gibson: I think I'm hearing someone else talking to...

Steve Metalitz: I have to (unintelligible). Yeah.

Chris Gibson: Anyway, I was just saying that somehow to extend your definition of remedy to make sure that it also requires registrars perhaps to take step. That's in line with the discussion we're having now.

Steve Metalitz: So - I'm sorry - to direct - who do take steps?

Chris Gibson: Require registrars. Yeah, in focusing on remedy, you said, take action, direct registrar to take action.

You might also extend it to say require registrars to take steps something beyond just the OPoC so that the definition of remedy now - and these are just this idea that there might need to be amendments to the RAA.

Steve Metalitz: Right, okay.

Chris Gibson: Thanks.

Steve Metalitz: Thank you.

I think we had Adam next, but I'm not sure if he's still with us.

All right. We'll let Adam get back in the queue when he returns.

Did anybody else want to be heard at this point? If not, maybe we can move on to the next page and the next question, which is WHAT. And this is really, what is the OPoC is supposed to do?

I used the classification that Chris suggested between legal issues, and I just quoted there Chris' - in Chris' proposal his definition of legal

issues. And (Admin Tech) issues, which I guess is kind of everything else.

I mean, I supposed it would - could include things on our - may not be (Admin Tech) issues in some sense, but I guess it would be everything else.

And we obviously haven't talked much everything else ought to be handled, but we have talked some about - and there's a lot of detail in Chris' proposal about how the legal issues ought to be handled. And I've just kind of set those out here.

First, Chris proposed that a legal issue, in order to be actionable, I guess, would have to be in some kind of standard format, at least to have to substantially comply with the standard format so that the OPoC would know that it was getting a legal query.

Second, should a copy of it be sent to the registrar just for this backup purpose that several of us have talked about before.

Third, I was trying to encapsulate there on number three a rather detailed discussion about - in effect, whether this should count as service of legal process or whether it should count as effective notice to the registered nameholder.

In other words, whether the OPoC is really acting as the agent for the nameholder in terms of receiving a notice, starting a clock running under UDRP, starting a clock running under a national law issue.

And one way to talk about that is to say, who bears the legal risk of failure to relay if the - or delay in relay if a notice goes to the OPoC on Day 1 and he or she doesn't forward it to Day 8 and there's a 10-day deadline...

Coordinator: Adam Scoville rejoins.

Steve Metalitz: There's a 10-day deadline for the registrant to respond who bears that risk.

I guess, the proposal is that the registrant bears that risk and that - to the extent possible, the notice to the OPoC would be considered notice to the registrant.

And then the fourth point under legal issues is really, you know, gets down to the question of what are the OPoCs obligations and what cases are they supposed to relay, and what cases are they supposed to reveal, and what cases are they supposed to take some remedial action.

And we - there isn't a lot of clarity on that, and that would certainly be a fruitful area for discussion.

I think Adam is back with us, and Adam, I think you disappeared at the time your spot came up in the queue so you're welcome to get back to the issue you were raising before or else we could start a queue on these legal issues questions.

So, Adam, do you...

Adam Scoville: Yeah. I only was just to kind of - sort of delve in a little bit more maybe to Eric Dierker's sort of question about the - how it might work if we were to have the accreditation come through the registrar.

So, am I right that it would be basically that the Register Accreditation Agreement would dictate to the registrar the sort of the standards for OPoCs would dictate to the registrar the obligation to accredit OPoC that they want to use - well, I'm not sure if I can think this out of my head, other obligations that would be dictated.

But anyway, these things would be dictated down as a responsibility to the registrar from ICANN. And then ICANN - then sorry, then the registrar would implement the accreditation. Is that what you're thinking of, Eric?

Eric Dierker: Yes, it is.

Adam Scoville: Okay. I just want to (give) a clarification on that.

I'm not sure. The registrars would necessarily like that but, you know, and there might be some question about, you know, how well those responsibilities are being done if the, you know, in the case of some of the kinds of registrars that we see that are not necessarily the good actors that we like, but, you know, I'm not necessarily sure that model is something that, you know, bears rejecting out of hand.

Steve Metalitz: There's all the substantial risk of the failure of the registrar and then further complications because of the - of encapsulating the OPoC agreement within the RAA. So, I agree there is a risk with that.

It's just simply that the non-starter concept of creating a new bureaucracy to accredit is something that we have to recognize as a stumbling block to get anything - any type of accreditation path.

Adam Scoville: Yeah. That's also a good point that the - that if you have - if you're relying on the registrar to be your - sort of your fallback in case the OPoC isn't doing its job. If the OPoC is really tied to the registrar and the OPoC was only accredited through the registrar, that fallback might not be of much worth.

And I guess, I'd also would disagree that necessarily, the idea of ICANN accreditation is a non-starter because, you know, there's a lot of, you know, principles in terms of the enforcement of rule of law on the Internet depending on being able to contact people, and that may just be sort of the - one of the things that, you know, we need to be looking at if we're going down the road of making an OPoC proposal, you know, workable.

And otherwise, it just gets too hard for people to enforce whatever kinds of rights they have. And the Internet, as a marketplace, just becomes a lot less dependable.

Steve Metalitz: I understand and agree with what you say, and the balancing act is very difficult. I don't know how to watch out, but I know that we're facing the two issues, either we have ICANN do it or we have it in the RAA. And whichever one is more palatable, I don't know.

It seems to me that there's a great deal of mistrust as far as bureaucracy is being set up through ICANN to get things done appropriately.



But on the other hand, now there's a great deal of (distrust) especially with the RegisterFly situation with the registrars handling it.

So, I know we have to reach a compromise somewhere. We'll just - everybody is just going to have to accept that. Somehow we're going to have to reach a compromise and come up with one solution or the other.

Adam Scoville: I agree.

Steve Metalitz: Okay. Shall we get back to the legal issues discussion and is there anybody that wants to comment on any of the points that are in the top half of Page 2 under WHAT.

Chris Gibson: This is Chris. I'd like to be in the queue.

Steve Metalitz: Okay. Anybody else?

Chris, go ahead.

Chris Gibson: Okay. I just - a comment you made a moment ago, Steve, I thought was quite important and also it highlights some of the discussion from the prior page. I think you might want to add a paragraph something like OPoC default.

You had OPoC for - heard of OPoC obligations upon receipt. You might want to spread out something on default. And I think the point that you want to highlight is what you said, which is if - who bears the risk for an OPoC failure.

And at least from my position, I couldn't - through a system where the answer should be anything other than that the registrant does bear the risk that the OPoC isn't performing, particularly, given the kind of legal notices that might come through.

And that's something to highlight in your summary and that should be well understood. We're adding another link in the system - if there's any type of implementation of an OPoC approach, and it's going to create another potential weakness.

So, you know, I think it's worth breaking that out as a separate point -- OPoC default consequences under this issue.

Steve Metalitz: Let me ask a question about that, which is three deals with legal risk of failure to relay, but I suppose there could be - I'm not sure what will be the legal risk of failure to reveal or to remedy. I guess, I'm not...

Chris Gibson: Maybe it's just throwing out a bit under three, Steve.

Steve Metalitz: Okay. Right. Yeah.

But we're thinking about whether this is also applicable to the other functions.

Okay. Other comments on the legal issues?

Philip Sheppard: Yeah, Steve, (unintelligible). Just - again a clarifying question on the UDRP.

Steve Metalitz: Uh-huh.

Philip Sheppard: The things in general I presume is a (post) (unintelligible) world, the universal availability of the registrant will disappear, and therefore, naturally that role would have to fall to the one contact WHOIS name with the OPoC.

And therefore, a little bit of thinking who in terms of the OPoC's responsibilities to the registrant as opposed to the registrant's direct responsibilities. That was the logic behind that section I (take it).

Steve Metalitz: Well, I think that the thinking was, if you have a potential - the two options are laid out there. Once is that if there's an actual UDRP complaint that when that - that would be served on the OPoC since that's the contact person...

Philip Sheppard: Yeah.

Steve Metalitz: ...can reach.

And at that point, the OPoC would have to reveal the contact information on the registered nameholder, and perhaps, you know, you might have to give - you might to have change the UDRP rules as well to give the complainant another ability to amend or supplement his complaint because of information that is relevant...

((Crosstalk))

Steve Metalitz: ...and find out the - who the registrant is.

The other alternative is to say that if you have an impending complaint, and I think Adam pointed out on the list, I believe it was Adam, that if you have a domain name that is identical or confusingly similar to your mark, that's one element of the UDRP.

And if you have only that element, you don't know whether you have a good case in UDRP or not until you know whether the registrant has any rights -- legitimate rights in the - those characters or whether there's evidence of registration or use in bad faith, (attrition) and use in bad faith, I guess, with UDRP.

So, in order to find out whether that's the case, you need to know more about the registrant than you would know from the limited data available.

Philip Sheppard: Right.

((Crosstalk))

Steve Metalitz: So the question then...

Philip Sheppard: The current situation would inform you more about the registrants to make a judgment...

Steve Metalitz: Right.

Philip Sheppard: ...than opposed to OPoC. Okay.

Steve Metalitz: Yeah. So - yeah, the question is it would reveal kicking only when you actually initiated a complaint, will reveal a kick in when you go to the

OPoC and say, I have the basis for a complaint based on identical or confusingly similar...

Philip Sheppard: Okay.

Steve Metalitz: ...now, you should reveal.

Philip Sheppard: So in terms of making the UDRP as effective as it currently is, then you need both.

Steve Metalitz: Yeah. That was the argument, but some people, I mean, the people have different views on that, so let me just open...

Philip Sheppard: Oh okay, right.

Steve Metalitz: ...and (look) forward to additional comments on that.

The reason that is there because there's been some discussion of it on the list. We haven't really thought much some of the other cases.

So let me - what I've done there, by the way, and outside of UDRP is to say are - what about the standard that exist now in limited circumstances or in some circumstances for proxy services, which is for presentation of reasonable evidence of actionable harm.

And can we - is that the right standard? Or - and if so, how can we flesh that out?

So, let me just open the floor to comments in general on - quickly on Item 4 whether we can flesh out - what are the circumstances in which

there should be a relay? What are the circumstances in which there should be reveal? What are the circumstances in which there should be a remedy?

Eric Dierker: This is Eric.

Steve Metalitz: Okay, Eric.

Is anybody else want to get in the queue?

Adam Scoville: Adam.

Steve Metalitz: Adam. Anyone else?

Steve del Bianco: Steve.

Steve Metalitz: Steve. Okay. Anybody else?

Okay. Go ahead, Eric.

Eric Dierker: In this particular instance, it appears that we're balancing the right of the industry, the IP is particularly versus the consumer right and privacy, and so we're having to strike a balance between open access for the point of complaint or not.

And I think just on the IP owners' intuition, there's a violation to reveal the data -- force the OPoC to reveal the data of the registrant, I think that's a little steep, that's a little bit too easy to have - to be done.

It's - I understand that they need to investigate it further and in order to do that, which would save all parties' time and money. They need to have further information on the registrant.

But from what I've seen from the industry, it's an assumption of guilt that prevails upon some type of similar mark.

And if that's the prevailing attitude of the industry, I do think that consumers going to need some protection. So we need to get something a little bit more than the feeling, the good feeling or bad feeling of the registered trademark, for instance, before we start just willy-nilly handing out the private data via the OPoC.

Steve Metalitz: Okay. Now, let me just clarify, Eric. Are you talking just about the UDRP situation here or more generally?

Eric Dierker: I'm using the UDRP as a particular. I could see it coming up in other circumstances but, for instance, not what I'm talking about wouldn't necessarily be applicable to fishing kind of problem.

Steve Metalitz: Okay. I think we had Adam next.

Adam Scoville: Yeah. I have a - I maybe can respond to that a little briefly, and I also have a question for Philip about scope.

But just responding to that briefly, I think that - part of the point is that it's not really an assumption of guilt because you don't really - there's so many of these cases that, you know, you find out a little more and you know that there's other ways to resolve it or that there's a good reason behind them.

And I had a case just last week where the case - the Web site looked from all appearances like it was a completely bogus impostor, you know, Web site.

Someone is trying to pass themselves off as my company's brand. And there was no, you know, contact information, no real identifying information, but the - in this case, there was a proxy service use so I couldn't get stuff through the WHOIS.

And, you know, I was through another route, able to just get a physical address, which is a kind of information that we'll be talking about revealing here. And it was - in that case, just that address with enough to enable me to tie it to a particular franchise of ours.

And that was - that enabled me to, you know, oh - say, okay, this isn't a completely bogus site. This is just someone who - someone from, you know, say, Idaho, and pretending to operate in Brazil or whatever and, you know, find that needle in a haystack and contact that person and say, you know, hey, don't you know, this doesn't really accord with our standards.

And it was something that was amicable, someone I never would have wanted to bring legal action against since it's our franchisee, you know.

The - I think that it's also important to note that it's not - the reveal step doesn't do anything to the domain. It's not like your compromising the person's ownership and dominion over the domain of that stage. So I don't know if there's a sense of guilt involved there.



It's just that there's enough of a - I don't know, would raise us an eyebrow just enough that there is possibly some interest in determining whether there's a legal violation that is worthwhile enough against - the person's information doesn't get disclosed to the world. It gets disclosed to this particular party who says I have a trademark that is identical or confusing similar to the text of this domain.

And, you know, that - the gain and efficiency, I think in terms of, you know, keeping unnecessary legal actions from a lot of domain registrants is, you know, the benefits and sort of everyone around. And I guess, I would disagree with the characterization of it as an assumption of guilt.

My question for Philip about scope though is, I know that there's been some discussion on the list about whether any discussion of reveal event is out of scope for this working group.

And I think Steve and I had sort of attempted to kind of talk about the kinds of reveal events that we're talking about here, and I guess, maybe some feedback as to whether this is the kind of thing that we can talk about would be good.

I think that we are not talking about situations where someone by virtue of just who they are, i.e., an IP owner, a member of law enforcement kind of get standing access, so to speak, to WHOIS information. This is sort of what happens.

We're talking about reveal in the context of possibly the registrar revealing the person's name if the OPoC is completely not doing their job, and it's kind of got to default back.

Or in this kind of case where there's an actual, you know, complaint that either this is identical and confusingly similar to a trademark or that there is some reasonable evidence of actual harm or whatever understand that we might adopt. And that particular notification comes in rather than the more general sort of case that I think Subgroup B is talking about.

Can you give us some guidance as to whether we're, you know, out of bounds here, Philip?

Ross Rader: And before you issue that clarification, Philip...

Man: Uh-huh.

Ross Rader: ...can I ask a question to the speakers so that I understand what the questions being asked (unintelligible)?

Steve Metalitz: Yeah. Go ahead, Ross.

Ross Rader: And just real quickly, (still) referring to the string or the use of the string as it relates to (unintelligible)?

Adam Scoville: I think - I guess, I'm not necessarily being specific. I think that there's - that we - that will be the next step would be to look at the specific sort of situations whether it's inherent and what the domain name is or the use - we sort of need to look at when it's appropriate and when it wasn't.

Ross Rader: Okay. Thank you.

Philip Sheppard: Yeah. I think just in response to that, I think (fall) here on the right track, I mean, I think it make sense to flesh out the things that seems (unintelligible) in terms of the job this subgroup is doing. I think you're right to mention, of course, that these things - also in isolation that we're just doing that work in that way for the time being.

I think it may well be the - that - if its tiered access discussion in the other group on looking towards mechanism, typically characterized by both access, then be the differentiation here is individual query based on one particular concern. I think that's probably where the distinction is, so that in my mind it make sense to continue.

Steve Metalitz: Okay. I think we had Steve del Bianco in the queue and I know if there's anybody else that would like to get in the queue.

Chris Gibson: This is Chris.

Steve Metalitz: Okay, Chris. Anybody else?

Ross Rader: And Ross, please.

Steve Metalitz: Ross, okay. Anybody else?

Okay. Steve, you have the floor?

Steve del Bianco: Thank you, Steve.

Eric, (I first) wanted to respond to the balance that you proposed. You proposed the balance between IP owners and consumers in the nature of consumer privacy.

I would ask you that on the IP side, you need to add the interest of consumer protection to IP owners, not just about IP.

When it comes to fishing, farming, fraud, it's done online, counterfeit goods -- those are all consumer protection issues that are being balanced against the privacy of the one individual who doesn't wish to be revealed.

When you look at that balance that way and add consumer protection to that of the IP owners, my feel is if we can help this balance much more towards adding real (unintelligible) responsibilities to an OPoC.

A second point is with respect to the three capabilities and responsibilities that is to say, reveal - relay, reveal and remedy. We ought to think of those as escalating responsibility.

And that the OPoC first response will be is the relay -- a two-way relay.

The second responsibility is to reveal when in fact the relay has failed to actually solve the issue.

And then, failing to reveal or having the revelations be able to solve the issue, then you escalate to the remedy.

So putting them in that hierarchy, I think will make it easier for us to explain or articulate why we need to create three sets of capabilities later on.

And my final point is one with respect to scope as well.

Yesterday, on the emails, one group is explaining that, we are out of scope discussing reveal because some other group is discussing who has access to the information.

I really feel strong we got to push back on that because we are discussing the responsibilities of an OPoC when it comes to reveal, that is to say when and how they reveal.

We are not actually discussing to whom they must reveal it. And we're not - something on the scope of the access. They are the ones who will indicate whether it's tiered or law enforcement or something. They'll indicate who's entitled to the revelation of the information.

So we're speaking specifically to an OPoC's responsibility to reveal because the OPoC had failed through the relay process to actually run to your problem.

So, Philip, I hope that you're comfortable with allowing us to continue to go after the reveal responsibility despite the fact that another group is looking at access.

And that's all I have.

Steve Metalitz: Okay. We have Chris and Ross, then I'm going to put myself in the queue, and we may have to wrap up at that point, but we'll see where we are.

So Chris, go ahead.

Chris Gibson: Steve, I just wanted to highlight a point in relations to relay. It's already on your page.

It's a possibility that a relay would be withheld or that there would be some delay in cases of active investigations. I could imagine that there would be certain cases where you would perhaps want to delay their relay within the kind of investigations, whether it's law enforcement or something else if you think someone's going to - try to flip the domain name.

I think that's a very difficult thing there at the same time because the most easy responsibility to set in a OPoC where it is a completely automated and immediate relay - two-way relay type of responsibility.

And so now, if we're saying, no, there will be certain situations in which a relay has to be delayed or something while that information is disclosed. I'm interested to see if anyone else on the call has further thoughts about that possibility.

Steve Metalitz: Okay. Ross, you're next in the queue.

Ross, are you with us?

Ross Rader: I'm sorry. My (head) had got screwed at.

Steve Metalitz: Okay. Go ahead.

Ross Rader: Sorry about that.

I'm kind of - I'm trying to understand - I'm not quite sure I understand what's being proposed here in terms of - what is the Operational Point of Contact going to reveal in these cases? Or what's the expectation as to what the OPoC will be revealing?

Steve Metalitz: Well, we have very limited definition of reveal, which is to provide the contact information on the registered nameholder.

Ross Rader: But to the extent that that's a proxy service, would that be - would be revealed or...

Steve Metalitz: We haven't gotten into that question, but first, the idea is that some or all of the information that is withheld from public access under the OPoC proposal would be made available to the requester in the reveal cases.

Ross Rader: So - okay. I would, you know, with those kind of passing judgment on the - those should have revealed, I would just note that the proxy services are pretty much ubiquitous nowadays.

And to the extent that the discussion doesn't encompass those proxy services, I think we're doing yourselves a good service.

And perhaps, we should, at this point, widen up that discussions to take that into account.

Steve Metalitz: Okay. I think that's a good point.

It may raise some scope issues, but I think that the point is well taken.

I have myself next in the queue. Is anybody else want to be in the queue?

Okay. Let me just comment on a couple of things.

First, I think Steve del Bianco has kind of suggested a somewhat different approach here, which is that you really first and then you reveal in some cases, then you remedy in some cases.

I think the model we're talking about here while there might be some combinations, I think there might be some cases in which you reveal without waiting to relay.

For example, UDRP situation, I don't think you would - whenever that's triggered, I don't think you would first relay and then wait some period of time to reveal.

But I mean, that's actually more on the - almost on the next page, but it's not necessarily an escalation situation. There might be some situations in which you do all three of these things or some combination of them.

And then just in response to Chris' point about - under relay, would there be circumstances where relay is withheld or delayed, it might be



that this is a place to draw a distinction between what we're talking about and what Subgroup B is talking about.

And then if you had a query that you didn't want relayed to the registrant, then you might have to go through whatever channel, you know, is developed through a Subgroup B.

You wouldn't just go to the OPoC because there is certainly a lot of attractiveness to the OPoC just automatically passing this stuff along and relaying in every case, you know, maybe they do something else in certain cases too, but relaying in every case.

And that if you were, for example, a law enforcement agency or conducting active investigation and you didn't want this (close) your query is to be registered, maybe you would use a different route than this.

So that might be one way to differentiate between two mechanisms.

Steve Metalitz: Are there further comments at this point on the legal issues?

Eric Dierker: This is Eric.

I simply wanted to say that I certainly appreciate and understand the criticisms of my point of view on that. It's not as though I'm - or anyone I think is (blind to a dirt), obviously, a give and take.

Steve Metalitz: Okay. Thank you.

All right.

Man: Just in terms of process, what are your next steps to this (off)?

Steve Metalitz: Well...

Steve del Bianco: Steve del Bianco (on one).

Steve Metalitz: Pardon me.

Steve del Bianco: Sorry. Steve del Bianco wants to add for you.

Steve Metalitz: Okay. Steve, why don't you speak and then we will get a second to Ross' question?

Steve del Bianco: Sorry. Very quickly.

I think you're exactly right that if law enforcement wishes to do some investigations without alerting, and this should not use the OPoC. Instead, it should take - it should look at the access to the underlying information held by the registrants.

In whatever means, the other subgroup comes up and should be an OPoC path that would allow you, as you say, for the OPoC to say, to create an automated relay process.

And the second is that Ross brought up a great point about responsibilities today, those who are proxy registrants. We must be explicit in dealing with proxy.

I mean, one interpretation is that we think proxy really don't fit today's rules so that in fact is, we are suggesting the OPoC instead of proxy registrants. And therefore that after an OPoC is rolled out, you won't do proxies anymore that would do (other) interpretations.

And another is you explicitly carve out a role and responsibility for the proxy person that are somewhat different than the OPoC. I think that's going to just create confusion and we should endeavor to extinguish the proxy and replace it with an OPoC.

Thank you.

Steve Metalitz: Okay. All right. Well, let me - I think we need to wrap up in terms of the time, and Ross asked what are the next steps in this document.

Of course, we haven't gone all the way through it although we've gone through most of it where there is something fairly specific to react to, and a lot of the rest of it is questions about timing and - yeah, you know, the time frames for taking these actions and how some of these would be enforced, which obviously, may get to - back to question of the relationships that the OPoC has.

I guess, my suggestion would be that, you know, we can tweak this document based on our discussion today, and then, you know, and re-circulate that.

And then on our next call, which will be our last call, we then try to step through some of the other questions or some of the other issues that we haven't reached today.

And again, I would emphasize that at the beginning, this is not intended to...

Man: Yes, yes.

Steve Metalitz: ...share and reflect a recommendation.

((Crosstalk))

Man: I'm not being paid to stay until two minutes to 5.

Steve Metalitz: Excuse me.

Man: Two minutes...

Steve Metalitz: Hey, just stay on. Okay?

Well, anyway, the - if there are areas where we have general agreement, I think we should note that. For example, if we agree that generally the OPoC should relay automatically and real - as close to real-time as possible in all cases of queries that are received, we should note that.

But I recognize that we're not going to have - I'm not suggesting everyone is signing off on everything here. It's really just to reflect the contours of the discussion.

Man: (And to close that)...

Steve Metalitz: So that my proposal would be that we circulate a slightly revised version of this, really just revised on Pages 1 and 2.

And then, on our next call, try to see if we can flesh out 3 and 4 to (forward) and extensions...

((Crosstalk))

Steve Metalitz: ...or adjustments are needed on 1 and 2.

((Crosstalk))

Philip Sheppard: (Is a)...

Steve Metalitz: Question?

Philip Sheppard: Philip here. Just on that, I think my guidance of any given limited time is that many of the questions I think on the WHEN are, to some extent, implementation detailed that almost come in a post working group if a structure is created, and then goes forward to some sort of augmentation group.

Whereas, perhaps a couple - some of the questions on HOW are a bit more interesting, and if you had a choice in terms of doing one or the other, and I was - possibly the HOW and enforcement side may be a place and a time we better spend.

Steve Metalitz: I think that's a good point, and we should adjust our agenda next time accordingly.

Okay. And last comments that people want to make?

Adam Scoville: Yes, Steve, Adam.

Steve Metalitz: Adam, go ahead.

Adam Scoville: Just to say that - and basically just to agree with Philip that I think, you know, we've talked a lot about accreditation as a possible way to get some sort of a contractual and legal hook to the OPoC to enforce the responsibilities. I do agree that we probably need to concentrate on HOW.

And part of it is to, you know, have the time to discuss that accreditation idea and how it went work and so forth, but also really to brainstorm - can anyone count with other ways to make this enforceable - to make these responsibilities and enforce?

Well, I think we really owe it to folks to really try whatever options we can whether they be, you know, good ones or (maybe) ones to at least air them out and see what we can do.

Steve Metalitz: Thank you for that reminder, Adam.

I really would encourage people to use to list to give their reactions, not only on HOW, but on anything in this document. I think Ross said he was going to try to react to some of the things at the beginning of the document on the list, so I would encourage him to do that.

And if there's no other business that we need to discuss, then we will adjourn this call.

Thanks everybody.

Man: Thanks, Steve.

Man: (Unintelligible), bye-bye.

Man: Thanks.

Man: Thanks.

Man: Bye.

END